

Countries at the Crossroads

Countries at the Crossroads 2012: Democratic Republic of Congo

Jason K. Stearns¹

Introduction

Recent years have seen a transformation of the Democratic Republic of the Congo from a dictatorship through two destructive wars into an embattled regime with authoritarian tendencies. Civil liberties have benefitted in some areas and suffered in others. While the country has profited from a slight expansion of democratic space in the past decade, with the first multiparty elections ever held in 2006, this positive trend was dramatically undercut by the deeply flawed 2011 polls, in which Joseph Kabila was re-elected for a second term despite massive irregularities.

This most recent crisis took place against the backdrop of a history marred by mass violence. Following thirty-two years of authoritarian rule under Mobutu Sese Seko, the country succumbed to a regional war in 1996. Troops from Angola, Rwanda, and Uganda invaded the country—then called Zaire—to hunt down insurgents who had established rear bases there. After toppling Mobutu in 1997, these countries placed rebel leader Laurent Kabila in power. The new president soon fell out with his former Rwandan and Ugandan benefactors, sparking a second, bloodier and protracted war in which nine African countries deployed troops on Congolese territory in support of local militias and armed groups. A 2002 peace deal signed under South African auspices reunited the country and ushered in a transitional government that included all major Congolese belligerents except for Mai Mai militias.

This new government drafted a new constitution, which was promulgated in 2006, and organized the first democratic elections since 1965. Joseph Kabila, who had been in power since his father's assassination five years earlier, won the 2006 polls in a run-off election with 58 percent of the vote. Despite some flaws, including, in particular, the use of state assets for campaigning and inequalities in campaign financing, the elections were widely hailed as well-organized and fair by international observers.² However, violence broke out in the capital on two separate occasions between the private bodyguards of Jean-Pierre Bemba, who came second in the elections with 42 percent of the vote, and troops loyal to Joseph Kabila. Bemba fled the country and was arrested shortly afterwards by the International Criminal Court for crimes committed in the Central African Republic.

The legislative elections that were held at the same time gave President Kabila's *Alliance de la Majorité Présidentielle* (AMP) and its allies a majority in parliament. This alliance was led first by Prime Minister Antoine Gizenga, the octogenarian leader of the *Parti lumubiste unifié* (PALU), and, after he resigned in October 2008, by fellow PALU member Adolphe Muzito.

In his first term, Joseph Kabila's democratic mandate was marred by abuses of power and ongoing fighting in the eastern Kivu region. Parallel chains of command undermined the consolidation of the rule of law, as real political and economic power continued to reside in a small clique of officials around the presidency.³ Many of the

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reforms mandated in the constitution were not implemented, including the holding of local elections, the decentralization of power to the provincial level, and the creation of three new national courts.⁴ The government showed signs of an authoritarian drift, as several prominent journalists and human rights activists were assassinated, mining and oil concessions were sold off in questionable deals, and little was done to remedy human rights abuses in the restive eastern regions. The killing of Floribert Chebeya, the head of the respected human rights group *Voix des Sans Voix* (VSV), in June 2010 was particularly alarming, as it allegedly involved high-ranking police officers.⁵

While GDP grew by 7 percent in 2010, it had little impact on the lives of most Congolese, who continue to languish in poverty. The country was ranked last in the world by the United Nations Human Development Index in 2011.⁶ The Congolese government has largely relied on foreign aid for development projects, leaving its own state institutions and state-run companies moribund. It has particularly relied on Chinese aid, including a \$6 billion minerals-for-infrastructure deal in 2007, which has led to a small number of infrastructure projects, such as the construction of important new roads in various parts of the country.

Despite the 2002 comprehensive peace deal, fighting continued in the east due to pervasive state weakness and the emergence of local armed groups linked to political elites or to grassroots grievances. Violence escalated in the Kivus region after the 2006 elections, as the government faced a continued insurrection by the *Congrès national pour la défense du peuple* (CNDP), an armed group led by ethnic Tutsi that received support from business and political elites in the eastern trade hub of Goma, as well as from neighboring Rwanda.⁷ The Kinshasa government deployed thousands of troops from the Armed Forces of the Democratic Republic of the Congo (FARDC) to suppress the rebellion. The conflict intensified as the Congolese government allied itself with local Mai-Mai groups, as well as Rwandan rebels from the *Forces démocratiques pour le libération du Rwanda* (FDLR).

The United Nations Mission to the Democratic Republic of the Congo (MONUC), created in 1999, deployed a majority of its 20,000 troops to the east. The peacekeepers, however, were politically sidelined after the 2006 elections and struggled to adopt tactics to enforce their mandate of protecting civilians in imminent danger.

