

The 2023 elections

in the Democratic Republic of the Congo:

rectifying past mistakes
to strengthen democracy



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Table of Contents

Executive summary	5
Recommendations	6
Introduction	
The 2023 elections in the DRC: rectifying past mistakes to strengthen democracy	9
Part I.	
State of play of the pre-electoral situation: sociopolitical context and stakeholders' issues	11
■ What lessons can be learned from the three election experiences?	12
■ Political landscape	13
■ Political parties	14
■ Citizen participation in the 2023 elections	14
■ Political participation of women and youth	15
Part II.	
Diagnosis of the institutional and legal framework for elections	16
■ The continuous pursuit of independence for a divided CENI	17
■ Incomplete court architecture, a handicap to electoral litigation	18
■ The Conseil supérieur de l'Audiovisuel et de la Communication, a body with shared competences and an imbalanced composition	19
■ A national council for monitoring the agreement and the electoral process that has become obsolete	19
■ Complexity of the legal framework for elections in the DRC	19
■ Mapping and interplay of actors around the proposed electoral reforms	19
Part III.	
Challenges to be met in organising the 2023 elections	21
■ Obstacles to holding the elections within the constitutional deadline	22
■ Recurrent problem of the electoral register	22
■ Financing of the elections	23
■ The human rights situation and insecurity in the East	23
■ Increase in tribal divisions and hate speech	24
Conclusion	
Recommendations for the EU and its Member States regarding the electoral process in the DRC	26
Annexes	27

Abbreviations

- **UNJHRO** United Nations Joint Human Rights Office in the DRC
- **CENCO** National Episcopal Conference of the Congo
- **CENI** Independent National Electoral Commission
- **CIAT** Comité International d'Accompagnement de la Transition
- **CNSA** Conseil National de suivi de l'Accord et du processus électoral
- **CSAC** Conseil Supérieur de l'Audiovisuel et de la Communication
- **CCC** Church of Christ in the Congo
- **DTE** Decentralised Territorial Entity
- **EurAc** European Network for Central Africa
- **FARDC** Armed Forces of the DRC
- **G13** Group of 13 figures calling for consensus on electoral reforms
- **LUCHA** Lutte pour le Changement
- **Lyrec** League of Youth for the Renaissance of Congo
- **MLC** Movement for the Liberation of the Congo
- **MONUC** United Nations Mission in the Democratic Republic of Congo
- **MONUSCO** United Nations Organisation Stabilisation Mission in the DR Congo
- **UN** United Nations
- **PNC** Congolese National Police
- **DRC** Democratic Republic of the Congo
- **UDPS** Union for Democracy and Social Progress
- **EU** European Union
- **UNC** Union for the Congolese Nation
- **USN** Union Sacrée pour la Nation
- **PPRD** People's Party for Reconstruction and Democracy

Executive summary

This report takes stock of the pre-election situation in the Democratic Republic of the Congo (DRC). It examines the issues and challenges of the current electoral process and proposes courses of action for the European Union (EU) and its Member States to help pacify the electoral climate, reduce the potential for fraudulent elections and prevent a situation of post-electoral violence that could engulf the entire Great Lakes region. Reviewing the available literature on the past and current sociopolitical situation in the DRC, this report was enriched by data from interviews and questionnaires conducted with stakeholders in the current electoral process, including religious denominations, civil society, opposition and majority political actors, the election management body, certain UN agencies and diplomatic missions accredited to the DRC.

The elections, expected to take place at the end of 2023, are being held in a complex political and social context, characterised by a lack of consensus between stakeholders, the demotivation of citizens with regard to the electoral process and the fragility of the party system following the reshuffling of the parliamentary majority. Several concerns also emerge, including that of a desire on the part of the government to control the bodies involved in the electoral process. The battles over the appointment of the leaders of the Constitutional Court and the CENI are striking examples of this. Each of these elements contribute to a general climate of insecurity in the east of the country and the rise of tribal divisions and hate speech, which raise fears of violent post-election protests. The report considers how this context could affect the smooth running of the elections, such as leading to a postponement of the vote, the exclusion of certain regions of the country or a disruption of peaceful demonstrations or opposition rallies during the election campaign.

The changeover of Head of State after the 2018 elections failed to respect the sovereign choice of Congolese voters. After contradictory and hesitant reactions, regional and international actors, including the EU, recognised Felix Tshisekedi as the new president of the DRC. Thus, while the EU was able to provide a united voice on the international scene at the beginning of the electoral process, European collegiality gradually became more and more distorted, thus undermining the impact of

the EU's action. In the light of these findings, this report analyses how the 2023 elections can mark a decisive step away from the mistakes of the past to consolidate democracy in the DRC. As such, it aims to **mobilise the EU and its Member States to assure their position on the current electoral process by establishing clear red lines that the electoral process must not cross**. The EU and its Member States must now adopt a clear position and a common strategy to be able to speak with one voice during the electoral process, in particular in the event of serious irregularities affecting the credibility of the process.

In parallel, the EU and its Member States should maintain or extend a number of measures, such as:

- continuing to encourage Congolese political institutions to respect their obligations to organise free, transparent, credible and peaceful elections;
- adopting the “Team Europe” approach, by coordinating in advance on the financial support to the electoral process, the key actors, as well as their common response to the various possible scenarios of the electoral situation before, during and after the elections.
- strengthening their support for Congolese civil society in its crucial threefold role of (1) ongoing civic education; (2) defence of human rights and public freedoms; (3) monitoring of the preparations for elections.

Finally, as a deterrent, the EU and its Member States should **publicly denounce any repression and violation** of civil liberties by sending a clear signal that they are ready to impose sanctions against any natural or legal person responsible for hate speech, delaying the organisation of elections within the constitutional time frame, or for sabotaging the will of the Congolese people to choose their leaders.

Recommendations

Below, EurAc puts forward a series of recommendations to ensure free, transparent, credible and peaceful elections in the Democratic Republic of Congo.

1. Act in a firm, preventive and united manner

The European Union and its Member States should coordinate their political and diplomatic relations with the DRC and **set red lines that the electoral process must not cross** in the period before, during and after the elections. The EU and its Member States must pre-position themselves and have a common strategy in the event of fraudulent election results or other serious irregularities affecting the credibility of the process. At least five red lines must be respected:

- *Freedom for all Congolese to demonstrate peacefully, without fear of being killed, injured or arrested throughout the country.*
- *Freedom of the press and expression in the (pre-)election phase, including the opening up of all private media and fair access to public media.*

- *Respect the constitutional deadline for the organisation of elections and avoid any delay in the elections.*
- *Transparency in the voting and counting system.*
- *Inclusiveness of candidates.*

The EU should create a temporary task force for the 2023 elections. The role of this task force would be to assess the (pre-)election situation and the various obstacles to the freedom to demonstrate peacefully, as well as cases of violations against activists. Monthly dialogues should be organised with representatives of civil society and pro-democracy movements to ensure the structural monitoring of these elections.

2. Encourage Congolese political institutions to organise free, transparent, credible and peaceful elections

- Through all possible diplomatic channels, and in close collaboration with other countries in the region, as well as regional and international organisations, encourage Congolese political institutions to respect their own commitments and obligations, namely:

■ Encourage the President of the Democratic Republic of the Congo to:

- reassure the Congolese population and implement all means at its disposal to respect the constitutional deadline for the organisation of general elections scheduled for December 2023;
- respect the independence of the CENI and all other institutions involved in the electoral process for future electoral operations;

- support all efforts and initiatives for the equal participation of women and men political candidates through the electoral law reform, and endorse the implementation of the law on equality;
- initiate and support the “United call for a national commitment to the increased participation of women in politics”, supported by UN Women and the Belgian Embassy.

■ Encourage the Congolese government to:

- respect the electoral process commitments made in its action programme adopted by the National Assembly on 26 April 2021;
- respect the legal texts enshrining the equal participation of women and men in decision-making bodies;

- make funds for electoral operations available to the CENI according to the budget determined by the CENI and the disbursement plan defined jointly with the government;
 - improve the security situation in the east of the country and ensure that the state of siege, as long as it is declared in the provinces of North Kivu and Ituri, does not lead to a restriction of people's fundamental rights and of their right to vote.
- **Encourage the CENI to:**
- publish, as a matter of urgency, the detailed electoral timetable with possible delays, and strategies to mitigate those delays, and propose the final budget for electoral operations;
 - demonstrate independence and neutrality by ensuring that its future appointments of election officials are not called into question by public opinion;
- set up a permanent and decentralised consultation framework with Congolese civil society and political parties, at all stages of the process, with a view to restore confidence in the electoral process;
 - put in place a mechanism for the technical verification of the deadlines and resources required for the organisation of the elections, including the revision of the electoral register, the enrolment of voters, the ordering of electoral kits and the logistics of voting operations;
 - facilitate inclusive access to registration and polling stations for all voters, taking into account the gender-specific needs of women and people with other vulnerabilities.

