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Decisive elections in the DRC

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Abstract

In December 2023, general elections are supposed to be held in the Democratic Republic of the Congo in a tense political and security environment. This paper tries to assess current challenges to the organisation of free and fair elections, within the political, security and historical context. This includes technical and organisational issues, the risks related to the conflict in the East, the strategies of the main political actors, and the risks for violence and derailing of the electoral process. The paper concludes arguing that prioritizing short-term stability threatens the fundamentals of the electoral process which is adequate representation.

DECISIVE ELECTIONS IN THE DRC

By the end of this year, general elections will be held in the Democratic Republic of the Congo in a tense political and security environment. This brief tries to assess current challenges to the organisation of free and fair elections, within the political, security and historical context.

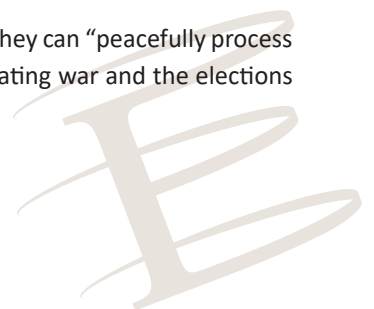
Elections are obviously not democracy. Bleck and Van De Walle argue in a comprehensive study that the institutionalisation of competitive elections in Sub-Saharan Africa is accompanied by a striking continuity in political regimes and exercise of power.¹ This statement must be qualified for the DRC. The organization of competitive elections in the DRC in 2006 installed a new political regime governed by an innovative and democratic constitution. Still, political practice over the years was increasingly at odds with the constitution, despite the more or less regular holding of elections in 2006, 2011 and 2018. The increasing disjunction between rules and practices also affected the electoral process. Will the upcoming elections in 2023 continue this downward trend? What are the risks involved? Is there a chance for a turning of the tides?

The paper tries first to assess the reasons why elections are important in the DRC, highlighting the imperatives of stability and representation. It then briefly takes stock of progress and setbacks in the struggle for the organisation of free and fair elections in the DRC since 2006. An assessment of the challenges to free and fair elections in 2023 includes technical and organisational issues, the risks related to the conflict in the East, the strategies of the main political actors, and the risks for violence and derailing of the electoral process. The paper concludes with some suggestions about what still can be done. On a more fundamental level, it argues that prioritizing short term stability threatens the fundamentals of the electoral process. Real stability can only be achieved by prioritizing adequate representation, to be patiently constructed and adequately protected.

1. WHY ELECTIONS IN THE DRC?

The successful organization of free and fair elections requires a well-functioning administration, respect for a set of relatively complex rules, and sufficient financial means. This is a huge challenge for a country as the DRC with limited infrastructure, a budget far below its potential, and a shallow historical experience with elections. Elections are costly (in DRC between 430 million USD in 2006 and 983 million USD in 2018), they often create conflict, are extremely difficult to organize, and respect for the electoral rules and procedures in the DRC, to say the least, is not guaranteed. So why are they important?

Przeworski argues, after discussion of what elections can and cannot achieve, that in the end they can “peacefully process conflicts in intensely divided societies”.² Indeed, in 2006 the DR Congo came out of a devastating war and the elections



were to be the final phase of a conflict resolution process started four years earlier. The liberal peacebuilding paradigm pushed for elections in an effort to replace the bullet by the ballot.

The objective was, first of all, stability.

A second reason for elections, as expressed in the preamble to the new 2006 constitution of the DRC, was the need to resolve the DRC's chronic legitimacy crisis since 1960 and to install a government recognized as representing the majority of the population. The objective was electoral democracy.

How do these two objectives relate? Although officially it was stated that stability would result from electoral democracy, in practice this was not the case. When stability enters into conflict with democracy, the "international community" always preferred stability. For the DRC population however, adequate representation was the priority – even if the often-complex rules of translating the vote into representation were not always understood.

It did not work out as smoothly as planned. One of the reasons for the 1996-2002 war to be fought was the protection of the minority Tutsi community in the DRC, supported politically and militarily by the Rwandan government. When the war was over, the warring parties did not want to lose what they had been fighting for. The Tutsi community obtained through elections merely a very small representation in parliament, motivating some of their military leaders to take up arms again in 2007, leading to a crisis the effects of which are still felt today.³ Electoral democracy thus created instability. To resolve this and following crises, in the name of stability, an overrepresentation of the Tutsi community in the army of the DRC, and in other state services was accepted through negotiations and demobilisation processes.

The regular organisation of elections in DRC in a country with almost no democratic tradition is a feat. Still with each successive election, the elections' democratic content has been increasingly eroded; this process was internationally accepted in 2011 and 2018 in the name of stability. However, this stability may also prove to be an illusion. If the upcoming elections take a step further on the road towards the undermining of electoral democracy, the entire political regime installed by the 2006 constitution, or at least the electoral process, may in the end be put into question.

Although stability and representation, or even more stability and democracy are not easy to reconcile, it has a much better chance to succeed if priority is given to adequate representation and democracy than to sacrifice democracy in the name of stability.

What are currently the chances for a return to genuine democratic elections? This can only be understood against the historical background of the progressive erosion of good electoral practices.

2. 2006-2018: FROM FREE AND FAIR TO UNFREE AND UNFAIR

The 2006 elections were to be the culmination of the peace process and the transition period begun in 2003. Their successful organisation benefitted from strong international support but still organizationally and politically almost a miracle. The European Union stated that:

Despite a few shortcomings these elections already represent a remarkable success. The Congolese People showed that they could take their future into their own hands through democratic means.⁴



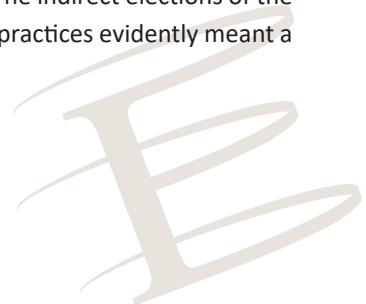
Joseph Kabila, still invested with an aura of leader of a legitimate government against rebellions supported by outside forces, won the elections and quickly made efforts to dominate his rivals. Jean-Pierre Bemba, chairman of the rebel movement MLC⁵ and loser of the elections, unsuccessfully tried to organize an armed resistance in Kinshasa. As mentioned above, ethnic Tutsi military leaders were more successful but were finally defeated.

