DEMOCRACY AND ELECTIONS IN AFRICA IN THE DEMOCRATIC REPUBLIC OF CONGO: LESSONS FOR AFRICA

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1 INTRODUCTION

Since its independence from Belgium on 30 June 1960, the history of the Democratic Republic of Congo\(^1\) (DRC) has been a succession of coups d’état, secession attempts, and aggression by foreign troops, civil wars, rebellions, lootings, authoritarian regimes, United Nations (UN) interventions, and national conferences or dialogues.\(^2\)

On 24 November 1965, General Mobutu Sese Seko seized power by coup d’état and later established the Mouvement Populaire de la Révolution (MPR) as a single party in the country. In May 1997, his regime was toppled by the rebels of the Alliance des Forces Démocratiques de Libération (AFDL) led by Laurent Désiré Kabila. An armed conflict broke out between 1996 and 1997 in the former Zaire. This conflict was not only a rebellion but also a foreign aggression financed by Mobutu’s erstwhile Western allies and supported by his foes in the central and Southern African regions, notably the leaders of Ruanda, Uganda, Angola, Burundi, Namibia, Zimbabwe and even South Africa.\(^3\) In August 1998, Ruanda and Uganda supported a new rebellion and invaded the DRC, as Laurent-Désiré Kabila no longer served their interests. This time around, the Kinshasa regime could count on Angola, Namibia and Zimbabwe. The DRC was once more at war. It became the battle ground for many national armed forces and foreign armies siding with either Kabila or with his opponents in the rebellion. In the words of Howard Wolpe, the then US Special Envoy to Africa’s Great Lakes region, the DRC war was ‘the most widespread interstate war in modern African history,’\(^4\) considered by some analysts ‘the African equivalent of World War I’ and labelled ‘the African war.’\(^5\)

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\(^1\) Hereinafter the DRC.
\(^2\) Thandika Mkandawire ‘Introduction’ in Mbaya Kankwenda (ed) Le Zaïre vers quelles destinées? (1992) at IX-X.
The UN intervened by establishing the UN Mission in the Congo (MONUC), as they did in the 1960s with the UN Force in the Congo (ONUC) to end the first Congolese crisis.6

Some forty years on, the country has therefore gone from one DRC to another DRC,7 and from a crisis of the Congo in the 1960s to another crisis of the Congo in the 1996-1997, with actors nearly identical to the ghosts of the past.8 The political and constitutional history of the Congo has been repeating itself in a vicious circle of coups and counter-coups, rebellions, mutinies, roundtables, and unconstitutional regimes, all unfolding simultaneously as both tragedy and farce.9

To bring the recent DRC crisis to an end, international efforts within the UN, the Organisation of African Unity (OAU)/African Union (AU), and the European Union (EU) and key powers such as Canada, Belgium, the former colonial power, Britain, France, the USA, encouraged the Inter-Congolese Dialogue (ICD) that was hosted by South Africa in Sun City between 2002 and 2003.10 In 2002, Congolese leaders from the government, the different rebel groups and civil society adopted a global and inclusive agreement that was finally signed in Pretoria on 17 December 2002.11 This agreement was later adopted by the ICD and based on it the ICD adopted an interim constitution on 2 April 2003. The Interim Constitution came into force on 4 April 2003 after President Joseph Kabila assented to it.12 In May 2005, Parliament adopted the final Constitution. This Constitution was approved by popular referendum held on 18 and 19 December 2006 and entered into force on 18 February 2006.13 Shortly after the promulgation of the 2006 Constitution, the DRC Parliament adopted the Electoral Act, which the President assented to on 9 March 2006.14

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6 André Mbata B Mangu ‘From war to peace: the Democratic Republic of Congo in transition’ at 160-163.
7 In 1972, President Mobutu changed the name of the country from DRC as it was known at independence to Zaire in line with his policy of authenticity that outlawed foreign names and denominations and rather favoured African, traditional and pre-colonial names. When he came to power in May 1997, President Laurent-Désiré Kabila renamed the country that recovered its previous name as ‘DRC.’
8 Thandika Mkandawire ‘Introduction’ op cit at IX-X.
9 Idem.
10 André Mbata B Mangu ‘From war to peace: the Democratic Republic of Congo in transition’ at 160-168. The ICD opened in Addis-Ababa in October 2001, but could not finish its work due to financial problems and disputes over parties’ representation. It then moved to Sun City, South Africa, where it was reopened on 25 February 2002. It was adjourned on 19 April 2002, as the participants could not reach an inclusive agreement after 52 days of negotiation. Several initiatives of mediation among the Congolese parties resulted in the resumption of the dialogue in Sun City on 1 April 2003. They finally agreed on a draft constitution to govern country during a transitional period of 24 to 26 months. The draft Constitution, which was signed into law on 4 April 2003, was based on the Global Agreement signed by the parties in Pretoria, RSA, on 17 December 2002 and provided for a government of national unity during the transition. The latter was to end with the organisation of free and fair elections.
11 André Mbata B Mangu ‘From war to peace: the Democratic Republic of Congo in transition’ at 166.
12 André Mbata B Mangu ‘From war to peace: the Democratic Republic of Congo in transition’ at 168.
14 Act no 06/006 of 9 March 2006 relating to the organisation of presidential, legislative, provincial, urban, municipal and local elections. Hereinafter the ‘Electoral Act.’
The Electoral Act was to be enforced by the Electoral Independent Commission (EIC). This Act and the relevant provisions of the Constitution constituted the electoral laws and governed the elections that where held in 2006 in order to establish or rather consolidate democracy in the DRC.

Against this background, this article purports to reflect on democracy and elections in Africa. It will first examine the electoral laws and systems in the DRC. It will then discuss the 2006 DRC elections. Municipal and local elections are still forthcoming and are therefore out of the scope of this article. Out of the DRC case, the article will engage with the concepts of democracy, multipartysm and elections, which are the key concepts of the study, and draw out lessons on democratic consolidation for the African continent as a whole. It will end with a brief conclusion.

2 ELECTORAL LAWS AND SYSTEMS IN THE DRC

The rules that governed the electoral process in the DRC were to be found in the Constitution, in the Electoral Act, and in a number of decisions and guidelines set up by the EIC. It is worth examining these laws and the electoral systems provided for the presidential, legislative, and provincial elections prior to dealing with the elections.

2.1 ELECTORAL LAWS

The 2006 Constitution provides that national sovereignty is vested in the people. All power emanates from the people who exercise it directly by referendum or elections and indirectly by their representatives. An Act of Parliament sets up the conditions for the organisation of the referendum and the elections. Suffrage is to be universal, equal, and by secret ballot. With the exceptions established by the Constitution, all Congolese citizens, male or female of 18 years old and enjoying their civil and political rights are entitled to vote or to be elected. Political pluralism is recognised. Any Congolese citizen enjoying his civil and political rights is entitled to create a political party or to join a party of his or her choice. Parties are formed and operate freely subject to the law, public order and good morale. They may receive public funds to finance their activities or electoral campaigns. The establishment of a single party under any form or on any part of the national territory is prohibited and constitutes an offence of high treason.

15 Decision No 003/CEI/BUR/06 of 9 March 2006 relating to the implementation of the Electoral Act.
17 Art 5 of the DRC Constitution.
18 Art 5 of the DRC Constitution.
19 Art 5 of the DRC Constitution.
20 Art 6 of the DRC Constitution.
21 Art 6 of the DRC Constitution.
22 Art 6 of the DRC Constitution.
23 Art 7 of the DRC Constitution.
Political opposition is recognised and its status is determined by an ‘organic’ law. Chapter 1 of the Constitution deals with citizenship, which is a prerequisite for anyone to participate in the elections either as a voter or as a candidate. Citizenship is also a critical issue since one of the reasons why the Congolese people suffered war is that the Congolese people of Rwandan and Tutsi origin known as ‘the Banyamulenge’ were denied their legitimate right as citizens of the Congo. The Constitution provides that the Congolese citizenship is exclusive and cannot be held concurrently with any other citizenship. Unlike citizenship by naturalisation, ‘citizenship by origin’ is granted to anyone belonging to any ethnic group which inhabited the DRC at independence on 30 June 1960. The conditions of recognition, acquisition, loss and recovery of the Congolese citizenship are determined by law.