The government concluded three separate peace deals with the CNDP after fighting first broke out with the rebels in 2004, including one following a peace conference in Goma in January 2008 that led to the integration of CNDP soldiers into the national army. None of the agreements, however, succeeded in bringing about the demobilization or integration of the CNDP. At the end of 2008, the Congolese government circumvented the CNDP and struck a deal with the Rwandan government. The agreement, the details of which remain secret, led the Rwandan army to arrest CNDP leader Laurent Nkunda and directed the Congolese government to allow Rwandan troops to deploy within its borders. As a result, around 20,000 CNDP troops and soldiers from other armed groups were integrated into the Congolese army, bringing the number of government troops based in the Kivus region to 60,000.⁸

The newly integrated forces then launched three operations against the FDLR between 2009 and 2011 in North and South Kivu. The operations led to the demobilization of around half of the FDLR's 6,000 troops, but also produced massive humanitarian suffering.⁹ In 2009 alone, military operations displaced 900,000 civilians

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and burned down 9,000 houses.¹⁰ The operations also caused popular resentment due to the powerful positions given to former CNDP commanders.¹¹

In late March 2012, the integration of the CNDP into the army collapsed, as a large number of ex-CNDP officers defected and launched a new rebellion, called the M23 after the March 23, 2009 peace agreement that they demanded be implemented. This mutiny gathered steam amid allegations that the Rwandan government was providing substantial support to the M23 and other armed groups in the eastern Congo.¹²

The political scene in 2011 was dominated by presidential and legislative elections, which were held on November 28. The polls were criticized by both local and international observers due to massive irregularities, including the disappearance of hundreds of thousands of votes, ballot stuffing, and confusion over the electoral register. Despite these irregularities, Joseph Kabila was declared the winner with 49 percent of the vote, ahead of Etienne Tshisekedi, who officially received 32 percent. Kabila was inaugurated for a second term on December 20, 2011.

Accountability and Public Voice

The 2011 elections were a significant step back from the 2006 polls, which included a number of procedural flaws. The 2011 ballot was expected to be more contentious, as the incumbent Joseph Kabila had lost support in his electoral heartland in the east due to the persistent violence there, and he faced a new challenge from veteran opposition leader Etienne Tshisekedi, who had boycotted the previous polls.

An electoral controversy began on in December 2009, when parliament passed changes to the by-laws of the election commission (CENI), allowing for a majority of election commissioners, including the body's president, to be named by the ruling party. This was in contrast with the previous commission, which consisted of formally neutral commissioners and a president who came out of civil society. Daniel Ngoy Mulunda, a spiritual advisor to President Kabila, became the new, embattled head. In contrast with the previous polls, the CENI was also more independent from donors, since the Congolese government was shouldering the majority of the funding.¹³

There were other deficiencies in the electoral law. Campaign finance, which Article 6 of the 2006 constitution suggests should be regulated by a law, was not monitored, creating an uneven playing field.¹⁴ The incumbent allegedly had much greater financial resources than his competitors, which made it easier for him to campaign across the vast country and co-opt local chiefs and authorities as allies. The electoral law also failed to implement constitutional provisions for gender parity, merely saying that such equality "should be taken into consideration."¹⁵ This was despite demands from women rights groups that parliament legislate "zebraed lists," in which women would alternate with men, guaranteeing much higher female representation. In the end, none of the 11 presidential candidates and only 10 percent of the legislative candidates were women.

Electoral wrangling escalated on January 25, 2011 when parliament approved an overhaul of the constitution by changing eight articles, and reduced the presidential polls to a one-round, plurality-wins affair.¹⁶ Given that the presidential vote was widely expected to be primarily split between pro- and anti-incumbent factions, the revision effectively pitted opposition candidates against each other and made it possible for Kabila to win the polls with only a small fraction of the vote. Meanwhile, debate intensified over

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the voters' register, as the CENI decided it would re-register all Congolese voters instead of just updating the electoral lists. Few observers from civil society or the opposition were on hand for the registration process, and a leaked confidential partial audit of the registration raised the possibility of wide-spread fraud.¹⁷ In the end, the election commission was unable to agree with the opposition on the terms of an official audit of the register. In the aftermath of the election, civil society and the opposition were fiercely critical of this re-registration process, claiming it had given the incumbent a "reservoir" of over two million fake votes.¹⁸

The haste with which the elections were being organized added to the controversy. CENI was racing to meet the constitutional deadline of December 6, 2011, by which point a winner to the elections had to be announced. Campaign groups, including the Kinshasa-based African Association for Human Rights (ASADHO) and the International Crisis Group, pushed for elections to be postponed so that logistical obstacles could be adequately addressed.¹⁹ However, CENI insisted on maintaining the date, as did the main opposition party, the *Union pour la démocratie et le progrès social* (UDPS). This added to disorganization on election day, as many polling stations did not have voting lists posted outside, as required by law; some had insufficient ballots; and others had no voting materials at all.²⁰ There were other massive irregularities across the country. Following accusations of fraud and ballot-stuffing, voters burned down dozens of polling stations in the central Kasai provinces.²¹