Unfortunately, the gradual concentration of political, military, and economic power in the hands of Joseph Kabila subordinated the existing institutions to his dominance and to steer these away from the spirit, and sometimes the letter, of the 2006 constitution. In January 2011, the constitution was modified within less than a week to change the presidential election from a two to a one round procedure where a candidate merely needed a relative majority of the vote to be declared the winner. This voting system benefitted the incumbent President Kabila, and the opportunistic modification of the Constitution created a dangerous precedent. In 2011 a new electoral commission was set up and, unfortunately, the important technical competence acquired by the 2006 team was not put to profit. The Independent National Electoral Commission CENI started functioning on 3 March 2011,⁶ a mere nine months before the presidential and legislative elections. The relatively chaotic organization and the suspicions of fraud in favour of the incumbent president contributed to reduce considerably the legitimacy of President Kabila's second mandate and, according to the Carter Center report, of the democratic institutions installed in 2006. The European Union considered the election results published by the CENI as lacking credibility.⁷ Similarly, the Carter Center considered the final presidential election results as not credible.⁸ Unlike 2006 when external donors funded 91% of the elections budget, they did so only for 26% in 2011. This national reappropriation of the electoral process thus reduced rather than increased the quality of electoral procedures and practices. Kabila's diminished legitimacy, motivated him to try and ensure perpetuation in power by all means.

From 2013, it became obvious that President Kabila wanted to modify the constitution to allow him an unconstitutional third presidential mandate. An effort to rally a sufficient number of parties behind this initiative during the "national consultations" in September 2013 backfired and eventually the "presidential majority" tried the infamous strategy of "glissement":⁹ i.e. extending the ongoing presidential term by postponing the elections which were to be held in 2016. This triggered important popular protest, under the impulse of the Catholic Church¹⁰ and the emerging leader Moïse Katumbi with allies who managed to involve the militants of the most important opposition party UDPS¹¹ in Kinshasa. To isolate the UDPS, the "presidential majority" then started secret negotiations about a power sharing deal with Felix Tshisekedi, his father the UDPS president Etienne Tshisekedi being ill and residing in exile.

When the latter recovered his health however, Etienne Tshisekedi broke off the negotiations and anchored his party in a broad opposition platform against Kabila. Etienne Tshisekedi's death in 2017 opened the way for his son to become UDPS president in 2018. Although the party remained in the opposition, secret negotiations with Kabila took off again in 2018 and a post-election power-sharing deal was concluded. Kabila, under heavy internal and external pressure, decided not to pursue a third presidential mandate and appointed another candidate for the presidential elections. When the electoral commission was informed about the catastrophic result for the latter, it was simply decided to stop counting the votes and to ignore the results, which gave opposition candidate Martin Fayulu the majority, and to appoint Felix Tshisekedi, the second in row, as President. A secret deal between Kabila and Tshisekedi detailed the conditions of this transfer of power.¹²

Electoral fraud was systematized for the legislative elections. Several sources suspect that instruction was given by Kabila to ensure a two third's majority for his coalition in parliament. Within these limits electoral results for some candidates were followed while not for others. In any case, the electoral results were never published. The indirect elections of the senators by the provincial assemblies were also tainted by high levels of corruption.¹³ These practices evidently meant a hard blow to the integrity and credibility of the electoral system.



3. ELECTORAL PROCESS 2006-2018: WHAT HAS BEEN WON?

Assessing the electoral process since 2006, some progress was made in terms of democratization.

First and foremost: the Congolese population has appropriated the vote as the sole legitimate instrument to confer political power. Many ordinary citizens have sacrificed their life in the struggle for free and fair elections, through harsh periods of repression. When in Beni and Butembo (North Kivu) the 2018 elections were postponed because of insecurity, the inhabitants organized their own elections in protest.¹⁴ This is a remarkable result in a country where no real elections had been held since 1965.

Second: the presidential term limit. The evolution from 2006-2018 saw a decline in respect for electoral norms and procedures, ending up in straightforward modification of the electoral results in 2018. However, for the first time in the DRC's history, a massive mobilisation of civil society and opposition parties succeeded to block a third presidential term and to force the incumbent president to respect the constitution. It seems unlikely that the current or next president if tempted, will succeed to discard the constitutional two term limit. However, there is a flipside to the coin: the 2015-2018 mobilisation was led by the Catholic and Protestant churches, but was made possible mainly through the work of a core of UDPS militants on the ground, joined by many civil society activists including from these churches. Once Felix Tshisekedi became president, the UDPS militants and their sympathizers in civil society pledged loyalty to him and weakened the mobilisation potential for the opposition.

However, for several years, youth associations in the East (Lucha, Veranda Mutchanga, Filimbi...) have emerged as a new and powerful engine for the opposition, this time outside the political party structures. The power of the current mobilisation against Monusco, EAC, M23¹⁵... will almost certainly push protest forward during the electoral process - very probably a protest against all political parties – at least if these movements will not be bought off by politicians and disintegrate.

Finally, and since 1990, the Catholic Church (allied since 2017 with the Protestant Church ECC) established itself as the most important organisational force of civil society, weighing as no other on the political process. It has constantly provided strong guidance against any tendency to install a full dictatorship. The recent visit by Pope Francis has almost certainly reinvigorated their engagement and probably inaugurates a new phase of difficult relationships with the UDPS.

4. ELECTORAL PROCESS 2006-2018: WHAT HAS BEEN LOST?

The damage inflicted by the 2018 electoral fraud to the institutional structure introduced in 2006 cannot be underestimated. While under Joseph Kabila most institutions no longer functioned as they constitutionally should, this evolution has been pushed further down the road. A good example is the National Assembly. While all attention went to the presidential election in 2018, the validation process for the members of the legislative assembly received much less attention, and electoral results were never published. According to several interviewed sources, Kabila's FCC coalition¹⁶ wanted to ensure a two-thirds majority in the National Assembly and a small committee including the CENI President manipulated the results to that effect. Elected MPs were replaced by FCC loyalists and/or by friends and family members. MPs from the opposition were "allowed" to seat when their electoral victory was too important, but within the one-third limit.

