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## PRE-ELECTIONS PHASE

### Introduction

The Democratic Republic of Congo (DRC) will hold general elections and these elections on 30 July 2006. For the Congolese people, these elections represent an historical moment of hope, as expectations are high after decades of state collapse and kleptocracy. The Democratic Republic Congo is a creation of the International Community. Continuing conflicts in the Congo represent the tragic legacy of

a country created from the onset by the will of western powers at the Berlin conference in 1885. The terror and atrocities upon its people during Leopold's era (1885–1908) and the Belgian rule (1908–1960), constitute the inheritance that featured significantly in the conflicts of the post-independence Congo.

The coming of independence and the founding of the First Republic in 1960 were marked by violence, instability and turmoil,

prompting Mobutu to take over as Head of State in November 1965. Mobutu's regime lasted for 32 years and was marked by excessive authoritarianism.

In May 1997, Mobutu was toppled by Laurent Kabila and his Allied Democratic Forces for the Liberation of Congo (AFDL). A second war began in 1998 in which Kabila fought his former Rwandan and Ugandan allies. Over 4 million people have died over the last 8 years of war and poverty.

After more than four decades of instability, mismanagement and corruption, and after three years of transitional arrangements marked by a fragile peace, the July 2006 elections are likely to set a stage for post-conflict reconstruction and development as well as building a foundation for democratic governance. In line with the Principles for Election Management, Monitoring and Observation (PEMMO) this *Election Update* will provide an in-depth insight into the pre-election period.

### **Transition to Democracy**

After 25 years of authoritarian one party rule, Mobutu's regime found itself under pressure from western countries. As a direct result of *Perestroika* and *Glasnost* on the one hand, the end of the Cold War in the late 1980's and demands for greater political rights and democratization of state institutions from internal opposition on the other hand, Mobutu's citadel started cracking. The pressure was so unbearable that Mobutu ended up abolishing the one-party rule on 24 April 1990.

The demise of the one-party state signalled the end of the Second Republic and the launching of a tumultuous period of democratization that witnessed the capitulation of Mobutu.

The high point of this democratization process however, was the holding of the National Sovereign Conference (CNS) in August 1991. But democratization was cut short by Mobutu's reluctance to give up power, which led to two devastating wars. The first (1996-1997) was led by Laurent Kabila with the support of Rwandan Patriotic Army troops that entered in Kinshasa in May 1997. Subsequently, Mobutu fled the country following failed talks initiated by western powers and mediated by Nelson Mandela, the former South African president. Kabila proclaimed himself president and renamed the country the Democratic Republic of Congo (DRC) on 17 May 1997.

The second war (1998-2003), which began in August 1998, pitted Kabila against his former Rwandan and Ugandan allies, who armed rebel groups in the eastern Congo. These rebels succeeded in controlling over half the country. The war, dubbed "Africa's First World War", which lasted for five years involving eight African countries (namely, DRC, Rwanda, Uganda, Burundi, Zimbabwe, Namibia, Chad, Angola). The war cost the lives of an estimated 4 million people, leaving nearly 2 million of internally displaced people and half a million refugees. An estimated 16 million are in need of food and about

40% of children are out of school. More than 1000 persons are dying every day.

### **The Peace Process**

The devastating effects of the war and the resulting humanitarian crisis prompted the International Community under the leadership of the Organisation of African Unity (OAU) and the Southern Africa Development Community (SADC) to urge the key belligerents to come together. They signed various peace deals, but the most notably was the Lusaka Agreement signed in Lusaka in July 1999.

The agreement provided for the immediate cessation of hostilities and military disengagement. The Joint Military Commission (JMC) composed of the belligerent parties was established to investigate cease-fire violations and to work out mechanisms to disarm negative forces. The UN deployed a task team whose mandate was to disarm armed groups and initiate an Inter-Congolese Dialogue in 1999.

Thus, the Lusaka Peace Accord was formally signed in two phases: first, by the state parties on 10 July 1999; second, by the MLC of Jean Pierre Bemba on 1 August and the RCD on 31 August 1999. However, the implementation of the Accord has proved more

difficult than its initiation as for nearly 3 years after the signing, very little happened. Tension persisted between Rwanda and Uganda who had clashed in Kisangani one month before the signing of the Accord. Rivalry also continued between the respective rebel factions they supported, leading to tensions on which group should control North Kivu.

The situation remained unchanged until the assassination of Laurent Kabila in January 2001, which brought his son, Joseph, to power. Joseph transformed the negotiating process and shifted it decisively from Lusaka to Pretoria. In May 2001, the Lusaka process gathered momentum when Congolese parties to the Accord signed the Declaration of Principles (S/2001/466) laying the ground for an all-inclusive dialogue and calling for the establishment of a transitional government prior to elections.

After many attempts to meet in various places in different countries (Gaborone, Addis Ababa, Libreville), the ICD (Inter- Congolese Dialogue) was finally reconvened at Sun City in South Africa (February 25–19 April, 2002), bringing together all the belligerents, the non-armed opposition and the civil society. The Sun City Dialogue reached broad agreement on the formation of a transitional government

but failed to agree on the formula for power sharing in the new institutions.