In some areas, security forces interfered in the electoral process. Already before the elections, security personnel had opened fire on opposition demonstrations in Kinshasa, killing at least 18 people.²² The army took over security in the capital for polling stations from the police in some areas, while in Masisi (North Kivu province) ex-CNDP soldiers reportedly forced thousands of voters to vote for their candidates. For example, according to Human Rights Watch and local journalists, officers loyal to Gen. Bosco Ntaganda, the head of the ex-CNDP in the Congolese army, killed local leaders and intimidated voters in an effort to promote candidates of their picking.²³ There were also reports of witnesses of political parties being chased out of polling stations by soldiers or police. According to Human Rights Watch, within several weeks of results being announced, security forces had killed at least another 24 people and arrested dozens of others in elections-related incidents.²⁴

The presidential elections were denounced by many independent observers for numerous flaws. The Carter Center denounced the poll, saying "the results lack credibility,"²⁵ while the Catholic Church in the Congo declared that the results "do not conform either to truth or to justice."²⁶ The European Union observer mission also denounced the flaws in the polls. Observers from various African regional bodies were much less critical.²⁷

The legislative elections were also plagued by allegations of fraud. Electoral officials were arrested following accusations of fraud in North Kivu and Ituri, and many other allegations of fraud surfaced elsewhere.²⁸ Given the controversy surrounding the presidential elections, the CENI decided to suspend the compilation of legislative results between December 13 and 27, 2011 and invited international advisors to assist in the compilation process.

Despite these allegations, President Kabila was sworn in for a second term in December 20, 2011, in front of ambassadors from most major donors and regional

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countries. The electoral cycle is scheduled to continue in 2013, with five more rounds of direct and indirect elections for provincial assemblies; governors and senators; sector, chiefdom and municipal councilors; urban councilors, sector chiefs and bourgomestres; and mayors. The electoral calendar was once again postponed in June 2012, and serious doubts remain regarding the financing and organization of these subsequent rounds of elections. Donors have demanded that reforms be carried out, including the naming of a new election commissioner, before they contribute to the financing of the elections. Local elections, which are due to take place in November 2013, are particularly sensitive, as they will circumscribe the power of customary chiefs. The government's reluctance, however, to carry out the decentralization required by the constitution, including the retention of 40 percent of revenues at the provincial level, has called into question the power of these local and provincial authorities.

The 2006 constitution provides for sufficient oversight mechanisms between the three branches of government, however these provisions are not rigorously applied. In addition, the constitutional amendment of January 2011 undermined some of these checks and balances, giving the president the power to dissolve provincial assemblies and placing public prosecutors underneath the authority of the ministry of justice. These changes were carried out despite the fact that the constitution prohibits any changes to compromise the independence of the judiciary.

Under the leadership of speaker Vital Kamerhe, parliamentary sessions were televised in the capital and debate was largely perceived to be cordial and constructive between the majority and opposition. Nonetheless, after Kamerhe was pushed out and replaced by Evariste Boshab, following a disagreement with the presidency in March 2009 over Rwandan troop deployments in the east, the parliament became less vibrant.

The 2007-2011 legislature was lauded for the many laws it drafted and approved, but was equally criticized for its lack of effective oversight of the executive.²⁹ The main reason for this lack of oversight was the ruling coalition's dominance—332 of the 500 parliamentarians belonged to the ruling AMP coalition. While parliament carried out several investigations—a total of 24 between January 2007 and December 2009, for example³⁰—and called on ministers to explain allegations of abuse, none of these inquiries resulted in sanctions. In several instances, well-documented cases of government abuse were glossed over, for example when Minister Nkulu Mitomba was exonerated despite documentary evidence for having authorized an unsafe aircraft to fly in 2007.³¹ During 2009, several unsuccessful motions were tabled by parliamentarians to censure the ministers of transport, foreign affairs, and communication, as well as the prime minister himself. According to the International Crisis Group, "...it is now common practice for the regime to pay parliamentarians to approve legislation, propose or reject motions against members of the government or provincial governors."³² In addition, none of these investigations have examined the many accusations of corruption and abuse lodged against the security forces deployed in the East of the country.

The balance of power between the central and provincial governments has also been a subject of controversy. The 2006 constitution requires the government to create 26 new provinces out of the current 11 and to substantially decentralize political and financial responsibilities, including by allowing provinces to manage 40 percent of revenues. These provisions were, however, never implemented, as the central government refused to retrocede the full 40 percent and did not hold local elections. Further fears of

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an authoritarian drift were raised by the constitutional revisions that were rushed through parliament in January 2011. The president now has the ability to dissolve provincial assemblies and replace provincial governors; the question of term limits was also tabled and never voted on. While the ostensible reason for these changes was grounded in the often chaotic dynamics of provincial politics, the executive's increased power will make it even more difficult for provinces, in particular where the opposition is strong, to mark their autonomy.