Tshisekedi succeeded to reverse the majority in the National Assembly in his favour by first creating what he called a "Sacred Union"¹⁷ coalition. He reportedly succeeded this operation by buying off a sufficient number of deputies. It rapidly appeared that their work in parliament would be seriously affected and permanently conditioned on corruption.

A recent report¹⁸ highlights the very limited results of parliamentary work. During a parliamentary voting session, the votes are not even counted but interpreted by the National Assembly president who very openly campaigns in favour of President Tshisekedi.

The senatorial as well as the provincial elections were also characterized by massive corruption; the senate lost its role as “chamber of wisdom” as well as the moderate opposition role it played during the Kabila regime.

The Constitutional Court, already tainted by questionable decisions about the “decoupage” (carving up of the former provinces) process in 2015, damaged further its reputation by lack of transparency in its rulings on electoral disputes and validation of deputies, as well as in contradictory rulings on the indictment of former Prime Minister Matata Ponyo for an affair of embezzlement.¹⁹

The lack of legitimacy from a president appointed by electoral fraud is thus strongly reinforced by the loss of legitimacy of the core institutions of the DRC. If fraudulent elections were held in 2023, this may in the longer run lead to a rejection of the entire electoral and institutional structure.

5. NO TRUST IN THE ELECTORAL PROCESS

Against this background it is not surprising that there is an important trust gap between the institutions organizing the elections and the population. A recent poll²⁰ indicates a possible abstention rate of 54%; in March 2021 a previous poll mentioned a rate of 25%.²¹ More immediate reasons for this lack of confidence include a perception of the CENI as too dependent on the presidential coalition, as is e.g., the case for its key appointments: the CENI President Kadima (considered to be ethnically close to Tshisekedi) and National Executive Secretary Mabiku Totokani (a member of the UDPS and former presidential advisor). The law on CENI did not reduce political influence as requested by a group of MP’s and civil society members called the G13.²² Reform proposals of the electoral law in order to increase transparency, even when supported by respected MPs not only from the opposition (the G13), met with resistance from the UDPS and were rejected. As is noted by Professor Bob Kabamba, the law in its current version, promulgated on 5 July 2022, provides the majority with several opportunities to reduce challenges from the opposition – especially with a justice system that is easy to manipulate. (1) Past experience has taught that it is not too difficult to declare a candidate ineligible based on the broad criteria for ineligibility defined in art. 10 para 2 of the law. (2) Candidates on a list presented by a political party or political grouping (*regroupement politique*) must cover 60% of the contested seats of the National Assembly (i.e., 300 seats all over the country). While this is meant to reduce the number of fake political parties, it also can eliminate local parties (the requirement is also valid for provincial and local elections) and the CENI can in principle declare several candidates ineligible to prevent a party or grouping to reach the 60% threshold. As many politicians have created their own political party, an important number of groupings will be constituted. Finally, the Interior Ministry which approves the list of legally constituted parties or groupings, can block the approval of an opposition political grouping. (3) The electoral results must be published per polling station by the local vote counting office, which is essential for election observation. However, and contrary to the proposal from the G13 group,²³ no specific sanctions are provided for non-compliance. Most importantly, there are no sanctions for not publishing the complete electoral results per polling office, as happened in 2018.

If everyone plays it fair according to the rules, there is nothing to worry about. Past experience however made it clear that this is wishful thinking.



The constitutional court, which is in the end the ultimate protector of the entire political system, lost its independence by the irregular nomination of several court judges considered to be loyal to President Tshisekedi.²⁴ The same occurred under Kabila. Some decisions taken by the court since these nominations indicate the influence of political imperatives vs. legal requirements, which is a worrying development.

Finally, the ongoing first phases of the electoral process do not inspire confidence either. The electoral calendar was published on 26 November, 13 months before the presidential elections. Despite criticism about the unrealistic timing, the CENI assures that the elections will take place on 20 December 2023.²⁵ By comparison in 2011 the electoral calendar was published seven months before the – highly contested – elections were held.

Voter registration is the key to the entire sequence of election events: it determines how many people will vote in an electoral constituency, but also how many seats the latter will get. A candidate's chances to win a seat is directly proportional with the number of supporters he can get to register. This process is quite evidently confronted with enormous logistical challenges in a vast country with limited infrastructure. Still there was an important technical improvement in 2018 (compared to 2011) with the publication of a comprehensive electoral cartography (maps with the voter registration and polling stations) which for the first time included the limits of the constituencies for the local elections.

Despite the current CENI having thus much better technical instruments to ensure adequate voter registration, it decided to start the mapping process again from scratch, without oversight from political parties or civil society, raising – again – suspicion of a hidden agenda.

The voter registration process in DRC started with a tight schedule on 24 December 2022 but was rapidly confronted with many organisational, logistical, and technical challenges. From many areas there are complaints about malfunctioning or absent voter registration machines, power shortages, lack of competent personnel, inexistent voter registration centres etc. In some areas in Bandundu, including Kwamouth territory, no voter registration was done²⁶. In some areas, agents were reported to accept bribes to speed up a slow registration process, leading the CENI to introduce a warning system.²⁷ Voter registration in each of the three operational area was extended, causing a delay of 15 days compared to the electoral calendar.²⁸ On 13 March, CENI figures report registration of 70% of the expected voters. CENCO-ECC²⁹ however, for the sake of transparency, request clarification on the veracity of the CENI statistics.³⁰ Moreover, on 6 March 2023 CENI president Kadima announced that the CENI had exhausted its funds for elections in the enrolment process³¹ – while the CENI has not presented yet a comprehensive budget. Even if the problems are technical, they inevitably create suspicion of intentional fraud. The Catholic and Protestant Churches issued this year two press releases deploring irregularities in the enrolment process and suspicions of fraud by the setting up of private voters' enrolment units, questioning the credibility of the process.³²

The CENI tries to provide assurances about the reliability of the electoral process. High level CENI officials assured that not a single province saw the number of voter registration stations reduced, but underlined that some corrections had to be made, including for the Kasai provinces which, they said, historically have been the object of discrimination since independence. However, at the time of writing, only timid efforts were made to restore trust, either by the CENI which does not have an adequate communication policy towards political parties, civil society, and the population, or by the government which focuses on the war in the East.