3. Support civil society, citizen activists and movements in their role of civic education, monitoring and observation of the electoral process

- Strengthen political and financial support for **civic education** projects and programmes, in particular the promotion and awareness raising of equal participation of women and men – on a **permanent** basis, not just before elections.
- Provide political and financial support to **civil society organisations, human rights defenders (HRDs), women's movements**, pro-democracy and anti-corruption **activists**, whistle blower and anti-impunity coalitions, as well as to independent media, while allowing them to operate and speak independently. This should include financial support to help cover:
 - the operational expenditure of these groups;
 - opportunities for training and exchange;
 - efforts to ensure their legal protection;
 - more flexible programmes to provide urgent and rapid protection to human rights defenders whose lives are at risk (relocation and support through cascading funds that take into account HRDs' dependants, and especially gender-specific needs when it comes to women).
- Support the work of Congolese civil society through **increased direct funding of their election monitoring projects**, including monitoring of the pre-election process, election observation missions, and policy related advocacy. In the case of observation missions:
 - ensure that observation missions, whether run by civil society organisations and/or churches, are able to publish the results of the observation;
 - before sending an election observation mission, the EU should ensure that the minimum conditions for effective and credible election observation as listed in its *Election Observation Handbook* are met;
 - create a synergy of actions, particularly in the deployment of observers, to avoid an imbalance in the coverage of the country by encouraging the strengthening of election monitoring at grassroots level.

4. Provide political and financial support to the electoral process while maintaining a tough stance on human rights

- ❑ Offer political and financial support for the organisation of the electoral process while adopting a cautious attitude, making the support conditional on the strict respect of human rights and civil liberties.
- ❑ Publicly and firmly denounce all political repression and human rights violations, to show that the international community is watching the situation closely, and to help deter further abuses. Condemn any arbitrary arrest and detention of political opponents, human rights defenders, journalists and members of civil society. Communicate proactively, strongly and consistently the EU's commitment and determination to defend the rights and freedoms of Congolese citizens, such as freedom of expression, association and assembly.
- ❑ Stand ready to sanction individuals responsible for political repression, hate speech, and other serious violations of human rights or democratic principles throughout the country, especially in the provinces under state of siege.



Introduction

The 2023 elections in the DRC: rectifying past mistakes to strengthen democracy

¹ This is the town, commune, sector and/or chiefdom.

The Democratic Republic of the Congo (DRC) is about to organise its fourth electoral cycle after the democratic transition of 2003-2006. These elections will be closely observed, especially since the results of the last three electoral cycles have contributed to a crisis of legitimacy in the country. However, according to the preamble of the Congolese Constitution, this crisis of legitimacy is the main source behind the various conflicts affecting the DRC. Such a crisis of legitimacy is the result of the absence of credible and inclusive elections, which do not in themselves create true democracy, but which contribute greatly to it.

The elections, which are expected to be held at the end of 2023, are taking place in a political and social context characterised by the lack of consensus between stakeholders, the lack of motivation of citizens with regard to the electoral process, the fragility of the party system following the reshuffling of the parliamentary majority, etc. Several concerns have also emerged, including that of a desire on the part of the ruling power to control the electoral body. Each of these elements are linked to a general climate of insecurity in the east of the country and the rise of tribal divisions and hate speech, which have led to fears of violent post-election protests.

In addition to the political and social context, several practical and technical challenges persist, raising fears that the elections will be postponed again, as in 2016. Indeed, as in the past three elections, the current process does not offer sufficient guarantees that the elections will be organised and completed within the constitutional deadline. Firstly, prerequisites such as the census, the enrolment of voters and financing are bottlenecks to meeting the deadline. Secondly, there are doubts about the completion of the electoral process for the holding of elections at the level of the decentralised territorial entities (DTEs)¹, which civil society has called for in order to guarantee better local governance. This report will focus less on this second aspect, although it remains of crucial importance.

In view of these numerous indicators, which point to a potential new electoral crisis, EurAc and its members, in close consultation with their Congolese partners and other experts from Congolese civil society, believe it is crucial to reflect and act before the 2023 elections in order to help pacify the electoral climate, mitigate the potential for fraudulent elections and prevent post-electoral violence. It is in this context that the present study is being conducted. It extends the efforts previously made by EurAc in its advocacy for credible elections in the DRC during the

last elections. The aim of this analysis is to examine the issues and challenges facing the Congolese institutions in relation to the current electoral process and to identify what responses the European Union (EU) and its Member States can provide to consolidate democracy in the DRC.

The initial methodological approach applied consisted of drawing lessons from the three previous electoral cycles² and, thereafter, analysing the legal arsenal, case law, practices and literature relating to electoral processes in the DRC. This report was enriched by contributions collected through

face-to-face and online interviews as well as responses to questionnaires from various figures from civil society, the political class, the election management body and diplomatic missions accredited to the DRC.

This report is divided into three parts: the state of play of the pre-electoral situation, the diagnosis of the institutional and legal framework and finally the challenges to be met with a view to organising elections in 2023. The report also presents possible courses of action for the EU and its Member States.

² EurAc, in collaboration with the Royal Egmont Institute, organised a webinar on the subject: *"Elections de 2023 en RD Congo: quelles leçons apprises du précédent cycle électoral de 2018?"*.

This report is divided into three parts:

- **Part 1.** The state of play of the pre-electoral situation
- **Part 2.** Diagnosis of the institutional and legal framework
- **Part 3.** Challenges to be met in organising the 2023 elections.

The report also presents possible courses of action for the EU and its Member States.

Part I.

State of play of the pre-electoral situation: sociopolitical context and stakeholders' issues



What lessons can be learned from the three election experiences?

The elections organised in 2006, 2011 and 2018 were limited to presidential, national and provincial legislative elections, while all electoral calendars have always also provided for elections at DTE level. Each of these elections raised questions about the credibility of the key actors (*Commission électorale nationale indépendante* - Independent National Electoral Commission, CENI- and the Constitutional Court) and the results of the polls.

The first multi-party elections were held in the DRC in 2006, following a transition supported by the international community through the *Comité international d'accompagnement de la transition* (International Committee for Transition Support, CIAT) and the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC). In 2006, the controversy led to a confrontation in Kinshasa between the troops of Jean-Pierre Bemba and those of former president Joseph Kabila, two candidates who had reached the second round of the presidential election.³ A climate of mistrust and bipolarisation could be observed in the DRC, with the eastern part of the country reputed to be in favour of Kabila and the west in favour of Bemba. These elections were credited with sealing the Sun City transition process for the reunification of the country threatened by balkanisation. They also made it possible for an electoral administration to be established that continues to organise the elections.

Characterised by considerable shortcomings in terms of technical preparation, the 2011 elections were considered a failure by several international observers.⁴ This was due to the hasty and late changes in the legal framework for the elections⁵, the late appointment of members of the CENI, as well as a sharp reduction in external support for the electoral process.⁶ This undermined the credibility of the results and reinforced a deep crisis of legitimacy within political institutions.

