

## Congo: A Stalled Democratic Agenda

### I. OVERVIEW

The consolidation of democracy in the Democratic Republic of Congo (DRC) is stalled on almost all fronts, and the Congolese regime remains fragile. When Joseph Kabila became the first democratically elected president in 2006, the international community celebrated the election as a milestone in the peace process, but today checks and balances barely exist, as the president's office has curtailed the powers of the government, parliament and judiciary. Civil liberties are regularly threatened, and key institutional reforms – decentralisation and the security sector – have made no significant progress. Unless the Congolese political authorities give new impetus to democratic transformation and institutional consolidation in 2010, the gains made during the transition could be at risk and the international investment in the country's stabilisation wasted. The Congo's international partners must place democratisation and institutional reform at the centre of their dialogue with Kabila's government and link the provision of development aid to their progress.

In 2006, for the first time in the Congo's history, its people chose their national and regional leaders through credible elections. A year before, the most democratic constitution yet had been adopted by referendum, entrenching the apparent determination to radically change political and economic governance and recognise democratic aspirations that had been unfulfilled since independence. Implementation of this new constitution demanded fundamental institutional reforms, such as decentralisation and a complete overhaul of the security sector. This political project, whose origins lay in the negotiations to end years of war at Sun City, as well as the national conference of the early 1990s, clearly linked the return of lasting peace to the principle of a balance of power between central government and the provinces and the establishment of genuine checks and balances at both levels.

Kabila won a five-year term by embracing this vision during the election campaign. He promised to fix a collapsed state and fight corruption; elaborated a program to rebuild the Congo through five strategic priorities – infrastructure, health, education, housing and employment; and pledged further democratisation, notably by respecting the rule of law and holding local elections. Nearly four years on, however, the record is abysmal. His presi-

dency is seeking to impose its power on all branches of the state and maintain parallel networks of decision-making.

The regime has undermined the independence of the judicial branch by running an anti-corruption campaign that is politically biased. It has used money and coercion to eliminate challenges to its authority and to fight against the local rebellions that have occurred since 2006. Kabila is contemplating amending the constitution on the pretext of addressing difficulties in implementing decentralisation. Any constitutional amendment aiming at concentrating more power at the level of the presidency or controlling dissenting voices, however, would pose a threat to already weakened mechanisms of checks and balances. It is unlikely local elections will be held before the end of parliament's first term, putting the prospect of general elections in 2011 at risk.

Despite this authoritarian trend, the international community, which has invested so much in the Congo's peace process, has remained mostly silent. The Congolese authorities demonstrate an extreme sensitivity to any remaining indications of international tutelage. Invoking sovereignty, the Congolese government has called for the withdrawal of the UN mission (MONUC) to be completed by summer 2011, and has announced that it will take charge of organising the general elections. It is simultaneously engaged in negotiations to secure massive debt relief before the 50th anniversary of independence on 30 June 2010. Given its size and its tense internal politics, the DRC is prone to local rebellions fuelled by domestic discontent that can easily get out of control. In this context, a new international strategy is needed to support democratic consolidation and to prevent new risks of destabilisation.

Furthering the democratic agenda is vital to the Congo's mid- and long-term stabilisation. Creating new momentum to reverse current trends will require that institutional reforms and legislative programs are not considered merely as technical processes, but as tests of the government's political will to improve governance and as a central part of any dialogue on additional aid. The following steps are necessary to restart democratic transformation:

- ❑ Beginning to prepare for the 2011 general elections now. The long-awaited National Independent Electoral Commission should be established and a proper budget should be allocated at the same time. In the meantime, the current electoral authorities should present a clear operational plan for those elections as a basis for discussion with donors.
- ❑ Institutionalising the fight against corruption. An anti-corruption strategy based on civil society's efforts and other post-conflict countries' experiences should be elaborated and implemented by newly-created independent agencies.
- ❑ Guaranteeing fundamental rights through law and institutions. Parliament should create the National Human Rights Commission as outlined in the constitution, review the penal code to comply with the UN Convention against Torture, limit the powers of the national intelligence agency and pass a law protecting journalists, human rights activists and victims and witnesses of human rights abuses.
- ❑ Harmonising the decentralisation process with the capacity building and budgetary allocations of the provinces and local governments. The government should set up a commission of national and international experts to establish openly when and how to hold local elections. In the event these elections cannot be held before the 2011 general elections, a new timeframe should be elaborated.
- ❑ Establishing a clear partnership between the international community and the Congolese government on security sector reform that aims to add a political dimension to the current technical approach. Benchmarks should be set to measure progress, and conditionality should be determined.
- ❑ Connecting development aid and democratic governance. Given the major role played by donors in the Congo, they should use their financial and political leverage to support the process of building democratic institutions and seek to engage the country's new Asian partners in this strategy, who would benefit equally from a more stable and effective regime with which to cooperate and do business.

## II. THE THIRD REPUBLIC – THE PROMISE OF DEMOCRACY

Through his second round presidential election victory on 29 October 2006, Joseph Kabila secured a democratic legitimacy that no one had obtained at any point during the preceding 40 years in the Democratic Republic of Congo (DRC).<sup>1</sup> Joseph Kabila was first installed as head of state in January 2001, following the assassination of his father, Laurent-Désiré Kabila, and was appointed president of a transitional government in June 2003. In 2006 he became the first Congolese president elected by the people through a credible electoral process.<sup>2</sup> Although the western provinces predominantly voted for other candidates in the first round – Jean-Pierre Bemba or Antoine Gizenga – the success of the presidential election gave the Congolese population, exhausted by ten years of violence, civil war and foreign occupation, hope for peace.

### A. A ROADMAP FOR THE CONSOLIDATION OF DEMOCRACY

#### 1. Kabila's campaign promises: a commitment on governance and institutional reforms

The promises Kabila made while a candidate in the 2006 campaign aimed to respond to the wishes and concerns of the Congolese voters and of international partners, whose support he was seeking. To encourage economic recovery, Kabila planned to allocate substantial resources to improving infrastructure, health and education, water and electricity, housing and employment. This program for Congo's reconstruction, summed up for election day in the slogan "Five Projects", was to become symbolic of Kabila's first five-year term under the Third Republic.<sup>3</sup>

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<sup>1</sup> On 15 November 2006, Kabila was declared the winner of the presidential election, after securing 58.05 per cent of the votes in the second round, ahead of Jean-Pierre Bemba who won 41.95 per cent. Two thirds of the 25 million registered Congolese voters turned out for the poll.

<sup>2</sup> "According to national and international observer missions, including those of the African Union, the European Union, South Africa and the Carter Center, the elections were in general technically well organised, transparent and credible". "Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo", S/2007/156, 20 March 2007, II.A.3.

<sup>3</sup> Kabila first set out his five priority projects in an interview with the press on 27 October 2006, two days before the second round of the election. See "Les chantiers de Kabila", Radio France International (RFI), 5 December 2006.

In his inaugural speech on 6 December 2006, Kabila said he wanted to achieve a fundamental revolution in attitudes, in order to end the crisis in national governance. His condemnation of corruption was immediate and uncompromising: he announced “an end to slackness of any kind and an end to impunity at all levels”. He pledged to put lawbreakers behind bars,<sup>4</sup> and to respect the constitution by strengthening the institutional capacity of the state and non-state actors, and by protecting the political opposition. He told the listening crowd of Congolese and foreign dignitaries that his term in office would be guided by a trinity of values – good governance, democracy and respect for human rights.<sup>5</sup>

His election program and his inaugural speech thus set out promises to restore peace in the East; to build a functioning state that serves its citizens; to consolidate democracy; and improve the living conditions of all Congolese. Meanwhile, with the elections over, international partners redefined their own role in the DRC. With the dissolution of the International Committee in Support of the Transition (Comité international d’appui à la transition, CIAT),<sup>6</sup> the political involvement of diplomats in supporting the peace process seemed to become less important than the technical assistance that international experts could provide in helping Congo reform its system of governance.<sup>7</sup>

The constitution of the Third Republic had been approved through a referendum on 18 December 2005 and promulgated by Joseph Kabila on 18 February 2006.<sup>8</sup> The Third

Republic is a semi-presidential system with a far-reaching decentralisation, in total contrast to the dictatorial and centralised structure of Mobutu-era Congo.<sup>9</sup> On paper at least, the constitution establishes a genuine balance of powers and includes one essential provision – Article 220. This article formally excludes changing those features of the constitution that relate to the vital elements of Congolese democracy, such as the “republican nature of the state, the principle of universal suffrage, the representative nature of the government, the length and number of terms of presidential office, the independence of the judiciary, political, and the pluralism of trade unions”.<sup>10</sup> Article 220 also forbids any reduction in the rights and liberties of individuals and the prerogatives of the provinces and decentralised territorial entities.

The new constitution created a considerable institutional workload. Its implementation required the adoption of at least 23 organic laws, including twenty that would directly relate to institutional reform, and 46 ordinary statutes.<sup>11</sup> This meant embarking quickly on a substantial legislative agenda in order to put in place the new institutional architecture and establish the DRC as a properly constitutional/law-based state. Facing up to this challenge, Prime Minister Gizenga submitted a “Governance Contract” to parliament in February 2007. This document sets out the government’s priorities in terms of specific reforms, including the fight against corruption and reform of the security sector; public finances; the management of

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<sup>4</sup>“I am warning that the state’s prisons are available to accommodate all those who break the law”, Joseph Kabila, “Message to the Nation at the Taking of the Oath of office by the elected President”, inaugural address, Kinshasa, 6 December 2006.

<sup>5</sup> Ibid.

<sup>6</sup> The CIAT was a consultative committee set up to damp down crises that might flare up during the transition by offering international mediation. It consisted of the Special Representative of the United Nations Secretary-General, the European Commission delegate and the ambassadors of the U.S., France, China, Canada, Russia, Zambia, Belgium, South Africa, Angola, the UK and Gabon.

<sup>7</sup> Paul Wolfowitz, then President of the World Bank, and Louis Michel, the European Commissioner for Development, travelled to Kinshasa on 8 March 2007 to demonstrate the support of their respective organisations for the new government’s reforms. Their visit saw the announcement of a new focus for international aid to the DRC – governance and, in particular, state capacity building.

<sup>8</sup> The post-crisis agenda drawn up for the transition was based on the political structure of territorial division into eleven provinces, with a national president and four vice-presidents. The next step was to prepare Congo for elections by encouraging the conflict parties to compromise. During this inter-Congolese dialogue there was vigorous debate over the type of regime that the country should adopt and the scale of decentralisation appropriate for such a large country entering a phase of stabilisation and reconstruction. Taking into account the country’s

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history of violence and distinct social and geographical characteristics, Congolese politicians managed to reach a consensus which was reflected in the constitution. See Michel Liégeois, “Acteurs et enjeux du processus de décentralisation”, in Théodore Trefon (ed.), *Réforme au Congo (RDC) Attentes et désillusions* (Paris, 2009), pp. 67-85.

<sup>9</sup> The Constitution of the Republic of Zaïre, which took effect in 1974, gave the president the power to choose all the ministers, judges and members of the Supreme Court of Justice. The decisions of the head of state took precedence over the laws passed by the National Assembly. Members of parliament and senior officials belonged to the only authorised party, the Popular Revolutionary Movement (Mouvement populaire de la révolution, MPR). Trade unions and authorised media outlets were also under the control of the MPR. Although some steps towards decentralisation had been taken in 1982, the regime was highly centralised, with provinces, districts and territorial entities governed by officials appointed by central government. See Tshiyembe Mwayila, *Invention de l’Etat de droit et projet de société démocratique en Afrique – Le cas du Zaïre* (Paris, 1992).

<sup>10</sup> During the 1990s, the new constitutions of African countries moving to multi-party politics often included this type of measure to guard against ill-intentioned constitutional changes.

<sup>11</sup> Pierre Akele Adau and Angélique Sitta-Akele Muila, *Des lois indispensables pour l’application de la Constitution du 18 février 2006 de la RDC* (Kinshasa, 2006).

natural resources; local governance; administration and public enterprises.<sup>12</sup>

The two rounds of elections, on 30 July and 29 October 2006, saw presidential, legislative and provincial votes held simultaneously. Like the head of state, the members of the national and provincial parliaments and the eleven provincial governors<sup>13</sup> were elected for five-year terms. Kabila emerged from the general elections<sup>14</sup> at the head of a Presidential Majority Alliance (Alliance pour la majorité présidentielle, AMP), a disparate coalition of 30 political parties, including the People's Party for Reconstruction and Democracy (Parti du peuple pour la reconstruction et la démocratie, PPRD), which he had founded in 2002. Initially, the AMP coalition occupied 338 of the 500 seats in the National Assembly and 55 of the 108 seats in the Senate.<sup>15</sup> In theory, it has a sufficiently large parliamentary majority to pass the laws required for the reforms promised by the new president.

## 2. Decentralisation and security sector reform take priority

Decentralisation and the reform of the security sector are particularly important for the future of democracy and peace in Congo.

The structure of the Congolese state posed problems right from the moment it became independent in 1960. At that time the "federalists" led by Moïse Tshombe, the leader of the Katanga secessionist movement, were violently opposed to the "unitarists" whose figurehead was Patrice Lumumba, the prime minister at the time.<sup>16</sup> When Mobutu became the country's leader a few years later, he deliberately ended the political and administrative autonomy of the provinces. But the confrontation between federalists and unitarists re-emerged during the sovereign National Conference which lasted from 1990 to 1992 and again during the 2003-2006 political transition. Both occasions saw the emergence of a political consensus on the

need for decentralisation, in order to improve governance in Congo.<sup>17</sup> Decentralisation is supposed to help entrench democracy by strengthening the accountability of elected figures and reducing the gap that separates them from those they represent. Decentralisation is also supposed to provide a mechanism for resolving conflict, through the establishment of a more balanced dialogue between Kinshasa and the provinces.