Title II of the Constitution deals with human rights, fundamental freedoms and duties of the citizens and of the State. The Congolese ‘Bill of Rights’ entrenches a number of rights supporting multiparty democracy. These are the right to equality and human dignity, except for political rights which are recognised to Congolese citizens only, the right to individual freedom, the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to information, freedom of press and the media, the right to freedom to assemble unarmed, the right to demonstrate, the right to petition individually or collectively the public authorities, and the right to freedom of association. The Constitution also enshrines the right to non-discrimination, including non-discrimination against women. One of the biggest innovations of the 2006 DRC Constitution is the entrenchment of the ‘parity’ principle between man and woman. This principle requires a fair representation of men and women in all political institutions, national, provincial or local.

24 In the French legal system that inspired the legal system of Belgium, the DRC former colonial power and ultimately the Congolese system itself, ‘organic’ laws are those laws considered as such by the Constitution. They govern some critical constitutional matters and they complement the Constitution in this regard. T aBeDRC law, as compared to ‘ordinary’ laws referring to Acts of Parliament, ‘organic’ laws in the French legal system that inspired the DRC law, laws that are expressly qualified such by the Constitution. They complement the Constitution in some critical matters. In the normative pyramid of the sources of domestic law, organic laws rank lower than the Constitution, which is the supreme law of the Republic, but higher than ‘ordinary’ laws that refer to ordinary Acts of Parliament.
25 Art 8 of the DRC Constitution.
26 Art 10 of the DRC Constitution.
27 Art 10 of the DRC Constitution.
28 Art 10 of the DRC Constitution.
29 Art 11 of the DRC Constitution.
30 Art 17 of the DRC Constitution.
31 Art 22 of the DRC Constitution.
32 Art 23 of the DRC Constitution.
33 Art 24 of the DRC Constitution.
34 Art 25 of the DRC Constitution.
35 Art 26 of the DRC Constitution.
36 Art 27 of the DRC Constitution.
37 Art 37 of the DRC Constitution.
38 Art 13 of the DRC Constitution.
39 Art 14 of the DRC Constitution.
40 Art 14 of the DRC Constitution.
The Electoral Act passed in terms of the Constitution provides for the organisation of presidential, legislative, provincial, municipal and local elections. For each election, the Electoral Act determines the constituency, the conditions for eligibility, the time and duration of the campaign, and the electoral operations to be conducted from voting to the proclamation of the final results, and the role of the EIC.

2.2 ELECTORAL SYSTEMS

Direct and election by universal suffrage was provided for the president, the members of the National Assembly, and the members of the provincial assemblies. However, it was indirect for the senators, the governors and vice-governors of provinces who were elected by the members of the provincial assemblies and not directly by the people.

Two electoral systems were used during the 2006 DRC elections, namely the majority system and the proportional representation one.

The majority system under territorial or regional representation was adopted for the presidential election and for the election of governors and vice-governors of provinces. The DRC territory constituted a single constituency for the president while the provinces formed the constituencies for the election of governors and vice-governors. The candidate who obtained the most votes was declared elected. The governors and vice-governors were elected for five years by the members of the provincial assemblies and inaugurated by the President who was himself directly elected by the people for the same period renewable once.

The DRC Electoral Act adopted a mixed electoral system for the election of the members of the National Assembly, the Senate, and the provincial assemblies. The national, provincial deputies and the senators were also elected for five years in terms of the Constitution. For the election of the members of the National Assembly and the provincial assemblies, the suffrage was uninominal in a constituency entitled to one seat only. The candidate who obtained most votes was elected. Where a constituency was entitled to more than two seats, the system was that of proportional representation with open lists. In this case, the candidates were presented on lists drawn by their respective parties unless they were independent candidates who compiled their own lists. The voter was entitled to cast one vote for a candidate on a particular list and the vote counted for the entire list. The total number of votes of a list was the total of votes obtained by different candidates on that list. An electoral quotient was obtained by dividing the total number of votes by the number of seats in a constituency.

41 Art 5 of the DRC Constitution.
42 Arts 114, 170, 189, 197, 205, and 221 of the Electoral Act.
44 Arts 70-73, 76 of the Electoral Act of 9 March 2006.
45 Arts 68-71 of the Constitution; Arts 100-114, 223 of the Electoral Act of 9 March 2006.
46 Arts 118-119, 130, 146, 175, 193, 209 of the Electoral Act.
For each list, the total number of votes obtained was equal to the total number of votes obtained by candidates on that list divided by the electoral quotient. The seats were then distributed among the different lists proportionally to the number of votes won by the candidates on those lists. The highest-rest rule applied. The list of the party or the independent candidate that got most votes after division of the total number of votes by the electoral quotient was elected. In case there were still seats available, these seats were reserved for the list(s) with the highest rest(s). Proportional representation is an electoral system that is complicated as much for the candidates as for the voters and some calculation is needed to determine the list or the party that won most votes and the particular candidate elected on the list. However, its main advantage is that it allows for a better reflection of the electorate as small parties are also represented in the legislature. The election of the members of Senate also followed the proportional representation system. Unlike national and provincial Deputies who are members of the National Assembly and the provincial assemblies respectively, the Senators were not directly elected by the people, but rather by the members of the provincial assemblies. Be that as it may, the DRC 2006 elections were based on the above electoral laws and systems.

3 DRC ELECTIONS

The EIC identified 25, 712,552 citizens as voters. Two hundred sixty-seven (267) political parties and independent candidates were registered to compete. Much of the funding of the DRC elections was provided by external and foreign sources. The international community, mainly the UN and the EU, contributed around $460 million. Individual countries such as South Africa, Canada, the USA, Britain, Belgium and France also contributed materially and financially to the organisation of the elections.

This discussion of the DRC elections follows the sequence in which these elections were organised, starting with election of the members of the National Assembly and the first round of the presidential election on 30 July 2006 to the election of the governors and vice governors and the members of the Senate held during the first semester of 2007 through the second round of the presidential election and the election of the members of the provincial assemblies on 30 October 2006.

3.1 PRESIDENTIAL ELECTION

Thirty-three (33) candidates, including four (4) women, registered and campaigned during the DRC 2006 presidential election. Six (6) candidates were independent candidates. President Joseph Kabila was among these independent candidates despite the fact that everyone knew that he was the founder of the Parti du Peuple pour la Reconstruction et le Développement (PPRD) and this party had earlier announced during its congress that President Joseph Kabila would be its presidential candidate. Arguably, President Kabila decided to present himself as an independent candidate in order to win the crucial votes of many of his supporters in other parties and in the civil society.

Three of his four vice-presidents during the transition also competed for the presidency. Vice-presidents Azarias Ruberwa, Jean-Pierre Bemba, and Arthur Zaidi Ngoma were presented by the Rassemblement Congolais pour la Démocratie (RCD), the Mouvement de Libération du Congo (MLC), and the Camp de la Patrie/Forces du Futur respectively.

The list of presidential candidates included former ministers in the transitional government or during the Mobutu regime. Presidential candidates such as Dr Kashala Lukumuenda, Father Banyingela Kasonga, and Professor Osee Muyima Ndjolo spent many years outside the DRC and their parties registered a few months ahead of the elections. The overwhelming majority of the presidential candidates were unable to run a 30-day electoral campaign in a country larger than Western Europe and without adequate infrastructures of transport and communication. Those in power, particularly President Kabila and his three vice-presidents, were privileged. Ruling the country for almost three years gave them a serious advantage over other candidates. During the campaign, or instance, they were welcomed throughout the Republic in their respective capacities as president and vice-presidents during the transition and treated differently from other presidential candidates.