After prolonged disagreements on issues between delegates and six months of shuttle diplomacy by Moustapha Niasse in close collaboration with South Africa, an all-inclusive agreement on the transition in the DRC by all Congolese parties was finally signed on 17 December 2002 in Pretoria, South Africa. Following the signing of the inclusive and comprehensive agreement, efforts were made to set up an administration and begin the transition in earnest. After months of preparation and dealings, a transitional government was eventually in place on 30 June 2003 following the signing at Sun City on 3 April 2003 of the Final Act of the Global and All-Inclusive Peace Accord of Pretoria.

The deal created a sprawling power structure, with Joseph Kabila as president, flanked by 4 vice-presidents, a 620-seat Parliament and 36 ministries divided between the signatories of the Peace deal, and an army waiting to be gradually integrated. The main mandate of the transitional government was as follows:

- The verification, pacification, reconstruction of the country, restoration of territorial integrity and

the establishment of the authority of the state over the whole national territory;

- National reconciliation;
- The formulation of a restructured and integrated national army;
- The organization of free and transparent elections at all levels allowing for the setting up of a constitutional and democratic regime;
- The establishment of the structure that will lead to a new political order.

The transition government had a period of two years to organize elections, but could, if necessary, expand this by two additional six month periods. In early 2005, it became clear that neither the transitional government nor the Independent Electoral Commission (CEI) had taken any of the necessary steps to organize elections by the original June 2005 deadline. Thus the timetable was postponed. The extended electoral schedule allowed the CEI to call for a constitutional referendum on 18 December 2005 to be followed by legislative and presidential elections, to be held on 30 July 2006.

### **History of Elections**

On 30 June 2006, the transition government totalled three years since it embarked on its assigned task of guiding the country to national elections. The history of elections in the

country is traceable to 22 May 1960, when Patrice Lumumba and his allies won the majority of parliamentary seats in the pre-independence elections. This led to Lumumba becoming the first elected prime minister and head of government, while Joseph Kasavubu became head of state. Due to these free elections, the Belgian Congo became, on Independence Day on 30 June 1960, the Democratic Republic of the Congo (DRC).

However, the “euphoria” of the independence lasted only four days before the country plunged into a long period of destabilization and instability that witnessed the assassination of Lumumba in January 1961, the secession of the Katanga and South Kasai provinces in 1960, mutinies and rebellions that prompted the deployment of the first UN mission, known as ONUC to restore order in Congo. A series of negotiations between politicians to restore political stability and peace led to the drawing of a new constitution, known as the *Luluabourg Constitution* in 1964 at Luluabourg, today Kananga. The 1964 Constitution was approved by a referendum held from 25 June to 10 July 1964 before the 1965 parliamentary elections took place from 18 March to 30 April 1965, moving from one constituency to another. The then Prime Minister

Moise Tshombe and his *Convention Nationale des Congolais* (CONACO) won 122 of the 167 seats in the National Assembly.

The struggle between Kasavubu and Tshombe for the appointment of a prime minister resulted in another institutional crisis, a pretext for Mobutu to stage a military coup and to overthrow the institutions of the First Republic and declared himself head of state on 24 November 1965. The Mobutu regime or the Second Republic was an authoritarian state and a military dictatorship.

It is worth mentioning that during Mobutu rule, free, transparent, democratic and pluralist elections could never be held. The coming presidential and legislative elections will be the first multiparty polls since 1965. During his dictatorship, Mobutu organized six national elections and won the presidency in 1970, 1977 and 1984. These elections were organized within the framework of a one-party system and essentially symbolic, as voters did not have another choice but to approve one list<sup>1</sup>.

Thereafter, the need to resolve the ever enduring crisis of legitimacy of government, the organization of election was seen by successive regimes as the

solution. But nothing has been done. Therefore, the Peace Agreement signed by all parties in December 2002 appears to be the document providing an organizing mechanism for the constitutional and legal framework for the electoral process to take place on 30 July 2006.

### **The Preparedness of the Election Management Body (EMB)**

The legal framework governing general elections in the DRC consists of the *Commission Electorale Indépendante* (CEI) or the main body responsible for the management and administration of elections in the DRC. The July elections will be its first experience, and everybody hopes that its integrity and professionalism will prevail.

Resolution No DIC/CPJ/09 of 18 April 2002 created the Independent Electoral Commission (CEI). Articles 154 to 160 of the 2003 Transitional Constitution, as well as the Organic Law No 04/009 of 5 June 2004 established the CEI and govern its internal organization. The most important of these laws however, are the 2006 Constitution and the Electoral Law. The 2006 Constitution of 18 February 2006 in its articles 5 and 211 institutes an independent national electoral commission, a judicial

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<sup>1</sup> *Crisis Group, Africa Report* No 108, 27 April 2006

personality with the mandate of organizing the electoral process, notably, voter registration, the maintenance of the electoral rolls, the voting operations and the counting of the votes. It ensures the regularity of the electoral and referendum processes.

Finally the Electoral Law (No 06/006 of 3 March 2006), following the approbation of the new Constitution, marks a decisive step in the electoral process leading to regular, free and fair elections.