The regional structure of the Congolese state is formally enshrined in the new constitution. The DRC is supposed to establish 26 provinces, including Kinshasa, to replace the present eleven-province structure. Administrative powers and financial resources should be transferred to the new provinces so they can assume responsibility for the daunting array of 54 subject areas for which they will either be solely responsible or share responsibility with the central government.<sup>18</sup> The constitution imposed a particularly tight timetable for this. The new provincial governments and assembly members took office during the months that followed the 2006 elections.<sup>19</sup> Article 226 specifies that the new territorial boundaries come into force just 36 months after the Senate took office, that is on 14 May 2010.<sup>20</sup> Furthermore, the new regime was required to hold the Third Republic's first local elections<sup>21</sup> promptly, before the general elections of 2011.

The difficulty in implementing reforms partially stems from the fact that negotiations had to be quick, so as not to hold up the peace process. In some cases, the negotiators agreed on measures that were poorly thought out. For example, the boundaries of the new provinces have been the subject of debate ever since they were announced.<sup>22</sup> The implementation of other measures promised to be delicate because they fundamentally alter the existing political practices by establishing a system that is almost federal in nature. The share of national revenues, with 40 per cent allocated to the provinces and 60 per cent for the

<sup>12</sup> *Contrat de Gouvernance*, government of DRC, Kinshasa, February 2007.

<sup>13</sup> Members of provincial assemblies elected provincial governors by indirect suffrage on 27 July 2007.

<sup>14</sup> This report uses the term "general elections" to refer collectively to the presidential, legislative and provincial elections held on the same day.

<sup>15</sup> See Crisis Group Africa Report N°128, *Congo: Consolidating the Peace*, 5 July 2007, pp. 5-7.

<sup>16</sup> The division of economic resources between local and national authorities is the main reason why the rich provinces of Katanga and Bas-Congo have sometimes been tempted by secession. The outbreak of Katanga's rebellion against the central government on 11 July 1960 contributed to the collapse of the Lumumba government. The ensuing instability gave Mobutu's soldiers the chance to launch a coup d'état in 1965.

<sup>17</sup> See Crisis Group Africa Report N°150, *Congo: Five Priorities for a Peacebuilding Strategy*, 11 May 2009, p. 18.

<sup>18</sup> Articles 203 and 204 of the constitution.

<sup>19</sup> On 27 January 2007, the new members of provincial parliaments, elected in provincial elections, chose the governors and deputy governors of the provinces.

<sup>20</sup> Article 75 of the law of 31 July 2008 sets the fundamental principles of the free administration of the provinces.

<sup>21</sup> This report uses the term "local elections" to refer collectively to local, urban and municipal elections, which are essentially the same election but held in local communities of different kinds.

<sup>22</sup> Certain questions relating to institutions or the transfer of powers were not settled in time to be included in the constitution and it has been left to the legislature to resolve these matters.

central government will revolutionise Congo's financial governance and the balance of power.<sup>23</sup>

The governance of the security sector, including the judiciary, army and police, also has to be rapidly reorganised on a democratic basis. This has a dual purpose: to make the judicial system independent and to ensure the security services are no longer tools for oppression, acting at the behest of the president – as was the case under Mobutu – and that their activities are subject to parliamentary and judicial control. Moreover, it is necessary to rebuild security structures that are currently as damaged as the rest of the Congolese state apparatus.

When the elections were held, local and national courts were few and far between in Congo. Of the 180 envisaged under law, only 50 actually existed. The judges – which numbered only about 2,000 for a population of 60 million – were poorly trained, underpaid and often corrupt. The prisons lacked staff and funding. In 2006, the justice system received only 1.27 per cent of state spending. The amount officially allocated to the national presidency was almost three times the size of the justice budget.<sup>24</sup>

The constitution stipulates that the judiciary is independent from the legislature and the executive, and that the judges are subject to no authority other than the law itself. But to implement this democratic principle the judicial architecture of the Mobutu era will have to be replaced with new higher jurisdictions that are not subject to political authority. The plan was to abolish the Supreme Court of Justice, sharing its responsibilities between a Constitutional Court, a State Council and a Court of Appeal, which all had yet to be created. The constitution also provided for a Higher Judiciary Council composed almost solely of jurists, whose role would be to replace the executive in managing the judicial system.<sup>25</sup>

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<sup>23</sup> Article 175 of the constitution specifies that the share of national revenue allocated to the provinces is fixed at 40 per cent, and that this share is retained at source. Moreover, Article 181 envisages the creation of a national equalisation fund to redistribute 10 per cent of the state's share of national revenues to the poorest provinces. Until decentralisation has been implemented, the Kinshasa authorities will continue to decide how much support they will allocate to the budget of each province.

<sup>24</sup> In 2006, the Congolese state's total expenditure reached 694 billion Congolese francs, then equivalent to \$1.6 billion. Some CF8,840 billion (about \$20 million) was allotted to the judicial system, courts and the ministry of justice; the national presidency received CF25,222 billion, almost \$60 million. See *Etat de Suivi Budgétaire par Administration au 31/12/2006*, Congolese Ministry of the Budget, [http://ministeredubudget.cd/esb2006exec/esb\\_administration.pdf](http://ministeredubudget.cd/esb2006exec/esb_administration.pdf).

<sup>25</sup> Articles 149, 150, 152 and 223.

The police force, meanwhile, did not have a clear idea of its own manpower and instead of an operating budget had to rely on "envelopes" of operational funds.<sup>26</sup> It was divided into numerous specialised services, including the mines police, the judicial police, municipal police, the national park guard service, etc. The army was in an even more troubling condition. Following the comprehensive and inclusive agreement of 2002, the various Congolese belligerents agreed to integrate into the new national army, the Armed Forces of the DRC (Forces armées de la RDC, FARDC).<sup>27</sup> Initially, 340,000 soldiers were listed on the payroll, but observers estimated the true manpower figure at 130,000.<sup>28</sup>

During the transition, FARDC soldiers continued to take their orders from parallel chains of command driven by corruption and political calculations. Paid erratically and lacking effective training or a shared military doctrine, they survived by extracting unofficial levies from local people. Many went unpunished for war crimes and human rights abuses. Thus, in the aftermath of the 2006 elections, the Congolese state lacked an army that was "apolitical", "subject to the civil authorities" or capable of "defending the nation's territorial integrity and frontiers" as provided for under the constitution.<sup>29</sup>

Faced with these problems, the new constitution required the complete redrafting of the legal framework for the security forces. Two organic laws were envisaged for the armed forces, one for the police and six for the judicial system. The Governance Contract stresses their obligation to respect the law, the demilitarisation of the police, the struggle against impunity and the development of policies in all three sectors.

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<sup>26</sup> Between 2003 and 2006 estimates of police manpower fluctuated between 80,000 and 114,000; a new personnel audit counted 99,000. *Rapport final de présentation des travaux du groupe mixte de réflexion sur la réorganisation et la réforme de la police congolaise*, Ministry of the Interior, Decentralisation and Security, 2006.

<sup>27</sup> The FARDC was to be created from the core of the former Mobutu-era Armed Forces of Zaïre (Forces armées zaïroises, FAZ), that Laurent-Désiré Kabila transformed into the Congolese Armed Forces (Forces armées congolaises, FAC) after the first war (1996-1997), and the militia fighters of the various rebel movements that appeared during the second war (1998-2001). See Crisis Group Africa Report N°21, *Pulling Back from the Brink in the Congo*, 17 December 2004.

<sup>28</sup> By incorporating "ghost" soldiers into their stated force manpower, officers were able to embezzle extra funding, while also securing their own promotion to ranks that were senior to those genuinely required to command their unit. See Crisis Group Africa Report N°104, *Security Sector Reform in the Congo*, 13 February 2006, p. 16.

<sup>29</sup> Articles 187 and 188 of the constitution.

At the start of the president's mandate, the reform agenda was therefore particularly heavy. Its implementation was set to be politically sensitive. The on-going conflict in North Kivu and the endemic corruption that undermined the security sector made it particularly difficult to start the reconstruction of the justice system, the police and the FARDC. Moreover, many of the Congolese politicians of the new post-transition era who now found themselves tasked with passing reform laws had in fact been members of the government under Mobutu or leaders of armed groups.<sup>30</sup> To decentralise and create 26 provinces was also difficult in a country where the administration was flawed and the power relationships still fragile, both between central government and the provinces – influenced by centrifugal pressures – and within those provinces suffering deep ethnic tensions.<sup>31</sup> Decentralisation also needed to avoid merely replicating at the local level the problems of the dysfunctional national state. It needed, instead, to create responsible and functional decentralised institutions, themselves subjected to a proper balance of powers.

### III. THREE YEARS ON, DEMOCRATISATION IN DANGER

While the Congolese political leaders elected in 2006 are already into the second half of their terms of office, the reform agenda envisaged under the constitution and the Governance Contract has not been implemented. The consolidation of democracy has come to a halt and is even at risk of being abandoned. Over the last three years, power has become increasingly concentrated in the presidency, attempts to challenge the regime have been repressed and the process of implementing the constitution has almost broken down.

#### A. THE CENTRALISATION OF POWER

The grounding principles of Congolese democracy are supposed to be multi-party elections, separation of powers, respect for countervailing political forces and fundamental freedoms. In reality, parallel networks of decision-making linked to the presidency exert control over the government as well as the legislature and the judiciary.

#### 1. Presidential advisers dominate the government

By appointing Antoine Gizenga prime minister, Kabila recruited a head of government incapable of carrying out his official functions. In his 80s and physically weak, Gizenga can neither cope with the quantity of work that his job requires nor impose his authority in the corridors of power. His party, the Unified Lumumbiste Party (Parti lumumbiste unifié, PALU) is formally the third largest force in parliament, behind the president's own PPRD and the Movement for the Liberation of Congo (Mouvement pour la libération du Congo, MLC) of Jean-Pierre Bemba. But it only has 34 parliamentarians and two senators. Kabila soon began to preside over many meetings of the Council of Ministers in the absence of his prime minister.<sup>32</sup>

Criticised even within the ruling majority for his lack of dynamism, Gizenga resigned on 25 September 2008, to be succeeded by Adolphe Muzito, his deputy in the PALU leadership. Despite the appointment of a new government on 26 October 2008, relations between the president and the prime minister remained out of balance. A letter from the president's office, revealed by the press on 5 June 2009, asked Muzito not to order any expenditure without the prior agreement of the head of state.<sup>33</sup>

The prime minister's prerogatives have been eroded and his authority weakened. Numerous decisions that supposedly fall within the premier's purview are in fact made by the president. Advisers in Kabila's office who have no official mandate impose their own decisions on ministers in their areas of expertise. The influence of Augustin Katumba Mwanke<sup>34</sup> on political and mining affairs has provoked complaints about the opaque manner in which decisions are taken in Kinshasa.<sup>35</sup>

<sup>32</sup> See "Un an de pouvoir élu, peu de progrès", Marie-France Cros, *La libre Belgique*, 11 March 2008.

<sup>33</sup> "Kabila place Muzito sous surveillance financière", RFI, 5 June 2009.

<sup>34</sup> Born in 1963 in Katanga, Katumba Mwanke spent many years in business in South Africa. He is regarded as the president's most influential adviser. Having entered government alongside Laurent-Désiré Kabila, he has remained close to Kabila's son, under whom he has held a number of key posts (secretary general of the government, roving ambassador, secretary general of the AMP, etc).

<sup>35</sup> These criticisms have added weight as Mwanke's name appears on the list of individuals against whom targeted personal sanctions are recommended by the group of experts mandated by the Secretary-General of the United Nations. See *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, United Nations Security Council, UN S/2002/1146, 16 October 2002, p. 8 and its annexe II.

<sup>30</sup> Kabila himself confirmed this. See *Jeune Afrique*, no. 2545-2546, 18-31 October 2009, p. 93.

<sup>31</sup> An illustration of this was the violent clashes between Enyele and Munzaya in Equateur province in 2009.

In particular, security matters are dealt with outside the official decision-making structures. The stabilisation of the eastern provinces is managed directly by Kabila's entourage. At the end of 2008, John Numbi, the inspector general of the Congolese police, was sent on a secret mission to Rwanda to negotiate the removal of Laurent Nkunda from the leadership of the National Congress for the Defence of the People (Congrès national pour la défense du peuple, CNDP) and the launch of a military operation by the two countries against the Democratic Forces for the Liberation of Rwanda (Forces démocratiques de libération du Rwanda, FDLR).<sup>36</sup> General Didier Etumba, the FARDC chief of staff, was only informed about the military operation several days before it was launched in January 2009. A group of Katangan advisers, whose most influential members include Katumba Mwanke and Numbi, is involved in dealing with most of the sensitive issues and, as it did during the transition, this group operates a system of decision-making that runs parallel to the formal structures of government.<sup>37</sup>

## 2. Parliament is brought to heel

The forced exile of Jean-Pierre Bemba to Europe from April 2007 onwards<sup>38</sup> and his subsequent arrest in May 2008, at the behest of the International Criminal Court, left the parliamentary opposition in disarray. In Bemba's absence the leaders of the MLC in Kinshasa proved incapable of agreeing on a strategy. They thus failed to make the most of the new formal status of opposition granted under the law of 4 December 2007. Moreover, they failed to exploit their strength in the Senate<sup>39</sup> and establish themselves as an effective counterweight to the AMP.<sup>40</sup> The 4 December 2007 law confers senior ministerial rank on the chief opposition spokesperson. The MLC nominated no one to fill this role, preferring to keep it

aside for Jean-Pierre Bemba, whom they hope will eventually return home. Thus the opposition in DRC lacks a political figurehead who could lead it to effectively play its designated role as a parliamentary counter-balance to government.<sup>41</sup>

However, Vital Kamerhe, the first elected speaker of the National Assembly under the Third Republic, a former PPRD general secretary, did attempt to develop the Assembly as a forum for the expression of views and scrutiny of government action. Initially he chaired debates in an equitable manner, thus allowing the opposition to make its presence felt during the televised sessions of the lower chamber. During his term as speaker, the government was the target of criticism on two sensitive issues: relations between Congo and Angola and an economic agreement with the Chinese.