The provisional results were released by the EIC on 22 August 2006 and later on confirmed by the Supreme Court of Justice acting as the Constitutional Court in the interim period. Joseph Kabila was the front-runner with 44.81%. He was directly followed by Jean-Pierre Bemba Gombo (20.03%), Antoine Gizenga (13.06%), Francois Joseph Nzanga Mobutu (4.77%), Oscar Kashala (3.46%), Azarias Ruberwa (1.69%), Pierre Pay Pay (1.58%), and Vincent de Paul Lunda Bululu (1.40%). Each of the 25 remaining presidential candidates won less than 1% of votes. Since no candidate won an outright majority on 30 July 2006, a second round took place on 29 October 2006 between the two front-runners, namely Joseph Kabila and Jean-Pierre Bemba. On 15 November 2006, the EIC proclaimed Joseph Kabila the winner of the election with 58.05% against Jean-Pierre Bemba who obtained 41.95%. Jean-Pierre Bemba appealed to the Supreme Court of Justice alleging massive irregularities and vote rigging. Unfortunately, these results were upheld by the Supreme Court of Justice in its judgment delivered on 27 November 2006. President Kabila was then sworn in and took office on 6 December 2006.

52 Antoine Gizenga was the leader of the Parti Lumumbiste Unifié (PALU) and a vice-prime minister in the first Congolese cabinet which was formed by Prime Minister Lumumba at independence. François Joseph Mobutu Nzanga is the son of the late dictator Mobutu Sese Seko. Oscar Kashala is a Congolese medical doctor well established in the USA and turned politician. Azarias Ruberwa was one of the four vice-presidents during the transition. Pierre Pay Pay was the governor of the Banque Centrale du Congo (Reserve Bank) for more than two decades under Mobutu while Vincent de Paul Lunda Bululu is a former Mobutu’s Prime Minister.
54 Idem.
3.2 ELECTION OF THE MEMBERS OF THE NATIONAL ASSEMBLY

The country was divided into one hundred sixty-nine (169) constituencies (145 rural and 20 metropolitan municipalities, and 4 for the capital city of Kinshasa) for the election of the members of the National Assembly. Nine thousand six hundred thirty-two (9632) candidates competed for the five hundred (500) seats. Most of them were presented by two hundred sixty-seven (267) parties while others were independent candidates.

The results released by the EIC in September 2006 and later upheld by the Supreme Court of Justice confirmed the leadership of some political parties or coalitions in national politics. These include PPRD (Kabila’s party), MLC (Bemba’s party), PALU (Parti Lumumbiste Unifié, Gizenga’s party), MSR (Mouvement Social pour le Renouveau, a party led by presidential advisor Pierre Lumbi), Forces de Renouveau (Party led by Minister Mbusa Nyamuisi), and RCD (Ruberwa’s party) ex aequo with CODECO (Coalition des Démocrates Congolais), and CDC (Convention des Démocrates Chrétiens) that won 111 seats, 64 seats, 34 seats, 27 seats, 26 seats, 15 seats, and 10 seats respectively. The remaining parties won less than ten (10) seats each while independent candidates together won sixty-three (63) seats. However, most of them were financially and materially assisted by the PPRD during the electoral campaign and were therefore Kabila’s allies. The Alliance de la Majorité Présidentielle (AMP), a coalition – not a single party - formed by President Kabila’s PPRD and allies, mainly Gizenga’s PALU and Nzanga Mobutu’s UDEMO, in the run-up to the second round of the presidential election against Jean-Pierre Bemba and his Union pour la Nation (UN) constituted the majority that formed the government.

The inaugural session of the National Assembly was convened on 22 September 2006 to enable the National Assembly to adopt the rules of its proceedings, validate the mandate of its members and elect its presiding officers. Mr Vital Kamerhe, formerly Secretary General of the PPRD, was elected Speaker of the National Assembly.

3.3 ELECTION OF THE MEMBERS OF THE PROVINCIAL ASSEMBLIES

The election of the members of the provincial assemblies (Provincial Deputies) was organised the same day as the second round of the presidential election on 29 October 2006. For this election, the Republic was divided into one hundred eighty-nine (189) constituencies (24 for Kinshasa and 165 for the provinces) for six hundred ninety (60) seats. Six hundred thirty-two (632) were elected directly by the people while fifty-eight (58) were nominated by traditional leaders.

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57 Act No 06/006 of 9 March 2006 relating to the organisation of presidential, legislative, provincial, urban, municipal and local elections, Annex II.
58 Art 152 -156 of the Electoral Act of 9 March 2006. Act No 06/006 of 9 March 2006 relating to the organisation of presidential, legislative, provincial, urban, municipal and local elections, Annex II.
Out of the 632 members of the provincial assemblies to be elected in the eleven (11) provincial assemblies, the PPRD, MLC, RCD and Forces du Renouveau won 133, 102, 42, and 33 seats respectively. Fifteen (15) political parties won between five (5) and nineteen (19) seats, eighteen (18) between two (2) and four (4), and thirty-seven (37) won one (1) seat each in the provincial assemblies. The provincial assemblies were inaugurated in January 2007.

As in the National Assembly, the PPRD and its allies within the AMP won most seats, followed by the MLC and its allies within the Union for the Nation (UN). The RCD improved on its results during the presidential election and the election of the members of the National Assembly to become the third force in the provincial assemblies.

The AMP and its allies within the AMP control the majority of the provincial assemblies, including the Provincial Assembly of the capital city of Kinshasa. The opposition of the Union pour la Nation won the majority in the provincial assemblies of four (4) provinces, namely Kasai Occidental, Kinshasa, Bas-Congo, and Equateur. However, due to electoral practice dominated by corruption and ethnicity, the MLC and the UN succeeded in getting one governor of province and three Speakers of provincial assemblies. They got a governor in the Equateur province and Speakers of the provincial assemblies of Equateur, Kasai Occidental and Bas-Congo respectively.

As far as women’ representation is concerned, no woman was elected Speaker. Only three (3) women, namely Emilie Matshoko, Lucie Shungu and Caroline Nziana, were elected Deputy Speakers in the provincial assemblies of the city of Kinshasa and the provinces of Kasai Oriental and Province Orientale respectively. This signals that despite the ‘parity’ principle enshrined in the Constitution, parties did little to comply. On the other hand, women have not played a significant role in ending the discrimination against them in national politics by ensuring that the parity principle was respected by political leaders.

3.4 ELECTION OF THE MEMBERS OF THE SENATE

The Senators were elected by the provincial assemblies on 19 January 2007. The electoral campaign took place between 15 and 17 January 2007. The Senate was inaugurated on 3 February 2007. Like in the provincial assemblies, the major parties in the Senate were the PPRD (22 seats), MLC (14), and RCD (7), followed by Forces du Renouveau (7) PDC (6), MSR (3), CDC (3) and PALU (2). Eighteen (18) other parties won one (1) seat each. However, as in the National Assembly and most provincial assemblies, the PPRD and its allies in the AMP hold the majority in the Senate, which comprises one hundred eight (108) members, including five (5) women. Nevertheless, Mr Kengo wa Dondo, an independent Senator close to the opposition, managed to get elected President of the Senate and in this capacity second highest personality in Republic. Some politicians who failed to be elected as members of the National Assembly or the provincial assemblies were elected as senators despite that their parties did not hold the majority in the provincial assemblies.

Some criticism was therefore levelled against the electoral system of the Senators with people advocating their direct election by the people as for the members of the national and provincial assemblies to avoid corruption. The same was said about the election of governors and vice-governors.

3.5 ELECTION OF THE GOVERNORS AND VICE-GOVERNORS OF PROVINCES

The results of the election of Governors and Vice-Governors of provinces were announced on Sunday 28 January 2007. The election of the Governors and Vice-Governors in the two provinces of Kasai was postponed to 10 and then to 15 February 2007 following the disqualification by the EIC of the two candidates presented by the MLC on the grounds that they had a dual citizenship in violation of the Constitution. The EIC decision was set aside by the Courts of Appeal in both Kasai. These judgments were later upheld by the Supreme Court of Justice. As pointed out earlier, the Governors and Vice-Governors of the ten (10) Provinces, including the city of Kinshasa, are PPRD or allies, except for the Province of Equateur. 61

The organisation of free and fair elections was seen as the most critical moment in the democratisation process in the DRC. It also marked the end of the transition. Many commentators and actors within the international community, including the UN, the EU, the AU, and individual countries that supported the process considered the elections to be a fresh start of democracy in the DRC. This finally gives rise to a number of questions in a country which did not organised its multiparty elections for the first time, 62 and on a continent already familiar with elections, and multipartyism that have unfortunately failed so far to bring about democracy in Africa.