The 2006 Constitution is the result of the 2005 Referendum held on 18-19 December 2005. As observed by EISA<sup>2</sup> *“The CEI, in partnership with other institutions of the transition, is responsible for the preparation and organization of both the constitutional referendum and democratic elections in the DRC during the transition period”*. In addition, the CEI has three main organs: the Plenary Assembly, the Office and the Specialized Commissions. To ensure effective coordination of the electoral process, several coordination frameworks were established, which include government institutions, political parties, civil society organizations (CSOs), international non-

governmental organizations (NGOs) and the international community.

The Electoral Law recognizes the sovereignty of the people to govern themselves, gender parity at all levels of government, as well as people living with disabilities. Equally important, the Electoral Act provides for the secrecy of the ballot and inclusiveness of the political participation of key actors.

The electoral law includes five sections:

Title I: Preliminary provisions,  
Title II: Common provisions for the elections,  
Title III: Specific provisions,  
Title IV: Installation of the institutions,  
Title V: Transitional and final provisions.

The **preliminary provisions** deal with the application of the present law.

The **common provisions** are concerned with the general rules applicable to all elections. They deal with the quality of voters, the general conditions of eligibility and cases of ineligibility, the presentation and nomination of candidatures, the role and powers of witnesses and observers, the registration and disputes regarding the candidates, the election campaign, the progress of the voting operations, vote counting and proclamation of the provisional and final

results as well as the elections dispute, the incompatibilities and sanctions provisions.

The **specific provisions** regulate in detail the presidential election, the general, provincial, urban, municipal and local elections.

The **provisions** of the Title IV explain the manner in which different institutions resulting from the elections are constituted.

The **transitional provisions** solve specially, the problems related to the composition of the provincial assemblies of the new provinces, the senators' electorate and the fate of governors and Vice-Governors elected in the provinces which will be divided.

In short, the Electoral Law provides guidelines for how elections are to be prepared and run, sets electoral districts and establishes dispute resolution procedures.

The electoral commission is led by a civil society delegate, the Abbe Appolinaire Malumalu. The electoral process was planned in several phases, including voter registration, constitutional referendum, and then the presidential, legislative and local elections.

Nevertheless, the DRC is a country with little

<sup>2</sup> EISA Observer Mission Report, DRC, 18-19 December 2005, pp 16-17.

infrastructure and only has 500km of paved roads. Organizing the elections in this country, which is the size of Western Europe, is an enormous task. Despite difficulties, due mainly to the slow pace of the peace process, including institutional weakness, inefficiency and lack of political will, there have been notable successes: 25,6 million voters have registered, of whom more than 70% turned out for the referendum, which approved the new Constitution.

There will be over 11 000 voting centres and about 50 000 polling stations to organize and prepare. The Congolese electorate of 25,6 million voters will be called upon to cast their vote for some 33 presidential candidates, including the current head of the transitional government and 9707 candidates will contest the 500 seats in Parliament on 30 July 2006. This vote will be followed by provincial and local government elections.

The official campaign began on 29 June 2006 and ends on 29 July 2006, in accordance with the Electoral Law. However, even the UN Mission in Congo (MONUC) recognizes the enormity of the task and stresses that *“this is the biggest election the UN has*

*been involved with since its foundation”*<sup>3</sup>.

Despite challenges, such as logistic problems; late delivery of ballots and other materials; the slow pace of training of electoral agents; security and communication problems; the protest of 19 of the 33 candidates calling for a delay and arguing that the elections were badly organized and lack transparency regarding the printing of an extra five million ballot papers, observers are confident that the CEI has the capacity to fulfil its mission: organizing, preparing, managing and supervising in all independence and neutrality, the conduct of general elections in the DRC.

The payment of electoral agents is an additional challenge, since the CEI could not set up the necessary financial structures in time. All those shortcomings and other organizational problems are to be resolved before 30 July 2006 in order to avoid serious unrest during election operations. However President Malumalu is confident that all obstacles can be overcome before this date. *“There is no reason to postpone the process. Everything is ready”*, is Malumalu answer to criticism.

### **Preparedness of Civil Society Organizations**

Civil society's contribution has mainly been in the form of voter education and election monitoring. As it did during the referendum by disseminating the contents of the Draft Constitution, civil society, including faith-based organizations, undertook activities aimed at educating and informing people on voting procedures. Civil society organizations are playing a significant role in promoting voting procedures. Although excellent civic and voter education activities are run by national and international non governmental organizations, generally with the financial support of international donors, these activities do not cover the entire country. As noted by EISA Observer Mission for the referendum of December 2005, *“these actions were limited due to time and resource constraints... Most of these initiatives were concentrated in Kinshasa and, to some extent, in main urban centres throughout the country”*<sup>4</sup>.

As a result many people do not have information on the voting process, as most voters do not know how to cast a ballot. This led President Malumalu to explain the roots of the problem: *“The problem is illiteracy, as people do not*

<sup>3</sup>. See [www.allafrica.com/Stories](http://www.allafrica.com/Stories), 6 June 2006.

<sup>4</sup>. EISA Observer Mission in DRC, 18-19 December 2005, p.22.