While the government sought to play down the incident, the occupation by Angolan troops of Kahemba – a frontier area in Bandundu province – in early 2007 sparked uproar among Congolese parliamentarians. They set up a bipartisan commission and attacked the then Interior Minister, Denis Kalume, for adopting a conciliatory attitude towards Luanda. By condemning the incursion, the parliamentarians also caused problems for Kabila, who at the time was seeking to maintain good relations with Angola, an ally.

This first parliamentary criticism of the government was followed by a second outburst of anger in 2008.<sup>42</sup>

After his inauguration as president in late 2006, Kabila privately entrusted the Minister of Infrastructure, Pierre Lumbi,<sup>43</sup> with negotiating an "infrastructure for natural resources" deal with China.<sup>44</sup> Lumbi organised the signing of a deal on 17 September 2007. Chinese companies agreed to carry out \$6 billion worth of infrastructure pro-

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<sup>36</sup> See Crisis Group Africa Report N°151, *Congo: a Comprehensive Strategy to Disarm the FDLR*, 9 July 2009, p. 4.

<sup>37</sup> At the end of the transition, the CIAT was already talking to Katumba Mwanke in an attempt to influence Kabila. See Crisis Group Africa Report N°128, *Congo: Consolidating the Peace*, op. cit., pp. 3 and 16. Kabila generally entrusts secret missions to Numbi; he was the envoy who negotiated with General Laurent Nkunda the "mixing" of the CNDP armed group into the national army in January 2007. See Crisis Group Africa Report N°133, *Congo: Bringing Peace to North Kivu*, 31 October 2007, p. 9. See also "La méthode Kabila: le premier cercle", *Jeune Afrique*, 25 May 2009.

<sup>38</sup> Crisis Group Africa Report N°128, *Congo: Consolidating the Peace*, op. cit., pp. 10-12.

<sup>39</sup> The PPRD and the MLC are by far the two most important parliamentary groups in the Senate. The PPRD holds 20 per cent of the seats while the MLC has 13 per cent. No other group is represented by more than 6.5 per cent of the 108 senators.

<sup>40</sup> Crisis Group interview, senior MLC figure, Kinshasa, 20 November 2009.

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<sup>41</sup> The second party presenting itself as an alternative political voice, the Union for Democracy and Social Progress (Union pour la démocratie et le progrès social, UDPS), has also been plunged into a leadership crisis; and, in any case, it boycotted the elections. Its president, Etienne Tshisekedi, who is from the same generation as Gizenga, remains in fragile health, convalescing in Brussels. See the interview with Tshisekedi, "Contrairement à la rumeur, Etienne Tshisekedi n'est pas mort", Radio Okapi, 12 December 2009.

<sup>42</sup> See the interview with Kamerhe, "Dossier Kahemba, Cour suprême, relations avec Kabila, Kamerhe s'exprime...", Radio Okapi, 20 July 2007.

<sup>43</sup> Lumbi is the former deputy to Samba Kaputo, the special security adviser to Kabila who died in summer 2007.

<sup>44</sup> China has a habit of striking agreements of this type with African countries rich in raw materials. It develops infrastructure in exchange for deliveries of oil and minerals. Examples include Angola, the Republic of Congo and Sudan.



jects and invest a further \$3 billion under a joint-venture with Gécamines, the state-owned Congolese mining company that operates in Katanga province. In return, the Chinese would obtain mineral rights for 25 years covering 10.6 million tonnes of copper and 626,000 tonnes of cobalt. The Sino-Congolese cooperation agreement provided that the Congolese state would guarantee this mining component. But the International Monetary Fund (IMF) feared this guarantee might transform into a further debt and therefore blocked debt relief for Congo until this question was clarified.<sup>45</sup>

The structure of the Chinese contract remained very opaque. Despite the importance of the issue for the country, Congo's representative institutions were denied any detail about the negotiations. The publication of the deal by a daily newspaper on 8 May 2008 provoked a wave of protests.<sup>46</sup> On 12 May 2008, in parliament and in front of television cameras, the opposition condemned the contract as "one-sided". Claiming that only the copper resources covered by the deal were worth as much as \$85 billion, it accused the government of having "sold out the country's interests cheaply". From his cell in The Hague, Jean-Pierre Bemba attacked what he called "the biggest hold-up" of the century.<sup>47</sup> Parliament asked the government to officially provide it with a copy of the contract and organised a special session at which the government was forced to explain itself. Sceptical, parliamentarians from all camps adopted ten recommendations to the government on how to manage the contract. At the presidency, this criticism of Kabila's landmark project was bitterly resented. Kamerhe was accused of failing to exert enough control over the National Assembly.

Kabila won the 2006 presidential election thanks to the votes of the eastern provinces, whose inhabitants hoped to see the restoration of security. His popularity remains

low among Congolese in the west and in the capital. Yet, well into his presidential term, militias in the eastern provinces have still not been disarmed. On several occasions Laurent Nkunda's CNDP imposed humiliating defeats on the national army, sent by Kinshasa to hunt it down. The interposition of MONUC peacekeepers in North Kivu province, initially in the village of Sake in 2007 and then at the entrance to Goma city in 2008, prevented a complete CNDP victory. Thus Kabila's electoral base was significantly eroded in the East while Vital Kamerhe – a native of South Kivu – drew attention when he became involved in the Goma conference in January 2008. At the same time, with National Assembly sessions regularly televised, Kamerhe began to establish a profile beyond his South Kivu home province.<sup>48</sup>

Six months after the Chinese contract affair, Kamerhe openly criticised President Kabila's decision to authorise Rwandan participation in a military operation against the FDLR.<sup>49</sup> On 21 January 2009, he said the entry of Rwandan soldiers into North Kivu was a "serious" matter and warned against the risk of collateral damage. In February 2009, some 260 parliamentarians, including some AMP members, signed a petition demanding a debate on the agreement between Kabila and his Rwandan counterpart and pressing for more transparency over its contents.<sup>50</sup> With this, Kamerhe had crossed the line.

Kabila felt strengthened by the apparent success of the joint military campaign and the withdrawal of the Rwandan forces in late February, within the deadline he had imposed. He therefore moved to sideline Kamerhe. In March 2009, at the instigation of the presidency, the AMP members of parliament forced Kamerhe to resign from his position. On 17 April 2009, Evariste Boshab,<sup>51</sup> a close ally of the president, replaced him as speaker. The political elimination of Kamerhe was a warning to other potential dissidents and reinforced Kabila's domination of the legislature.

Within the AMP, as in the opposition parties, few were tempted to stand up strongly in defence of the prerogatives of the legislature when faced with the growing concentration of power in the presidency. In the January 2007 provincial governor elections, lavish spending

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<sup>45</sup> Under pressure from the IMF and the World Bank, the "Chinese contract" was finally renegotiated. On 18 August 2009, a press conference by an IMF delegation and the governor of the Central Bank of Congo announced the approval of major changes to the contract. The government's guarantee of the mining project was revised and the value of the project was reduced to a first conditional \$6 billion. In December 2009, the IMF confirmed the revised accord was compatible with debt sustainability. This enabled the Congolese authorities to secure a reduction in the bilateral debt to Paris Club creditors and \$560 million, phased over three years, in IMF support for a program to modernise governance in Congo. See "Congo gets \$552 million IMF loan to help growth, reduce poverty", Bloomberg, 11 December 2009.

<sup>46</sup> *Le Phare*, 8 May 2008.

<sup>47</sup> "Contrats chinois en RDC: des députés de l'opposition claquent la porte", Agence France-Presse, 13 May 2008. See also an interview with Kamerhe. "Contrats chinois: miracle ou mirage", *Jeune Afrique*, 19 May 2008.

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<sup>48</sup> See François Soudan, "Kabila – Kamerhe: chronique d'un désamour", *Jeune Afrique*, 17 February 2009.

<sup>49</sup> Crisis Group Report, *Congo: a Comprehensive Strategy to Disarm the FDLR*, op. cit., p. 7.

<sup>50</sup> "260 signatures de députés pour la session extraordinaire", *Le Phare*, 11 February 2009.

<sup>51</sup> A law professor, Evariste Boshab is one of the president's loyalists. He was the head of Kabila's office during the transition before his election as an MP in 2006 and appointment as PPRD general secretary in 2007.



ensured that opposition members of provincial assemblies voted for the AMP candidates. Thus, the presidential majority secured the governorships of Bas-Congo, Kinshasa and Kasai Occidental, provinces where the balance of forces within the local assemblies was theoretically favourable to the opposition.<sup>52</sup> And several hundred thousand dollars was distributed in an effort to persuade parliamentarians of the presidential majority to support the ejection of Kamerhe from the speaker's chair.<sup>53</sup>

### 3. Judges obstruct anti-corruption measures

The independence of the judicial system promised by the constitution has come under attack on a number of occasions. After the 2006 elections, parliament condemned rulings by the Supreme Court of Justice, which, in its capacity as the elections court, declared as invalid the mandates of some candidates.<sup>54</sup> As a condemnation of "government by judges", parliamentarians tried to revise Article 152 of the constitution, to make the president or the justice minister members of the High Judicial Council. Twice, on the pretext of fighting corruption, dozens of judges were forced into retirement or deprived of their positions without the implementation of normal disciplinary procedures.

Indeed, having totally failed to encourage a governmental strategy to fight corruption, the presidency itself took complete control of the issue. Kabila used all his major speeches to attack the damage wrought by corruption. On 17 May 2007, during a ceremony celebrating the 10th anniversary of his father's victory over Mobutu, he cited corruption among the moral failings that undermine the country. On the anniversary of independence, on 30 June 2007, he called on his fellow citizens to "engage in a genuine moral revolution"; and on 30 June 2008 he proclaimed a "zero tolerance policy". One year later, on the same occasion, Kabila launched a fierce attack on the judges when he said "the justice system itself is in the dock", arguing that judges had abused the independence that comes with their position.<sup>55</sup>

The "clean-up" thus initially targeted the judiciary.<sup>56</sup> In a first wave of forced personnel changes, on 9 February 2008, some 92 judges and investigating magistrates were immediately replaced by 26 newly promoted appointees.<sup>57</sup> On 15 July 2009, the president signed dismissal orders for a second wave of 90 jurists and a competitive recruitment process was launched to secure new personnel.<sup>58</sup> Finally, a number of officials from various ministries and state organisations were removed from their posts as a result of the new "zero tolerance" policy on corruption.<sup>59</sup>

Whatever the rationale for these disciplinary measures – implemented at the behest of the presidency – they were not actually based on evidence about individual cases; their legality was therefore questionable.<sup>60</sup> They were not followed up with judicial action and they look like a public relations exercise. The replacement of judges represented not so much a cleaning up of corruption as the installation of a new judicial client structure, politically docile and subject to the same pressures as its predecessors. Seen as purges that brought back memories of the "Affair of the 315",<sup>61</sup> these measures – taken without consulting the High Council of the Judiciary – demonstrated the extent of the executive's control over the judiciary. Judges are specifically targeted but it is now common practice for the regime to pay parliamentarians to approve legislation, propose or reject motions against members of the government or provincial governors.<sup>62</sup> Yet the authorities have troubled none of the major political figures implicated in corruption scandals.

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<sup>52</sup> See Crisis Group Report, *Congo: Consolidating the Peace*, op. cit., pp. 9-10.

<sup>53</sup> Crisis Group interviews, senior Congolese politicians, Kinshasa, March 2009.

<sup>54</sup> *Résolution du Conseil directeur de l'Union interparlementaire*, 15 October 2008, <http://195.65.105.150/hr-f/183/drc30.htm>.

<sup>55</sup> See Kabila's speeches: "Message du chef de l'Etat à l'occasion du 47ème anniversaire de l'indépendance de notre pays", Kinshasa, 30 June 2007, p. 2; "Discours du Président Kabila à la Nation", Kinshasa, 30 June 2008, p. 3; and "Discours du Président Kabila à la Nation", Kinshasa, 30 June 2009, p. 3.

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<sup>56</sup> See also the very detailed report "RDC: La dérive autoritaire du régime", Fédération internationale des droits de l'homme (FIDH), July 2009.

<sup>57</sup> "RDC: Nomination de nouveaux magistrats, une 'violation' de la loi", Agence France-Presse, 13 February 2008.

<sup>58</sup> *Analyse de la situation des droits de l'homme pour le mois de juillet 2009*, Bureau conjoint des Nations unies aux droits de l'homme (BCNUDH), p. 2.

<sup>59</sup> On 31 July 2009, 80 judges were dismissed and 1,212 forced to retire. On 2 January 2010, seventeen presidential decrees of contract termination and appointment were signed, instigating the replacement of almost 1,500 staff in services attached to the Ministry of Finance. Ordinances N°10/001-N°10/017 2 January 2010, available at [www.digitalcongo.net/article/63642](http://www.digitalcongo.net/article/63642).

<sup>60</sup> These provoked a number of affected individuals to make appeals.

<sup>61</sup> In 1998, Laurent-Désiré Kabila sacked 315 judges at one day's notice.

<sup>62</sup> During 2009, motions censuring the ministers of transports, foreign affairs and communication were submitted to the National Assembly. Prime Minister Muzito himself survived two such motions in March and October 2009.