The central government's interference in provincial politics has been compounded by the weakness of the political opposition. While the opposition was in a position to control at least five of the 11 governorships, the ruling coalition was able to marginalize their opponents through a mixture of corruption and intimidation, eventually taking control of all 11 provincial executives.³³ As governors are elected by provincial assemblies, the ballot is much easier to influence through intimidation and corruption than a direct vote, and credible allegations of such foul play have abounded.³⁴

The leadership of the civil service in the Congo is often beholden to political interests, in particular in the ministerial cabinets, and much of the rest of civil service is susceptible to political influence, undermining meritocratic promotion.

The simultaneous weakness and authoritarian nature of the Congolese state occasions many paradoxes. One of these is that the Congo is home to a vibrant civil society, consisting of thousands of non-profit organizations that often supplant state functions, but that these same groups often face harsh repression. Civil society organizations regularly criticize the government on the internet, in reports, and over the radio. Their rights are guaranteed by the constitution, and a new law to protect human rights defenders was passed by the Senate in August 2011. Most of these organizations' funding comes from foreign donors. There have been no recent reports of obstacles for donors in funding local non-profits. However, the rights of these organizations are often not respected. In June 2010, prominent human rights defender Floribert Chebeya was assassinated in Kinshasa. A senior police officer was found guilty of committing the murder, although advocacy groups complained that the head of the police, Inspector General John Numbi,³⁵ had been let off too easily. Numbi is seen as a close ally of President Kabila, which could explain the reluctance of the prosecution to press charges against him. This murder followed the assassinations of another human rights campaigner, Pascal Kabungulu, in 2005 and of four journalists since 2007. Human rights groups regularly complain of anonymous death threats and harassment by authorities.³⁶

In the aftermath of the controversial 2011 elections, numerous civil society groups called for the polls to be annulled and for new elections to be held.³⁷ This direct questioning of the legitimacy of the president could lead to increased harassment by authorities.

The media landscape is also characterized by a similar mixture of freedom and repression. There are dozens of media outlets in the Congo. While newspaper distribution is largely confined to the capital and Lubumbashi, most larger towns receive television broadcasts, and people across the country tune into radio stations. Newspapers regularly criticize the government, sometimes vociferously.

While the media is active and frequently critical, journalists often suffer persecution. According to the Congolese media rights group *Journaliste en Danger* (JED), there were 160 violations of press freedom in 2011, ranging from the murder of a

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reporter in North Kivu in June 2011 to 42 arrests and 57 threats.³⁸ This is compared with 100 such violations documented in 2010.³⁹ These violations are complicated by the fact that many media outlets are owned by political parties or the government, producing a very conflictual environment.

In part, the increase in press intimidation from 2010 to 2011 was due to the elections. On September 5, 2011 Radio Lisanga Television (RTLTV), which is owned by an opposition leader, was set on fire by armed men following demonstrations by the opposition in the capital. The station had previously been taken off the air in July by the media regulator for allegedly inciting violence. Shortly after the elections took place, the government banned the use of SMS messaging to prevent rumor-mongering. It also took the French broadcaster Radio France International (RFI) off the airwaves for allegedly inciting hatred. Both of these bans were in place for around a month, although RFI had been taken off the air in 2010 for almost a year. RFI's main correspondent to the Congo, Ghislaine Dupont, has also been barred from coming to the Congo since 2006, one of the very few foreign journalists or activists who have been subject to such action.

A media regulatory authority, the *Conseil supérieur de l'audiovisuel et la communication* (CSAC), was set up ahead of the elections, but it only had three weeks to prepare for the election campaign. It sanctioned 30 instances of media abuse, including that against RTLTV, but was accused by civil society and opposition parties as being partial toward the incumbent.⁴⁰ In particular, it did not react to the almost non-stop coverage of President Kabila by the national TV and radio station, *Radio Télévision National Congolaise* (RTNC), nor to the many posters of the incumbent plastered on public buildings.

Before the creation of the CSAC, the law that regulated the media and provided a basis for libel suits dated back to 1996, and was established under Mobutu's regime. While the law forbids insulting the head of state and public officials, it has rarely been implemented in recent years. A new law, commonly called "Loi Mutinga" was passed by parliament in June 2011, but has yet to be put into effect. It decriminalizes violations of press standards by making them civil rather than criminal cases.

The state has not been involved in censoring internet sites, although only a small percentage of the Congolese population has access to the web. Politicians from across the spectrum are known to provide money and other benefits to journalists in return for favorable coverage.