*know how to read a ballot paper or make their choice. During the month of July and the remaining weeks of campaigning, we are going to lead a big campaign aiming at "how to vote?"*<sup>5</sup>

Illiteracy, indeed, is a true problem in a country where 80% of inhabitants are illiterate. Observers of the Congolese scene are worried: "Will they be, this time, able to cast a useful vote rather than a regional, tribal or clannish adherence", asks Kabungulu?<sup>6</sup> Experience from the past has shown that the illiterate can be easily manipulated and could swap their votes for a T-shirt, a demagogic promise or banknotes. But since the beginning of the electoral campaign on 29 June 2006, poverty has pushed people to attend electoral meetings to get a "collation". In the streets of Kinshasa, there is a new philosophy: "where milk and honey are flowing, there we go". There are those who attend five meetings or more and receive 5 T-shirts or more and 500 francs or more<sup>7</sup>.

This is why it is important not only to promote good elections, but also encourage public participation in the democratic process, as a

whole. Thus, there is a dire need for permanent civic education, especially in a country that emerges from a long conflict, such as the DRC. Therefore, civic organizations have a major role to play in this regard. As stated by the CEI president: "We have asked civic organizations to support the coming elections and they accepted to do so"<sup>8</sup>.

### **Existence of Conflict Management Institutions**

The 2006 general election will be the first major election administered by the CEI. Despite its lack of experience, the Electoral Management Body (EMB) has overcome most of the challenges with which it was faced, including voter registration, civic and voter education and the referendum. All these operations were followed by the adoption of a new Constitution that was promulgated on 18 February 2006, followed by the Electoral Law on 9 March 2006. These open the way for democratic and free elections. This allowed the CEI to begin to register candidates for the presidential and legislative elections and to print ballot papers.

However, if elections are disputed, the cases will be brought before the competent court. According

to the Electoral Law, the Supreme Court has jurisdiction for presidential and legislative elections and the courts of appeal for the provincial elections.

Chapter VIII of the Electoral Law provides provisions for "Litigation of the elections". Article 73 states that an election can be contested within three days following the announcement of provisional results by the Independent Electoral Commission by:

- An independent candidate or his/her proxy;
- A political party or political grouping or their proxy having introduced its/his/her list in the constituency.

Article 74 provides the competent jurisdictions to acknowledge the litigation of the elections. They are:

- The Supreme Court of Justice for Presidential and General elections,
- The Court of Appeal for provincial elections,
- The High Court for urban and municipal elections,
- The Magistrate Court for local elections.

For the purpose of ensuring an efficient exercise of the devolved authority to the High Court and the Magistrate Court, the First President of the Court of Appeal can assign lawyers and counsels for the defence of his/her jurisdiction to the title of supplementary judges in order to add to the number

<sup>5</sup> www.monuc.org/News, 06 July 2006.

<sup>6</sup> Parties and Political Transition in the Democratic Republic of Congo, *EISA Research Report* No 20, 2006, p.45.

<sup>7</sup> La Libre Belgique, 13 July 2006.

<sup>8</sup> www.monuc.org/News, 06 July 2006

of judges of these courts and, thus, facilitate the achievement, in compliance with articles 67 and 69 of the Code of the judicial organization and competency, court hearings that could prove to be necessary.

For the presidential election, the Supreme Court of Justice has seven days from the date of the matter referral to the court to take decisions. For other elections, the competent jurisdictions have two months from the date of the matter referral to the court to take decisions. These courts decide at no cost. The pronouncement of the ruling or judgment is brought to the attention of the Independent Electoral Commission and the plaintiff (complainant).

If the case arises, the Independent Electoral Commission modifies the lists. A remark should be noted in the report: *Without delay the Independent Electoral Commission publishes the final list.* The litigation of the elections is always judged by a jurisdiction with at least three judges sitting.

Rulings and judgments taken by the Court of Appeal and the High Court are susceptible to appeal within three days from their notification to complainants. Article 75 deals with cases of recourse. If the recourses are declared inadmissible or

unfounded, the Supreme Court of Justice, the Court of Appeal, the High Court or the Magistrate Court within the competent jurisdiction, proclaims, depending on the case, the final results of the elections.

If the competent jurisdiction admits recourse for clerical error, it rectifies the erroneous result. The jurisdiction communicates the ruling or the judgment to the Independent Electoral Commission for publication purpose.

In all other cases, it can partially or wholly nullify the vote when the accepted irregularities could have had a determining influence on the result of the vote. However, one should note that all these courts are highly politicised, as the Supreme Court judges were named by President Kabila before the transition began. They have shown themselves partial in many cases, notably the Amnesty Law passed by Parliament in December 2005, when they excluded from amnesty the assassins of Laurent Kabila.

Furthermore, in February 2006, they decided to terminate the mandate of legislators who have left their parties, despite provisions in the transitional constitution guaranteeing their tenure. The legality of these judgments was questioned by Congolese lawyers. Other questionable

judgements involved the naming of governors in 2004 and the sharing of positions in state-run companies in 2005. Nevertheless, the international community has treated dispute resolution for the time being as a technical matter. The Supreme Court has set up branches in most provinces to deal with electoral disputes but the three judges in each are poorly paid and too few to deal with the enormous number of complaints that could arise.

### **Delimitation Process and Disputes**

The delimitation process is a technical exercise that can be used to achieve political goals by taking into account certain factors, including population density, ease of transport and communication, geographical features, existing patterns of human settlement, financial viability and administrative capacity, financial and administrative consequences of boundary determination, existing boundaries, and community of interest. In the DRC the Electoral Law divides the country's 169 territories and communes into districts that will elect the 500 National Assembly representatives. With an electorate of 25,6 million, districts with fewer than 51 000 votes will only get one seat.