The battle against corruption has also become a political tool. In autumn 2009, the only MLC provincial governor, José Makila, was deposed after the provincial assembly voted for a censure motion sparked by the exposure of a corruption scandal. Meanwhile, the governor of North Kivu was the target of an identical move in early 2010. So far it has failed.<sup>63</sup> In both cases an accusation of corruption was used as a pretext to oust, or attempt to oust, governors who were proving to be troublemakers.

Despite the campaign against corruption, the situation has hardly improved. On 24 September 2009, a report on practices in the mining industry was submitted to Congo's senate. This showed that state authorities had collected only \$92 million in duties. The senators estimated that embezzlement and poor governance, practices that are commonplace in the mining sector, had caused the loss of some \$450 million in state revenue.<sup>64</sup> In late January 2010, a National Assembly committee estimated that the management of Gécamines had embezzled half a \$50 million sum advanced under the terms of the Chinese contract.<sup>65</sup> The 2009 corruption index produced by the independent organisation Transparency International ranks the DRC 162 out of 180 countries.<sup>66</sup>

## B. THE BRUTAL IMPOSITION OF PRESIDENTIAL AUTHORITY

### 1. Rebellions suppressed

Since 2006, Kabila has used force on a number of occasions to counter attempts to challenge the authority of the state. Only when put under pressure by a military setback, has he been prepared to engage in dialogue with his opponents.

Two months after his inauguration, members of the politico-religious Bundu dia Kongo (BDK) movement based in the highly strategic province of Bas-Congo,<sup>67</sup> planned demonstrations against the flawed election of an AMP candidate as provincial governor of Bas-Congo.<sup>68</sup> On 31 January 2007, the police opened fire on BDK supporters while attempting to arrest their leader. The Interior Minister, Denis Kalume Numbi, sent army and police units from Kinshasa to restore order. Human Rights Watch (HRW) says that by the beginning of March 2007 state forces had killed 104 civilians and carried out mass arrests.<sup>69</sup> One year later the government carried out a further operation in Bas-Congo to bring an end to the BDK revolt. According to MONUC<sup>70</sup> and HRW<sup>71</sup> estimates, that in more than two weeks from 28 February 2008, the police possibly killed more than 200 people.

In August 2006, between the first and second rounds of the presidential election, a score of people died in a confrontation in Kinshasa between the presidential guard and the militia fighters protecting Jean-Pierre Bemba. On 21 March 2007, the presidential guard was ordered to forcibly disarm Bemba's men in the capital. The MLC leader promised to lead a "constitutional opposition" to the new government but refused to disband his personal guard. Two days of fighting with heavy weapons left hundreds of military and civilian victims in the streets of Kinshasa.<sup>72</sup> This time Kabila's main political opponent was forced to leave the DRC under MONUC protection to seek exile in Portugal. His subsequent arrest in Brussels and detention in an International Criminal Court prison caused lasting damage to the MLC.

Between June and December 2007, and again between August and November 2008, Congolese troops were mobilised in North Kivu in an attempt to crush General Laurent Nkunda's rebellion. Each attempt to negotiate a settlement produced deals that were not implemented. They were undermined by Kinshasa's lack of commitment, Nkunda's intransigence and, above all, corruption. Three times this led to humiliating defeats for the FARDC. The most spectacular of these, between late September and early October 2008, finally forced Kabila to hold talks

<sup>63</sup> See "Equateur: La Cour suprême confirme la déchéance de José Makila", Radio Okapi, 22 September 2009 ; and "Goma: la Cour d'appel rejette la requête de l'Assemblée provinciale contre Julien Paluku", Radio Okapi, 8 February 2010.

<sup>64</sup> "Mines: 450 millions USD de manque à gagner: le PGR doit se saisir du dossier", *Le Potentiel*, 29 September 2009. Moreover, the independent conciliator appointed under the Extractive Industries Transparency Initiative has identified a shortfall of several million dollars between the revenues reported by companies and the revenue actually collected by the financial administration in 2007 (Rapport du conciliateur indépendant, PricewaterhouseCoopers, Kinshasa, 2009).

<sup>65</sup> "Kinshasa's missing millions", *Africa-Asia Confidential*, February 2010.

<sup>66</sup> See [www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table).

<sup>67</sup> Bas-Congo is the only Congolese province offering access to the sea and the DRC's offshore oil reserves. The rich port city of Matadi supplies imported goods to Kinshasa.

<sup>68</sup> Crisis Group Report, *Congo: Consolidating the Peace*, op. cit., p. 10.

<sup>69</sup> "On va vous écraser", Human Rights Watch, November 2008, p. 79.

<sup>70</sup> *Enquête spéciale sur les événements de février et mars 2008*, Bureau conjoint des Nations unies aux droits de l'homme.

<sup>71</sup> *On va vous écraser*, Human Rights Watch, op. cit., p. 87.

<sup>72</sup> Crisis Group Report, *Congo: Consolidating the Peace*, op. cit., p. 11.

with the president of Rwanda and seek his help in neutralising Nkunda.<sup>73</sup>

The two presidents agreed to implement a plan comprising the arrest of Nkunda, the integration of the CNDP into the political and military structures of Kivu<sup>74</sup>, and the launch of military operations to destroy the FDLR in Congo. The integration of the CNDP into the FARDC allowed Kabila to proclaim the restoration of peace, thus achieving an important campaign promise. However, peace remains highly fragile and the CNDP has not truly been dismantled. It retains a parallel chain of command over its men who are now within the national army.<sup>75</sup>

In his televised New Year greetings to the Congolese people on 31 December 2009, Kabila boasted that “for the first time in fifteen years, the Congolese people are beginning the year in peace, without the thud of army boots or the crack of bullets echoing in the background, across the whole country”.<sup>76</sup> However, new violence had broken out in late October 2009 in Equateur province. Since summer 2009, ethnic tensions had considerably worsened around the town of Dongo, where the political authorities have ignored socio-economic demands since the 1940s.<sup>77</sup> Sparked by a quarrel over fishing rights, a violent conflict between the Enyele and Munzaya tribes culminated in a further massacre of civilians on 29 October 2009<sup>78</sup> and a massive displacement of population. More than 130,000 Congolese crossed the border to seek refuge in the neighbouring Republic of Congo or Central African Republic. On 27 November 2009, the FARDC and MONUC evacuated Dongo under gunfire.<sup>79</sup>

Groups of Enyele advanced towards the town of Gemena, an important regional hub. With the situation slipping out of control, the Congolese military command decided to redeploy troops from all over the country, with MONUC support, to re-establish control over the west of the province. The intervention of a commando battalion recently trained by the Belgians enabled the authorities – who had hitherto been losing ground – to take the initiative. On 1 January 2010, MONUC told the press that the FARDC had retaken the main Enyele base and that 157 rebels and one government soldier had been killed.<sup>80</sup>

Comforted by this military victory, the government in Kinshasa regarded the crisis as resolved. With MONUC’s help, it issued strong appeals for displaced people to return to their villages.<sup>81</sup> However, the conflict in Equateur had not been settled. On 4 April 2010, a group of fighters thought to be from the Enyele tribe launched a surprise attack on the provincial capital, Mbandaka, some 500km south of Dongo. By briefly seizing control of the town’s airport and killing three MONUC personnel,<sup>82</sup> the rebels gave a spectacular demonstration of quite how difficult it is for the Congolese state to bring an end to local conflicts.

## 2. Critics intimidated

Since 2007, public criticism of presidential decisions has sparked an increasingly harsh response. The National Information Agency (Agence nationale du renseignement, ANR), an intelligence service under the president’s control and present in all provinces,<sup>83</sup> is largely responsible for this repression.<sup>84</sup> In many cases reported to the UN Joint Human Rights Office (Bureau conjoint des Nations unies

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<sup>73</sup> Crisis Group Reports, *Congo: Bringing Peace to North Kivu* and *Congo: une stratégie globale pour désarmer les FDLR*, op. cit.

<sup>74</sup> Until administrative boundaries were redrawn in 1986, Kivu was a single entity, encompassing the present day provinces of North Kivu, South Kivu and Maniema. As in common usage, in this report the term “Kivu” refers to the geographical area covered by the provinces of North Kivu and South Kivu.

<sup>75</sup> See *Final Report of the Group of Experts on the DRC*, UNSC S/2009/603, 23 November 2009.

<sup>76</sup> Joseph Kabila, “Message des vœux du président Joseph Kabila à la Nation”, Kinshasa, 31 December 2009.

<sup>77</sup> “RD Congo: Projecteurs sur la crise en Equateur”, Refugees International, 31 March 2010.

<sup>78</sup> According to a report from an official of an international NGO that carried out humanitarian assessment in Dongo town in February 2010, between 200 and 500 civilians were killed in Dongo.

<sup>79</sup> “Dongo: la police et les FARDC planifient une opération armée”, Radio Okapi, 2 December 2009.

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<sup>80</sup> These estimates were given by MONUC’s military spokesman during a press conference in Kinshasa, 2 January 2010. “RD Congo: Combats entre groupes armés et militaires en Equateur”, Missionary International Service News Agency, 4 January 2010. The operation was led by the commando battalion and by a brigade trained by South Africa.

<sup>81</sup> A report by the United Nations Secretary-General to the Security Council, dated 30 March 2010, estimated the total number of Congolese who are still displaced following the clashes of October 2009 at about 200,000. See *Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2010/164, 30 March 2010, p. 3.

<sup>82</sup> See the press release from the Prime Minister’s office, 5 April 2010.

<sup>83</sup> Decree law N°003-2003 governing the establishment and organisation of the National Information Agency, 11 January 2003. See also *RDC: La dérive autoritaire du régime*, Fédération internationale des droits de l’homme (FIDH), op. cit., p. 20.

<sup>84</sup> In its 2009 annual report on the position of the press in the DRC, the international NGO, Journalistes en danger, blames the ANR for 26 of the 75 attacks on press freedom that it counted during the year.

aux droits de l'homme, BCNUDH), the ANR's victims are Congolese civil society activists and journalists.<sup>85</sup> On a visit to the DRC on 3 June 2009, the United Nations Special Rapporteur on the Situation of Human Rights Defenders underlined the need to establish a legal framework for the activities and the powers of the ANR. She also recommended the adoption of a law to protect defenders of human rights.<sup>86</sup>

In July 2009, the BCNUDH warned that the case concerning Golden Misabiko "has come to symbolise the restrictions placed on the role of human rights defenders in the DRC".<sup>87</sup> On 27 March 2009, a visit to Kinshasa by French President Nicolas Sarkozy saw the signing of a cooperation agreement under which the French company Areva will search for uranium deposits in partnership with the state company Gécamines. On 30 March 2009, the Katanga section of the African Association for the Defence of Human Rights (Association africaine de défense des droits de l'homme, ASADHO/Katanga) issued a statement calling for the agreement to be published.<sup>88</sup>

On 13 July 2009, it published a report on the lack of transparency that surrounds the search for uranium in Katanga and refers to the future Franco-Congolese partnership.<sup>89</sup> On 24 July 2009, the ANR arrested Golden Misabiko, the president of the NGO's Katanga branch. A court in Lubumbashi found him guilty of spreading false rumours of a kind that might alarm the population and provoke unrest. Misabiko was sentenced to one year in jail, of which eight months were suspended. As for Vital Kamerhe in the National Assembly, the condemnation of Golden Misabiko was a warning to other activists tempted to criticise Kabila's strategic choices.

The government also regularly calls the media to order. During the clashes between the presidential guard and Bemba's supporters in March 2007, the transmission signals from television and radio stations belonging to the MLC leader were disrupted. The premises of CKTV and CCTV were looted and their journalists received death

threats.<sup>90</sup> During the summer 2008 fighting between the FARDC and the CNDP, the ANR detained two staff from the private Global TV station on the night of 11-12 September 2008 and confiscated their broadcasting equipment. The incident occurred after a BDK member of parliament made on-air comments blaming the government for the conflict.<sup>91</sup>

One month after the CNDP defeated FARDC troops in Goma, on 20 November 2008 the ANR detained five journalists from the private television station Raga TV for 24 hours. The authorities accused them of broadcasting claims by an opposition parliamentarian that there was "panic among those around the President".<sup>92</sup> On 26 February 2010, the ANR raided the premises of Radio Liberté in Kisangani to interrupt a discussion that was being broadcast live. They arrested the two provincial opposition leaders taking part in the program, but left alone the local representative of the PPRD, the president's party.<sup>93</sup> While the local media in the DRC are free, regular ANR interventions impose an unspoken limit on the extent to which criticism of President Kabila is tolerated.

The Information Minister, Lambert Mende, also tries to impose this censorship on international media and NGOs. On 10 June 2009, the Radio France Internationale (RFI) was interrupted in the towns of Bunia and Bukavu, on the grounds of national security. Mende complained about RFI's coverage of the operations by the Congolese army and MONUC against the FDLR. On 26 July, RFI was suspended right across Congo. Mende accused the station of mounting a campaign to demoralise the FARDC. Two days later, in Kinshasa, the same Congolese minister publicly described the international NGOs, Global Witness, Human Rights Watch and the International Federation for Human Rights (Fédération internationale pour les droits de l'homme, FIDH), as "humanitarian terrorists".<sup>94</sup>

<sup>85</sup> *Analyse de la situation des droits de l'homme pour le mois de septembre 2009*, BCNUDH, p. 3.

<sup>86</sup> Press conference, 3 June 2009.

<sup>87</sup> *Analyse de la situation des droits de l'homme pour le mois de juillet 2009*, BCNUDH.

<sup>88</sup> "ASADHO/Katanga exige que soit rendu public le contrat sur la recherche et l'exploitation de l'uranium entre la RDC et le groupe français Areva", press release N°05/2009, ASADHO/Katanga, 30 March 2009.

<sup>89</sup> "Mine uranifère de Shinkolobwe: d'une exploitation artisanale illicite à l'accord entre la RD Congo et le groupe nucléaire français AREVA", ASADHO/Katanga, 13 July 2009.