Civil liberties

Congolese civilians have been victims of thousands of violations of their rights over the past two years, including murder, arbitrary arrest, and rape. A majority of these abuses were caused by military operations in the east of the country, as civilians were either caught in the crossfire or targeted in reprisal attacks by the national army or rebel groups. One of the groups, the Lord's Resistance Army (LRA), was particularly brutal, carrying out numerous raids in the northwest of the country, killing 604 people and abducting 473 in 2010, bringing the number of dead to 2,000 and those abducted to 2,600 since the group entered the Congo in 2008.⁴¹ In 2011, the group began moving out of the Congo into neighboring Central African Republic, but they nonetheless carried out many attacks in the Congo in that year, killing several dozen.⁴² The Congolese army has continued to

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downplay the LRA threat, saying that the group is no longer present in the country. One of the largest challenges to security still comes from the Congolese army itself, which continues to be responsible for most human rights abuses in many areas.⁴³

In the Kivu provinces, two offensives by FARDC and MONUC were launched against the FDLR armed group in 2009 and 2010, named Kimia Kimia I and II. These offensives triggered a series of retaliatory abuses, often targeted at civilians. In 2010, several large massacres of civilians took place, including one of 105 civilians in Masisi territory by recently integrated CNDP troops. In that same year, a number of FDLR members and a local militia carried out a mass rape of over 100 women in Walikale territory. Rapes continued the following year, with up to 220 women raped on two separate occasions in Fizi territory by government soldiers.⁴⁴ The United Nations reported 7,685 cases of rape in the country in just the first six months of 2010, whereas a statistical study based on a demographic survey argued that up to 400,000 women could have been raped in 2006 alone.⁴⁵

By the end of 2011, around a dozen armed groups remained at large in the eastern Congo, and showed little sign of demobilizing. The groups survive by taxing the local population, including the mineral, palm oil, cannabis, and timber trade. The United Nations has documented complicity between these armed groups, the national army and local politicians.⁴⁶

Legal protection against abuses committed by the state is enshrined in the Congolese constitution, but until recently there has been scant possibility for recourse. In part, this is due to a lack of resources—Congolese prosecutors are desperately understaffed and lack even the most rudimentary equipment. The government allocated only 1.27 percent of its budget to justice, a third of the amount placed at the disposal of the presidency.⁴⁷ Human rights groups have also complained about the lack of political will to put senior officers on trial.⁴⁸

The situation remains dire in other areas of justice, as well. The state has not taken effective steps against human trafficking, and children continue to be abducted and recruited as soldiers. The United Nations documented 447 children recruited into armed groups in 2010, down from around twice that number the previous year.⁴⁹

Long periods of pre-trial detention in prisons are the norm, despite legal provisions requiring prisoners to be tried within 15 days of arrest, with a maximum of three month-long extensions. As many as 75 percent of detainees are awaiting trial, and many courts do not respect Congolese law regarding pre-trial detention.⁵⁰ Numerous jailbreaks were reported in 2010 and 2011, including one involving nearly 1,000 prisoners in Katanga province in September 2011.

Despite the ongoing challenges in the justice sector, some progress was made in legislation regarding the administration of justice in recent years. On July 20, 2011 President Kabila signed the Law Penalizing Torture, which makes torture a separate offence. Furthermore, the government has expressed its willingness to create specialized chambers within the Congolese court system to investigate crimes against humanity committed since the democratic process began in 1990, although the minister of justice's attempts to push through legislation in this regard have failed thus far.⁵¹ The Congo was also one of the first countries to ask the International Criminal Court (ICC) to investigate crimes committed on its territory. Five Congolese nationals have been arrested and are being tried in The Hague for war crimes and crimes against humanity, including Thomas

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Lubanga, a formal rebel leader and the first ICC indictee, and Jean-Pierre Bemba, the former leader of the opposition.

Women are guaranteed fundamental rights by the 2006 constitution. However, the lack of implementing laws and the dominance of custom in many areas of life has allowed deep-rooted discrimination to persist. The constitution states in Article 14, “the state shall have the duty to ensure the elimination of all forms of discrimination against women and ensure the respect and promotion of their rights.” Likewise, the state must “take measures to address all forms of violence against women in public and private life,” and assure the “full participation of women in the development of the nation” particularly guaranteeing the “right to significant representation in national, provincial, and local institutions.” Nonetheless, other areas of Congolese law still discriminate against women. For example, the family code decrees that men are the head of the household and women must obey them. The legal minimum age for marriage is only 15 years for women and 18 for men, contributing to a high rate of child marriages. Women are also discriminated against with regard to ownership rights. Married women do not have the right to sign certain acts and contracts without the consent of their husbands, and while they are in theory equal in terms of inheritance law, customary practices often lead women to be disowned.⁵²

The constitution required the government to work towards gender parity in national institutions, but the legislature has not passed laws to implement this. In the 2007-2011 legislature, only 8 percent of parliamentarians and 11 percent of cabinet ministers were women.⁵³ The electoral law contains contradictory provisions for gender parity on electoral lists, ultimately not requiring political parties to put forward a given percentage of women. Women are also underrepresented in the labor force, although the Labor Code of October 2002 provided for greater equality of women in front of the law, including by banning discrimination in wages.