6. WAR IN THE EAST AND ITS IMPACT ON THE ELECTIONS

The incursion of the M23 rebel movement³³ and the steady expansion of the territory it controls in North Kivu, with 904 829 IDPs in March 2023³⁴ presents an obvious challenge for the timely organisation of the 2023 elections and more specifically for voter enrolment in the area despite efforts from CENI. The current situation is problematic for the security of the electoral infrastructure and voting process and is also felt for enrolment because of the refusal of several voting offices to register Kinyarwanda speakers. This refusal is motivated not only by existing antagonisms, but also by the fear of infiltration by individuals from the neighbouring countries to register as voters and influence the results.³⁵

Government officials already hinted at the difficulty to organize elections in North Kivu and Ituri, and during the 4 March press conference of President Tshisekedi with French President Macron, the President said that if no peace plan is implemented to allow the return of the IDPs in the area, this will cause considerable delay for the upcoming elections.³⁶

In any case, an exclusion of North Kivu and Ituri, to name but the two provinces, from the elections, as happened with Beni-Butembo in 2018, means the exclusion of 15% of the voters and 15% (76) of the National Assembly seats if we take the figures from 2018. This would delegitimize the election result. If elections were to be cancelled in the partly M23 controlled territories of Masisi, Rutshuru and Nyiragongo, it would imply the non-election of an estimated 17 deputies and the disenfranchisement of an estimated 1 361 813 voters (3.4% of the total figures from 2018).³⁷ In Ituri province, a cancellation or postponement in the territories of Djugu, Irumu and Mambasa would mean the non-election of an estimated 13 deputies and the disenfranchisement of an estimated 1 094 355 voters³⁸ (2.6%, together with North Kivu 6%).

Moreover, a message from the South Kivu Provincial Bishop's Conference probably expresses popular opinion in Kivu when it says that the country needs to be united against foreign aggression; elections would rather favour internal division and conflict.³⁹ Postponement of the elections would thus at least partly rest on legitimate concerns. It is also unsure in the current political and security climate whether negotiations with armed groups to ensure the peaceful organisation of elections, as successfully happened in 2006, would still be possible.

The stakes are high. The management and outcome of the conflict in the East will probably be decisive for the President's chances to win the upcoming election without having to resort to fraud. The Congolese population strongly supports the government's uncompromising stance against the Rwandan government supporting the M23 rebellion, but this could be short-lived in face of an erratic and incoherent international policy, an ill-prepared membership of the East African Community, important operational failures from the FARDC government army, inclusion of armed groups into the military operations leading in the future probably to an even more uncontrollable security situation in the East etc. However, even a small and symbolic military victory against the M23 would strongly boost Tshisekedi's popularity and be a push towards the holding of elections, even flawed, in 2023. A failure to develop sufficient clout in the conflict, even if this would be justified with heavy anti-western rhetoric,⁴⁰ will motivate the President to postpone. It is a risky bet, given the weakness of the DRC army; but it seems as if the DRC government is trying to assemble a heterogeneous group of retired FARDC, youth with elementary military training, Rumanian mercenaries, demobilized soldiers etc.⁴¹ In the face of a well-organized M23 militia supported by the Rwandan government army, which is reprimanded but not sanctioned by other states, the chances for Tshisekedi's plan to succeed seem shallow. From this perspective, it appears more likely that the recent purchases of military equipment by the DRC are meant to reinforce their negotiating position towards Rwanda and the M23.



7. WHAT ABOUT THE OPPOSITION? FAYULU, KATUMBI, MUKWEGE?

Contrary to 2018, there is not, or not yet, a strong and organized opposition movement. Political alliances will be concluded when the elections come nearer; for these alliances to be successful the political figures involved will have to be able to transcend classical elite politics and to canalize popular discontent over the deterioration of their living conditions.

On 11 November 2018, Martin Fayulu, popular in Kinshasa but relatively unknown elsewhere, was chosen to represent the opposition in a meeting in Geneva. As Felix Tshisekedi had already concluded a deal with President Kabila months before, he left this opposition coalition to create his alliance with the UNC of Vital Kamerhe. Fayulu acquired a nationwide standing and popularity thanks to his personal integrity but most importantly because he represented the then very popular Moise Katumbi who had been prevented to be a presidential candidate by Kabila and the CENI. Still, Fayulu failed to create and organize an inclusive political movement and to consolidate his de facto electoral victory; today his political standing and organization is too weak to be on himself alone a credible challenger to Tshisekedi.

Things are slightly different for Moise Katumbi who has much more financial means at his disposal and whose nationwide popularity is probably still much higher than Fayulu's. Still, he is politically much weaker than in 2018 when he appeared as the real challenger of Kabila. When his movement became part of the presidential coalition, he got five ministerial posts. When in December last year he declared his own candidacy as president only three ministers joined him. From the former G7 coalition created in September 2015 to support Katumbi as a presidential candidate, only three parties of the initial seven remain in his movement, reducing the number of respected political figures who were with him in the G7. Even highly popular, he does not seem to be able at this stage to challenge president Tshisekedi. Remarkably, the UDPS and the "Union Sacrée" consider him as their key challenge if we must judge by their efforts to block his campaign. On 17 March, the controversial economist Noel Tshiani⁴² submitted for the second time a law proposal to the National Assembly President that aims to limit presidential candidates to nationals whose both parents are native Congolese,⁴³ thus excluding Moise Katumbi who has a father of Greek origin. The political elite does not seem to realize that this opportunistic law not only would create heavy tension in Katanga, Katumbi's native province, but would open a Pandora's Box by excluding important numbers of Congolese nationals, as children with one non-native parent of the DRC's border provinces, children of emigrated Congolese who adopted another nationality etc. Most of all, it would ignite endless conflicts about one's "Congolese-ness" (Congolité) in a country where identity papers (in practice the voters' registration card) can easily be bought by anyone willing to pay. For many it is almost impossible to prove having two native Congolese parents.