<sup>90</sup> "Les médias appartenant à Jean-Pierre Bemba interrompus, son personnel se cache", Reporters sans Frontières, 28 March 2007.

<sup>91</sup> "Le régisseur de Global TV acquitté après 41 jours de détention", Reporters sans Frontières, 29 October 2008.

<sup>92</sup> "Libération des cinq journalistes de Raga TV, après 24 heures de détention au secret", Reporters sans Frontières, 21 November 2008.

<sup>93</sup> "Des agents de l'ANR font irruption dans une radio privée à Kisangani, interrompent une émission de débat politique et interpellent deux participants", Journalistes en danger, 26 February 2010.

<sup>94</sup> See HRW's response: *RD Congo: Lettre au premier ministre au sujet des attaques publiques contre les organisations de défense des droits humains*, press release, 31 July 2009.

## C. BREAKDOWN IN THE INSTITUTIONAL REFORM PROCESS

The referendum and election cycle of 2005-2006 was supposed to open the door to a period of major institutional reforms. Yet in five years there has been little progress on two major issues, namely decentralisation and security sector reform.

### 1. Decentralisation frozen

Congo's provinces are largely dysfunctional. Revenues collected at the border posts at Kasumbalesa and Matadi port make Katanga and Bas-Congo the two exceptions and put them in a privileged economic position. In all the rest, provincial authorities lack the human and financial resources to carry out their duties or to draw up realistic budgets. Unable to count on reliable revenue flows, they do not pass money on to the decentralised territorial entities.

In North Kivu, for example, assembly members, ministers and the staff of the provincial administration received no salary payments in summer 2009. The grants that are handed out to them come from the governor's personal reserve, itself funded from discretionary allocations from Kinshasa.<sup>95</sup> In September 2009, because the ministry of education failed to pay teachers, the governor of North Kivu approved a non constitutional order that obliged the parents of pupils to pay schoolteachers allowances.<sup>96</sup> Although the governors of all eleven provinces are now allied to the pro-Kabila parliamentary majority,<sup>97</sup> those in power at national level balk at entrusting them with more power and resources.

During the first two years of Kabila's term, measures to prepare for decentralisation, coordinated by Denis Kalume's interior ministry, moved forward slowly. The process began in October 2007 with a national forum that concluded by producing specific recommendations to overcome the problems of implementation that had been identified since the political transition.<sup>98</sup> Between July and October 2008, Kabila promulgated two basic laws and an ordinary statute that had been envisaged under the constitution. Simultaneously, the government signed a decree and a ministerial order creating the bodies that

were to carry out the decentralisation process.<sup>99</sup> Four further basic laws are still required to complete the legislative structure linked to decentralisation.<sup>100</sup>

But since the change of government that took place in autumn 2008, this process has been suspended. The re-drawing of boundaries to create 26 provinces and their territorial subdivisions has not been completed, despite the creation of a ministry entrusted to Mbusa Nyamwisi, dedicated solely to decentralisation and regional development. The budgetary and fiscal laws approved each year by parliament have failed to conform to Article 175 of the constitution, which stipulates that each province should receive 40 per cent of the national revenues collected within its territory. The legislative framework to create a National Rebalancing Fund has not been finalised. So the resources needed for the operation of provincial political institutions continue to be allocated as grants by central government. Since 2007, parliament has been approving annual funding for these allocations based on forecasts of the grants that will be made to the provinces. While these have averaged 28 per cent of national current revenue, the government in Kinshasa has in fact transferred less than 10 per cent per year.<sup>101</sup> Even halfway through the 2006-2011 legislature, the constitutional

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<sup>99</sup> Organic law of 7 October 2008 dealing with the composition, organisation and operation of the Decentralised Territorial Entities and their relationships with the state and the provinces (it corresponds to Article 3 of the constitution); organic law of 7 October 2008 dealing with the organisation and functioning of the Conference of the Governors (it corresponds to Article 200 of the constitution); ordinary statute of 31 July 2008 concerning the fundamental principles related to the free administration of the provinces; decree of 26 March 2008 concerning the creation of a new National Council for the Implementation and Monitoring of the Decentralisation process; and ministerial order of 25 July 2008 concerning the organisation and operation of the Decentralisation Technical Support Unit.

<sup>100</sup> A basic law to set the boundaries of the provinces and the city of Kinshasa (Article 2), a basic law to set out the organisation and operation of a National Rebalancing Fund (Article 181), a basic law to set out the organisation and operation of the public services that should be provided by central government, the provinces and the decentralised territorial entities (Article 194) and a basic law to establish the territorial subdivisions within the provinces (Article 196).

<sup>101</sup> According to reports by Congo's Court of Audit, in 2007 national current revenue reached 743 billion Congolese francs – the equivalent of \$1,315 billion (in August 2007 the Congolese currency was trading at CFr565 against the US dollar). Transfers to the provinces amounted to CFr48.7 milliards, just 6.5 per cent of the total. In 2008 national current revenue reached CFr1211.9 billion and transfers to the provinces amounted to CFr127.3 milliards, 10.5 per cent of the total. The budget for 2009 forecast national current revenue of CFr1587.9 billion; and by the end of the first half of the year just CFr72.1 billion had been transferred.

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<sup>95</sup> Crisis Group interview, senior Congolese politician, Goma, 18 September 2009.

<sup>96</sup> Article 43 of the constitution states that primary education is compulsory and is provided free of charge by state schools.

<sup>97</sup> Crisis Group report, *Congo: Consolidating the Peace*, op. cit., p. 6.

<sup>98</sup> Michel Liégeois, *Acteurs et enjeux du processus de décentralisation*, op. cit., pp. 74-75.

principle of power sharing between Kinshasa and the provinces is still not respected.

The president plans to change the parameters of decentralisation that were envisaged in the constitution of 18 February 2006. In his annual state of the nation speech, on 7 December 2009, Kabila announced that the plan for decentralisation on the basis of 26 provinces would be subject to a change in the constitution.<sup>102</sup> He argues that the future political units, as they are currently outlined, would not be viable. Their human, administrative and material infrastructure remains hugely under-resourced,<sup>103</sup> and it is impossible to significantly increase their funding when the national budget for 2010 is limited to a mere \$6 billion. The national budget deficit has become a key issue in negotiations over debt relief for Congo since the IMF's managing director, Dominique Strauss-Kahn, visited Kinshasa in May 2009.

Kabila's second justification for modifying the constitutional plan is more controversial. It springs from the contradiction between decentralisation as provided for by the constitution and the need to "first of all, consolidate the authority of a state that has only just been restored, in a context where centrifugal tensions could yet reassert themselves".<sup>104</sup> Yet, the rationale behind the constitution was the argument that decentralisation in fact helps to consolidate the national unity that has been eroded through a succession of wars.

While there is general agreement over a moratorium on the establishment of fifteen more provinces and a gradualist approach to the transfer of powers,<sup>105</sup> any adjustment of the 54 constitutional powers accorded to the provinces that strengthened Kinshasa's role would in effect undermine the compromise negotiated during the peace process. Suspending the implementation of decentralisation would

undermine democracy at a time when the provincial authorities are still largely subject to central government power.<sup>106</sup> Less than two years before the next presidential election in 2011, Kabila is presenting himself more as a defender of centralised power than as a guarantor of the constitution.

## 2. Reform of the security sector: caution rules

Preliminary work on security sector reform, involving both international and national specialists, began during the transition.<sup>107</sup> The 2007 Governance Contract envisaged rapid progress on the development of sector strategies for reform, adoption of the necessary legislation and even the application of measures such as the reorganisation of the administrative and operational departments of the Congolese National Police (Police nationale congolaise, PNC), as well as the establishment of a structure to pay the armed forces. Yet, in spite of these detailed technical preparations and the deployment of a huge number of UN and European experts to Kinshasa,<sup>108</sup> there has been little progress.

An initial master plan, which aimed at creating a professional army of 60,000-70,000 soldiers, was drawn up in September 2007. But it was only on 26 January 2010 that the Congolese defence ministry officially presented its plan for reform of the FARDC to its international partners. To provide the legislative framework for the armed forces, the Council of Ministers submitted the three draft laws required to parliament on 28 August 2009.<sup>109</sup> Consideration of these draft laws was initially included in the work program for the ordinary session of parliament that was due to run from 15 September to 15 December. But the two chambers had still not approved the measures by the end of a specially convened extraordinary session

<sup>102</sup> Joseph Kabila, *Discours du Président de la République sur l'Etat de la Nation*, Kinshasa, 7 December 2009.

<sup>103</sup> A report jointly produced by the World Bank and the European Commission delegation in the DRC in January 2008 listed the measures that would have to be taken in order to implement the 26 province decentralisation plan by May 2010. Because most of these measures have been ignored, the future institutions are not ready and there are many outstanding uncertainties over their new geographical boundaries. *DRC: Decentralization in the Democratic Republic of Congo, Opportunities and Risks*, Report N°41776-ZR, joint note; and Crisis Group interview, senior World Bank official, November 2009.

<sup>104</sup> Joseph Kabila, *Discours du Président de la République sur l'Etat de la Nation*, Kinshasa, 7 December 2009.

<sup>105</sup> Read *Décentralisation en RDC, défis et perspectives*, the general report of the workshop organised by the Center on International Cooperation and Open Society Initiative for Southern Africa, Hotel Memling, Kinshasa, 31 August and 1 September 2009.

<sup>106</sup> Crisis Group interview, Congolese lawyer specialised in human rights, Goma, 16 September 2009.

<sup>107</sup> The Joint Group for Reflection on the Reorganisation and Reform of the Police, which brought together the PNC with foreign experts, was formed in 2005 and finished its work in 2006. The Joint Committee on Justice was set up in 2005, following recommendations made in an organisational audit conducted by the European Commission.

<sup>108</sup> In 2005, the European Union set up EUSEC, an advisory mission on reform of the army and EUPOL, which fulfilled a similar role on policing. The United Nations also have their own teams of experts – the Rule of Law unit for the justice system and UNPOL for the police.

<sup>109</sup> See the official minutes of the Council of Ministers of Friday 28 August 2009. This concerns a proposal for an ordinary law governing the status of FARDC military personnel and proposals for two basic laws concerning the organisation and operation of the armed forces, as well as the organisation, composition, responsibilities and operation of the Higher Defence Council.

that ran from 15 January to 15 February 2010. As for the police, a national seminar on police reform, held in Kinshasa in April 2007, took two years to produce results. The basic reform law for which the constitution provides was submitted to parliament in 2009, and an action plan has been drawn up.

A plan for the reform of the judicial system, approved by both government and donors, was produced as early as 2007<sup>110</sup> and the laws establishing the Higher Judicial Council and the Constitutional Court were adopted in 2008. However, there have been serious delays in the implementation of the constitutional provisions that reform Congo's judicial structure and guarantee the independence of the justice system. Of the three higher jurisdictions envisaged by the constitution – the State Council/Court, the Appeal Court and the Constitutional Court – only the latter has been established, theoretically at least. Basic laws necessary for the reorganisation of military jurisdictions, as well as the creation of the State Council and the Appeal Court are still at the planning stage. The same is true for the law that gives local effect to the statute of the International Criminal Court, and for the new penal code and procedures.<sup>111</sup>

Moreover, the Higher Judicial Council has had a difficult start. A dispute between the Council and the Ministry of Justice over the interpretation of the powers given to the former only ended with the passage in 2008 of the law providing for the Council's establishment. At issue was the extent to which the government would be able to exercise influence, as well as control over the judiciary's budget. Later, the Council's effectiveness was threatened by the emergence of rifts within its permanent secretariat.<sup>112</sup> In sum, security sector reform has made some headway since 2006, but progress has been extremely slow, given the scale of international expert support provided.

These delays are explained by differences on priorities between government and donors. In 2007 and 2008, the launch of the armed forces reform, for which the constitution provides, was repeatedly postponed because the military command was preoccupied with carrying out operations in Kinshasa and North Kivu. Although the official objective is to cut military manpower, fighters

from the militias in eastern provinces were integrated into the regular army in a disorganised manner. Rather than instigating a fundamental transformation of the Congolese army, the Kinshasa authorities have given priority to the acquisition of equipment and to the short-term training of the battalions fighting rebel groups.<sup>113</sup> Moreover, the Ministry of Defence and donors failed to reach a consensus on the shape of the future Congolese army.

During talks held on 25-26 February 2008 in Kinshasa, Defence Minister Chikez Diemu failed in an attempt to secure the backing of the international community for the concept of a "reconstruction army".<sup>114</sup> The idea of soldiers rebuilding public infrastructure or helping farmers in the fields commands little confidence among the foreign partners willing to help in training the Congolese military. The plan, officially presented to international partners by the Ministry of Defence on 26 January 2010, envisages a restructuring of the FARDC in three phases between 2009 and 2025. Its objective is to maintain military manpower at 145,000 troops over the long term.<sup>115</sup> The cost of the first three-year phase is put at \$3.7 billion. A lack of financial realism also characterises the government's approach to police reform, whose action plan is estimated to cost \$1.3 billion.

Security sector reform has also suffered from a lack of coordination between international partners. During the transition, Belgium, South Africa and Angola developed separate training programs for a number of battalions. These transition-era training partners have now been joined by the U.S. and China. Since 2006, international partners have been discussing coordination of security sector reform but have failed to agree on a strategy.<sup>116</sup>

<sup>110</sup> The action plan for reform of the justice system is available at [www.justice.gov.cd](http://www.justice.gov.cd).

<sup>111</sup> Some of these texts are draft laws (draft law for the application of the statute of the International Criminal Court, 2006, draft penal code 2007, etc.) prepared long ago but not prioritised by the Congolese authorities.