There are over 250 different ethnic groups in the Congo, none of which accounts for more than a small fraction of the population. This makes it difficult for any one ethnic group to gain overwhelming political power. In addition, the Congolese constitution forbids ethnic discrimination and commits the state to promote ethnic coexistence.⁵⁴ Discrimination, however, often takes place at a provincial level, and to a certain degree within the state apparatus. The state does not have any official procedures or commission to prevent ethnic discrimination, and no lawsuits have been filed on this basis in the recent past. President Joseph Kabila is from northern Katanga, and many key members of his government and security forces are also from that province, although there is no overt discrimination and many other ethnic groups are represented at high levels of government.⁵⁵

The 2011 election campaign resuscitated local ethnic tensions, in particular in Katanga and the Kivus. In southern Katanga, a few instances of xenophobic violence targeted members of the Luba community, many of who supported opposition leader Etienne Tshisekedi. In the Kivus, Tshisekedi’s UDPS party rallied anti-Rwandan sentiment against President Kabila, claiming he is a foreigner.

There are several hundred thousand Kinyarwanda-speakers in the eastern Congo, many of who are descendants of people who immigrated to the Congo generations ago from Rwanda. There are long-standing tensions between these communities and other local communities over land and political power. The two wars between 1996-2003,

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along with the subsequent rebellions in the east, have exacerbated these tensions due to the prominent participation of Kinyarwanda-speakers in the various rebellions. The CNDP armed group has been particularly insistent on the promotion of minority rights, demanding increased local autonomy for certain areas in the eastern Congo and better representation at the local and national level. In part, the concerns of these communities were addressed by the 2006 constitution and a law on citizenship passed in 2004, both of which gave a broad interpretation of who could claim citizenship. In addition, the de facto acceptance of anyone with a voter identification card as a Congolese citizen reassured many in these minority communities of their rights following the 2005 voter registration drive. However, the disproportionate representation of Hutu and Tutsi officers in the police and army, as well as the history of violence perpetrated by their armed groups, have caused resentment against these communities to fester. There is a long history of violence and hate speech against this so-called rwandophone population, including targeted massacres and arrests, especially in the run-up and during the 1996-2003 wars.

Another group that has faced persistent discrimination is the pygmies, called Bambuti in many areas in the Congo. There are an estimated 600,000 pygmies in the country, and they are often marginalized socially and have poor access to education and political power.⁵⁶ They rarely have customary rights to land, and during the war armed groups often targeted them.

Approximately 50 percent of the national population is Roman Catholic, while 20 percent is mainline Protestant, although in some places these beliefs are mixed with traditional animist religion. The Kimbanguist Church, which practices a indigenized form of Christianity as preached by the prophet Simon Kimbangu, is influential, in particular in the far west of the country, and is followed by around 9 percent of the population. There is also a small Muslim minority in some provinces in the east, in particular Maniema, as well as in Kinshasa. There have been no known cases of religious discrimination in recent years, although some church leaders have become involved in politics and have faced persecution by the state.

The right of assembly is guaranteed by the Congolese constitution. To hold demonstrations, organizers are required to inform authorities, but do not need to ask for official permission. Organizers regularly invoke this right and hold demonstrations. Non-governmental organizations (NGOs) and the political opposition organize most of these demonstrations. Unions were banned under Mobutu's rule, but became an important part of the democratization movement in the early 1990s. Today, many unions have been politicized, but they nonetheless organize regular strikes to demand for better pay and conditions, in particular in the educational and justice sector.

Despite the constitutionally guaranteed right to hold demonstrations, authorities regularly violate the freedom to assemble. In the run-up and wake of the 2011 elections, the police regularly dispersed protests in the capital Kinshasa, sometimes resorting to deadly force. On November 26, 2011 presidential guard members opened fire on crowds that had gathered to wait for opposition leader Tshisekedi at the airport in the capital Kinshasa, killing at least 12 people.⁵⁷ Curfews were also imposed and demonstrations banned in various cities in the central Kasai region to prevent the UDPS opposition from organizing protests.

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Rule of Law

The Congolese constitution guarantees the independence of the judiciary, and in 2008 parliament passed a law creating the High Council of Judges, a regulatory body in charge of naming, sanctioning, and promoting judges that the constitution of 2006 brought back into existence. However, the body is still underresourced and, with more than 100 members, difficult to coordinate and mobilize effectively.⁵⁸ There have also been many instances of executive interference in recent years.

The judiciary has also shown few signs of having the resources or political will necessary to be an effective counterweight to the executive. The constitution calls for the creation of three new courts to replace the Supreme Court: a Constitutional Court, a State Council, and a Court of Appeals, but five years after the constitution was adopted these reforms are still outstanding. In the meantime, there have been several instances of interference with the independence of the judiciary. In February 2008, 92 judges were replaced by 26 newly promoted appointees, followed by the dismissal of a second group of 90 jurists and the forced retirement of 1,212 others in July 2009.⁵⁹ These changes did not reportedly follow due process and were criticized by human rights groups.⁶⁰ In October 2011, in the run-up to elections, the presidency was also criticized for naming 17 new judges to the Supreme Court just six weeks before elections, prompting allegations that he was trying to undermine the independence of the body mandated to deal with electoral disputes.⁶¹

The extensive use of military courts, even to try civilian cases, also forms an obstacle to the independence of the judiciary. Military judges can be influenced by their military hierarchies, especially when the accused are high-ranking military officers, as Congolese law stipulates that officers can only be judged by their superiors. In several cases the government has interfered in prosecutions, as in January 2009, when the minister of justice wrote to bar military prosecutors from investigating abuses committed by CNDP soldiers.⁶² According to a 2009 evaluation carried out by Lawyers Without Borders, only 13 cases of military abuse had been successfully tried, only three of which involved senior military officers.⁶³ Since then there have been several other cases tried, including of Colonel Kibibi Mutware, who was sentenced to death for mass rape in Fizi in January 2009.