The opposition configuration may be modified if Nobel peace prize winner Dr Denis Mukwege was to become a presidential candidate. Being an outsider in the world of DRC politics, having a reputation of great personal integrity and concern for the well-being of the population, and enjoying wide international notoriety are important assets in the current political situation of the DRC. He has no political party or movement but is heavily pushed by civil society organizations in East Congo to be a candidate. A credible political coalition around Mukwege could possibly create sufficient momentum to weigh on the electoral result, despite the many organizational challenges to be overcome as well as Mukwege's lack of political experience. Elite politics in the DRC, based on the conclusion of opportunistic deals among the members of the political elite, seems to be rejected by civil society movements and the population. Dr Mukwege might be able to give a credible voice to the population if he can develop a national standing; but his lack of experience in politics may also be a serious handicap.

Another joker could be Joseph Kabila. Still influential behind the scenes, he was left unharmed by Tshisekedi, officially because of the power sharing agreement they concluded after the 2018 elections. Kabila did not support nor organize his

own political party or coalition, leading several of its key members (mostly from the greater Kasai province) to cross over to the “sacred union”. Still, his popularity seems to have increased, and some consider his regime to have been better than Tshisekedi’s, even though he organized the current situation resulting from massive electoral fraud. On 10 March, Kabila’s spouse held a meeting in Bukavu requesting the population to support her husband for him to continue the job he had left in 2019 – contrasting with his views expressed privately about his lack of interest in the electoral process.⁴⁴

8. AND PRESIDENT TSHISEKEDI?

President Tshisekedi and his UDPS party need some formal legitimation of his presidential mandate, to compensate for the electoral fraud on which his current mandate is resting. This is why he may choose the quickest option for elections as long as it is effective to ensure his second mandate.

Tshisekedi has the advantages of an incumbent president for the upcoming elections, most importantly his leverage over the relevant institutions. Still, he needs the mobilization capacity of the UDPS party to shore up his lagging popularity. As was detailed by a recent report from Ebuteli,⁴⁵ the organisation of the party became gradually centred around the president and the secretary general, controlling informal support groups called “parlementaires debout”. The specific identity of the UDPS as a people’s party based on local committees was thus abandoned in favour of a populist top-down structure. This worked as long as the charisma of Etienne Tshisekedi held the UDPS together; his disappearance and the lack of charisma of his son opened the way for more factional infighting. To manage his party, Tshisekedi manoeuvred to exclude Jean-Marc Kabund, vice-president of the National Assembly and former UDPS secretary general, who had important influence on the UDPS militants in Kinshasa. Despite this move, he still does not have the full support of the UDPS. Part of the reasons are disappointment about his recruitment policy.

Tshisekedi has been confronted for a long time with criticism about his favouring of friends from abroad over UDPS party members. While this criticism is not unwarranted, he may try with this move to organize his independence from the UDPS militants and must assume the heritage of a party where most competent higher-level officials left or were excluded in the past, due to Etienne Tshisekedi’s authoritarianism or to factional infighting.

Tshisekedi thus relies not only on the UDPS (which has after all a mere 32 seats in the National Assembly, third after PPRD and AFDC/A), but also on smaller parties created by political allies and advisors, creating a political nebula somehow similar to Kabila’s “Common Front for the Congo” coalition in 2018. Most importantly, he seems to have succeeded to create a broad coalition among the political elite around the “Great Kasai” provinces, his home area, having even former core figures from the Kabila coalition hoping for a better future, to join him. The “Great Kasai” cohesion may be based on a collective memory of discrimination under the Mobutu and Kabila regimes. The UDPS party, created in 1982, was at the forefront of the struggle for democratization, at high personal risks, under the Mobutu and Kabila regimes. Having borne the brunt of the struggle, the UDPS and parts of the broader Kasai community are convinced that they are morally entitled to lead the country. The UDPS party was also the learning school for an important part of the political elite in the DRC: many political figures of the Kabila and Tshisekedi regimes were UDPS militants before joining other political movements. They may now for opportunistic reasons return to the cradle-, hoping to be elected or appointed to an interesting function.

Meanwhile, the “Sacred Union” coalition is now being structured around several “big men”, including Jean-Pierre Bemba, strongman in the Equateur provinces, and Vital Kamerhe, who still has some influence in the East. On 23 March, a “technical reshuffle” of the government integrated Kamerhe, Bemba and Mbusa Nyamwisi in government,⁴⁶ clearly with the aim to

gather electoral support from their constituencies in the former Equateur provinces (Bemba), in South Kivu (Kamerhe) and in the Nande section of North Kivu (Mbusa). This is consistent with a long-term tendency in DRC politics to define political configurations through political settlements between elite actors who distribute political dividends. It remains to be seen what its effect will be during the upcoming elections, given the undeniable gap between elites and the population. On 5 April, the members of this coalition (political parties, political groupings, personalities) signed the “Charter of the Sacred Union of the Nation” which formalized and structured the electoral platform to ensure the re-election of Tshisekedi. Obviously the charter aims at some sort of national union which hardly conceals the ambition to create a dominant party coalition.