<sup>112</sup> The 2010 budget is the first on which the Higher Judicial Council has been consulted and has thus obtained a funding allocation for the judiciary, as provided for by Article 149 of the constitution.

<sup>113</sup> The DRC is no longer under an arms embargo. Between June and November 2007 it hurried to acquire two Mi-24 attack helicopters, T-55 heavy tanks, BMP-1 armoured personnel carriers and multiple rocket launchers to combat the CNDP rebellion in North Kivu. Their use, without adequate training of maintenance personnel or crews, failed to prevent the FARDC's defeat in December 2007 and October 2008.

<sup>114</sup> See *Candide au Congo: l'échec annoncé de la réforme du secteur de la sécurité*, Sebastien Melmot, Institut français de recherche internationale, Laboratoire de recherche sur la défense, focus stratégique no. 9, September 2008, p. 12; and Cathy Clement, *Security Sector Reform in the DRC: Forward to the Past*, in Hans Born and Albrecht Schnabel (eds.), *SSR in Challenging Environments* (Geneva, 2009), p. 97.

<sup>115</sup> 85,000 for the army, 10,000 for the airforce, 20,000 for the navy and 30,000 for command, training and support. A biometric audit carried out in late 2009 by the EUSEC teams counted almost 130,000 active troops in the FARDC, including just 50,000 soldiers for 48,000 non-commissioned officers and 32,000 officers.

<sup>116</sup> See *Defence reform like people matter*, briefing note, Oxfam, January 2010.



The lack of progress in security sector reform has political, institutional and human costs. The FARDC has demonstrated very serious operational shortcomings in their numerous failed offensives over the past three years. In each intervention, human rights abuses and acts of sexual violence have been committed against the population. Despite Article 15 of the Constitution,<sup>117</sup> it was only in 2009 that a national strategy to combat gender violence was adopted, largely under the pressure of international organisations.

Because of the structural weakness of the police, the army is still deployed to deal with major outbreaks of public disorder. The fact that the new judicial institutions have yet to be completed and that only limited progress has been made in translating constitutional principles into Congolese criminal law also has negative political and human consequences. Because the penal code has not yet been revised, Congolese courts continue to apply the death penalty, despite the fact that Articles 16 and 61 of the constitution affirm the right to life.<sup>118</sup>

## **D. THE TEMPTATION TO CHANGE THE RULES OF THE DEMOCRATIC GAME**

### **1. The threat to local and national elections**

Postponed each year, local elections have still not taken place. The international community made arrangements to assist with these polls early on: in January 2008, the UN Security Council mandated MONUC to help the Congolese authorities.<sup>119</sup> Arrangements for coordination between international partners and the Congolese authorities were put in place.<sup>120</sup> Donors initially offered to cover \$131 million of the \$163 million total cost of revising the electoral register used in 2005 and 2006 and staging the elections. This leaves Congo's government and parliament to raise the remaining \$32 million, complete the legal

framework for the establishment of a new Independent National Electoral Commission (Commission électorale nationale indépendante, CENI)<sup>121</sup> and update the boundaries of the local election districts.<sup>122</sup>

The mandate of the Independent Electoral Commission (Commission électorale indépendante, CEI), in charge of elections during the transition, has been extended. It has been asked to draw up a definitive timetable for local and general elections and quickly revise the electoral roll that will be used for both votes.

In 2007, the government of Prime Minister Gizenga told MONUC that the local elections would be held in the second half of 2008. But despite this announcement, the planned date repeatedly slipped. In July 2008, the local polls had to be postponed to June 2009 because the CEI was revising the electoral roll. When the registration of new voters had not yet begun in March 2009 the elections were pushed back once again, to early 2010.<sup>123</sup>

In the summer of 2009, the government took an important decision that surprised its international partners. After registering voters in the city of Kinshasa, it unilaterally decided to alter the system for updating the voters' roll. Rather than simply updating the document, it said all Congolese aged eighteen or above in 2011 should register or re-register.<sup>124</sup> CEI staff told their foreign contacts that on election day they wanted to have a register that could not be criticised.

On 25 November 2009, at a meeting of various institutions in the city of Mbuji-Mayi, Kabila confirmed that this extensive option had been selected. He said the revenues earned from selling national identity cards – which would be made compulsory – would cover the extra costs

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<sup>117</sup> Article 15: "The public authorities will oversee the elimination of sexual violence".

<sup>118</sup> On this point it is worth noting that while the Congolese government maintains an unofficial moratorium on executions, it has not signed the universal moratorium on the death penalty – which has given Rwanda an excuse to refuse to extradite Laurent Nkunda.

<sup>119</sup> Resolution 1797, 30 January 2008, p. 11, point 48.

<sup>120</sup> A steering committee, composed of relevant Congolese ministers, ambassadors and the deputy head of MONUC, acts as overview monitor of the electoral process. There is a technical committee of Congolese officials and international experts from the Project in Support of the Electoral Cycle (PACE). PACE represents the donors, MONUC and the United Nations Development Programme (PNUD). It manages the international fund dedicated to the electoral process, and is mandated to help the CEI up to the local elections.

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<sup>121</sup> Article 221 of the constitution gives CENI the permanent charge of organising the electoral process. A draft organic law was approved in the Council of Ministers on 12 June 2007, but the measure has since been blocked in Parliament. On the role of the CEI in the 2006 elections and the problems besetting the establishment of the CENI, see Crisis Group Report, *Congo: Consolidating the Peace*, op. cit., p. 18.

<sup>122</sup> The delineation of electoral boundaries at local level lists all the decentralised entities where the vote will take place. (In contrast to the devolved entities, which spring from traditional ruling structures, these decentralised entities have a legal status: they are the town, the municipality, the district and the chiefdom.) Articles 2, 3 and 196 of the Constitution all require the promulgation of a basic law to permit the decentralised entities to operate.

<sup>123</sup> *Twenty-eighth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, UNSC S/2009/335, 30 June 2009, p. 15.

<sup>124</sup> "The new IEC approach to voter registration", position paper 2009-01, MONUC, November 2009, p. 3, point 11.

of the new registration process and parliament would quickly find the time to make the necessary changes to the electoral law.<sup>125</sup> He also publicly asked MONUC to begin its withdrawal from the DRC on 30 June 2010, the 50th anniversary of Congo's independence and said the government would assume responsibility for organising and paying for the 2011 general elections.<sup>126</sup>

The CEI leadership announced in February 2010 that registration operations would restart from zero in May 2010, including in the capital.<sup>127</sup> But by the time of this announcement, the international community had already disbursed more than \$33 million to fund electoral preparations.<sup>128</sup> As of March 2010, Congo had yet to complete any of the actions it was supposed to carry out. The government had not released the money envisaged for the CEI.<sup>129</sup> The new electoral law had still not been adopted. Parliament had yet to debate the independence and composition of the CENI. The official list of local voting districts had only been finalised for four of the country's eleven provinces. The CEI had not published the definitive elections calendar nor had it submitted to donors any budgeted operating plan for the revision of the electoral roll.

In a letter dated 13 November 2009, Ross Mountain, MONUC deputy head, asked CEI president Abbot Apollinaire Malu Malu "to save" the electoral process by restarting the work on registration strategy that had originally been agreed. In the absence of a compromise over the handling of registration, he thought it unlikely that the election timeframes set by the constitution could be met. Mountain reminded Malu Malu of the importance of the local elections as a precursor to the 2011 general elec-

tions.<sup>130</sup> The voters' rolls that will have been updated for the local polls will then be used for the general elections. While there will be a five year gap between the last – successful – national elections and the next general elections, the holding of local elections will help Congolese election staff maintain their technical competence ready for 2011. These intermediate local polls will serve as a test of the organisational arrangements for the general elections.

UN election specialists believe it would be technically impossible to organise a combined vote in which local and general elections are held simultaneously in 2011.<sup>131</sup> They believe it will take six to twelve months to carry out a reasonable revision of the voters' roll and then stage the local elections.<sup>132</sup> A further six to twelve months would then be needed to prepare for the general elections. Kabila's term comes to an end at midnight on 5 December 2011. The provisions of the constitution could be respected if local polls are held in February 2011 and the first round of the presidential election followed on 5 September 2011 at the latest. But this scenario leaves no safety margin. Yet Abbot Malu Malu confirmed to Crisis Group in December 2010 that his teams was working on the basis of this informal calendar while adopting the most far-reaching approach to revision of the voters' roll.<sup>133</sup>

There is a clear risk of further delays, which would produce a situation that will be unconstitutional in late 2011, just when the election competition is expected to be at its most tense. The soaring cost of voter registration<sup>134</sup> and the confidential nature of the negotiations getting underway between the CEI and suppliers of the equipment and

<sup>125</sup> See the press statement issued by the office of Congo's President on 25 November 2009.

<sup>126</sup> Malu Malu told a press conference in Kinshasa on 29 November 2009 that the Congolese government plans to ask the donors only for a top-up aid to help fund this election.

<sup>127</sup> On 25 February 2010, a leading member of the CEI, Crispin Kankindé, told a Kinshasa press conference that the revision of the electoral roll would resume on 19 May 2010 in Katanga, Maniema, Bas Congo and Kasai Occidental provinces, where all voters would have to register afresh, even if they already had old voters' cards. "La révision du fichier électoral reprend dans quatre provinces", Radio Okapi, 25 February 2010.

<sup>128</sup> See the letter of 23 February 2010 to President Kabila signed by the head of MONUC, the ambassador of Spain and incumbent president of the European Union, and the US ambassador.

<sup>129</sup> Making reference to the global financial crisis of 2008 and the fall in the price of minerals exported by the DRC in 2009, the Congolese government promised to release \$10 million of the \$32 million for which it is responsible before the end of July 2009. By December 2009, the government had only released \$4.9 million. With the government failing to make its planned payments, UNDP has been forced to pay the salaries of CEI staff since the start of 2009.

<sup>130</sup> *Objet: Processus électoral en RDC*, letter, Kinshasa, p. 5.

<sup>131</sup> There would be huge logistical difficulties in combining general elections – to choose the national president, national parliamentary deputies and provincial assembly deputies – with local elections to choose the heads of chiefdoms and municipal, communal and district councillor; the number of different voting slips would be quite unmanageable. The 24th report by the Secretary-General to the Security Council set out the scale of the local elections as then established: "The local elections will involve approximately the same number of voters and polling stations as the national elections, but will be considerably more complex. Some 200,000 candidates are expected to compete in more than 6,000 constituencies, as compared to 13,000 candidates in 169 constituencies in the national elections".

<sup>132</sup> Crisis Group interviews, MONUC electoral officers, Kinshasa, 28 September and 25 November 2009.

<sup>133</sup> Crisis Group interview, Apollinaire Malu Malu, Kinshasa, 8 December 2009.

<sup>134</sup> On 18 January 2010, the CEI's rapporteur, Dieudonné Mirimo, revised his forecast of the cost of the revision of the voters' register and the staging of the local elections to \$283 million. "Kinshasa: son siège actuel étant vendu, la CEI acquiert un nouveau bâtiment", Radio Okapi, 18 January 2010.

services needed for the various elections increases the risks of corruption.

Given the unrealistic decisions taken by the Congolese authorities during the second half of 2009, combined with the systematic delays in parliament's work and in the release of budget resources, many observers question the true intentions of the regime.<sup>135</sup> As early as 5 October 2009, a minister in the Muzito government told Crisis Group he was convinced there would not be any local elections; the presidency would have nothing to gain from a vote that would risk altering the balances of political forces within the provinces such a short time before the presidential election.<sup>136</sup> In March 2009, a confidential CEI assessment put the combined cost of local and general elections at \$760 million.<sup>137</sup> The survival of the Congolese electoral process is at risk if there is no compromise on a sensible method of updating the voters' roll and if foreign donors do not provide financial support.<sup>138</sup>

## 2. Heading for a revision of the constitution

In his state of the nation address in December 2009, Kabila argues that the constitution of 18 February 2006 needs to be adjusted to improve the functioning of

Congo's institutions.<sup>139</sup> The presidential alliance strongly dominates both chambers of parliament and should therefore be able to mobilise the three-fifths parliamentary majority required to pass constitutional changes. However, it would not be possible to alter the dispositions enshrined in Article 220 without the approval of a national referendum. And no referendum can be held until the CEI has completed its overhaul of the electoral register.

In September 2009, the President of the Senate Léon Kengo wa Dondo revealed that a commission to assess the constitution had been formed.<sup>140</sup> In February 2010, Minister of Planning Olivier Kamitatu explained that conditions in Congo required the abandonment of the current semi-presidential system in favour of a strong presidency, to give more power to the head of state whose term of office, he said, should be lengthened.<sup>141</sup>

On 15 March 2010, at the opening of the ordinary session of the Senate and the National Assembly, the Assembly speaker stated that "a fresh look at the constitution was no longer taboo".<sup>142</sup> Evariste Boshab revealed that one of the tasks facing the March-April 2010 parliamentary session was to consider how constitutional provisions relating to decentralisation could be modified.

On 27 March in Kinshasa, a second inter-institutional meeting that brought Kabila together with representatives of the government, parliament and the CEI discussed a much wider list of provisions to revise. The commission for the evaluation of the constitution reported on the results and tacitly floated the idea of pressing forward without regard for the requirements set by Article 220. Among its most spectacular recommendations was the suggestion that the presidential term of office could be extended and

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<sup>135</sup> In an internal report to the United Nations, MONUC's electoral experts give a gloomy assessment of the outcome of the inter-institutional meeting in Mbuji-Mayi: "The high-level endorsement of the CEI's ambitious new approach to voter registration, against United Nations' advice and once many problems in applying this approach have become clear, sends a signal that the DRC is now taking its own decisions about the electoral process. It shows that finance or timetable constraints are not the main factors. This rules out any chance of holding local elections in 2010 and can only reinforce the case of those who argue that the government of the DRC does not want to hold local elections at all" [Crisis Group translation]. See *Operational concerns following the inter-institutional meeting*, p. 3, point 6.i.