4 DEMOCRACY, MULTIPARTYISM AND ELECTIONS WITH REGARD TO THE DRC CASE AND LESSONS FOR THE REST OF AFRICA

With more and more African countries calling for or going to elections, it is therefore important to revisit the concept of democracy and its relationship to multipartyism and elections and to use the DRC experience to draw out lessons for the rest of the continent.

62 The DRC went to multiparty elections shortly before independence in 1960. The legislative elections were won by the Mouvement National Congolais (MNC) led by Patrice-Emery Lumumba who then became Prime Minister in terms of the parliamentary system established by the Congolese Basic Law. General elections, which were preceded by a constitutional referendum, were once more held in 1964. The coalition led by Moïse Tchombe won the majority in Parliament, which allowed him to become Prime Minister.
4.1 REVISITING THE CONCEPTS AND THE RELATIONSHIP BETWEEN DEMOCRACY, MULTIPARTYISM AND ELECTIONS IN AFRICA

Democracy is a complex concept that is closely related to multipartyism and elections.

4.1.1 DEMOCRACY

As Hoffman pointed out, democracy is the most discussed and contested notion of political theory.\textsuperscript{63} Nwabueze stressed that ‘no word is more susceptible of a variety of tendentious interpretations than democracy.’\textsuperscript{64} According to Wiseman, ‘Many governments of quite different types wish to describe themselves as democratic.’\textsuperscript{65} The paradox is that in most cases this happened, as in the German Democratic Republic and the People’s Democratic Republic of Yemen, the states concerned appeared significantly undemocratic.\textsuperscript{66} Democracy has acquired different, even contradictory meanings. It has been used and abused\textsuperscript{67} to such an extent that defining it is a challenge.\textsuperscript{68}

Two major conceptions dispute the definitional terrain of democracy. These minimalist and maximalist conceptions of democracy have been informed by the two dominant ideologies of the past century, namely liberalism and socialism. They are generally opposed in the mainstream scientific discourse.\textsuperscript{69} In maximalist conceptions, democracy is defined as a regime based on some core values and principles. It is a regime that seeks to protect and promote human rights that are understood broadly to encompass individual, civil and political rights as well as group, social and economic rights. Maximalist conceptions of democracy were been mainly propounded by African and socialist scholars such as Claude Ake,\textsuperscript{70} Issa Shivji,\textsuperscript{71} and Samir Amin.\textsuperscript{72}

On the other hand, minimalist conceptions are basically procedural, formal and institutional. Democracy is considered a specific political machinery of institutions, processes and rules.\textsuperscript{73} These include institutions such as elections and political parties.

\textsuperscript{64} B O Nwabueze \textit{Constitutionalism in the emergent states} (1973) at 1.
\textsuperscript{66} \textit{Idem.} Italics are mine.
\textsuperscript{67} See Themba Sono \textit{Comments on democracy and its relevance in Africa} (1992) at 3; André Mbata B Manga \textit{The road to constitutionalism and democracy in post-colonial Africa} (2002) at 173; Wiseman \textit{Democracy in black Africa} at 4.
\textsuperscript{68} Dov Ronen ‘The challenges of democracy in Africa’ in Dov Ronen (ed) \textit{Democracy and pluralism in Africa} (1986) at 1.
\textsuperscript{69} André Mbata B Manga \textit{The road to constitutionalism and democracy in post-colonial Africa} at 175.
\textsuperscript{70} Claude Ake \textit{Democracy and Development in Africa} (1996) at 132-134, 137.
\textsuperscript{73} Dov Ronen ‘The state and democracy in Africa’ in Dov Ronen (ed) \textit{op cit} at 200.
The notion of procedural or institutional democracy is of the sort found in Robert Dahl’s concept of polyarchy. According to Dahl, polyarchy in a political order is characterised by seven institutions, all of which must be present. These are elected officials, free and fair elections, inclusive suffrage, and right to run for office, freedom of expression, alternative information and associational autonomy. According to Sorensen, Dahl’s notion of polyarchy has three elements: competition for governmental power, political participation in the selection of leaders and policies, and civil and political rights. In minimalist views, democracy is synonymous with competitive and multiparty democracy. Support for a minimalist and procedural form of democracy came from liberal scholars such as Glaser, Huntington, Hinden, Sandbrook, and Wiseman.

As Olukoshi stressed, democracy has an element of process in it; it is a set of institutions and procedures to enable the government of the people by the people and for the people. Contrary to the proponents of maximalist theories, individual and civil rights are not simply ‘bourgeois’. They also matter in democracy. However, democracy should not stop there, at forms and institutions. It must include individual and collective rights, civil and political rights as well as social and economic rights since all human rights are interdependent and interrelated. Bangura insisted that ‘although democracy is primarily concerned with the rules and institutions that allow for open competition and participation in government, it embodies also social and economic characteristics that are crucial in determining its capacity to survive.’ Modern democracy is also constitutional and multiparty democracy.

As pointed out earlier, the requirements for democracy, particularly praised by minimalist and liberal scholars, include multipartyism and elections, which are sometimes confused with democracy.

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75 Idem.
76 George Sorensen op cit at 42.
77 André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa at 177.
78 D Glaser ‘Discourses of democracy in the South African left: a critical commentary’ in Nyang’oro (ed) op cit at 248-251, 270.
79 S P Huntington The Third Wave: Democratisation in the Late Twentieth Century (1991) at 10.
80 R Hinden Africa and Democracy (1963) at 9.
81 R Sandbrook ‘Liberal Democracy in Africa: A Socialist-Revisionist Perspective’ in Nyang’oro (ed) op cit at 137-138, 143-146.
82 Wiseman Democracy in Black Africa at 6.
84 See Glaser op cit at 248-251; Sandbrook op cit at 145, André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa at 185.
85 André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa at 185-186.
86 Yusuf Bangura ‘Authoritarian rule and democracy in Africa: a theoretical discourse,” in Nyang’oro (ed) op cit at 98, 107; André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa at 186.
87 André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa at 196.
4.1.2 DEMOCRACY AND MULTIPARTYISM

Multipartyism presupposes the existence of several parties in a country. A multiparty system is the opposite of monopartyism or even ‘nopartyism.’ After decades of one party or no party system, several African countries embraced a multiparty system of government in the late 1980s.

According to the liberal theory, there is no democracy without political pluralism, understood as multipartyism. Political parties have been identified as crucial to the process of democratic transition and consolidation. However, multipartyism is not democracy. On the other hand, political parties are recent and, as demonstrated in some pre-colonial African, Asian and European societies, it is possible to have democracy, or some measure of it, without a multiparty system.

Multipartyism is related to democracy, but they are not synonymous. When it exists, multipartyism is not a guarantee for democracy as authoritarianism may well tie the knot with it. Zimbabwe is a recent case in point. Past examples include Apartheid South Africa and Mobutu’s Zaire. The South African regime under Apartheid was an authoritarian one despite the existence of several parties. It was undemocratic as the Black people who constitute the overwhelming majority of the population were denied political rights and excluded from the government. In the former Zaire, integral multipartyism with more than four hundred political parties during the 1990-1992 ‘Mobutu’s guided transition’ did not contribute to the establishment and consolidation of democracy. Instead of advancing democracy, this wild multipartyism rather contributed to the survival of the authoritarian regime of President Mobutu. Accordingly, multipartyism is not synonymous with democracy. Béchir Ben Yahmed rightly warned that those African peoples who would be content with multipartyism thinking they had already entered the paradise of democracy would not take long to be disappointed. Former Zaire, Congo Republic, Burkina Faso, Burundi, Cameroon, Central African Republic, Ethiopia, Gabon, and Zimbabwe are cases in point, to name but a few African countries where democracy did not prosper despite the establishment of a multiparty rule.

Criticism against multipartyism should not, however, be used to celebrate the monopartyism or ‘no-partyism’ as authentic forms of democracy in Africa. In the 1960s and 1970s, many political leaders and a number of intellectuals backing them justified and praised the one-party as the best and ideal instrument to help build the nation and consolidate national unity, stabilise power, and achieve economic development.