President Tshisekedi is handicapped by his management of the country which was not an unqualified success. Several long-standing projects (as the Kinshasa-Brazzaville bridge, as the methane gas of Lake Kivu) were unblocked, but others suffer from poor management and corruption. Public debt since he came to power increased with 74%⁴⁷ to almost 10 billion USD. According to the authoritative ODEP (Observatory of Public Expense) who published a report about public debt management in the DRC since 2019, debt management is even worse than under President Kabila.⁴⁸

The General Inspection of Finance drafted many reports on cases of big corruption and embezzlement – and gave thus the proof that the DRC is perfectly capable of tackling the gangrene of corruption - but all but few cases were brought before justice. Undeniable proofs of embezzlement of large sums of money by former president Kabila were disclosed by the “Congo Hold Up” inquiry,⁴⁹ but no judicial action was pursued. The anti-corruption inquiries do not touch the presidential circle, involved in many profitable mining projects. In sum, the policies of President Tshisekedi did not improve the living conditions of the Congolese population, quite to the contrary. Within this context, manipulation of electoral result or postponement may become an attractive alternative. The balance may possibly tilt in Tshisekedi’s favour with the start of the local development plan of 145 territories, aiming at the construction of basic infrastructure in each of the DRC’s territories. The plan wants to showcase presidential gifts to the population – which is traditional electoral strategy - but is not based on a systematic and progressive development plan.⁵⁰

9. POTENTIAL FOR VIOLENCE

Beyond the situation in East Congo (mainly North and South Kivu, Ituri), several other areas in the DRC have an important potential for conflict. One factor generalized all over the country is the perception of regional bias. While the Kabila regime was thought to favour natives from Katanga, the current regime is considered to favour natives from Kasai – which is almost certainly seen by the concerned as a legitimate catch-up operation.⁵¹ Recent appointments in public enterprises, justice and in the territorial administration for that reason drew much criticism from natives from other provinces, but also from UDPS militants who felt side-lined. At the same time, support for the current regime is strong within the Kasai community. This creates a real risk for violence during the elections, a situation exacerbated in Katanga provinces (especially in Lubumbashi) where a high level of arrivals of natives from Kasai created serious social tension with the locals. One of the reasons is the attitude of UDPS militants and the network of motorcycle taxi drivers (mostly natives from Kasai) who consider themselves protected by the presidency and standing above the law. More recently, several motorcycle drivers were killed by unknown, triggering among the Kasaian population anger and appeals for self-defence against the Katangese. The upcoming electoral competition between Kasaian and Katangese in Katanga, if not properly managed, will inevitably lead to violence.

More generally, Jason Stearns in his latest book highlighted the institutionalisation of the link between elections and violence.⁵² Since the 2003-2006 transition, he writes, a politico-military bourgeoisie having an interest in the continuation of violence was gradually installed and tends to dominate the power structure. During elections, political entrepreneurs

may mobilize armed groups they control to show their strength and force their recruitment into positions as e.g., deputies. Where no armed groups are present, violence can be instrumentalized with other entrepreneurs of violence as the kuluna (extremely violent youth gangs) or the youth organizations from political parties.

10. WHAT CAN BE DONE NOW?

Amidst the many uncertainties about future scenario's, it seems certain that the upcoming elections will be a determinant factor for the country's political future.

The DRC President may choose to push for elections, even technically flawed, within the constitutional time limit, or may suggest a technical postponement for a few months, which will almost certainly be accepted by all stakeholders. In need of legitimacy, it is unlikely that he will copy the "glissement" strategy of his predecessor. Some presidential advisors even seem to suggest, if necessary, to organize presidential elections in 2023 and postpone legislative elections. This would increase the number of deputies in favour of the incumbent (by voter abstention or by political opportunism from the deputies) and possibly provide the "Sacred Union" with a two thirds majority necessary to modify the constitutional two term limit for the President.

Electoral fraud in favour of the incumbent is a likely scenario, given its national and international acceptance in 2019; massive and obvious fraud however will trigger violent protest.

At the time of writing, it seems that Tshisekedi is following a relatively classical model of DRC elite politics: co-optation of potential allies (as is demonstrated by the recent government reshuffle) and "big men" with whom a political settlement is concluded which is the basis for future distribution of political dividends and benefits including parliamentary seats. Opposition figures and regions are threatened to be excluded from any favours in the future. The key question here is the kind of relationship currently existing between the elites and their constituencies: are they affected by the dysfunctioning of the institutions, prevalence of corruption and the deterioration of the living conditions of the population? Will this influence negatively electoral results for the elites or will it instead increase abstention?

Currently it does not seem as if the regime is willing or able to create the conditions to reinstall trust in the elections and the workings of the state. Disaffection from the political system as expressed in a high level of abstention may be another factor allowing President Tshisekedi to gain a second mandate, but this may well lead to anti-system violence in the future, which will be more difficult to control and could lead to a coup or new rebellions.

Opposition civil society movements,⁵³ including Dr Mukwege, reject this political model, but their action will at this stage most likely end up in the introduction of a new form of political movement in parliament, not in a fundamental transformation of politics. Anti-system violence and a rejection of the existing political and electoral system however is not to be excluded for the future.

The "international community" is in a difficult position. After its acceptance of the massive electoral fraud in 2018, it has lost legitimacy to claim free and fair elections – which are by the way not claimed from the neighbour states. This is compounded by the general very much anti-western atmosphere in the DRC because of its perceived support for the FPR regime in Kigali.



It is possible however to assure adequate election monitoring by supporting ONG coalitions with CENCO who has a long experience, and obviously the Carter Center. This monitoring should go beyond presidential elections. An absolute necessity is monitoring of the legislative and provincial elections, meaning analysis of the political recruitment process of the candidates within the existing provincial and national power configurations. This is particularly relevant if we accept the analysis of Jason Stearns about the creation of an elite which has an interest in the continuation of the conflict in the East and, we may add in the continuing of pervasive practices of embezzlement and corruption which are profoundly conflict generating evolutions.

Support for civil society organisations in the past has greatly contributed to create a civil society that is among the strongest in Sub-Saharan Africa. Some hope for political renewal may come from the citizen's movements in Goma and Beni which activities are pushed forward by the outrage over insecurity and conflict in the East, as well as the perceived lack of action from the government headed by President Tshisekedi. The strong voices from the Catholic and Protestant Churches are constant in their claim for free and fair elections, backed up by an experienced network of observers on the ground.

11. NECESSARY OPTIONS FOR THE FUTURE

The analysis above raises more fundamental questions. Until now, the national political elite and the so-called international community have always, in the end, prioritized stability as a short-term option, disregarding increasing occurrences of fraud in the 2011 and 2018 elections. If this happens again in 2023, the damage to the correct implementation of the electoral system may be irreversible. The usefulness of voting representatives of geographical areas and communities in parliament will be put into question. There cannot be any longer-term stability in the DRC without an adequate system of representation and of accountability. Not only has the need for short term stability pushed representation aside, but representation itself has been highjacked by the powerful sections of the political elite who manoeuvred to replace elected MPs by family members, cronies etc. This created a gap between many MPs in Parliament and the population.