<sup>136</sup> Crisis Group interview, Congolese minister whose portfolio covers issues that are essential to the electoral process, Kinshasa, 5 October 2009.

<sup>137</sup> Crisis Group interview, Kinshasa, March 2010.

<sup>138</sup> The cost of MONUC's supplementary activities related to the local elections is estimated at \$80-85 million. "Given the size of the country and the lack of surface transport, the Government and electoral authorities will require substantial support from MONUC, particularly in the form of logistical assistance and technical advice on a scale similar to that provided during the national elections. The requested support includes air transportation of electoral materials from Kinshasa and 15 hubs to some 210 sites across the country, as no other national entity is capable of carrying out this task". See *Twenty-fourth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, UNSC S/2007/671, 14 November 2007, p. 11, point 49.

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<sup>139</sup> "Almost four years after the promulgation of the Constitution, on 16 February 2006, and looking at how it has been applied, I have reached the view, in my capacity as guarantor of the good operation of our institutions, that certain provisions of this constitution are worth a fresh look". President's state of the nation speech, 7 December 2009.

<sup>140</sup> The existence of a "commission for the evaluation of the constitution" was first reported by RFI. The radio said it had about ten members, drawn from the presidency, the prime minister's office, parliament and the Supreme Court of Justice. "Projet de modification de la constitution", RFI, 21 September 2009. Radio Okapi reported that the commission would look at the provisions concerning the delineation of new provinces, the president's term of office and the possibility of allowing the president to sit in the Higher Judiciary Council. "RDC: une commission de révision de la Constitution", Radio Okapi, 23 September 2009.

<sup>141</sup> See Olivier Kamitatu: "il faut plus de pouvoir pour le chef de l'Etat", *Jeune Afrique*, no. 2564, 28 February-6 March 2010.

<sup>142</sup> "Rentrée parlementaire: Kengo met l'accent sur la transparence des élections, Boshab justifie la révision constitutionnelle", *Le Potentiel*, 17 March 2010.

that the head of state could serve more than two successive terms. It suggested scrapping the constitutional formula governing the share out of 40 per cent of the national revenues collected by the provinces and said it considered the extension of the principle of judicial independence to civil and military prosecutors to be “aberrant”.<sup>143</sup>

Changes to constitutions lengthening presidential terms of office are not unusual in Africa.<sup>144</sup> Kabila, who will complete his first term of office in 2011, has a very strong chance of being re-elected without recourse to such a measure. Despite the erosion of his electoral base in the East, because of the ongoing violence in Kivu and Orientale province, the opposition no longer seems capable of putting forward a powerful candidate to face him in the next presidential election. Even so, parliament’s current inability to quickly approve legislation and the trend towards a concentration of power that has been evident since 2006 suggests that any forthcoming adjustment of the constitution would alter the balance of power between institutions. Some of Kabila’s advisers and some members of the government are tempted to move the country from a decentralised semi-presidential system towards a model that is close to a centralised presidential system, ignoring the constitutional lock that Article 220 supposedly represents.<sup>145</sup>

#### IV. CONSOLIDATING THE DEMOCRATIC PROCESS

Between 2006 and 2010 democratic reforms in the DRC became bogged down. Despite the agenda set out by the first Gizenga government in its work program, the term of office that began in 2006 has not in fact produced the institutionalisation of democracy. The process of establishing new institutions that should have followed the 2006 election looks like an incomplete jigsaw puzzle. Some of these institutions do exist and function, others

exist without producing results and others remain on the drawing board. Congo’s democracy remains incomplete and the political commitment of its leaders is uncertain.

The consolidation of democracy has taken second place to “permanent urgent issues” – namely the stabilisation of the East, the reconstruction of infrastructure, negotiations with international financial institutions and the localised problems that invariably spring up across a territory the size of Western Europe. That represents a first paradox: the delay to promised reforms, such as decentralisation or security sector reform, further weakens the regime. This has contributed substantially to worsening the security crises that have emerged since 2006. The clashes in Bas-Congo, Kivu and more recently in Equateur have shown that weak provincial political institutions cannot cope with local conflicts which rapidly worsen.

Without decentralisation and a reform of the security system, the Congolese regime has neither the political nor security tools needed to regulate internal disputes. The intervention of the international community, particularly through the use of MONUC resources, has been crucial in preventing a long-term loss of control over regions distant from the capital. On 4 April 2010, at Mbandaka airport, MONUC suffered its heaviest combat losses in a single day since 2006. But without the recapture of this airport from the rebels, FARDC’s ability to deploy reinforcements in Equateur would have been seriously undermined. Yet several days before this attack, a UN technical evaluation mission had recommended the withdrawal of the blue helmets from four provinces, including Equateur, in the first half of 2010.<sup>146</sup>

Far from incarnating durable institutions, the application of constitutional principles depends on the goodwill of governments. To give a second wind to democratic reforms, Congo would have to step beyond the apparently technical nature of the problems it encounters to focus on the political dimension. The political nature of the solutions sought is at the centre of a second paradox: having contributed to endow Kabila with sovereign authority – through a successfully run election – the international community uses this as an excuse for not criticising or condemning the anti-democratic decisions and practices of his regime.

<sup>143</sup> “La révision constitutionnelle et la loi électorale à l’ordre du jour de la réunion interinstitutionnelle”, *Le Potentiel*, 30 March 2010.

<sup>144</sup> Between 1990 and 2010, nine African presidents changed the constitution to maintain their hold on power beyond the end of their second and final permitted term of office: Blaise Compaoré (Burkina Faso, 2005), Idriss Déby (Chad, 2005), Omar Bongo (Gabon, 2003), Lansana Conté (Guinea, 2001), Sam Nujoma (Namibia, 1999), Gnassingbé Eyadéma (Togo, 2002), Yoweri Museveni (Uganda, 2005), Paul Biya (Cameroon, 2008) and Mamadou Tandja (Niger, 2009). See Daniel Vencovsky, “Presidential Term Limits in Africa”, *Conflict Trends*, no. 2, 2007, pp. 15–21. See also Linda Darkwa and Philip Attuquayefio, “Situation Report 30 October 2009”, Institute of Security Studies, pp. 3–4.

<sup>145</sup> Crisis Group interviews, Kinshasa, March 2010.

<sup>146</sup> This mission sent by the United Nations Secretary-General was in the DRC from 22 February to 5 March. According to its observations, “the relative stability” of this part of the country offers the government the chance to maintain order without relying on MONUC’s military presence. See “Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo”, S/2010/164, 30 March 2010, pp. 23 and 24.

In a context in which MONUC's departure is now under discussion,<sup>147</sup> tensions related to the forthcoming presidential elections are rising and changes to the constitution are now openly floated, the international community needs to place the democratic and institutional reform agenda at the heart of its actions. This means stressing the construction of functional institutions, particularly in financial terms, as provided for in the constitution. These will contribute to easing the tensions that are likely to be stirred by the prospect of forthcoming elections.

The agenda of institutionalising democracy is centred on the establishment of the CENI, an early start to preparations for the next elections, rigorous respect for freedoms guaranteed by the constitution, the institutionalisation of the fight against corruption, continuing the decentralisation process and re-establishing a framework for the security sector reform. It also implies tighter management of external aid for development and democratic governance by bringing the Congo's new Asian partners into the process.

### **1. Preparing for the elections: returning to the constitutional path**

Kabila's first term under the Third Republic comes to an end in 2011. For the reasons already set out, the electoral calendar has already become seriously delayed and the Congolese authorities' recent refusal to set out a timetable gives grounds for concern.<sup>148</sup> The government should first create and install the CENI and allocate its budget, as Article 211 of the constitution provides. The draft law being examined by parliament should be given priority in the session that began on 15 March 2010 and legislators should at the same time approve a launch budget. The CENI should start work as soon as possible, in order to first, establish its own administrative structure and, second, develop a program of preparations for the 2011 elections and present it to potential donors.

Given the government's current budget problems, the electoral systems should make the most of what was already put in place for the 2006 polls and be based on a realistic assessment of costs. "The world's most expensive election" is not an option for 2011. So the donor

community's commitment should be based on a plan for election arrangements that is clear and concrete in terms of timetable and cost.

### **2. Institutionalising the fight against corruption**

The fight against corruption is being manipulated for political ends. Instead of repeated declarations of intent and personnel dismissals that are not properly explained, the government should equip itself with the institutional tools to both punish and prevent corruption.

Following up on the 2009 national forum, a strategy for fighting corruption should be developed in close collaboration with the NGOs already involved in the forum. The government should ratify and implement the United Nations convention against corruption. To ensure its rapid application, and learning from international experience, this strategy will need the support of a civil society anti-corruption coalition of NGOs, churches and others; it should work through Congolese organisations that have independent resources, appropriate skills and powers of sanction – as called for in the conclusions of the national forum.<sup>149</sup>

Certain instruments already exist but at present perform very weakly. The statutes of the Congolese Observatory of Ethics and Professionalism, charged with fighting corruption within the administration, and the brand new national financial information unit – based in the Central Bank and tasked with the fight against money laundering – should be altered. These organisations should be made independent and endowed with protected budgets. Moreover, units in the prime minister's office and the presidency that oversee the fight against corruption should be closed so the subject is depoliticised. The development of institutional capacity for fighting corruption is an important dimension of governance reforms, which the international community has so far not given much attention. International support would be welcome if this depoliticises the issue and helps Congo learn from the best practices developed in other post-conflict countries.

### **3. Respect for constitutional freedoms**

On 7 December 2009, the United Nations Human Rights Council adopted a report that made 163 recommendations to the Congolese government on ways to improve the human rights situation in the country.<sup>150</sup> The Congolese delegation in New York immediately accepted 124 of

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<sup>147</sup> The president set out his request on 4 March 2010 at a meeting in Kinshasa with Alain Le Roy, head of the department of peacekeeping operations at the United Nations. Crisis Group interview, Alain Le Roy, New York, 30 March 2010.

<sup>148</sup> "Protestation du gouvernement congolais auprès des gouvernements des USA, d'Espagne et de l'ONU au sujet d'une lettre adressée au chef de l'Etat" ("The Congolese government protests to the governments of the US and Spain and the UN about a letter written to the President"), [www.digitalcongo.net](http://www.digitalcongo.net), 11 March 2010.

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<sup>149</sup> Summary report of the national forum on fighting corruption, Public Service Ministry, Kinshasa, 16-19 December 2009.

<sup>150</sup> "Report of the Working Group on the Universal Periodic Review – Democratic Republic of the Congo", Human Rights Council, UNGA, A/HRC/13/8, 4 January 2010.

these, but made no comment about 28 points and rejected eleven recommendations, including those concerning the delivery of Bosco Ntaganda to the International Criminal Court.<sup>151</sup>

On 28 January 2010, the United Nations High Commissioner for Human Rights submitted a report to the UN General Assembly assessing the measures taken by the Congolese government between March and November 2009 to follow up on its own recommendations.<sup>152</sup> The verdict was harsh: “very limited progress has been made in their implementation ... the Congolese people remain insecure in enjoying even their most fundamental human rights”.

Noting that “an emerging ‘recommendation fatigue’ can be observed”, the High Commissioner refrained from making new proposals in her January 2010 report. Given the number of recommendations that have not been followed it is indeed pointless to issue more.<sup>153</sup> Henceforth, it is up to the government to show its good faith, starting with the promulgation of laws that would institute the defence of basic freedoms in Congo. Four legislative measures need to be passed before the start of the election campaign.

The Senate approved the draft basic law required for the creation of the National Human Rights Commission during its ordinary session of March 2008. But the law has been blocked in the National Assembly for the past two years. In June 2009, the prime minister and the presiding officers of the two chambers of parliament confirmed to the United Nations special rapporteur on the situation of human rights defenders that they were willing to pass a law to protect human rights activists, journalists,

witnesses and victims. But no draft law on this subject has yet been put on the parliamentary agenda. The need to give a legal framework to the activities and prerogatives of the ANR has not been followed up in parliament. Legislation is also needed to give effect to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the DRC ratified on 18 March 1996.

The failure to pass these laws promptly cannot be explained by the legislative backlog in parliament. The law according amnesty for acts of war or insurrection that the government promised the CNDP on 23 March 2009 was approved on 6 May 2009 by both chambers and promulgated the next day by the president.<sup>154</sup> Similar efficiency could be deployed to establish guarantees of the basic liberties of the Congolese people.

#### 4. Pressing on with decentralisation

In political terms, decentralisation could be the Pandora’s box that holds all the centrifugal tensions that strain the DRC. In financial terms, the 40-60 formula set down by the constitution would still not give some provinces financial viability and in technical terms the provinces are still not ready to take on all the responsibilities that are devolved to them under the constitution.

The constitution gives the provinces a vital role. But over the past five years they have exhibited serious shortfalls in capacity and operational effectiveness. The government certainly needs to press forward with the legislative initiatives it has launched in this area. But in doing so, it needs to focus on strengthening the capacity of provincial and local administration, particularly in financial management. The pace of legislative changes needs to be kept in step with the development of the administrative and financial capacity of the provinces and decentralised entities.

Because of the delays that have now built up in the electoral calendar and the logistical difficulty of organising local polls in such a vast country, the government needs to assemble a committee of national and international experts. The committee should be charged with assessing the feasibility of holding local elections within the time constraints imposed by the constitution. If this is not realistic, the committee should draw up a new timetable for local elections that takes account of the fact that national elections are being held in 2011.