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88 André Mbata B Mangu *The road to constitutionalism and democracy in post-colonial Africa* at 200.
89 G Bauer ‘Challenges to democratic consolidation in Namibia’ in Joseph (ed) *op cit* at 439-441.
91 André Mbata B Mangu *The road to constitutionalism and democracy in post-colonial Africa* at 201.
92 Idem.
93 Idem 430-434.
94 Idem.
96 André Mbata B Mangu *The road to constitutionalism and democracy in post-colonial Africa* at 292.
97 André Mbata B Mangu *The road to constitutionalism and democracy in post-colonial Africa* at 394.
Georges Nzongola-Ntalaja held that if multipartyism is not necessarily synonymous with democracy, it is difficult, if not impossible, to show that a one-party system, whether of Marxist, socialist, communist or African tradition, can be democratic and contribute to the consolidation of a genuine democracy. Accordingly, it is worth emphasising once more that although multipartyism is important to democracy, it should not be confused with it. Nor should democracy be confused with elections.

4.1.3 DEMOCRACY AND ELECTIONS

Elections offer the opportunity for the citizens to choose freely between several programmes or policies presented by several parties or candidates. Elections are governed by law, both international (human rights) and domestic law. In international law, the right to vote is a political right entrenched in a number of legal instruments. For example, the Universal Declaration of Human Rights (UDHR) provides that ‘everyone has the right to take part in the government of his country, directly or through freely chosen representatives.’ This right is supported by the right to freedom of peacefully assembly and association. Although the UDHR is a UN general Assembly resolution not binding per se, its acceptance by the overwhelming majority of UN member states has made it binding as part of customary international law. The International Covenant on Civil and Political Rights (ICCPR), which a treaty binding on states parties, also entitles every citizen to take part in the conduct of public affairs of his/her country, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and held by secret ballot, guaranteeing the free expression of the will of the electors. The right to vote and to be elected is entrenched in almost all modern Constitutions and electoral laws enacted to enforce it. On the domestic level, there is no single African country where the Constitution does not provide for the right of every citizen to vote during regular, free and fair elections even though electoral politics has taught otherwise. Elections have become a political game, but a game that has to be played according to some agreed upon rules and principles entrenched in the Constitution and electoral laws. Unfortunately, the rules of the game are very often manipulated by some political leaders to remain in power.

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100 Art 21 (1) of the UDHR.
101 Art 20 (1) of the UDHR.
103 The ICCPR (International Covenant on Civil and Political Rights 1966 (999 UNTS 171).
104 Art 25 (a) & (b) of the ICCPR.
According to Richard Joseph, elections and democracy have become virtually synonymous in Western political thought and analysis. Claude Ake also observed that more recently, in the hurry to globalise democracy in the aftermath of the ending Cold War, democracy was reduced to the crude simplicity of multiparty elections to the benefit of some of the world’s most notorious autocrats who were able to parade democratic credentials without reforming their repressive regimes.

In the liberal conception, ‘elections are the defining institution of democracy.’ In his ‘two-turnover test’ according to which consolidation of democracy occurs whenever the winners of founding elections are defeated in a subsequent election, and the new winners accept an electoral turnover, Huntington also considered elections to be the essence of democracy. Yet, as Olukoshi argued, the embrace of dubious electoral and political arrangements on the grounds that, at this stage of Africa’s development, it is the only outcome that can be realistically expected, is very problematic. Karl Terry rightly criticised assessments of democratic building and consolidation based on elections or what he labelled ‘the fallacy of electoralism’ postulating the confusion between democracy and elections.

As we have seen in Latin America and in many African countries where have been organised several times since independence without the country achieving democracy, formal procedures for elections do not create a democracy because elections can and did exist with systematic abuses of human rights and disenfranchisement of large segments of the population. Georges Nzongola-Ntalaja argues that it would be too simplistic to identify democracy with the holding of elections since the question of democracy goes beyond elections to the realisation of democratic principles of governance and to the balance of social forces in the political community. Electoral democracies are but cosmetic democracies. However, while dismissing the ‘electoral fallacy’ or the ‘fallacy of electoralism,’ we should not embrace its antithesis, what Mitchell and Booth called the ‘anti-electoralist fallacy,’ which assumes that elections never matter for democratisation. In our modern era, you can have elections without democracy, but you cannot have democracy without elections.

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105 See André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa at 196.
106 Claude Ake op cit at 130.
108 André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa 197.
109 See Olukoshi op cit at 456; André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa at 197.
110 As quoted by Bratton & Posner op cit at 379.
111 See Bratton & Posner op cit at 378-379; André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa at 198.
112 Georges Nzongola-Ntalaja op cit 19.
113 See Claude Ake op cit at 130; André Mbata B Mangu The road to constitutionalism and democracy in post-colonial Africa at 199.
114 As quoted by Bratton & Posner op cit at 379.
115 Bratton & Posner op cit at 379.
The regularity, openness, and acceptability of elections signal whether basic constitutional and attitudinal foundations are being laid for sustainable democracy.\textsuperscript{116} According to Bratton and Posner, elections remain fundamental not only for the installation of democratic government but for broader democratic consolidation.\textsuperscript{117}

4.2 ELECTIONS IN THE DRC AND LESSONS FOR AFRICA

As pointed out earlier, elections alone do not make a democracy but they are essential to it since no regime would qualify as a democracy in our modern times if it is elections unfriendly. To usher into a democracy or contribute to democratic consolidation, elections should meet a number of criteria that need to be revisited.

First, a democratic regime being the one based on the rule of law, democratic elections should also be provided for and organised in terms of rules and principles adopted by the legitimate representatives of the people and accepted by the majority of the citizens and parties. These rules and principles cannot be made dependent on the incumbent political leader or his party who would decide when elections are to be organised, who should be entitled to vote or stand for elections, under which conditions these elections should be organised, how the electoral process should be managed and which institutions should be involved in the management of the process or in the promulgation of the results. There should be a legitimate Constitution and legislation adopted by people’s representatives in Parliament to set up the rules and principles which would constitute the ‘electoral law’. Arguably, this is the main criterion of democratic elections on which others depend. Without a Constitution or electoral legislation adopted or agreed upon by the citizens or the major political parties, elections are unlikely to be open, free and fair.

Second, democratic elections should be regular, fair, open and free. This requires that elections should be held on a regular basis. They should be exempted from any rigging. They should be open to all in the sense that every adult citizen should be entitled to vote although he or she may not actually take place in voting. On the other hand, any citizen or political party should be allowed to participate in these elections. Moreover, they should be allowed to vote or campaign freely. Again, the regularity, fairness, openness and freedom of elections should be provided by the Constitution and the electoral law.

Third, elections are likely to be open, free and fair when the electoral process is managed by a special body established by law. This body, generally known as the electoral commission, should be independent and impartial. It should be independent from the government of the day, from all political parties and from any other internal or foreign force. Popular participation in the elections and the acceptation of the results of elections are also dependent on the confidence the electoral bodies enjoys among the citizens and major political parties.

\textsuperscript{116} Bratton & Posner \textit{op cit} at 379.
\textsuperscript{117} \textit{Idem}.
Fourth, the electoral process is generally over with the proclamation of the results. This is left to the judiciary to which the electoral body or commission is subjected and which decides the electoral disputes. As for the electoral commission and even more than it, the judiciary should be independent and impartial. An electoral process may totally derail in the end if the judiciary is biased. Down the line, the judiciary therefore play a crucial role in determining whether elections were open, free and fair to be considered democratic ones.

Recent elections in the DRC took place after decades of authoritarian and single party rule. It cannot be gainsaid that a major opposition Congolese party, namely the Union pour la Démocratie et le Progrès Social (UDPS), called for boycott and its militants did not take place in the referendum and the electoral process. The Electoral Act was also drafted in such a way as to content the incumbent leader, President Joseph Kabila. The electoral commission, which mainly depended on Western powers and the international community that funded the elections, was not really autonomous and independent from them. Nor was it independent from President Kabila who nominated its chairperson. The number of voters was increased in the provinces that supported the President and his allies. Some vote-rigging took place in a number of constituencies despite the claim by many international observers that the elections were open, free and fair. On the other hand, the judiciary was subjected to the President. In the absence of an independent judicial commission, the members of the judiciary were appointed and could be suspended or dismissed by him and it was unlikely that they could uphold results which did not made him the winner.