Despite the 2018 elections bringing the country's first change of leadership, they were nevertheless severely criticised. Their technical aspect, although welcomed by some local electoral observation missions⁷, were marred by the non-publication of results poll by poll, the non-consensual use of the voting machine⁸, the exclusion of international electoral observation, changes to the electoral legal framework in the middle of the electoral process, etc. Moreover, some territorial entities, including Yumbi (Mai-Ndombe Province) and Beni-Butembo (North Kivu Province) were excluded from the presidential election, officially for security and health reasons. Following credible allegations of electoral fraud supported by leaked CENI data, several domestic observers and some opposition actors challenged the results.⁹ International media also presented evidence that the election results had been manipulated in favour of Félix Tshisekedi and against Martin Fayulu, one of the presidential candidates in the elections. After contradictory and hesitant reactions, regional and international actors, including the EU, recognised Felix Tshisekedi as the new president of the DRC.¹⁰

The changeover at the end of the 2018 elections did not allow the sovereign choice of Congolese voters to be respected. Thus, while the EU managed at the beginning of the electoral process to bring a united voice to the international scene, European collegiality gradually became less and less important, thus contributing to a reduction in the impact of the EU's action. For some national and international actors, this electoral failure provided an opportunity to consolidate democracy and bring about substantial changes in the DRC. To this end, several proposals to improve the Congolese electoral system were made by political and civil society actors. Although these proposals were welcomed by President Tshisekedi¹¹, almost no specific initiatives were taken to adopt them. Only the organic law on the CENI was adopted in 2021. The agenda for the National Assembly's March

- 3 "We Will Crush You" *The Restriction of Political Space in the Democratic Republic of Congo*, Human Rights Watch, 2008.
- 4 R. Pourtier, Les élections de 2011 en RDC : entre cafoeuillage et tripatoeuillage, available at <https://doi.org/10.4000/echogeo.13119>. See also *Élections présidentielle et législatives République Démocratique du Congo*, Carter Centre, 2011.
- 5 J.-L. Esambo, *Droit électoral congolais*, Academia L'Harmattan, Louvain-la-neuve.
- 6 I. Batumike, Financement extérieur des élections et souveraineté économique en Afrique : quelles alternatives pour la RD Congo ? in J. Baraka Akilimali et T. Makunya Muhindo (dir.), *L'État africain et la crise postcoloniale. Repenser 60 ans d'alternance institutionnelle et idéologique sans alternative socioéconomique*, Paris, L'Harmattan, 2021.
- 7 *Rapport final d'observation des élections directes et indirectes de 2018 et 2019*, Symocel, 2019.
- 8 An electronic tool used in the 2018 DRC elections consisting of a computer with a built-in printer and several other devices (batteries, scanner, etc.) to cast the vote and print the voter's choice.
- 9 Felix Tshisekedi's victory over candidate Martin Fayulu in the 2018 elections was disputed by the election observation mission set up by CENCO. The mission and leaks attributed to CENI had revealed that Martin Fayulu had won the 2018 presidential elections with more than 62% of the vote.
- 10 *Democracy, human rights, and natural resources in the Democratic Republic of the Congo*, EurAc, 2019.
- 11 *Discours du président de la République sur l'état de la Nation*, 13 December 2019.

¹² Some USN national deputies, including Steve Mbikayi, elected representative of the AFDC-A in Kinshasa, have tabled a proposal for a constitutional revision in the National Assembly aimed at increasing the term of office of the Head of State to 7 years.

¹³ Survey report: *La RDC face à la démobilisation politique. Perte de confiance et risque d'une abstention élevée*, CRG and BERCI, October 2021.

¹⁴ *RDC : Katumbi ou Muzito... Qui dirige Lamuka ?*, Jeune Afrique, 2021.

2022 session places the reform of the electoral law among its priorities. **However, the majority seem to be putting in place conditions for an electoral system that will not allow for transparent, credible and peaceful elections.** Major differences of opinion persist with regard to both the institutions involved in the electoral process and the rules that should govern the electoral game.

Nearly 4 years after the transfer of power, the Congolese people continue to wait for the changes they desire. The pre-electoral environment is marked by the seeds of conflict and risks of a loss of motivation on the part of citizens. The country is experiencing institutional instability marked by corruption. Several concerns are emerging with regard to the establishment of the new CENI, which is contested by a section of stakeholders. There is also a delay in the compilation of the electoral register and the adoption of electoral reforms. As an example, in the run-up to the 2023 elections, there is a suggestion to extend the term of office of the head of state to 7 years.¹²

According to the national deputy Juvénal Munubo, elected by the Union for the Congolese Nation (UNC) in the territory of Walikale in North Kivu, the failure to improve social conditions could gradually lead to a boycott of the elections by the population. In their October 2021 report, the Congo Research Group (CRG) and the *Bureau d'Études, de Recherche et de Consulting International* (International Studies, Research and Consulting Office, Berci) note that the controversies surrounding the appointment of the members of CENI have reinforced this trend towards abstention. According to the report, only 40% were in favour of participating in the vote if the elections were held tomorrow, compared with 67% in March 2021.¹³ This situation gives rise to fears, as pointed out by various actors in Congolese civil society, of low participation by the population in future elections.

Political landscape

According to the interviews and questionnaires conducted for this report, the most representative stakeholders in the upcoming electoral process in the DRC can be summarised in three trends. The first trend is organised around President Felix Tshisekedi with the *Union Sacrée de la Nation* (USN). This governmental coalition is still struggling to transform itself into an electoral platform in view of the numerous dissensions within it between the supporters of Moïse Katumbi, former governor of ex-Katanga, and those of President Tshisekedi. In the diverse opposition, two other major trends are emerging. On the one hand, the actors affiliated to Joseph Kabila's political platform, the Common Front for Congo (FCC). This platform is currently run by a crisis cell set up at the time of the split between the Tshisekedi and Kabila camps. On the other hand, the actors of the early days of the Lamuka coalition, who supported the candidacy of Martin Fayulu in the 2018 presidential elections. Although they have remained fiercely opposed to President Tshisekedi, they have been weakened by the departure of some of their peers to the USN.¹⁴

The second term for the president is being prepared within the components of the USN that remain loyal to him, such as his party the Union for Democracy and Social Progress (UDPS). On the other hand, within the opposition, Kabila's supporters still dream of returning to power, while Martin Fayulu continues to claim his stolen victory in the 2018 elections. Together with former Prime Minister Adolphe Muzito, he is engaged in a struggle for elections that will this time respect the truth of the ballot box.

Political parties

According to the list of political parties authorised to operate as of 22 June 2018¹⁵, there are 601 political parties operating in the DRC. It is not impossible that other parties will be created during 2022. The disadvantages of this multiparty system are multiple. First of all, many of these political parties are not viable.¹⁶ Without a clear ideological direction or adequate resources, they are the private property of their leaders. Moreover, internal democracy often does not work.¹⁷ Additionally, many of them have no national roots,¹⁸ and risk contributing, consciously or not, to the exacerbation of tribalism and regionalism in the DRC.

To address these weaknesses that affect the quality of the country's governance, the electoral threshold was introduced to require parties to group together. However, the 69 political groupings formed are not governed by any legislation.¹⁹ This shortcoming may lead to political instability. Parties in a grouping can leave it at any time, as happened in 2020 with the creation of the USN. Moreover, with the approval of the Constitutional Court, deputies from the same political grouping can now be in the opposition and the majority at the same time. Such a move leads to the splitting of political parties, which was a point of contention between the majority and the opposition in 2016.²⁰

Citizen participation in the 2023 elections

Despite the existence of a multitude of organisations and platforms, the representation of Congolese civil society actors is regularly questioned. Civil society struggles to mobilise the Congolese population around the electoral process. This is mainly due to deep divisions between members of civil society, which weaken the potential for synergies – despite the fact that they have an indispensable role to play in monitoring the electoral process.

Following the 2018 elections, differing reactions have emerged from within civil society. While most civil society actors were unable to mobilise to contest the election results, others openly supported President Tshisekedi, despite doubts surrounding the transparency of his election. Some civil society have not been able to escape the divergent dynamics of cooperation, by joining the presidential cabinet or other institutions, while continuing to claim to be members of civil society. According to several actors contacted in the course of this research, tribalism and clientelism explain such outcomes.²¹

With regard to the religious denominations, a notorious division occurred following the controversial appointment of Denis Kadima as head of CENI. The failure of discussions to reach a consensus among the eight religious denominations on this issue led to various mutual accusations. According to some observers, these episodes significantly discredited the religious denominations as a whole.²² Others note that some religious denominations are seen as opposed to President Tshisekedi because of their continued intransigence in the face of governance failures in the country. According to Professor Jacques Djoli, former vice-chair of CENI and currently a national deputy of the Movement for the Liberation of the Congo (MLC), the religious denominations have undermined the credibility of the electoral process by engaging in the appointment of CENI leaders before the adoption of the electoral reforms.

Despite the divisions in a vastly diverse civil society, it should be noted that it was active on all fronts in demanding the holding of elections in 2016, under the auspices of the National Episcopal Conference of the Congo (CENCO). It is also thanks to the synergy of the Catholic Church with civil society organisations and some political groups that the ratification of Ronsard Malonda as chair of the CENI in 2020 has not been acted upon. Even without winning the consensual nomination of the members of the CENI, there is still a battle to be

¹⁵ See Official Journal of the DRC, special issue of 7 July 2018.

¹⁶ In 2020, according to a study published in 2021 by the Institute for Democracy and Political Leadership and the Konrad Adenauer Foundation on the mapping of political parties in the DRC, only 121 political parties out of 700 registered were active.

¹⁷ Professor Jacques DJOLI believes that the CENI should also be entrusted with the mission of organising elections every 5 years within political parties, as is the case in Namibia.