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<sup>151</sup> Bosco Ntaganda has acquired the nickname “Terminator”. The ICC issued a sealed warrant for his arrest on 22 August 2006 and made it public on 28 April 2008 for crimes committed in the province of Ituri between 2000 and 2006. He rejoined Laurent Nkunda’s CNDP in North Kivu in 2006 to become the organisation’s military chief of staff. He played a major role in Nkunda’s arrest in January 2009 and in the integration of CNDP troops into the FARDC. Today he is an FARDC brigadier. See Crisis Group Report, *Congo: une stratégie globale pour désarmer les FDLR*, op. cit., p. 4.

<sup>152</sup> “Report of the United Nations High Commissioner for Human Rights on the situation of Human Rights and the activities of her Office in the Democratic Republic of the Congo”, A/HRC/13/64, 28 January 2010.

<sup>153</sup> At the 13th session of the Human Rights Council, which ended on 26 March 2010, the Council “called on the DRC to ensure in all circumstances respect for human rights and international humanitarian law ... It also called on the government to develop a plan aimed at establishing priorities in the question of implementing the recommendations that the country has received up to now”.

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<sup>154</sup> Law N°09/003 of 7 May 2009 granting an amnesty for acts of war and rebellion committed in the provinces of North Kivu and South Kivu.

## 5. Restructuring security sector reform is essential

Security sector reform has been the subject of much international attention but it has also been the target of disjointed and sometimes competing initiatives. An early priority should be a properly clarified partnership between the government and interested donors. Development of a coherent reform that commands top level political attention requires an end to the sector project model which currently dominates the reform process and resembles a traditional military cooperation focus on “training and equipment”.<sup>155</sup>

The lack of a real partnership between the government and the international community helps to explain why so little progress has been made since 2006. A clearly redrawn partnership would specify priorities and include structures for coordination, progress benchmarks and clauses permitting the suspension of support.<sup>156</sup> To ensure that the reform amounts to more than just a fresh declaration of grand intentions, the partnership agreement needs to be publicised and signed at the highest political level – by the president, ministers from partner countries and senior officials from multilateral organisations. It would be subject to an implementation review every six months.

The priority themes of security sector reform would be civil supervision, the fight against corruption and respect for the law. Progress benchmarks should encompass both legislation – notably, the rapid adoption of measures already in the legislative process – and practical action, such as the demilitarisation of mining areas, funding support and the release of all the child soldiers used by the FARDC. Failure to meet these benchmarks would lead to the suspension of aid earmarked for the security sector.

Coordination of the process should make use of the structures already in place. The Kinshasa ambassadors’ forum on security sector reform could act as the international community’s coordination structure while the sector coordination frameworks for issues such as policing and justice would continue to coordinate the work of international partners and Congolese organisations. A sector coordination structure like those for policing and justice needs to be set up for the defence sector. A coordination group to handle the essentially political dimensions should be established in Kinshasa, bringing together the

ambassadors with the ministers concerned, under the authority of the deputy prime minister in charge of security.

## 6. Strengthening the link between development aid and democratic governance

An ad hoc international body would not be able to exert political influence over the Congolese regime in the way the CIAT could during the 2003-2006 transition. However, Joseph Kabila is keenly hoping to secure a declaration that the DRC has finally reached the completion point of the Heavily Indebted Poor Countries (HIPC) initiative before 30 June 2010, the 50th anniversary of independence. If the IMF and the World Bank decide to do so, Kinshasa could expect relief on 90 per cent of its debt and hope for new international funding just one year before the 2011 general elections.<sup>157</sup>

However, because donors still provide almost half the state’s financial resources each year<sup>158</sup> and because the government has made the completion point a symbolically important goal, donors still retain considerable influence. Moreover, they are of course obliged to assess the effectiveness of their support in terms of helping progress towards agreed goals.

At a time when the UN is considering how best to respond to Kabila’s request for an early start to MONUC’s withdrawal, it would make sense to link development aid more closely to support for democratic governance. The international community and major donors in particular should make it clear that aid cannot be provided unless there is progress on the democratic agenda and institutional reform and an improvement in the human rights situation. Their aid, just like the approval of debt relief shortly before elections, has a political dimension the international community should take into account in its dialogue with the Congolese government.

The various international frameworks for supporting Congo’s reconstruction already envisage such a dialogue; for example, this is the case under the Cotonou Accord with the European Union. So donors should henceforth demonstrate the political will to apply these conditions and they should also seek to involve the DRC’s new Asian donors – now substantial players in the country’s reconstruction.<sup>159</sup> Given the risks of instability that weigh upon the DRC and the importance of their long-term in-

<sup>155</sup> The Organisation for Economic Cooperation and Development (OECD) does not favour a sectoral approach. *OECD DAC Handbook on Security System Reform*, OECD, Paris, 2007.

<sup>156</sup> When MONUC provided logistical support for Congolese army battalions fighting armed groups in the East in 2009, it found itself caught up in a bitter controversy. Some of these battalions committed abuses against the civilian population and international NGOs accused MONUC of failing to immediately suspend its support for the units responsible.

<sup>157</sup> “Congo seeking cancellation of foreign debts”, Reuters, 18 March 2010.

<sup>158</sup> State budget law for the 2010 financial year.

<sup>159</sup> Having signed the “infrastructure in exchange for raw materials” with the Chinese in 2007, the DRC has now signed a contract with South Korea. “Signature de deux protocoles d’accord entre la RDC et la Corée du Sud dans les domaines de la santé et des mines”, 1 April 2010, [www.digitalcongo.net](http://www.digitalcongo.net).



vestments, the Asian partners – of which China is the most significant – should certainly be interested in a dialogue that aims to reduce the political fragility of the RDC.

## V. CONCLUSION

Four years after the 2006 election, the promises to reform governance, consolidate democracy and implement the constitution have not, for the most part, been kept. The hopes the public invested in the successful elections have been disappointed, security problems remain and international partners are tiring of supporting costly reform programs without seeing significant progress.

More power is now concentrated in Congo's presidency, yet the country lacks the balanced institutional structure upon which the main transitional players had agreed. The danger of a return to authoritarianism is real. It reflects the fragility of a regime that is now less at risk from external forces than internal challenges, because of local revolts with an ethno-regional dimension, such as those that have broken out in Bas-Congo and Equateur. Moreover, similarities with the governance issues of the Mobutuist era are becoming noticeable.

Nevertheless, it would still be possible for Congo's leaders and their international partners to save the democratic agenda. They should rejuvenate the process of institutional reform on the basis of a new pragmatic and redefined partnership to put the country back on a political trajectory towards democracy. Congo's legislators would vindicate their role if they quickly passed the laws and established the institutions envisaged under the constitution of 18 February 2006. National, provincial and local democracy remains essential to the restoration of peace and stability in Congo.

**Nairobi/Brussels, 8 April 2010**

## APPENDIX A

## MAP OF THE DEMOCRATIC REPUBLIC OF CONGO



## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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**April 2010**

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#### AFRICA

##### CENTRAL AFRICA

*Congo: Staying Engaged after the Election*, Africa Briefing N°44, 9 January 2007 (also available in French)

*Northern Uganda: Seizing the Opportunity for Peace*, Africa Report N°124, 26 April 2007

*Congo: Consolidating the Peace*, Africa Report N°128, 5 July 2007 (also available in French)

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*Congo: Bringing Peace to North Kivu*, Africa Report N°133, 31 October 2007 (also available in French)

*Central African Republic: Anatomy of a Phantom State*, Africa Report N°136, 13 December 2007 (also available in French)

*Congo: Four Priorities for Sustainable Peace in Ituri*, Africa Report N°140, 13 May 2008 (also available in French)

*Burundi: Restarting Political Dialogue*, Africa Briefing N°53, 19 August 2008 (also available in French)

*Chad: A New Conflict Resolution Framework*, Africa Report N°144, 24 September 2008 (also available in French)

*Central African Republic: Untangling the Political Dialogue*, Africa Briefing N°55, 9 December 2008 (also available in French)

*Northern Uganda: The Road to Peace, with or without Kony*, Africa Report N°146, 10 December 2008

*Chad: Powder Keg in the East*, Africa Report N°149, 15 April 2009 (also available in French)

*Congo: Five Priorities for a Peacebuilding Strategy*, Africa Report N°150, 11 May 2009 (also available in French)

*Congo: A Comprehensive Strategy to Disarm the FDLR*, Africa Report N°151, 9 July 2009 (also available in French)

*Burundi: réussir l'intégration des FNL*, Africa Briefing N°63, 30 July 2009

*Chad: Escaping from the Oil Trap*, Africa Briefing N°65, 26 August 2009 (also available in French)

*CAR: Keeping the Dialogue Alive*, Africa Briefing N°69, 12 January 2010 (also available in French)

*Burundi: Ensuring Credible Elections*, Africa Report N°155, 12 February 2010 (also available in French)

*Libye/Tchad : au-delà d'une politique d'influence*, Africa Briefing N°71, 23 March 2010 (also available in Arabic)

*Congo : l'enlisement du projet démocratique*, Africa Briefing N°73, 8 April 2010

##### HORN OF AFRICA

*Somalia: The Tough Part Is Ahead*, Africa Briefing N°45, 26 January 2007

*Darfur: Revitalising the Peace Process*, Africa Report N°125, 30 April 2007 (also available in Arabic)

*A Strategy for Comprehensive Peace in Sudan*, Africa Report N°130, 26 July 2007 (also available in Arabic)

*Sudan: Breaking the Abyei Deadlock*, Africa Briefing N°47, 12 October 2007 (also available in Arabic)

*Ethiopia and Eritrea: Stopping the Slide to War*, Africa Briefing N°48, 5 November 2007

*Darfur's New Security Reality*, Africa Report N°134, 26 November 2007 (also available in Arabic)

*Kenya in Crisis*, Africa Report N°137, 21 February 2008

*Sudan's Comprehensive Peace Agreement: Beyond the Crisis*, Africa Briefing N°50, 13 March 2008 (also available in Arabic)

*Beyond the Fragile Peace between Ethiopia and Eritrea: Averting New War*, Africa Report N°141, 17 June 2008

*Sudan's Southern Kordofan Problem: The Next Darfur?*, Africa Report N°145, 21 October 2008 (also available in Arabic)

*Somalia: To Move Beyond the Failed State*, Africa Report N°147, 23 December 2008

*Sudan: Justice, Peace and the ICC*, Africa Report N°152, 17 July 2009

*Somalia: The Trouble with Puntland*, Africa Briefing N°64, 12 August 2009

*Ethiopia: Ethnic Federalism and Its Discontents*, Africa Report N°153

*Somaliland: A Way out of the Electoral Crisis*, Africa Briefing N°67, 7 December 2009

*Sudan: Preventing Implosion*, Africa Briefing N°68, 17 December 2009

*Jonglei's Tribal Conflicts: Countering Insecurity in South Sudan*, Africa Report N°154, 23 December 2009

*Rigged Elections in Darfur and the Consequences of a Probable NCP Victory in Sudan*, Africa Briefing N°72, 30 March 2010

*LRA: A Regional Strategy beyond Killing Kony*, Africa Report N°157, 28 April 2010

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*Zimbabwe: An End to the Stalemate?*, Africa Report N°122, 5 March 2007

*Zimbabwe: A Regional Solution?*, Africa Report N°132, 18 September 2007

*Zimbabwe: Prospects from a Flawed Election*, Africa Report N°138, 20 March 2008

*Negotiating Zimbabwe's Transition*, Africa Briefing N°51, 21 May 2008

*Ending Zimbabwe's Nightmare: A Possible Way Forward*, Africa Briefing N°56, 16 December 2008

*Zimbabwe: Engaging the Inclusive Government*, Africa Briefing N°59, 20 April 2009

*Zimbabwe: Political and Security Challenges to the Transition*, Africa Briefing N°70, 3 March 2010

*Madagascar : sortir du cycle de crises*, Africa Report N°156, 18 March 2010

## WEST AFRICA

**Guinea: *Change or Chaos***, Africa Report N°121, 14 February 2007 (also available in French)

**Nigeria's Elections: *Avoiding a Political Crisis***, Africa Report N°123, 28 March 2007

**Nigeria: *Failed Elections, Failing State?***, Africa Report N°126, 30 May 2007

**Côte d'Ivoire: *Can the Ouagadougou Agreement Bring Peace?***, Africa Report N°127, 27 June 2007 (also available in French)

**Sierra Leone: *The Election Opportunity***, Africa Report N°129, 12 July 2007

**Guinea: *Change on Hold***, Africa Briefing N°49, 8 November 2007 (also available in French)

**Nigeria: *Ending Unrest in the Niger Delta***, Africa Report N°135, 5 December 2007

**Côte d'Ivoire: *Ensuring Credible Elections***, Africa Report N°139, 22 April 2008 (only available in French)

**Guinea: *Ensuring Democratic Reforms***, Africa Briefing N°52, 24 June 2008 (also available in French)

**Guinea-Bissau: *In Need of a State***, Africa Report N°142, 2 July 2008 (also available in French)

**Sierra Leone: *A New Era of Reform?***, Africa Report N°143, 31 July 2008

**Nigeria: *Ogoni Land after Shell***, Africa Briefing N°54, 18 September 2008

**Liberia: *Uneven Progress in Security Sector Reform***, Africa Report N°148, 13 January 2009

**Guinea-Bissau: *Building a Real Stability Pact***, Africa Briefing N°57, 29 January 2009 (also available in French)

**Guinea: *The Transition Has Only Just Begun***, Africa Briefing N°58, 5 March 2009 (also available in French)

**Nigeria: *Seizing the Moment in the Niger Delta***, Africa Briefing N°60, 30 April 2009

**Guinea-Bissau: *Beyond Rule of the Gun***, Africa Briefing N°61, 25 June 2009 (also available in Portuguese)

**Côte d'Ivoire: *What's Needed to End the Crisis***, Africa Briefing N°62, 2 July 2009 (also available in French)

**Guinea: *Military Rule Must End***, Africa Briefing N°66, 16 October 2009 (also available in French)

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