Adequate representation builds necessary links between the voters and the political elite. It may be questionable whether the current electoral system is best suited to organize this representation, given its important financial and organizational cost and the erosion of its adequate implementation, and whether alternatives are possible. Efforts to conceive alternative systems have been made in the past: the decentralization introduced in 1982 (but never really applied) was interesting by its combination of elected and appointed positions. More recently, Prof. Ngoma Binda made proposals for a system based on local elections with successive indirect elections at higher levels.⁵⁴ Prof. Lye Yoka analysed the conception of representation whereby an elected MP is considered to be not a scapegoat, but a "mercenary goat" supposed to solve all the problems from the community who elected him or her.⁵⁵ They provide at least food for thought on the way to conceive an electoral system that might possibly be more adapted to the geographic and sociological realities of the DRC. Reflection on these issues is necessary if we want to get out of the dilemma "2006 Constitution vs. dictatorship" that governs the debate in the DRC.



Endnotes

- 1 Bleck, J. and Van De Walle, N. (2019) *Electoral Politics in Africa Since 1990*, Cambridge: Cambridge University Press
- 2 Przeworski, A. (2018) *Why Bother with Elections?*, Cambridge: Polity Press, 134.
- 3 The current M23 crisis is to a certain extent an offshoot of the 2007 rebellion.
- 4 Schröder, J., (2006) , *Delegation to Observe the Second Round of the Presidential Elections in the Democratic Republic of the Congo*. European Parliament, 11.
- 5 The 1998-2002 war pitted the DRC government with Laurent Kabila and from 2001 his son Joseph, against two rebel movements called RCD (Congolese Rally for Democracy) and MLC (Movement for the Liberation of Congo), the latter under the leadership of Jean-Pierre Bemba. The second round of the 2006 presidential election confronted the two final candidates, Kabila and Bemba, and resulted in the victory of Kabila.
- 6 Wetsh'okonda Koso, M. (2014), *Le pari du respect de la vérité des urnes en Afrique. Analyse des élections présidentielles et législatives du 28 novembre 2011 en République Démocratique du Congo*, Bruxelles: 11.11.11., 88.
- 7 Union Européenne. Mission d'Observation Electorale, *République Démocratique du Congo. Rapport Final. Elections Présidentielle et Législatives 28 novembre 2011*, 7-8.
- 8 Carter Center (2011), *Presidential and Legislative Elections in the Democratic Republic of the Congo. Final Report*, Atlanta, 129.
- 9 Literally "slippage", intentional delay in the electoral calendar.
- 10 The Catholic Church, represented by the National Bishop's Conference CENCO, is present all over the country and it organized the most important election observation network in 2006 and 2018. By its structural independence, the Church has embodied a moral opposition since the Mobutu regime until the present. More recently it was joined by the network of Protestant churches ECC (Church of Christ in the Congo). Together they represent presumably a majority of believers in the DRC, although their structure and nationwide organization may be the major factor of their influence.
- 11 UDPS or "Union pour la Démocratie et le Progrès Social" (Union for Democracy and Social Progress) was set up in 1982 by a group of opposition political figures. From 1990 the party became increasingly identified with one of its leaders Etienne Tshisekedi, father of the current president Felix Tshisekedi. After a prolonged period of de facto party leadership, Tshisekedi became formally UDPS president in 2004. See Groupe d'Etude sur le Congo et Ebuteli (2022) UDPS, *Yoka base ! La difficile quête d'une structure en pyramide renversée*, Kinshasa- New York, 14.
- 12 ENGLEBERT, P. (2019), 'Aspirations and Realities in Africa. The DRC's Electoral Sideshow', *Journal of Democracy*, Vol. 30, n. 3, July, 135; BERWOUTS, K. and REYNTJENS, F. (2019), 'The Democratic Republic of Congo: the Great Electoral Robbery (and How and Why Kabila Got Away With It)', *Africa Policy Briefs*, Brussels: Egmont Institute, 19 April, 3.
- 13 This was even mentioned in the official CENI report, see République Démocratique du Congo. Commission Electorale Nationale Indépendante CENI (2021), *Rapport general du processus electoral de 2012 à 2019*, avril, 257.
- 14 See the interesting analysis in Mukadi Ilunga, C., s.j. (2019) 'Les populations de Beni et de Butembo (RD Congo)- ou le courage de la lutte pour la démocratie', *Congo-Afrique* (532)137-144
- 15 The incursion of the M23 movement in East-Congo and the involvement of the East African Community (EAC) to try and resolve the ensuing crisis, as well as the perceived inaction from the Monusco peacekeeping mission to combat the armed groups has been triggering popular protest since July 2022. See Wilén, N. And Kennes, *Multi-layered Violence in the DRC: is History Repeating Itself?*. Paris : Institut Montaigne. Available at: <https://www.institutmontaigne.org/en/analysis/multi-layered-violence-drc-history-repeating-itself>
- 16 FCC or "Front Commun pour le Congo" (Common Front for the Congo) is an electoral platform of the political parties and groupings favorable to (former) President Kabila. It was officially created by decision from the Council of Ministers on 7 June 2018.
- 17 The term refers to the opposition coalition against Mobutu created by three opposition parties in July 1991, including Etienne Tshisekedi.
- 18 Makadi Ngoy A. (2023) 'Session de septembre 2022 : les deputes ont-ils réalisé une "production législative remarquable" ?' 10 February, see <https://talatala.cd/eclairage/62/>
- 19 Okende, C. (2022), 'Affaire de Bukanga-Lonzo: Incompétente sous Kaluba, la Cour Constitutionnelle se déclare compétente de juger l'opposant Matata Ponyo', 18 novembre, see <https://www.politico.cd/encontinuu/2022/11/18/affaire-de-bukanga-lonzo-incompetente-sous-kaluba-la-cour-constitutionnelle-se-declare-competente-de-juger-lopposant-matata-ponyo.html/121209/>
- 20 See <https://www.congoresearchgroup.org/fr/2023/02/16/presidentielle-2023-labstention-pourrait-atteindre-un-taux-record/>
- 21 Groupe d'Etudes sur le Congo GEC et Ebuteli. Bureau d'études, de recherche et de consulting international Berci (2022) *L'an 3 de Tshisekedi. La fin de l'embellie?*, Rapport sondage, Mars, 9.
- 22 The CENI bureau includes four members of the majority, two from the opposition and its president from civil society. See Congo Research Group and Ebuteli (2022), *Elections in the Tshisekedi Era. A Bad Start?* Kinshasa-New York, 14.