Despite the above pitfalls, the DRC had a Constitution approved by popular referendum and an Electoral Act enacted by a multiparty Parliament - and not just a presidential decree - before going to elections. An Act of Parliament provided for the organisation and functioning of the EIC itself. The EIC was responsible for the implementation of the Acts of Parliament on referendum, the identification and registration of voters, and the organisation of elections at all levels. The EIC managed to overcome much technical, material, financial, administrative, and legal obstacles to help the Congolese people enforce their constitutional right to vote in a multiparty environment after decades of undemocratic rule under Mobutu and Laurent-Désiré Kabila. As stressed earlier, one should not, however, overlook the main problem it faced and also the major criticism levelled against the EIC. It relates to its independence vis-à-vis both the President Candidate Joseph Kabila and his party on the one hand and vis-à-vis the international community and even some of its members that largely financed the electoral process on the other hand. Its opponents held that it was biased in favour of Joseph Kabila, as Father Malu Malu who chaired it was a presidential ally recruited from the civil society. The EIC also proved the mouthpiece of the international community that funded the electoral process or of the Comité International d’Accompagnement de la Transition (CIAT) led by Ambassador William Swing and comprising the representatives of the USA, France, Belgium, South Africa, Gabon and Angola.

119 Act No 05/010 of 22 June 2004 relating to the organisation of referendum in the DRC.
120 Act No 04/028 of 24 December 2004 relating to the identification and registration of voters in the DRC.
The EIC did not always act as the independent and impartial institution established by the Constitution and as its denomination suggested. The veil of impartiality of the EIC also fell down when this institution attempted to disqualify Alex Kande and Dominique Kanku as opposition candidates for the positions of governors in the provinces of Kasai Occidental and Kasai Oriental. Nevertheless, the EIC succeeded in organising competitive elections after decades of undemocratic rule no matter how critical one could be about the fairness of these elections. Based on the circumstances and the conditions under which it had to operate, the EIC performed better than similar institutions in many other African countries. It even went far as deciding a second round of the presidential election despite being chaired by presidential nominees or allies.

The judiciary had also a key role to play as the final judge in all constitutional and electoral matters with decisions binding on all parties pending the creation of a Constitutional Court. The Supreme Court of Justice confirmed the results of the presidential election as released by the EIC. Presidential candidates such as Azarias Ruberwa (first round) and Jean-Pierre Bemba (second round) contested these results. They complained about irregularities such as unauthorised vote by procurement or vote by persons not entitled to vote, total absence of witnesses or observers, corruption of EIC officials, and excessive manipulation and intimidation of voters. Although the Court could not change the final results in terms of which Joseph Kabila was proclaimed the winner, these were instances where it could have ordered a new election, a recount or even an invalidation of votes. It is only in settling the disputes over the election of the members of the National Assembly that the Supreme Court decided to invalidate some candidates who had been proclaimed as elected by the EIC or to order a new election.

Every year, there is at least one African country going to polls. Recent general elections took place in countries such as Benin, Burundi, Central African Republic, Chad, Cameroon, Congo, Ethiopia, Egypt, Kenya Lesotho, Liberia, Malawi, Mauritania, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Tanzania, Uganda, and Zimbabwe. Côte d’Ivoire should be going to elections by the end of the year while South Africa, Zambia and Angola are expected to vote in 2009. There are definitely lessons that the rest of Africa can learn from the DRC 2006 elections. Arguably, as compared to other African countries, the DRC elections were among the best multi-party elections ever organised in Africa over the last decades. The fact that the Congolese people went to polls in a relatively peaceful environment and political leaders ultimately abode by the results was almost a miracle in a country still emerging from war and authoritarianism. Africa should learn from their shortcomings in order to correct or avoid them. African states can also learn from the successes achieved in the DRC elections and emulate them or improve when they organise their future elections.

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122 On the lists submitted by the MLC and allies in the Union pour la the Nation supporting opposition leader Jean-Pierre Bemba.
124 The Court ordered a new election in some constituencies (Mweca, province of Kasai Occidental, and Befale, province of Equateur) where massive vote rigging occurred. Later on, it reverted to its initial decision and confirmed the results of the election in Mweca.
5 CONCLUSION

As this article emphasised, democracy cannot be reduced to the holding of elections under a multiparty system. Multiparty elections have been regularly held, with the *satisfect* generally delivered by ‘international observers’ without many African countries entering the promised land of democracy. Although they are not synonymous, elections and multipartyism constitute nevertheless a step forward in the process of establishing a genuine democracy.

The DRC held its general elections in 2006 following decades of authoritarian rule. Contrary to what was then said, these were not the first multiparty elections in the Congolese history. Despite shortcomings in the electoral process, the complexity of the electoral laws and the intricacy of the electoral systems, the elections in the DRC were relatively peaceful and disappointed many prophets of doom. However, as this author stressed elsewhere, there are challenges to democratic consolidation in the DRC as well as on the rest of the African continent. As scholars such as Sandbrook, Schatzberg, Nzongola-Ntalaja and Lee also observed, some of these challenges relate to external factors such as the negative role of the international community and globalisation that contributed to the making of what Mkandawire aptly referred to as ‘choiceless’ democracies. Others challenges relate to internal or domestic factors like the establishment of the rule of law, the adoption of a Constitution, the enactment of relevant piece of legislation, the existence of institutions an autonomous and impartial electoral commission and an independent judiciary to preside over the process, the development of a political and democratic culture among the people, the existence of a political and an intellectual leadership truly committed to democratic change, national reconciliation and nation-building. The eradication of poverty, wars and rebellions also features among the challenges that need to be overcome as they pose a great threat to constitutionalism and democracy on the continent.

128 G Nzongola-Ntalaja & M Lee ‘Introduction’ op cit at 1, 7-8.
129 *Idem* 322.
130 T Mkandawire T ‘Crisis management and the making of “choiceless” democracies’ op cit at 119-120, 122-130, 133; Joseph R ‘State, conflict and democracy in Africa,” in Joseph op cit at 6-7.
132 See Huntington op cit at 316; Wiseman *Democracy in black Africa op cit* at 186; *Idem The new struggle for democracy in Africa op cit* at 132, 165, 172-173; Ibrahim op cit at 114-117.
133 Ottaway op cit 316.
134 See Van de Walle N ‘Economic reform and the consolidation of democracy in Africa’ in Ottaway op cit at 15; Clapham C & Wiseman J A ‘Conclusion: assessing the prospects for the consolidation of democracy in Africa’ in Wiseman op cit at 222.
Poverty and underdevelopment also constitutes one of the most serious threats to democracy. Total economic collapse is incompatible with democracy and failure to improve the economic situation can disappoint the masses who fought for political change as a prerequisite for economic development. The consolidation of democracy remains extremely difficult, especially at times of economic crisis.\textsuperscript{136} It should therefore go hand in hand with efforts to economic recovery and reconstruction.

From a legal and political perspective, with regard to elections, the main challenges From the above, the existence of a legitimate Constitution, proper electoral laws and systems, an independent and impartial electoral commission really autonomous, well-resourced and independent from all, an independent and impartial judiciary, a political leadership committed to democracy and the rules of the democratic game, and a vibrant civil and political society that contribute to empowering the citizenry.

Suberu pointed out, the challenges in Africa are enormous, but not insurmountable.\textsuperscript{137} Democracy also belongs to Africa and is feasible in Africa.\textsuperscript{138} This reflection on the electoral laws and systems and on the recent elections organised in a relatively successful manner in the DRC after decades of authoritarian rule and wars clearly demonstrates that there are lessons that Africa can and should learn from the DRC experience in order to consolidate democracy beyond the electoral masses regularly called on and sometimes suspended or delayed on the continent.