The Methodology of the distribution of seats

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according to the Electoral Law is set out as follows:

**Step 1:** Distribution of seats per province.

- The fixed electoral quotient for the National Assembly = the total number of registered voters in the Democratic Republic of Congo (25.696.964) divided by the total number of seats

to be provided in the National Assembly (500).  $25.696.964$  divided by  $500 = 51.393,93$

- The number of seats to be provided per province = the total number of registered voters of this province divided by the electoral quotient (51.393,93).

- Should the total number of seats assigned in this manner be inferior to 500, a supplementary seat shall be assigned to each district that has the highest decimal in comparison with the number of seats obtained, until the total number of 500 seats is reached

**Table 1: Distribution of districts for the national representatives**

Provinces	No of Districts	Cities	Territories	Communes groupings
City of Kinshasa	4			4
Bas-Congo	12	2	10	
Bandundu	20	2	18	
Equator	27	3	24	
Eastern Province	25	1	24	
North Kivu	9	3	6	
South Kivu	9	1	8	
Maniema	8	1	7	
Katanga	25	3	22	
Eastern Kasai	18	2	16	
Western Kasai	12	2	10	
<b>Total</b>	<b>169</b>	<b>20</b>	<b>145</b>	<b>4</b>

**Table 2: Distribution of seats for the national representatives per province**

Province	Registered Votes	Total Seats
	2,963,912	58
	1,232,416	24
Bandundu	2,949,237	57
Equator	2,973,525	58
Eastern Province	3,257,291	68
North-Kivu	2,462,012	48
South-Kivu	1,666,615	32
City of Kinshasa	629,894	12
Bas-Congo	3,517,922	69
Eastern-Kasai	2,021,418	39
Western-Kasai	2,038,310	40
<b>Total</b>	<b>25,712,552</b>	<b>500</b>

**Step 2:** Distribution of seats per district inside each province.

Each constituency is entitled to a number of representatives based on the following operations:

- The number of seats to be provided in each district = the total number of registered voters of the district divided by the fixed electoral quotient (51.393,93).

- A seat shall be assigned to all constituencies that would have a number of voters inferior to the electoral quotient.
- Should the total number of seats assigned in this manner to the districts of

the province be inferior to the number of seats assigned to this province, a supplementary seat shall be assigned to each district that has the highest decimal in comparison to the number of seats obtained, until the total number of seats for the province is reached.

The idea behind the delimitation of a given geographical area into voting districts is to minimise the voter inconvenience of standing in long queues at voting stations and to assist in electoral logistical planning. Voting districts are principally determined on the basis of geographical size and number of eligible voters.

However, the delimitation process was not free of conflicts. The most notable is that of Minembwe for which the Congolese Rally for Democracy (RCD) has lobbied to make it into territory, which would guarantee a parliament seat for the Banyamulenge.

### **Civic and Voter Education**

In the DRC, it is not only the CEI that carries out the civic and voter education. To some extent, civic organisations, including faith-based organisations and the MONUC all get involved. As was the case during the constitutional

referendum, political parties are nowhere to be seen. Although they have the responsibility for promoting awareness of the issues at stake amongst the electorate and party supporters in particular, the contribution of political parties is “disappointing”<sup>9</sup>. Regarding public awareness, the CEI claims not to have an adequate budget and seems to rely mainly on civic organisations, beneficiaries of donor funds. As observed by President Malumalu, “*the lack of funds is hampering our activities, but we are going to do whatever we can to educate people on how to vote*”. It is worth noting that most of these activities are concentrated around urban cities and do not reach the countryside.

### **Voter Registration**

The CEI has the responsibility of identifying those persons who are eligible to cast a ballot on Election Day. This phase implies, *inter alia*, clear criteria concerning citizenship, legal age of majority, residence requirements, any other additional grounds for disqualification. In this regard, Law No 04/028 of 24 December 2004 details procedures for the identification and registration of voters and established the conditions under which the right of

suffrage is allowed in the country. Therefore, to register as a voter, one should be a Congolese citizen and reside in the DRC during the registration process. Dual citizenship is prohibited, so only nationals holding exclusive Congolese nationality are allowed to register. The minimum voting age is 18 and the double operation “identification-registration” is compulsory.

Articles 8 and 9 of this Law excluded the following from the registration process:

- Congolese nationals living abroad or physically absent from the country during the registration process.
- Congolese nationals currently serving in the military or police forces.
- People with medically proven mental incapacity.
- People deprived of civic or political rights as a result of legal ruling.

Voter registration was carried out between June 2005 and February 2006. Voter registration required a sophisticated digital registration procedure necessitating kits, including a fingerprint scanner, laptops and digital cameras. UNDP purchased 10 000 of these kits. The kits included a generator, a computer, a digital fingerprint machine, an ID card printer and a digital camera. During these

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<sup>9</sup>. See EISA Observer Mission in DRC, 18-19 December 2005, p.22.

operations MONUC played a key role by helping with logistics and electoral training.