¹⁸ A. Kamukuny, *Droit constitutionnel congolais*, Editions universitaires africaines, Kinshasa, 2011. See also E. Boshab, *République Démocratique du Congo Entre les colombes et les faucons où vont les partis politiques?*, Presses Universitaires du Congo, Kinshasa, 2007.

¹⁹ Read the explanatory memorandum to the law on political parties.

²⁰ See Global and Inclusive Agreement of the Interdiocesan Centre of Kinshasa of 31 December 2016, known as the Saint Sylvester Agreement.

²¹ Several actors contacted by EurAc researchers pointed out that these civil society organisations are most often led by leaders from the same region as President Tshisekedi, if not from the same tribe.

²² *RDC: Blocage sur la CENI, Dodo Kamba affirme que "les 6 confessions religieuses ont été chassées du Centre interdiocésain"*, Zoom-Eco, 2021.

23 *RDC : la mobilisation s'accroît pour la représentation des femmes aux élections de 2023*, Actualite.cd, December 2021.

24 According to the Consortium of Congolese Women's Networks, women do not have the means to campaign once they have succeeded in filing their candidacies.

25 Figure from CENI's general report on the 2012-2019 electoral process.

26 *RDC : la mobilisation s'accroît pour la représentation des femmes aux élections de 2023*, Actualite.cd, December 2021.

27 *La Participation politique des femmes en République Démocratique du Congo. Une enquête auprès des femmes politiques congolaises de Kinshasa*, Konrad Adenauer Foundation, 2019.

fought over electoral law and other points of the process. In this respect, **the European Union and its Member States have an important role to play in supporting civil society in its proposals for priority reforms, as well as in their role of ongoing civic education, and in particular around the elections, monitoring and advocacy around the electoral process in order to remind the Congolese authorities at all levels of their responsibilities.**

Political participation of women and youth

Gender equality is an essential element for the rooting of democracy. As such, the EU and some Member States, including Belgium and Sweden, have made women's political participation one of their central objectives for cooperation²³. In the DRC, the political participation of women and girls faces many challenges, not least economic, political and cultural.²⁴

Women represent 50.54% of the Congolese electorate. However, they remain seriously under-represented at political level. Only about 12.8% of women are represented in the National Assembly and 23.9% in the Senate.²⁵ In the DRC, equality is a constitutional principle that, in theory, represents an opportunity to be seized. Despite the Congolese Constitution, the current electoral law reiterates the need for an equal representation of men and women, but does not provide for any obligation or consequences on the admissibility of electoral lists.²⁶

Several factors are responsible for the under-representation of women in political institutions. According to a study by the Konrad Adenauer Foundation²⁷, the main factors are as follows: the lack of transparency of the electoral process, the regime's strategy of maintaining power through its subservience to CENI, the poor organisation of the elections or of the electoral offices, including unsuitable opening hours, the long queues that extend into hours, which become incompatible with women's domestic tasks, the remoteness of the polling stations, the lack of resources and the unpreparedness of the opposition parties, and finally, the patriarchal functioning of Congolese society, which reinforces the domination of men. The consequences of these different factors include a reduction in the female electorate in favour of female candidates, a loss of self-confidence and, above all, the discouragement of the female electorate from participating in the various electoral activities.

With regard to the political participation of youth, the electoral legislation does not offer binding measures that oblige political parties to include young people on their lists of candidates. Secondly, there are issues of the electoral threshold and very high deposits, with poverty and unemployment among young people in the DRC being quite high.

Part II.

Diagnosis of the institutional and legal framework for elections



28 Nominated by six religious denominations out of the eight that made up the platform of religious denominations, Denis Kadima, the current chair of CENI, was invested by President Tshisekedi after a plenary session boycotted by the opposition and despite the protests of the Protestant and Catholic churches, as in 2020, when the appointment of Ronsard Malonda to the same post was aborted.

29 The postponement by the CENI of the governors' and vice-governors' elections in 14 provinces seems to be remote-controlled by the majority, who still had to divide internally the provinces to be managed. On 3 February 2022, the CENI rearranged the timetable previously published by the Corneille Nangaa team for these elections, citing technical and financial problems. In the meantime, negotiations were still ongoing within the USN and a compromise could not be found for the sharing of the provinces among the allies. The CENI again rearranged its timetable on 23 February 2022.

30 For his part, the chair of the CENI reiterated that this appointment was in conformity with all the texts relating to the organisation and functioning of the CENI.

31 *RDC : LAMUKA fustige la nomination du nouveau secrétaire exécutif de la CENI*, Radio Okapi, January 2022.

32 *Réforme de la CENI en RDC. Des nécessaires gardes fous à l'impossible dépolitisation*, GEC, January 2021.

33 Interview with the General Secretariat of the CCC Justice and Peace Commission. See also I. Batumike et al., *Réformes électorales et consolidation de la démocratie en RDC* in R. Ndayiragije et al., *Conjonctures de l'Afrique centrale 2021*, Paris, L'Harmattan, Cahiers africains, no. 97.

Several obstacles remain in the way for the preparing of elections. These obstacles are found in the legal and institutional frameworks, especially the key institutions in charge of the electoral process. These are the two levers that political actors use to ensure their control over the electoral process. The intention to place people of one's own political camp at the head of electoral bodies at each electoral cycle further erodes the confidence of the Congolese population.

The continuous pursuit of independence for a divided CENI

In order to strengthen the independence of the CENI, a proposal on the reform of the organic law was tabled in August 2019. Despite protests from part of the political class and civil society, the proposal was adopted in July 2021. The last reform of the CENI did not lead to a consensus on the current leaders of the institution. Beyond the lack of consensus surrounding the appointment of Denis Kadima²⁸ as chair of the CENI, the independence and neutrality of the CENI's leaders is a matter of debate. Some come from political parties of the majority and the opposition where they were active before their appointment.²⁹ For example, 8 of the 15 members are elected representatives who were sitting in the National Assembly at the time of their appointment, amongst whom some held senior political roles. This lack of neutrality and independence is further aggravated by the appointment of the National Executive Secretary of the CENI, Mabiku Totokani³⁰, a member of the presidential party UDPS, who worked as an advisor to President Tshisekedi in the presidency³¹.

The major proposals of the reform that could ensure the independence of CENI have not been taken into account³². These include the balance between the three components within CENI (civil society, majority and opposition) and the strengthening of the presence of civil society in the Board. The reform did not make it possible to separate the Board, which is the management body, from the plenary, which is its supervisory body. The equal representation of the majority, civil society and the opposition with five members each and the strengthening of the presence of civil society in the Board, the daily management body of CENI, were rejected. The same members of the Board are also members of the plenary and are all headed by the same chairperson from civil society/religious groups³³.

In short, certain provisions of the legal framework as well as the controversial appointment of the members of CENI theoretically and practically limit its political and functional independence. This context sets the scene for a possible challenge of the election results and requires an analysis of the courts called upon to decide on these potential challenges.

Incomplete court architecture, a handicap to electoral litigation

The legal framework applicable to elections in the DRC is composed of multiple provisions scattered in different legal texts of a constitutional, conventional³⁴, legal and regulatory nature. This creates a legal insecurity that confuses voters and candidates in their understanding of electoral standards.³⁵ During the previous cycle, the United Nations Development Programme (UNDP) and the *Organisation internationale de la Francophonie* (International Organisation of the Francophonie - OIF) embarked on a codification exercise³⁶ by producing compendiums of texts relating to the electoral process in the DRC as well as relevant case law³⁷.

Of all these courts responsible for settling electoral disputes, the Constitutional Court remains at the heart of controversy in the political class. The appointment of three new constitutional judges by President Félix Tshisekedi was contested by the camps of former President Joseph Kabila, Martin Fayulu and Theodore Ngoy³⁹, the latter two being the unsuccessful candidates in the 2018 presidential election. They denounced the violation of the Constitution, the organic law of the Constitutional Court and the status of the members of the Court through the appointment of constitutional judges whose mandates were still in progress to other functions within the Court of Cassation. President Tshisekedi had succeeded in getting the president of the Constitutional Court to resign and replacing him with a new judge deemed to be of his persuasion. At the same time, two other judges whose mandates were still in progress were appointed to the Court of Cassation without having been drawn by lot, contrary to the organic law of the Court.

³⁴ The DRC is party to most of the main international or regional conventions promoting democratic elections. These include the International Covenant on Civil and Political Rights, the Convention on the Political Rights of Women, the African Charter on Democracy, Elections and Good Governance, and the ICGLR Protocol on Democracy and Good Governance.