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André Mbata B Mangu ‘Challenges to constitutionalism and democratic consolidation in Africa’ (2005) 24 \textit{Politeia} at 321-330
André Mbata B Mangu “Conflict in the Democratic Republic of Congo: an international legal

\textsuperscript{136} See Van de Walle N ‘Economic reform and the consolidation of democracy in Africa’ in Ottaway \textit{op cit} at 15; Clapham C & Wiseman J A ‘Conclusion: assessing the prospects for the consolidation of democracy in Africa’ in Wiseman \textit{op cit} at 222.
\textsuperscript{138} See Hinden \textit{op cit} 9, 14; Ilunga Kabongo ‘Democracy in Africa: Hopes and Prospects,’ in Ronen \textit{op cit} 35; Ake op cit 129-159.


Decision No 008/CEI/BUR/05 of 9 June 2005 relating to the implementation of Act No 04/028 of 24 December 2004 relating to the identification and registration of voters in the Democratic Republic of Congo.

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R Hinden *Africa and Democracy*, Encounter, Pamphlet No 8, 1963.
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The ICCPR (International Covenant on Civil and Political Rights 1966 (999 UNTS 171).
4.1.2 RELATIONSHIP BETWEEN ELECTIONS, MULTIPARTYISM AND DEMOCRACY

As pointed out earlier, the requirements for democracy, particularly praised by minimalist and liberal scholars, include elections and multipartyism, which are sometimes confused with democracy.\textsuperscript{139}

4.1.2.1 ELECTIONS AND MULTIPARTYISM

In its most popular understanding, as inspired by Abraham Lincoln’s famous speech in Gettysburg on 19 November 1863, democracy is the ‘government of the people by the people and for the people.’\textsuperscript{140} People will only govern through their representatives who are generally chosen during elections.

In the Congo, the people went to elections even before gaining independence on 30 June 1960. Municipal and legislative elections took place in December 1957\textsuperscript{141} and in May 1960\textsuperscript{142} respectively. The first DRC legislative elections were won by the

\textsuperscript{139} André Mbata B Mangu \textit{The road to constitutionalism and democracy in post-colonial Africa} at 196.
\textsuperscript{140} \textit{Idem} at 187.
\textsuperscript{141} Crawford Young \textit{Introduction à la politique congolaise} (1979) at 80-82.
\textsuperscript{142} \textit{Idem} 156-157.
Mouvement national congolais/Lumumba (MNC/L) which obtained 41 out of the 137 seats in the National Assembly. Multiparty elections are not new in the Congo since the 1957 and 1960 elections were contested by several parties. It is therefore misleading to present the recent elections in the DRC as the first multiparty elections ever organised in this country. However, unlike President Kasa-Vubu who was elected by Parliament in 1960, Joseph Kabila was elected by universal suffrage and directly by the people in 2006. It is also worth stressing that under Mobutu Sese Seko’s one party rule, people were generally called upon to vote despite that there was a single candidate or candidates imposed by the ruling party or by the military. This was a farce that was aptly captured by Mkandawire as ‘choiceless democracy,’ where according to Ake, people were ‘voting without choosing.’

For elections to reflect the will of the people, they presuppose a free choice among several competitors or candidates championing different policies or programmes. These candidates are generally presented by different political parties as during the 2006 elections. Multipartyism and elections are therefore related. Credible elections can only take place in the context of true multipartyism. Multipartyism itself calls for and can only prosper with free and fair elections that would then lead to a genuine democracy.

4.1.2.3 DEMOCRACY AND ELECTIONS

4.2 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF CONGO AND LESSONS FOR AFRICA

As pointed out earlier, elections alone do not make a democracy but they are essential to it since no regime would qualify as a democracy in our modern times if it is elections unfriendly. To usher into a democracy or contribute to democratic consolidation, elections should meet a number of criteria that need to be revisited.

First, a democratic regime being the one based on the rule of law, democratic elections should also be provided for and organised in terms of rules and principles adopted by the legitimate representatives of the people and accepted by all citizens and parties. This is the principle which is not, unfortunately, applies to the first elections organised during the transition from an authoritarian to a democratic rule. They cannot be made dependent on the incumbent political leader or his party who would decide when elections are to be organised, who should be entitled to vote or stand for elections, under which conditions these elections should be organised, how the electoral process should be managed and which institutions should be involved in the management of the process or in the promulgation of the results. There should be

143 Crawford Young *Introduction à la politique zairoise* at 157.
144 Crawford Young *Introduction à la politique zairoise* at 150-160.
145 Thandika Mkandawire ‘Crisis management and the making of “choiceless democracies”’, in Mbaya Kankwenda *op cit* at 119-135.
146 Claude Ake *op cit* at 137.
a legitimate Constitution and legislation adopted by people’s representatives in Parliament to set up the rules and principles which would constitute the ‘electoral law’.

Arguably, this is the main criterion of democratic elections on which others depend. Without a Constitution or electoral legislation adopted or agreed upon by the citizens or the major political parties, elections are unlikely to be open, free and fair.

Second, democratic elections should be regular, fair, open and free. This requires that elections should be held on a regular basis. They should be exempted from any rigging. They should be open to all in the sense that every adult citizen should be entitled to vote although he or she may not actually take place in voting. On the other hand, any citizen or political party should be allowed to participate in these elections. Moreover, they should be allowed to vote or campaign freely. Again, the regularity, fairness, openness and freedom of elections should be provided by the Constitution and the electoral law.

Third, elections are likely to be open, free and fair when the electoral process is managed by a special body established by law. This body, generally known as the electoral commission, should be independent and impartial. It should be independent from the government of the day, from all political parties and from any other internal or foreign force. Popular participation in the elections and the acceptance of the results of elections are also dependent on the confidence the electoral bodies enjoys among the citizens and major political parties.

Fourth, the electoral process is generally over with the proclamation of the results. This is a left to the judiciary to which the electoral body or commission is subjected and which decides the electoral disputes. As for the electoral commission and even more than it, the judiciary should be independent and impartial. An electoral process may totally derail in the end if the judiciary is biased. Down the line, the judiciary therefore play a crucial role in determining whether elections were open, free and fair to be considered democratic ones.

Recent elections in the DRC took place after decades of authoritarian and single party rule under former presidents Mobutu Sese Seko and Laurent Desire Kabila. Despite shortcomings, they complied with some requirements examined above. They were provided for by the Constitution, which was adopted by popular referendum, and by an Electoral Act enacted by the interim Parliament representative of the major parties formed after the inter-Congolese Dialogue in South Africa. Despite boycott by one opposition party, the elections were open, free and fair. An indepependt electoral commission also led the process under an independent judiciary.

It cannot be denied that a major opposition Congolese party, namely the UDPS, called for boycott and its militants did not take place in the referendum and the electoral process. The electoral Act was also drafted in such a way as to content the incumbent leader, President Joseph Kabila. The electoral independent, which mainly depended on Western powers and the international community that funded the elections, was not independent from them. Nor was it from President Kabila who had nominated its chairperson and was controlled by his allies. The number of voters was increased in the provinces that supported the President and his allies. Vote rigging
took place in a number of constituencies despite the claim by international advisors on
the openness, fairness, regularity and freedom of the elections.
Finally, the judiciary, especially the Supreme Court of Justice, which was the supreme
judge in electoral matters in the place of the Constitutional Court still to be
established, was dependent on the President. In the absence of an independent judicial
commission, the members of the judiciary were appointed and could be suspended or
dismissed by him and it was unlikely that they could uphold results which did not
make him the winner.

Despite the above pitfalls, the DRC had a Constitution approved by popular
referendum and an Electoral Act enacted by a multiparty Parliament and not just a
presidential decree before going to elections.