More than \$400 million has been allocated to MONUC for election support in addition to its \$1.3 billion budget for its military operations. Thus MONUC brought election materials to the capitals of each territory but this was insufficient. Kinshasa was first to begin registration, followed by Bas-Congo and Province Orientale in the second phase, with Katanga and the two Kasais next, then the Kivus and Maniema. Operations in Equateur and Bandundu were extended and ran from 25 September 2005 to the end of February 2006 due to logistical problems.

To encourage participation, the government declared the voter card a valid form of identification and the CEI opted for the exclusive identification and registration of prospective voters. Despite the delays, voter identification and registration generally proceeded well. Of an initial estimate of 28 million potential voters, 25, 6 million voters have registered, of whom 70 percent turned out for the referendum on 18-19 December 2005.

As observed by a senior MONUC official: *“Voter registration in itself was a*

*daunting task. In a country where there are hardly any birth certificates or other forms of ID, we have managed to register close to 26 million voters out of a population of 58 million. This is the most complex election in the world”*<sup>10</sup>.

### **Political Campaign**

The period between the conclusion of candidate nomination and Election Day is used by political parties to mount heightened political campaigns. During the campaign period, competing parties and candidates tend to ignore the Code of Conduct and resort to unlawful practices.

Chapter V of the DRC Electoral Law deals with the provisions of the electoral campaign (see articles 28, 29, 30, 32). It has been announced that campaigning officially began on 29 June 2006 and ends on 29 July 2006 at midnight. But the climate was tense ahead of the official launch as parties awaited “political consultations” promised by the President Kabila, on the security of the candidates, their access to the media and the acceptance of the results. Several opposition parties threatened to disrupt the campaign if the consultations were not held rapidly. Dozens of political parties,

associations and the Catholic Church for weeks called for talks to overcome the lack of national consensus over the organisation of the presidential, parliamentary and local elections. The transitional government announced on 23 June 2006 it would hold talks aimed at ensuring that election candidates were kept safe, had access to the media, and accepted the results of the ballot. But the opposition on 27 June accused Kabila of going back on his word. The President then left the capital Kinshasa for a visit in the eastern Congo, seen by observers as the beginning of his own campaign.

Another challenge came from 19 presidential candidates, including Azarias Ruberwa of the RCD and Jean Pierre Bemba of the MLC, both vice-presidents in the current government. They called for campaigning to be halted in a row over the printing of millions of extra ballot papers.

The 19 candidates said the printing and distribution of an extra 5 million ballot papers, put the credibility and transparency of the historic poll in danger and demanded the suspension of the campaign while all the irregularities in the electoral process were dealt with. They demanded the entire ballot papers to be publicly destroyed as there was no guarantee that they would not be used to rig election.

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<sup>10</sup> See [www.allafrica.com/stories/20060650062.html](http://www.allafrica.com/stories/20060650062.html), 4 June 2006.

But the CEI is categorical: “there was ‘no question’ of extra ballots being destroyed as they were needed in case of an accident, such as fire. There is no need to worry; the printing of extra ballot papers is completely transparent”<sup>11</sup>. There are 33 presidential candidates and 9707 parliamentary candidates competing to fill the 500 seats in National Assembly.

Overall, with almost two weeks to go, there are reports of a painstakingly slow start. There is little visibility of campaigning and activities of most political parties are taking place in big cities. However, the competition is fair and varies from one province to another. Nevertheless, acts of vandalism on electoral posters demonstrate that democratic principles have not been adopted by all, despite the fact that all competing parties have signed and adopted the Code of Conduct. President Malumalu justifies the low-key campaigning as “strategic” and a lack of money. He is confident this will improve in the coming weeks.

### **Nomination of Candidates**

The nomination of candidates and party lists is driven primarily by political parties wishing to contest the elections. These parties have to adhere to the CEI

<sup>11</sup> See *Business Day*, 6 July 2006.

regulations and timeframes (see Chapter III of the Electoral Law in its articles 11-17).

In April 2006, the CEI approved lists with 33 presidential and more than 9700 legislative candidates from 269 political parties. Financial constraints prevented many parties from fielding their candidates in all districts, only a handful of parties could do so. But it has been reported that political parties are not giving much effort to get technical information from the CEI and waste their time in baseless accusations and criticism. It is recommended that candidates should focus on the dissemination of their political programmes and manifestos, instead of politicising certain technical aspects of the election. This could lead to erosion of confidence and trust in election among the public.

### **Media Coverage of Elections**

A free and non-biased press is a crucial component to any democracy. The Electoral Law in articles 33-36, regulate the requirements for equitable access to the media and the allocation of airtime during the electoral campaign. The High Authority of the Media (HAM) is established as the media watchdog and one of five institutions that support democracy. The HAM is responsible for preventing

partisan manipulation of state-run media and monitoring of speech inciting violence or hate. The president is selected by civil society while the other twenty posts are divided between all signatories of the peace deal.

According to the Crisis Group<sup>12</sup>, “there are 119 radio stations in the Congo, more or less throughout the country; 52 television stations, some half of which broadcast in Kinshasa, and 176 newspapers and magazine, most with limited circulation”. While most of them are affiliated with, or owned by politicians, the state-run media supposed to provide balanced election coverage, they ostensibly favour Kabila’s party.