³⁵ Denis Kadima et al., Op. cit.

³⁶ *Guide électoral Tome I. Lecture croisée des textes*, OIF, 2019.

³⁷ *Guide électoral Tome III. Référencement jurisprudentiel*, OIF, 2019.

³⁸ Voir P. Murhula, La légitimité de la justice électorale en République démocratique du Congo et au Burundi, Thèse de doctorat, Anvers 2019, inédit, p. 189-190.

³⁹ *Affaire juges Kilomba et Ubulu : M. Fayulu et Théodore Ngoy accusent F.Tshisekedi de haute trahison* Ouragan.cd 2020.

Electoral disputes fall under the jurisdiction of the courts as listed below:

Court	Competences	Observations
Constitutional Court	Disputes over candidacies and results of presidential and legislative elections as well as referendum disputes	As the source of discord between Joseph Kabila's FCC and Félix Tshisekedi's Heading for Change (CACH), the Constitutional Court is to be reconstituted on the occasion of the renewal by one-third of its members by drawing lots, pending since 2021.
Council of State	Appeals against decisions of the Administrative Courts of Appeal in electoral matters.	Functional court since 2018.
Administrative Courts of Appeal	Disputes concerning candidacies and the results of provincial elections (of provincial deputies and governors) and appeals against decisions of administrative tribunals.	Their competences are still exercised by the Courts of Appeal.
Administrative tribunals	Disputes concerning candidacies in local elections.	Courts not yet established. ³⁸

⁴⁰ Articles 8 and 9 of the Organic Law on the CSAC.

⁴¹ Denis Kadima et al., *Revue du cadre juridique et institutionnel des élections en République démocratique du Congo 2006-2019*. See also the Carter Center report on the 2018 elections, p. 61.

⁴² Judgment in *Actions pour la protection des droits de l'homme (APDH) v. Republic of Côte d'Ivoire*, Application 001/2014, African Court on Human and Peoples' Rights, 18 November 2016.

⁴³ See Explanatory Memorandum to the proposed law.

⁴⁴ *RDC : Félix Tshisekedi annonce qu'il compte désigner rapidement un responsable du suivi du bon déroulement du processus électoral*, 7sur7.cd, 2021.

⁴⁵ Constitution of the DRC of 18 February 2006, Law No. 06/006 of 9 March 2006 on the organisation of presidential, legislative, provincial, urban, municipal and local elections as amended to date (electoral law).

⁴⁶ Law No. 04/024 of 24 December 2004 as amended and supplemented by Law No. 16/007 of 29 June 2016.

⁴⁷ Law No. 18/005 of 8 May 2018 on the adoption of the distribution of seats by electoral district for the legislative, provincial, municipal and local elections. It relies on data from the registration of voters.

The Conseil supérieur de l'Audiovisuel et de la Communication, a body with shared competences and an imbalanced composition

The role of the *Conseil supérieur de l'Audiovisuel et de la Communication* (High Audiovisual and Communications Council, CSAC) is to ensure the regulation of the media and opinion polls.⁴⁰ However, in practice, it faces competition from the Ministry of Communication in carrying out these tasks.⁴¹ In addition to this conflict of competences, the 15 members of the CSAC are mostly from civil society, with eight members against seven for the institutions. The opposition is therefore not included, unlike the majority, which is represented by the delegates of the institutions it oversees, thus reducing its independence.⁴² The current practical set-up clearly makes fair access to the media limited or impossible. In addition to addressing this problem, social media campaigning should also be regulated, particularly to combat hate speech and tribalism.

A national council for monitoring the agreement and the electoral process that has become obsolete

The *Conseil National de Suivi de l'Accord* (National Council for Monitoring the Agreement, CNSA), created in 2016 under the terms of the Saint Sylvester Agreement, was very active at the beginning of 2017 but has since become inactive. Several of its members left office without being replaced, making it impossible for the institution to have a quorum for its decisions. In 2020, MP Delly Sesanga tabled a bill to dissolve the body. For this elected representative of the Luiza territory in Central Kasai, “*the mission of this institution is no longer justified in the face of the establishment of legitimate and permanent political institutions responsible for managing the country and the electoral process*”⁴³. Furthermore, in 2018 the Constitutional Court criticised

the organic law of the CNSA, as it proposed to establish consultations and consensus in the decision-making process of CENI. According to the Constitutional Court, this would have made CENI's decisions subject to the opinion of the CNSA, thus violating its independence. In this logic, President Tshisekedi's idea of appointing an official to monitor the electoral process carries the risk of increasing suspicions that the latter is controlling the electoral process.⁴⁴

Complexity of the legal framework for elections in the DRC

The electoral legal arsenal in the DRC is complex. It is based mainly on the Constitution, notably the laws relating to the organisation of presidential, legislative, provincial, urban, municipal and local elections⁴⁵, the identification and registration of voters⁴⁶ or the law adopting the distribution of seats by electoral district for legislative, provincial, municipal and local elections⁴⁷, as well as the various measures for the application of these texts, taken in particular by CENI. However, there are other texts that regulate the electoral process in the DRC. Some are specific to the bodies in charge of managing the electoral process and the participation of stakeholders in that process. Others relate to the territorial entities concerned by the elections or to certain categories of citizens. They are listed in Annex II to this report.

Mapping and interplay of actors around the proposed electoral reforms

The electoral reforms envisaged in the DRC are of various kinds and are the result of various initiatives. Electoral reforms are an opportunity that can either facilitate or disrupt the electoral process. At the time of writing, the debate on the extension of the mandate of the head of state risks diverting attention from other much-needed electoral reforms. The reforms, as presented in a brief

table in the annex to this report, include the publication of results on a poll-by-poll basis, the presidential, senatorial, governors' and vice-governors' voting systems, the electoral threshold, the substitution of elected officials, etc..

Faced with the multitude of reform proposals following the 2018 elections, the Carter Center emphasised the need for stakeholders to “engage in **an inclusive dialogue** with a broad range of actors, political authorities, legislators, security forces, electoral partners and civil society organisations on the institutional, legal and policy reforms that are essential to creating an environment conducive to the holding of credible democratic elections”.⁴⁸

The government's 2021-2023 action programme provides for a consensus on “the provisions to be amended following *ad hoc* political consultations”.⁴⁹ According to Edna Koskey of the Carter Center, these electoral reforms are expected before the publication of the electoral timetable, to ensure that the constitutional deadlines for the holding of elections are respected. Another source contacted for this report, the deputy André Mbata, president of the Political, Administrative and Legal Commission (PAJ) at the National Assembly and a member of the UDPS, promised inclusiveness and consensus during the process of revising the electoral law in the parliamentary session in March 2022. In practice, only the framework in which the adoption of these electoral reforms will take place will determine the real willingness for an inclusive and consensual dialogue.

⁴⁸ *Élections présidentielles, parlementaires et provinciales harmonisées de 2018. République démocratique du Congo*, Centre Carter, 2019.

⁴⁹ *Programme d'actions du gouvernement 2021-2023*.

Part III.

Challenges to be met in organising the 2023 elections



Beyond the legal and institutional obstacles, several other challenges remain to be overcome in order to organise the elections scheduled for 2023. President Tshisekedi expressed his openness to international election observation in his message to the nation on 22 October 2021.⁵⁰ However, this request has not yet been formalised.

As recommended in the *Declaration of Principles for International Election Observation*, a document whose importance has been recognised by the EU, “An organization should not send an international election observation mission to a country under conditions that make it likely that its presence will be interpreted as giving legitimacy to a clearly undemocratic electoral process, and international election observation missions in any such circumstance should make public statements to ensure that their presence does not imply such legitimacy”.⁵¹ The EU should also ensure that the minimum conditions for effective and credible election observation as listed in its *Handbook for Election Observation* are met, before sending any mission.⁵²

Obstacles to holding the elections within the constitutional deadline

The road map for the 2021-2027 electoral process published on 3 February 2022 by CENI highlights the numerous constraints of the three phases of electoral operations. The group of 13 figures who launched a call for a consensus on electoral reforms in 2020 (G13) deplores the fact that this road map is very vague on the options to be accomplished to attract the attention of decision-makers.⁵³ As noted by an electoral expert interviewed for the research, the road map fails to specify the implications or consequences of certain constraints on the electoral cycle and constitutional deadlines not being met.⁵⁴

To this end, some observers note that this road map is more “a trial run to gauge the temperature of opinion in relation to the planned electoral activities, in the face of a

likely postponement of elections”. The coordinator of the Civil Society Expert Panel, believes that a purely technical institution cannot be the first to announce political choices and/or options on the management of the State, by invoking options that are not mentioned anywhere in the Constitution. For the head of the Research and Sociopolitical Animation Section at the Centre d’Etudes pour l’Action Sociale (Centre for Social Action Studies, CEPAS), the road map remains a non-binding instrument, internal to CENI, as opposed to being a budgeted electoral timetable that the electoral centre should publish. Nevertheless, the road map remains a document that allows for dialogue with stakeholders and highlights the constraints of the electoral cycle.