The independence of the judiciary suffered another blow through the constitutional revision of January 2011. One of the changes gave the ministry of justice direct control over the office of the public prosecutor. While similar provisions exist in many countries, Article 220 of the 2006 constitution explicitly forbids any constitutional revision that impinges on the independence of the judiciary.

Congolese courts regularly disrespect rules of due process, including the right to counsel, presumption of innocence and the right to a speedy, free trial, either due to direct meddling by officials in the judicial system or a lack of resources. The lack of resources is a particularly striking challenge. According to a 2005 NGO audit of the justice sector, an estimated 80 percent of the population does not have access to courts.⁶⁴ The High Council of Judges has lamented the lack of judges and other judicial officials across the country⁶⁵—in all of Maniema province, for example, there were only six judges to serve a population of almost two million, while there were only 10 for a similar population in

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Kwilu district.⁶⁶ This situation was partially remediated on August 31, 2010, when a thousand new judges were sworn in and deployed across the country, bringing the total of judicial officials to 3,700 for a country of 68 million.⁶⁷ Nonetheless, serious imbalances remain in the distribution of judicial personnel, with most deployed in urban areas, in particular the capital. This lack of resources means that for the majority of the population, abuses and disputes are adjudicated by customary courts or not at all.

Property rights and contracts are guaranteed by the constitution, but are regularly flouted by authorities. According to the World Bank's *Doing Business in the World 2012* report, which ranks the Congo at 178th place out of 183 economies, enforcing a contract in the Congo can take up to 610 days, include 43 procedures and cost 151 percent of the value of the claim.⁶⁸ For corporate investors, property rights came sharply into relief between 2007 and 2010, during the renegotiation of mining contracts that had been signed during the war. While most mining companies reached agreements with the Congolese government, the Canadian mining company First Quantum had a large mining concession expropriated in 2010, leading to a legal battle in an international arbitration court. This led risk premiums for international investors to rise by 40 percent.⁶⁹

In December 2009, Congolese parliament approved the Congo's accession to the Organization for the Harmonization of Business Law in Africa (OHADA), which should reinforce investor confidence in the Congo. President Kabila signed the accession into law in February 2010, however the government has since ordered that judges be trained in OHADA law before implementing its provisions.

For the majority of Congolese, property rights translates into owning a plot of land. Some estimates are that as much as 97 percent of land in the Congo is held and managed through customary tenure, and a majority of disputes reported to administrators and courts in many areas relate to land.⁷⁰ This, in turn, fuels ethnic tensions when customary chiefs from one ethnic community refuse property claims of another ethnic group. The lack of legal title to land has also allowed more affluent land owners to expropriate land from peasants by bribing land registry officials.

Anticorruption and Transparency

Transparency International's Corruption Perceptions Index ranked the Congo 168th out of 183 countries in 2011 with a score of 2.0 out of 10, the same score it had received five years previously.⁷¹ The Congolese business climate is encumbered by a plethora of taxes and regulations that make bribery an essential part of many business strategies. According to the World Bank, if a business pays all of its taxes, it will consume 339 percent of its profits—in other words, tax evasion is an economic imperative.⁷² In an effort to reduce the burden on companies, the government replaced sales tax with a value-added tax in 2011.

President Kabila has on numerous occasions made reducing corruption a priority of his government. In September 2009, he launched a “zero-tolerance” campaign, which included the creation of a Financial Intelligence Unit to combat money laundering and financial crimes.

The Congolese penal code forbids all forms of corruption and, in Articles 147-150, it specifically bans the abuse of public office for personal gain, punishable by up to

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15 years in prison. During the “zero-tolerance” campaign the government dismissed several high-ranking civil servants for corruption, including a minister and the head of a state-run company; however, few officials have been successfully prosecuted in courts.⁷³ In addition, a whistle-blower working for the national tax agency was dismissed, allegedly for having denounced suspected large-scale tax evasion by a multinational company.⁷⁴

Embezzlement continues to cost the state hundreds of millions of dollars a year. A Congolese Senate commission concluded that the state was losing \$450 million in taxes from the mining sector alone.⁷⁵ This loss on tax revenues is dwarfed by the potential loss in state assets that were sold at concessionary prices. For example, between 2008 and 2011, the incumbent government was accused of having been involved in the sales of mining concessions that were undervalued by \$5 billion in return for kickbacks.⁷⁶ A national assembly commission also found that \$23 million in signing bonuses from a \$6 billion mining-for-infrastructure deal with the Chinese government had been embezzled.⁷⁷

Smuggling of minerals is rife, often in complicity with armed groups or corrupt army officials. According to a United Nations report, smuggling of mineral ore increased in 2011 across the border to Rwanda. The report estimates that General Bosco Ntaganda, who has been indicted by the ICC for war crimes but continues to serve in the Congolese army, makes around \$15,000 from this smuggling each month.⁷⁸ The report details the involvement of many other senior army officers in racketeering and smuggling in the eastern Congo. While the Congolese military code forbids this kind of abuse of office, none of these excesses have been punished.