During the referendum campaign, EISA<sup>13</sup> noted that the “No” camp repeatedly complained about the lack of a level playing field and equitable treatment. It received reports of biased coverage by state-owned media in favour of the “yes” camp. Other observers<sup>14</sup> have confirmed this tendency as the state-owned media granted much more time to parties supporting the Constitution: on television, time dedicated to the referendum, 43% went to

<sup>12</sup> *Crisis Group Africa Report*, No 108, 27 April 2006, p.7.

<sup>13</sup> Observer Mission to DRC, 18-19 December 2005, p.24

<sup>14</sup> The Crisis Group, p.9.

those in support and 8% to opponents.

During the electoral campaign, the media is an essential tool for voters in search of impartial and credible information over competing candidates and political parties' manifestos. Although the HAM put in place strict rules to promote good conduct during the campaign, it is regrettably reported that nobody is following the given instructions. Unfortunately the composition of the HAM constitutes is big weakness and make it hard for its president to take strong measures. Public and private media are deliberately violating the rules regulating the profession and fair access to the media and the allocation of time during the electoral campaign. Disparities in the treatment of political parties and candidates suggest bias.

Since the beginning, this electoral campaign has been punctuated by many allegations of violence and intimidation that hamper the freedom of the press. Among these incidences, security worries are pointed out:

- On 3 July 2006, police arrested a group of youths suspected of tearing down President Kabila's campaign posters. They badly assaulted them and all those in the near neighbourhood were

subjected to the same ordeal.

- On 8 July 2006, Bapuwa Mwamba, a journalist, was gunned down in his house by a group of armed men; a German journalist wounded by thieves; a French journalist expelled from Congo because of her stance against the government.
- On 11 July, the police used a disproportional use of force to stop an opposition rally.

These incidents are not a guarantee for a peaceful environment in which the media can exercise its duties without influence or intimidation.

#### **Use of State Resources**

As observed in the SADC region, not all political parties and candidates have access to public resources. This means a governing party could have an unfair advantage in using public resources to which they have exclusive access for campaigning purposes or to further their political ends.

The DRC case is unique. The country is emerging from a devastating long war with a weak government and no infrastructure. Financial institutions are poor and the system of checks and balances is not working. The power-sharing formula, known as 1+4 = 0 is a strong message indicating the

failure of the transitional government in terms of alleviating poverty in the country. Indeed, the major power-centres, PPRD, RCD and MLC, are undermining progress in many areas as each belligerent tries hard to keep the institutions weak, corrupt and fractionalised. Since the constitutional referendum, there have been numerous allegations of electoral fraud. Affluent parties such as the PPRD, MLC or RCD, long before the campaign starts began were already conducting their own campaign, as everyone could see them on TV spending money on local leaders and voters, distributing T-shirts, food parcels, generators and other gifts and using their positions in government to embezzle state resources.

Unfortunately in Congo there are few laws to prevent the use of public funds for campaigning. Parties in power have a distinct advantage through access to state funds. The President and the 4 vice-presidents have phenomenal budgets, including their cabinets. Figures are \$500,000 a month for the president while each vice president receives \$200,000 a month. As they were allowed to appoint the 230 managerial positions in state-owned companies, more officials pay dues into party treasures that range between 10 and 20 per cent of wages. It is clear that access to state resources

is a source of corruption. The Bakandjeja Commission, an audit of state-run companies revealed that millions of dollars were being embezzled. With the campaign almost reaching its finishing line, no one will be prosecuted. The government is “absent” as ministers and their deputies are “busy” campaigning for their parties.

This is why public assets and funds for party political purposes should be regulated in order to level the playing field for political competition. The use of public resources for political campaigns and political party activities should generally be avoided but, if permitted, access thereto must be equitable and be paid for in an appropriate manner.

### **Political Violence and Intimidation**

There can only be a free, fair, credible and legitimate electoral process in a climate that is free from political violence and intimidation. During this campaign, there have been incidents of violence and intimidation. There is therefore a need to create a culture of peace and tolerance and general agreement on what constitutes acceptable and unacceptable conduct.

According to the Carter Foundation, governmental authorities are undermining

political freedom both directly or indirectly. Certain government actors have deliberately tried to intimidate or obstruct the campaign of other candidates. This behaviour includes:

- Arbitrary arrests
- Customs harassment regarding the freezing of electoral materials of other candidates
- Intimidation of private companies to prevent them helping certain candidates.

These acts constitute a serious abuse of power in the part of government. This can result in tension and friction between political parties and put at risk a free and transparent electoral process. This led Secretary-General Kofi Annan to call for full transparency of the process, voicing concern at reports of intimidation, corruption and detentions. *“Any attempt to manipulate the process, including thorough restrictions on the freedom of the national or international press, the intimidation of voters and arbitrary arrests, cannot be tolerated and should be strongly condemned”*, said Kofi Annan<sup>15</sup>.

Therefore, all electoral stakeholders should put into place programmes that cultivate and promote a culture of peace and

tolerance before, during and after Election Day.

### **Role of Security Forces**

Security forces should maintain a neutral role in the provision of election security. They play a crucial role in protecting the integrity of the electoral process. In Matadi (Bas-Congo), the army and the police have been called to remain neutral, after the death of 12 people killed by security forces during a rally on 30 June 2006. They have been instructed to observe strict neutrality, before, during and after elections.