Recurrent problem of the electoral register

Since 1984 the country has not had accurate civil status data due to the lack of a general population census. The successive electoral files produced during the three previous electoral cycles contained numerous irregularities⁵⁵ due to delays in their constitution or the absence of an audit. For example, several electoral observation missions had recommended that the electoral register be extracted from civil status data. In 2015, the idea was abandoned following the 36 deaths recorded during demonstrations⁵⁶ by the opposition and civil society, who feared a strategy of “slipping” behind the general population census.

The government intends to pool this operation of a population census with that of voter identification in order to save about 300 million US dollars on the overall election budget.⁵⁷ Several actors have expressed their reservations: the G13 noted, for example, that pooling should not be a reason to complicate the electoral process, rather it should be a framework for administrative standardisation and the gradual simplification of subsequent electoral processes.⁵⁸ CENI has already sounded the alarm on

50 RDC: en investissant les membres de la CENI, Tshisekedi invite la communauté internationale à accompagner le processus électoral au pays, Actualite.cd, 2021

51 *Manuel d’observation électorale de l’Union européenne*, European Commission, 2008.

52 *Manuel d’observation électorale de l’Union européenne*, European Commission, 2008.

53 See the G13 statement on CENI’s electoral road map, G13, March 2022.

54 Responses to the questionnaire sent to participants in this research.

55 Presence of duplicates, minors, incapacitated or ineligible persons.

56 *RD Congo : Des manifestations ont fait l’objet d’une répression sanglante*, Human Rights Watch, January 2015.

57 Interview with the General Secretariat of the CCC Justice and Peace Commission. See also the minutes of the 39th Council of Ministers meeting of 4 February 2022.

58 G13 statement on CENI’s electoral road map, G13, March 2022.

59 *Ne pas conditionner l’organisation des prochaines élections à la réalisation complète du recensement et de l’identification de la population*, Talatala.cd, January 2022.

60 *Programme d'actions du gouvernement 2021-2023.*

61 I. Batumike, Financement des élections en RDC: le projet de budget 2022 prend-il en compte le respect des délais constitutionnels? Available at <https://talatala.cd/eclairage/34/> consulted on 3 March 2022.

62 *Discours du Premier Ministre à l'occasion de la présentation du projet de loi des finances de l'année 2022 à l'Assemblée nationale,* November 2021

63 Observatory of Public Expenditure, Encore des élections business au Congo, Communiqué N°. 001/ODEP/FEV/2022.

64 While the chair of CENI claimed during a radio broadcast on Top Congo that he had not yet received funds for the electoral operations, the Minister for Finance contradicted him a few days later on the same radio station, declaring that he had already released 37 million US dollars. See *RDC : bras de fer entre la Ceni et le gouvernement autour du financement des élections*, Jeune Afrique, February 2022.

65 *RDC : l'achat des véhicules des membres de la CENI viole l'article 6 de la loi relative aux marchés publics (ODEP)*, Zoom-Eco, February 2022.

66 *RDC : Une mission de l'ONU évalue les besoins de la CENI pour la tenue des élections en 2023*, Politico.cd, March 2022.

67 *République démocratique du Congo. Événements de 2021*, Human Rights Watch, 2022.

68 *Note du BCNUDH sur les principales tendances des violations des droits de l'homme*, UNJHRO, January 2022.

69 *République démocratique du Congo. Événements de 2021*, Human Rights Watch, 2022.

70 See the 2018 law on the distribution of seats for parliamentary, provincial, municipal, urban and local elections.

a possible postponement of the elections caused by this pooling operation. The insistence on pooling these operations goes against the government's promise not to make the holding of elections conditional⁵⁹ on a general population census.⁶⁰

Financing of the elections

While in 2016 the government had justified the delay of the electoral timetable by citing financial difficulties, in particular the postponement in convening the electorate, the current government is determined to finance the electoral process by ensuring the payment of funds for operations as soon as possible. To this end, the government has set aside a reserve of 500 billion Congolese francs (approximately US\$250 million) for the start of the first electoral operations.⁶¹ Although it believes that this is “*a strong signal for the further anchoring of democracy in the country and the normalisation of civic life*”⁶², **this reserve remains insufficient** compared with the overall cost of elections in the DRC. In fact, for 2022 alone, CENI has requested 640 million US dollars from the government, taking into account the pooled operations that combine the census and identification of the population with the enrolment of voters.

To date, the payment of funds remains problematic, as evidenced by the blatant contradictions⁶³ on Top Congo FM radio between the chair of CENI and the Minister for Finance regarding the funds actually disbursed to date⁶⁴. This incident rekindles the debate on the autonomy of CENI on the one hand, and the need for control of its operations on the other. Following the suspicions of overbilling and clientelism raised in the case of vehicles ordered for members of CENI⁶⁵, the Minister for Finance spoke of the need for oversight before any payment, even if this entails the risk of delaying the elections. The Observatory of Public Expenditure (ODEP) believes that only the recently established procurement unit of CENI should intervene in institutional contracts.

Faced with possible difficulties in financing the ongoing electoral process, the DRC could rely on international electoral assistance, to which President Tshisekedi has expressed an openness. To this end, following a request from CENI, a United Nations (UN) mission to assess electoral needs in the DRC was conducted in Kinshasa in March 2022⁶⁶. It aimed to explore ways and means of supporting the logistics of the ongoing electoral process.

The human rights situation and insecurity in the East

While in his early days President Tshisekedi showed some signs of opening civic space, in 2021 the authorities continued to repress dissenting voices. Journalists, activists, whistleblowers and government critics have faced intimidation and threats, have been beaten and arrested, with some prosecuted by the authorities and security forces⁶⁷. According to a report by the United Nations Joint Human Rights Office (UNJHRO), “*State agents are responsible for 270 violations, or 47% of documented violations in January 2022. This number represents an 8% increase from the 251 violations documented in December 2021. Officers of the Congolese National Police (PNC) and members of the Armed Forces of the Democratic Republic of Congo (FARDC) committed almost 44% of the total number of documented violations, which resulted in the death of at least 42 people, including 35 men, five women and two children*”⁶⁸. Human Rights Watch has also confirmed this responsibility of the State through the army's repression of any criticism of President Tshisekedi in the context of the state of siege in North Kivu and Ituri⁶⁹.

In the run-up to the elections, the measures in these two key electoral provinces are of concern. According to the latest statistics on voter registration in the DRC, the province of North Kivu is second in terms of electoral weight after Kinshasa⁷⁰. Ituri remains a very fragile province in terms of the security due to longstanding community

tensions, typically between the Hema and Lendu. **The security situation** in the east of the country continues to be alarming, where any region under a state of siege is likely to lose its guarantee of elections taking place. Eastern DRC continues to be the base for around 120 national and foreign armed groups⁷¹. It is currently experiencing the resurgence of former M23 rebels⁷², alongside a government-authorized presence of Ugandan armies in Ituri and North Kivu, while Burundian armies roam South Kivu⁷³. During the last electoral cycle, these armed groups were known to replace the duties of CENI, taking charge of voter registration, or playing a role in the selection of candidates and those elected at the polls (as in the case of certain Mai Mai groups and the FDLR in Walikale and Masisi, in North Kivu). They also held some candidates to ransom before letting them pass through certain areas to hold their campaign meetings in Masisi.⁷⁴ According to the G13, the security situation in the East is the only threat to the holding of regular elections.⁷⁵ To this end, the Ministry of the Interior is working to ensure that the steering committee for ensuring the security of the electoral process and its technical secretariat are soon activated. This framework for exchange should make it possible to identify a common strategy between the Congolese institutions and their partners, with the aim to minimise the impact of insecurity and the state of siege on the holding of elections within the constitutional deadlines.

The health situation is a second factor that could threaten a comprehensive holding of elections, including the holding of election campaigns and opposition rallies. During 2020, while some states postponed elections due to COVID-19, Human Rights Watch noted “*increasing repression of freedom of expression and peaceful assembly*”⁷⁶ in the DRC. In 2020, the Congolese authorities cracked down on peaceful dissent, journalists and political party members, using state of emergency measures as a pretext to limit political demonstrations.⁷⁷ These actions are reminiscent of the exclusion of around 1,200,000 voters from the 2018 elections in the cities of Beni and Butembo due to Ebola. They also raise fears that opposition rallies will be banned in the run-up to the elections, as was seen on several occasions during the 2018 election campaign.