There have, however, been improvements in the country’s regulatory framework. The senate adopted a new public finance law in June 2011, which aims to improve the management and transparency of public expenditures. The bill includes provisions for more accountable budget reporting intended to streamline the budgetary process.

Several steps have also been taken to increase transparency, especially in the natural resources sector. In May 2011, the Congolese government decreed that all contracts relating to natural resources must be published within 60 days of being signed. Many of the contracts were subsequently placed on the website of the ministry of mines, although the state-run mining company Gécamines has refused to publish some of its contracts, citing confidentiality clauses.⁷⁹ In March 2010, the Congolese government also published its first Extractive Industry Transparency Initiative (EITI) report, making it “close to compliant.” Nonetheless, it had failed by the end of 2011 to take the remedial action required by the EITI Board, which extended its candidacy for another 18 months.⁸⁰

According to Article 99 of the Congolese constitution, the president and members of government have to declare their assets to the constitutional court upon entering and leaving office. However, there has been no implementing legislation to this effect, and neither civil servants nor parliamentarians are subject to these rules.

In October 2009, the Congolese government set up a special unit in charge of money laundering and financial crimes, called the *Cellule nationale des renseignements financiers* (CENAREF), falling within the remit of the ministry of finance. This new service, which has not been very active since its creation, comes as a complement to existing financial investigative bodies, including the Inspectorate of Finance, which carries out investigations for the ministry of finance, and the Office of the National

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Auditor (*cours de comptes*), which can be tasked by the national assembly to investigate the government's financial management. All criminal cases, however, are supposed to be referred to and investigated by the justice system. Only a handful of cases of corruption have been prosecuted in recent years.

Congolese law does not have any particular provisions to protect whistleblowers or to give redress to victims of corruption. There is also no special anti-corruption court or "czar." Congolese media, however, do regularly report on and expose instances of corruption, although this does not usually lead to any legal action. Corruption is particularly rife in education, with many reports of students having to bribe their teachers to get good grades, although there are also many reports of students cheating on exams.

The government lacks transparency in many areas. It can even be difficult for citizens to get hold of recently passed legislation or decrees, although the appearance of websites for different ministries—of justice, mining, finance and budget, for example—has begun to remedy this. While laws are all published in the *Journal Officiel*, there is no comprehensive website that collects all Congolese legislation.

There are no specific laws that guarantee a legal right to information, such as a freedom of information law. While the government is progressively publishing more information regarding revenues from natural resources to comply with the EITI and International Monetary Fund requirements, many areas of revenue gathering remain opaque. The published budget, for example, lacks a break-down of revenue streams from the various fiscal agencies. The national auditor (*cours des comptes*), which audits the execution of the budget for the national assembly, does not have a website and has not published comprehensive audits in the past few years due to budgetary constraints.

The government has been working to reach the Highly Indebted Poor Country (HIPC) completion point and to receive debt relief. This push has resulted in a series of financial reforms. A new public procurement law, prepared with help from the World Bank and Canadian Cooperation, was passed on April 27, 2010. The legislation aims to improve transparency, including by mandating the broad publication of all procurement opportunities, as well as creating independent complaints and review mechanisms. The law also ushered in two new regulatory agencies, the *Agence de régulation des marchés publiques* (ARMP) and the *Direction général de contrôle des marchés publiques* (DGCMP). Prior to the creation of these institutions, the *Bureau Central de Contrôle* (BCECO) already existed to coordinate donor lending and to manage all procurement of donor-led projects.

Recommendations

- The government should reform the electoral law to reduce the politicization of the election commission, including by re-establishing a role for civil society in the commission and canceling provisions that allow nominations to be made by political parties.
- The government should create a special cell within the military prosecutor's office charged with investigating financial abuses committed by security personnel and collaborate with the United Nations Group of Experts on prosecutions.

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- The government should increase transparency by placing national and provincial parliamentary voting records, disaggregated revenue sources, laws and decrees, and land registry records in easily-accessible online databases.
- The government should fast-track security sector reform by reviewing salary scales together with major donors, confining troops that are not deployed in military operations to barracks, and providing greater resources and independence to military prosecutors to investigate abuses.
- The government should implement the reforms envisioned by the 2006 constitution, including by passing implementing legislation on decentralization, gender parity, campaign finance reform, the creation of new courts, and security sector reform.

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