Everywhere in the country, election security will be provided by the Congolese police, with the army in support if there is major violence. The problem is that Congolese forces remain politicized and could, themselves, be used to skew elections. International donors such as UNDP have funded the training and equipping of over 39,000 police. The training only lasts for 6 days and it is insufficient to instil discipline in a feeble force, notes the Crisis Group<sup>16</sup>.

According to Mr Annan, *“risks of violence during the forthcoming elections are potentially high”*. Security sector reform efforts remain largely incomplete and most of the former belligerents maintain a military capacity

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<sup>15</sup> See [www.allafrica.com/stories](http://www.allafrica.com/stories), UN News Service, 23 June 2006.

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<sup>16</sup> Op.cit, p.6.

with which they could challenge electoral results. Moreover the deployment of the presidential guard to parts of the country has raised concerns about possible intimidation of certain candidates. In fact President Kabila has greater control over the security forces than other parties and these forces can be used to intimidate and influence elections at the local level. The RCD and the MLC may be tempted to behave similarly in North Kivu and Equateur, respectively.

On the field, the reality is that despite some progress, the political and security situation in Ituri, the Kivus and Katanga remains tenuous with militia fighting continuing to affect civilians. All these armed groups continue to pose a threat to the population and MONUC intends to intensify operations against these remaining elements after the elections.

In the meantime, the European Union (EU) has sent a small force to boost MONUC, the Congolese Army and the police. Four hundred soldiers will be deployed in Kinshasa, and between 800 and 1000 will be on standby in Libreville (Gabon).

To avoid harassment, troops should be kept in their barracks while MONUC should be given much visibility during the electoral

campaign and on Election Day.

### **Political Party Finance**

Many countries provide public funding to political parties for election purposes. This is necessary in order to level the playing field and strengthen the democratic process. Nevertheless, in countries such as the DRC, public funding is not provided. This is despite provisions of the Law No 04/002 of 15 March 2004 concerning political parties that recognizes the fact in its article 25, which says: "*the registered political party may benefit from state subsidies*". This is optional as the state does not consider it a state responsibility. So there is nothing a political party can expect from the state. Drafts on campaign and party financing have not been voted upon and neither the Code of Conduct signed by the parties in August 2005, nor the Electoral Law has provisions regulating campaign finance or vote buying.

As seen, parties in power enjoy an advantage through access to state funds. The fiery battle among political parties for appointments in government and parastatal structures find its answer here. Obviously, poorer parties will be under pressure to stage rallies, buy media time and campaign in remote areas.

There are 269 registered political parties, however, it seems only ten to fifteen will be serious contenders, and only four or five will be represented in all electoral districts. Under these circumstances, poverty and illiteracy among urban and rural populations, both estimated to 80% by the World Bank in 2002, would leave them at the mercy of any demagogue. Well off politicians have the financial wherewithal and ample opportunity to buy votes.

Since the electoral campaign began, many political parties are confronted by organisational and financial challenges. As a result, they have to limit electoral activities in terms of duration as well as of geographical scope. This essentially means that in some areas, people will not be ready to make a judicious choice in the coming elections. In the same way, some serious and well organised parties will not be able to campaign due to the lack of funding. Although some initiatives of support for training political party agents have been funded by international donors, it is unfortunate that the support does not cover basic services such as graphics or printing.

This imbalance between resources of political parties in the DRC, a country where money is scarce, and logistic challenges phenomenal, undermines prospects for

level playing field during the political campaign. Hence the principle of transparency in the use of public resources is vital. Thus, public funding should be extended to all parties and independent candidates contesting election.

### Gender Issues

Gender equality is guaranteed in the new Congolese Constitution. Congolese women felt let down by the candidate nomination process in which their representation is insignificant. Certain political parties adopted quotas voluntarily to ensure a certain number of women. In practice, this quota only applies in theory and representation still remains gender-blind. There are only few women in the transitional government: 5 of 65 ministers and deputy ministers and 10% in the National Assembly.

After the Sun City peace talks, article 51 of the

transitional constitution mentions “a significant representation within national, provincial and local institutions”. Nevertheless, there are no specific provisions to ensure the adequate representation of women in the coming elections. More and more Congolese women currently enjoy a legal framework for action that is gradually getting stronger. Women have to catch the ball on the rebound and positively use this space for their empowerment when one takes into account the numerous opportunities presented by the development process.

Article 14 of the 2006 Constitution stipulates that government will work towards equal gender representation in all institutions. There is still no law passed to mandate minimum levels of office. Only 4 of 33 presidential candidates and 10% of legislative candidates are female. The presidential

candidates are Justine Kasavubu for the Movement of Democrats (MD), Catherine Nzuji wa Mbombo for the Popular Movement for the Revolution (MPR), Marie Therese Nlandu for the Party for Peace in the Congo (CONGOPAX) and Wivine Nlandu for the Union for the Defence of the Republic (UDR).

Finally, article 13 of the Electoral Law stipules: *“each list [of candidates] is put together taking into consideration equality between men and women... However, not realizing equality between men and women during the coming elections is not a reason for rejecting a list”*.

The incoming government will have plenty of work on its plate.



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Democratic Governance in Africa

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