Increase in tribal divisions and hate speech

In the run-up to the elections, the increase in tribal divisions is a matter of debate. According to some observers, the current divisions go further than those of 2006 and 2011, when opinion was divided between the West and the East. Several political and civil society actors believe that since the last elections, tribalism has taken on worrying proportions, particularly with the idea of “congolité” (“Congolese-ness”).⁷⁸ In this respect, the EU was “*particularly concerned by United Nations reports highlighting an increase in hate speech and messages in the public space and on social networks calling for violence, discrimination and hostility, often directed against ethnic groups or public figures*”⁷⁹. The UNJHRO has also called for closer monitoring of the tribal pronouncements that become more frequent in the run-up to the elections.⁸⁰

⁷¹ *La cartographie des groupes armés dans l’Est du Congo : Opportunités manquées, insécurité prolongée et prophéties autoréalisatrices, Baromètre sécuritaire du Kivu*, February 2021.

⁷² *RDC: Pourquoi le M23 réapparaît?*, Actualite.cd, March 2022.

⁷³ *Des militaires burundais signalés dans l’est de la République démocratique du Congo*, LeMonde, January 2022.

⁷⁴ EurAc and Royal Egmont Institute, *Elections 2023 en RDC : Quelles sont les leçons apprises du précédent cycle électoral de 2018*, 23 February 2022, Webinar. See also *RD Congo: Les élections ont été entachées de violences et de restrictions du droit de vote*, Human Rights Watch, January 2019.

⁷⁵ G13 statement on CENI’s electoral road map, G13, March 2022.

⁷⁶ *RD Congo : Restriction croissante des droits*, Human Rights Watch, July 2020.

⁷⁷ *RD Congo : Restriction croissante des droits*, Human Rights Watch, July 2020.

⁷⁸ The law on “congolité”, introduced in August 2021, aims to exclude from certain positions Congolese who are not born of two parents with Congolese nationality.

⁷⁹ *République démocratique du Congo: le Conseil proroge d’une année supplémentaire les sanctions actuellement appliquées à 10 personnes*, Council of the European Union, December 2021.

⁸⁰ Report on hate speech and messages in the Democratic Republic of the Congo, UNJHRO, 2021

81 *"Vous êtes mon sang":
"Il faut situer ces
propos du Chef de l'État
dans son contexte".
pense Patrick Muyaya,
MediaCongo, December
2021.*

For example, at the end of 2021, during a tour by President Tshisekedi his region of origin, Grand Kasai, the President announced to the public the slogan "Mashi a menu" ("You are my blood" in the Tshiluba language).⁸¹ According to some observers, this slogan was a call to the latter to vote for him in 2023. This speech reflects many tribal, ethnic and regional divisions around the upcoming elections.

President Tshisekedi has also been criticised for having favoured individuals from his region or tribe so that they obtain positions in strategic posts, comparable with his predecessor Joseph Kabila, who appointed Swahili-speakers (from the eastern provinces from which he originates). This controversy crystallised around the appointment of the chair of CENI, Denis Kadima, who, like President Tshisekedi, is originally from Kasai.

Conclusion

Recommendations for the EU and its Member States regarding the electoral process in the DRC

Whether it be the sociopolitical context or the institutional and legal framework, there are many challenges in this pre-electoral period. As we have seen in the course of this report, there are a number of factors that give cause for concern with regard to the smooth preparation of the elections and the observance of constitutional deadlines.

While we should not assume the worst, the EU must be attentive to developments in the run-up to the elections. The EU and its partners must be able to draw lessons from the previous Congolese electoral cycle so as to prevent future abuses in the organisation and smooth running of the elections and to avoid falling back into the failings that marred the previous elections.

It is indeed essential that the EU now encourages President Félix Tshisekedi to embark on the important path of democratic consolidation in the DRC by organising free, transparent, credible and peaceful elections. This electoral cycle opens a new important stage in Congolese political life and will have a long-term impact on the confidence the population will place in its political system. It is therefore crucial that the population, which seeks respect for its fundamental rights and an improvement in its living conditions, can have confidence in this new electoral cycle and in the fact that its choice will be respected after the elections. Momentum is important, and offers Félix Tshisekedi the opportunity to make his presidency a continuation of the change initiated in 2018.

In view of the many indicators pointing to a potential new electoral crisis, EurAc and its members, in close consultation with their Congolese partners and other experts from Congolese civil society, believe that **it is crucial to act in advance of the 2023 elections, in a firm, preventive and united manner, by establishing clear red lines** that the electoral process must not cross. This is to help pacify the electoral climate, reduce the potential for fraudulent elections and prevent a situation of post-electoral violence that could ignite the entire Great Lakes region.

It is also important that the EU and its Member States encourage the Congolese political institutions to respect their obligations to organise free, transparent, credible and peaceful elections. The EU and its Member States should also adopt the “Team Europe” approach, coordinating in advance on **the financial support for the electoral process**, the key actors, as well as their joint response to the various possible scenarios of the electoral situation before, during and after the polls. The EU should create a temporary task force for the 2023 elections. This task force should assess the (pre-)election situation and the various obstacles to the freedom of peaceful demonstration, as well as cases of violations against activists. Monthly dialogues should be organised with representatives of civil society and pro-democracy movements in order to ensure the structural monitoring of these elections.

The EU and its Member States should not only continue but also strengthen their political and financial support to Congolese civil society (including civil society organisations, HRDs, activists and citizens’ movements) which, despite existing divisions, remains a key actor in the monitoring of the pre-electoral process and the elections themselves. **It must be further supported in its crucial threefold role of (1) ongoing civic education; (2) defence of human rights and public freedoms; (3) more specific monitoring of the preparations for elections.**

More specifically, with regard to the possibility of sending an election observation mission, the EU should adopt a cautious approach and ensure that the preconditions for holding credible elections are met. As a deterrent, the EU and its Member States should **publicly denounce any repression and violation** of civil liberties by sending a clear signal that they are ready to impose sanctions against any natural or legal person responsible for hate speech, for delaying the organisation of elections within the constitutional time frame or for sabotaging the will of the Congolese people to choose their leaders in the upcoming elections.

Annexes

Annex I.

Indicative list of research stakeholders

The list of people interviewed for this research is available on request.

Annex II.

Directory of texts relating to elections in the DRC

N°	Text concerned	Observation
1	Organic Law N°. 10/13 of 28 July 2010 on the organisation and functioning of the National Independent Electoral Commission as amended and supplemented by Organic Law N°. 13/012 of 19 April 2013 and Organic Law N°. 21/012 of 3 July 2021	It regulates the composition, organisation and functioning of CENI by determining its structures, its missions, the management and control of its financial resources and the protection of its members to guarantee its independence and neutrality.
2	Organic Law N°. 13/026 of 15 October 2013 on the organisation and functioning of the Constitutional Court	It defines the competences of the Constitutional Court in relation to disputes concerning presidential and national legislative elections and referendums.
3	Organic Law N°. 11/001 of 10 January 2011 on the composition, attribution and functioning of the Conseil supérieur de l'Audiovisuel et de la Communication	This law assigns to the CSAC the task of ensuring, among other things, compliance with standards on opinion polls, fair access for political parties, associations and any other person to official information and communication media and the dissemination of the culture of peace and democracy ⁸² .
4	Organic Law N°. 18/023 of 13 November 2018 on the establishment, organisation and functioning of the National Council for Monitoring the Agreement and the Electoral Process	According to the explanatory memorandum of this law, the CNSA is of a temporary nature and must be dissolved by operation of law at the end of its mission. Indeed, its mission was to monitor the implementation of the so-called Saint Sylvester Agreement and to evaluate the 2018 electoral process.
5	Organic Law N°. 13/011-B of 11 April 2013 on the organisation, functioning and competences of the courts of the civil system	Pending the installation of administrative courts other than the Council of State, the judicial courts exercise their competences in electoral disputes.
6	Organic Law N°. 16/027 of 15 October 2016 on the organisation, competence and functioning of courts of the administrative system	It concerns the provisions relating to disputes concerning provincial elections.
7	Law N°. 04/002 of 15 March 2004 on the organisation and functioning of political parties	This law is currently unsuited to the political context of the DRC in that it does not take into account political groupings.
8	Law N°. 08/005 of 10 June 2008 on the public funding of political parties	To date, public funding of political parties is still not effective.
9	Organic law N°. 07/008 of 4 December 2007 on the status of political opposition	This law remains unimplemented with regard to the establishment of opposition structures, in particular the appointment of their spokespersons.
10	Law N°. 15/013 of 1 August 2015 on the implementation of women's rights and equality	Article 5 requires political parties to take gender equality into account when drawing up electoral lists in accordance with the conditions laid down in the electoral law.
11	Law N°. 15/015 of 25 August 2015 establishing the status of customary chiefs	It enshrines the apolitical nature of customary chiefs.
12	Organic Law N°. 08/016 of 7 October 2008 on the composition, organisation and functioning of decentralised territorial entities and their relations with the State and the provinces	Although it provides for the election of DTE leaders, it leaves the power to appoint them to the central authorities pending the organisation of urban, municipal and local elections.
13	Law N°. 08/012 of 31 July 2008 on the fundamental principles relating to the free administration of the provinces	It replicates the constitutional provisions on the election and co-option of provincial deputies as well as provincial governors and vice-governors.
14	Decree-Law N°. 196 of 29 January 1999 on the regulation of public demonstrations and meetings	A text unsuited to the democratic context because it institutes an authorisation regime whereas the Constitution has instituted an information regime since 2006.
15	Decree N°. 05/026 of 6 May 2005 on the operational plan to make the electoral process secure	It is a text that needs to be adapted today to the realities of the time.