- 23 See G13 (2020), *Appel en faveur d'un consensus national sur les réformes électorales*, 11 juillet. Available at <https://www.africanewsrdc.net/featured/g13-feuille-de-route-2023/>
- 24 EURAC (2021), *Elections de 2023 en République Démocratique du Congo. Rectifier les erreurs du passé pour consolider la démocratie*, Brussels, 18.
- 25 <https://www.dw.com/fr/ceni-rdc-patricia-nsey-mulela-enr%C3%B4lement-%C3%A9lecteurs/audio-64704260>
- 26 Cf. MOE-CENCO-ECC (2023) *Rapport d'étape d'observation électorale sur l'inscription des électeurs en République Démocratique du Congo*. Mars, 5.
- 27 CENI (2023), *Communiqué de presse*, 22 février. See <https://twitter.com/cenirdc>
- 28 Cf. CENI (2023), *Communiqué de presse n. 016/CENI/2023*, 15 mars.
- 29 CENCO is the Catholic Bishop's National Conference; ECC the union of 62 Protestant denominations.
- 30 MOE-CENCO-ECC (2023) *Rapport d'étape d'observation électorale sur l'inscription des électeurs en République Démocratique du Congo*. Mars, 11.
- 31 <https://mbote.cd/actualites/elections-la-ceni-ne-recoit-plus-le-financement-du-gouvernement-depuis-six-mois-denis-kadima/128454/>
- 32 CENCO_ECC (2023), *Déclaration à mi-parcours de la MOE CENCO-ECC sur le déroulement des opérations d'identification et d'enrôlement des électeurs dans la première aire opérationnelle (AO1) de la CENI*, Déclaration n. 001/MOE/ CENCOECC/Jan/2023 ; MISSION D'OBSERVATION ELECTORALE CENCO-ECC (2023) *Communiqué n°002/MOE CENCO-ECC/Fév./2023*, 24 February. See also their observation report about the first operational area in voters' registration, MOE-CENCO-ECC (2023) *Rapport d'étape d'observation électorale sur l'inscription des électeurs en République Démocratique du Congo*. Mars, 33 p.
- 33 The M23 movement declares that it wants to fight ethnic discrimination against Tutsi in the DRC. It recruits among Kinyarwanda speaking refugees from the DRC in Uganda and Rwanda. The movement led military operations in 2012 and now again from March 2022 until the present. For an excellent analysis see STEARNS, J. (2021) *The War that Doesn't Say its Name*, Princeton: Princeton University Press, 142-163.
- 34 See <https://reliefweb.int/report/democratic-republic-congo/republique-democratique-du-congo-evaluation-rapide-de-crise-m23-province-du-nord-kivu-mars-2023>.
- 35 There is no population registry in the DRC and in practice it is easy for an individual to register as DRC citizen under a different name.
- 36 KAVANAGH, M. Congo President Tells Macron Conflict in East May Delay Election, *Bloomberg*, 4 March. Available at <https://www.bloomberg.com/news/articles/2023-03-04/congo-president-tells-macron-conflict-in-east-may-delay-election>
- 37 Figures as included in Cabinet de la Présidence de la République (2018) *Loi n. 18/005 du 8 mai 2018 portant adoption de la répartition des sièges par circonscription électorale pour les élections législatives nationales, provinciales, municipales et locales*, Journal Officiel de la République Démocratique du Congo, Numéro Spécial, 7 juin, 534-537
- 38 In practice it would be less. At the time of writing, the red areas in Ituri are Bahema Nord and Bahema Badjere in Djugu territory; Walese Vonkutu in Irumu territory; Babila Babombi in Mambasa territory; Walendu Watsi in Mahagi territory. They represent (2018 figures) 285 178 voters, approx. 3 to 4 seats.
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- 40 There is currently a heavy anti-western atmosphere in the DRC: European countries (especially France) are considered to support the Rwandan government and thus indirectly the M23 incursions, as these are supported by Rwandan troops.
- 41 Law decree project creating the Armed Defense Reserve, mentioned in République Démocratique du Congo. Ministère de la Communication & Médias (2023) *Compte Rendu de la 89me réunion du conseil des ministres*, 3 mars. Thanks to Hans Hoebeker for bringing this to my attention. See also *Africa Intelligence* (2023) Tshisekedi weighs his military options against M23, 27 January.
- 42 Noel Tshiani was unsuccessful presidential candidate during the 2018 elections. In May 2021 and then again in March 2023 he submitted a law proposal through a national deputy to modify the DRC nationality law. The proposal wants to limit access to a number of high level political and security functions, including the DRC presidency, to Congolese nationals both of whose parents are born and raised Congolese.
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- 50 See Mwakobila, A. (2022), *Analyse critique et optimisation du PDL-145T*, Kinshasa: Mediaspaul, 91 p. See <https://pdl145.gouv.cd/>
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- 52 Stearns, J. K. (2022), *The War that Doesn’t Say its Name. The Unending Conflict in the Congo*, Princeton: Princeton University Press, 62-72 and 100-103.
- 53 Movements as Lucha, Filimbi, Veranda Mutchanga and new initiatives being taken in Kinshasa.
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- 55 Lye Yoka A. (2012), ‘Les élections de 2011 vues par le commun des Kinois’. *Congo Afrique* 462, Février, 129-134.





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