Annex III.

Summary of proposed electoral reforms in the DRC

⁸² Articles 8 and 9 of the organic law on the CSAC.

⁸³ State of the Nation Address of 13 December 2019 to the Parliament in Congress.

⁸⁴ Petition for constitutional review filed with the Board of the National Assembly on 24 December 2020.

⁸⁵ Civil society benchmark for electoral reforms.

⁸⁶ Government Action Programme 2021-2023.

⁸⁷ A group of 13 political figures who launched a call for consensus on electoral reforms in 2020. Its members sitting in parliament had tabled a proposal to amend the electoral law in 2020.

⁸⁸ A member of the UDPS, he also tabled a bill to amend the electoral law.

⁸⁹ See General Report on the Electoral Process 2012-2019 and Annual Report 2020.

⁹⁰ Recommendations for electoral reform in the Democratic Republic of the Congo.

⁹¹ Final observation report on the 2018 and 2019 direct and indirect elections.

⁹² Final report of the presidential, legislative and provincial elections in the Democratic Republic of the Congo in 2018 and 2019.

⁹³ Harmonised presidential, parliamentary and provincial elections of 2018 in the DRC.

⁹⁴ He has tabled two bills to amend the nationality law and electoral law respectively.

⁹⁵ Review of the legal and institutional framework for elections in the Democratic Republic of the Congo, 2006-2019.

N°	Proposed reforms	Texts concerned	Interested actors
1	Two-round presidential election	Constitution of the DRC	<ul style="list-style-type: none"> • President of the Republic⁸³ • Parti Envol⁸⁴ • Civil society⁸⁵
2	Election of senators, governors and vice-governors by direct universal suffrage	Constitution of the DRC	<ul style="list-style-type: none"> • President of the Republic and Government⁸⁶
3	Dual nationality	Constitution of the DRC	<ul style="list-style-type: none"> • President of the Republic, Parti Envol
4	Ban on substitutes who are related to the candidate	Electoral law	<ul style="list-style-type: none"> • G13⁸⁷ • Deputy Coco Mulongo⁸⁸ • CENI⁸⁹
5	Corruption of voters through donations during the election campaign	Electoral law	<ul style="list-style-type: none"> • G13
6	Cumulation of candidacies for two elections of the same level	Electoral law	<ul style="list-style-type: none"> • G13 • CENI
7	Representation of women on candidate lists	Electoral law	<ul style="list-style-type: none"> • G13, IFES⁹⁰, SYMOCEL⁹¹, CENCO⁹²
8	Obligation to display and/or publish election results for each polling and counting station	Electoral law	<ul style="list-style-type: none"> • G13
9	Publication of the electoral map before the electoral timetable	Electoral law	<ul style="list-style-type: none"> • G13
10	Handing over of the minutes of voting operations to all witnesses and observers	Electoral law	<ul style="list-style-type: none"> • G13
11	Penalty for refusal to publish results office by office	Electoral law	<ul style="list-style-type: none"> • G13
12	Introduce reforms to provide for independent technical audits to assess key aspects of specific e-voting functions, including, but not limited to, the randomisation of electronic records, the content of digitised barcodes printed on each ballot paper, and the use of USB keys and SD cards.	Electoral law	<ul style="list-style-type: none"> • G13, IFES, SYMOCEL, Carter Center⁹³
13	Admissibility of lists in proportion to the 60% of seats in competition	Electoral law	<ul style="list-style-type: none"> • G13
14	Eligibility for sovereign positions limited to those born of Congolese "father and mother"	Nationality law and electoral law	<ul style="list-style-type: none"> • Deputy Nsingi Pululu⁹⁴
15	Voter registration and identification	Law on the identification and registration of voters	<ul style="list-style-type: none"> • CENCO and Carter Center
16	Distribution of seats	Law on the distribution of seats	<ul style="list-style-type: none"> • Denis Kadima, Jean-Louis Esambo and Mathieu Mérino⁹⁵

17	Measures to implement electoral law	Decision of CENI on measures to implement electoral law	• CENI
18	Extend by at least 2 weeks the deadlines for appeals for unsuccessful candidates (size of country, distance from constituencies)	Electoral law	• Proposal based on Abbot Lomandja's answers ⁹⁶
19	Allow members of security forces to vote in the name of the principle of universal suffrage	Electoral law	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
20	Make equality more effective in the constitution of candidate lists, in particular by introducing a quota for women candidates in deliberative political assemblies	Electoral law	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
21	Remove the provisions that prohibit any challenge to a court decision on eligibility disputes on the grounds of the right to appeal enshrined in the Constitution	Electoral law	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
22	Reduce the obligation for the Ministry of the Interior to publish the list of political parties and groupings authorised to operate (and compete in elections) in the country to 3 months before the submission of candidacies at the latest	Electoral law	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
23	Create a clear distinction between lifetime ineligibility for the most serious offences and temporary ineligibility for other offences as well as harmonise all periods of ineligibility contained in the law	Electoral law	• CENI, G13, Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
24	Set a single representativeness threshold of 5% to be eligible for the distribution of seats (the modalities of application of which would henceforth be detailed in the law), determined within each electoral district, for all competitors in order to guarantee, in accordance with the Constitution, the equality of all Congolese before the law and non-discrimination in terms of access to an elective mandate.	Electoral law	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
25	Regulation of political groupings	Law on political parties	• Denis Kadima, Jean-Louis Esambo and Mathieu Merino
26	Amendments to voting assistance (one person cannot assist more than one voter) to avoid any situation where the secrecy of the vote and the choice of the voter is generally undermined	Electoral law	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
27	Make it compulsory to print copies of the results sheet for all witnesses, observers and media representatives present at the polling station concerned	Electoral law	• G13, Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
28	Cover only activities carried out by political parties related to campaign funding	Law on the funding of political parties	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino.
29	Harmonise the rule for the distribution of seats for all elected assemblies on the basis of the number of voters rather than the number of inhabitants	Electoral law	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino

⁹⁶ Proposal made in the responses to the questionnaire for this research.

30	Incorporate an effective control mechanism regarding the use or non-use of public funds for campaign purposes	Electoral law	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
31	Introduce into electoral law the right of witnesses from political groupings to observe registration operations in the same way as witnesses from political parties	Electoral law	• Denis Kadima, Jean-Louis Esambo and Mathieu Mérino.
32	Allow parties registered 12 months before polling day to register their candidates during the CENI registration period	Electoral law	• Carter Center
33	Clarify the issue of appeals regarding the registration of applications	Electoral law and Law No. 16/027 on the organisation, competence and functioning of the courts of the administrative system	• CENI, SYMOCEL, Carter Center, Denis Kadima, Jean-Louis Esambo and Mathieu Mérino
34	Review the electoral deposit	Electoral law	• CENCO, Carter Center, LYREC
35	Appointment of all members of the Constitutional Court by the Supreme Judicial Council	Constitution and organic law of the Constitutional Court	• Abbot Lomandja



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**European Network
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Rue Stevin, 115
B-1000 Brussels, Belgium
info@eurac-network.org

www.eurac-network.org

 [@EurAc_Net](https://twitter.com/EurAc_Net)