The Interim Constitution\textsuperscript{147} and then the final Constitution\textsuperscript{148} established the
EIC as an autonomous body responsible for the organisation of free and fair elections
and referendum. An Act of Parliament provided for the organisation and functioning
of the EIC itself.\textsuperscript{149} The EIC was responsible for the implementation of the Acts of
Parliament on referendum,\textsuperscript{150} the identification and registration of voters,\textsuperscript{151} and the
organisation of elections at all levels.\textsuperscript{152}

The EIC managed to overcome much technical, material, financial,
administrative, and legal obstacles to help the Congolese people enforce their
constitutional right to vote in a multiparty environment after decades of undemocratic
rule under Mobutu and Laurent-Désiré Kabila. One should not, however, overlook the
main problem it faced and also the major criticism levelled against the EIC. It relates
to its independence \textit{vis-à-vis} both the President Candidate Joseph Kabila and his party
on the one hand and \textit{vis-à-vis} the international community and even some of its
members that largely financed the electoral process on the other hand. Its opponents
held that it was biased in favour of President Candidate Kabila as Father Malu Malu
who chaired it was a presidential ally recruited from the civil society. The EIC also
proved the mouthpiece of the international community that funded the electoral
process or of the \textit{Comité International d’Accompagnement de la Transition} (CIAT)
led by Ambassador William Swing and comprising the representatives of the USA,
France, Belgium, South Africa, Gabon and Angola. The EIC did not always act as the
independent institution established by the Constitution and as its denomination
suggested. Faced with a great deal of criticism from the opposition, the EIC
sometimes failed to show restrain and the “referee” himself found scoring against
some teams engaged in the game or discouraging those still in the crowd. This was
especially illustrated by the EIC’s response to criticism levelled against it by the
\textit{Union pour la Démocratie et le Progrès Social} (UDPS). Created in 1982 by veteran
political leader Etienne Tshisekedi, the UDPS is the main opposition party and did not
participate in the elections, alleging that the process was fraught with irregularity and
the EIC was not impartial. General Joseph Kabila’s registration as a voter by the EIC
was also criticised, as the law did not entitle the members of the judiciary, the army,

\begin{itemize}
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\item Electoral Act of 9 March 2006.
\end{itemize}
and the police to vote or stand for election unless they previously resigned. In March 2006, just hours before he could announce and register his candidacy, President Kabila resigned from the army, proving his opponents right and certifying a posteriori that he was still in the army when he registered as a voter. The veil of impartiality of the EIC also fell when this institution attempted to disqualify Alex Kande and Dominique Kanku as opposition candidates for the positions of governors in the provinces of Kasai Occidental and Kasai Oriental. However, despite the irregularities, the EIC succeeded in organising competitive elections after decades of undemocratic rule no matter how critical one could be about the fairness of these elections. Based on the circumstances and the conditions under which it had to operate, the EIC performed better than similar institutions in many other African countries. Accordingly, the expertise of the EIC has been solicited in countries such as Côte d’Ivoire and the Republic of Congo.

Voters and parties were registered. An electoral Commission was provided for by the Constitution and by a special Act of Parliament to manage the electoral process. Despite being chaired by presidential allies, it did not proclaim the incumbent elected after the first round of elections and a second round had to be organised.

The judiciary had also a key role to play and was recognised as the final judge in electoral litigation with decisions binding on all parties. The Constitution provides that the judiciary is independent and impartial. The judicial power is vested in the courts and tribunals. The Constitutional Court is the highest court in the Republic. It has the final say in all constitutional matters. It is competent to invalidate any Act of Parliament or any act having the force of law for inconsistency with the Constitution. It is also competent to interpret the Constitution, to resolve the conflicts between the executive and the legislature on the one hand and between the central and provincial governments on the other hand. Moreover, the Constitutional Court is the electoral judge as far as presidential and parliamentary elections are concerned. Accordingly, it may invalidate or confirm the results of any presidential or legislative election. The 2006 Constitution provides

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153 On the lists submitted by the MLC and allies in the Union pour la the Nation supporting opposition leader Jean-Pierre Bemba.
further that during the period leading to the establishment of the Constitutional Court, the Supreme Court of Justice exercises the powers vested in the Constitutional Court.\textsuperscript{158} The Supreme Court also makes a final judgment on the appeals lodged against the decisions of the Court of Appeals, which are competent to pronounce on the regularity of the provincial and municipal elections.\textsuperscript{159}

The Supreme Court of Justice confirmed the results of the presidential election as published by the EIC. Presidential candidates such as Azarias Ruberwa (first round) and Jean-Pierre Bemba (second round) contested the results. They stressed irregularities such as unauthorised vote by procurement or vote by persons not entitled to vote, total absence of witnesses or observers, corruption of EIC officials, and excessive manipulation and intimidation of voters. Although the Court could not change the final results in terms of which Joseph Kabila was proclaimed the winner, these were instances where it could have ordered a new election, a recount or even an invalidation of votes. It is only in settling the disputes over the election of the members of the National Assembly that the Supreme Court decided to invalidate some candidates who had been proclaimed as elected by the EIC or to order a new election.\textsuperscript{160} In the DRC as in many other states of the continent, a lot still need to be done to ensure the independence of the judiciary that is critical to the rule of law and the establishment and consolidation of democracy. However, despite the weaknesses, the judiciary in the DRC should be commended for the work it has done as the electoral judge in the context of an emerging multiparty democracy.

Moreover, despite irregularities, all the parties ultimately abode by the results instead of resorting to war. Every year, there is at least one African countries going to polls. Recent general elections took place in countries such as Benin, Burundi, Central African Republic, Chad, Cameroon, Congo, Ethiopia, Egypt, Lesotho, Liberia, Malawi, Mauritania, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Tanzania, and Uganda. Most recent elections on the time of writing were held in Kenya. Zimbabwe is going to elections shortly. Cote d’Ivoire should be going to elections by the end of the year while South Africa, Zambia and Angola are expected to vote in 2009.

On the other hand, despite a few incidents, the Congolese elections took place in a generally peaceful context. This was almost a miracle in a country still emerging from war. The organisation of these elections in a multiparty context should be commended as one step ahead on the road to democracy and to the African renaissance.

There are definitely lessons that the rest of Africa can learn form the DRC experience. Arguably, the DRC elections were relatively the best multi-party elections organised in Africa over the last decades. Both their shortcomings and success may help other countries and even the DRC itself to overcome or emulate them or to improve when they organise their future elections.

\textsuperscript{158} Art 223 of the Constitution of 2006.
\textsuperscript{159} Arts 72, 74-76, 157, 172-173 of the Electoral Act.
\textsuperscript{160} The Court ordered a new election in some constituencies (Mweka, province of Kasai Occidental, and Befale, province of Equateur) where massive vote rigging occurred. Later on, it reverted to its initial decision and confirmed the results of the election in Mweka.
5 CONCLUSION

As this article emphasised, particularly within the African context where the masses of the people are still fighting to enjoy their basic civil, social and economic rights, democracy cannot be reduced to the holding of elections under a multiparty system. Multiparty elections have been regularly held, with the *satisfecit* generally delivered by ‘international observers’ without many African countries entering the promised land of democracy. Although they are not synonymous, elections and multipartyism constitute nevertheless a step forward in the process of establishing a genuine democracy.

Despite shortcomings in the electoral process and in the electoral laws and the intricacy of the electoral systems, the elections in the DRC were particularly peaceful and disappointed many prophets of doom. However, as this author stressed elsewhere, there are challenges to democratic consolidation in the DRC as well as on the rest of the African continent. As scholars such as Sandbrook, Schatzberg, Nzongola-Ntalaja and Lee also observed, some of these challenges relate to external factors as they relate to the negative role of the international community and globalisation and contributed to the making of what Mkandawire aptly referred to as ‘choiceless’ democracies. Others relate to internal or domestic factors such as the establishment of the rule of law, the existence of institutions such as a national, non-partisan and professional army, an independent and impartial electoral commission and judiciary to preside over the process, to the development of a political and democratic culture among the people, the existence of a political and intellectual leadership truly committed to democracy, to national reconciliation and nation-building, to the existence of peace and therefore the eradication of poverty, and of the ‘military syndrome’ and the absence of wars and rebellions that pose the greatest threat to constitutionalism and democracy on the continent.

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164 G Nzongola-Ntalaja & M Lee ‘Introduction’ *op cit* at 1, 7-8.
165 Idem at 322.
166 T Mkandawire T ‘Crisis management and the making of “choiceless” democracies’ *op cit* at 119-120, 122-130, 133; Joseph R ‘State, conflict and democracy in Africa,” in Joseph *op cit* at 6-7.
167 See Onalenna D G ‘Gender and democracy in Botswana: women’s struggle for equality and political participation’ in Nzongola-Ntalaja & Lee *op cit* at 39-40; Nwabueze *op cit* at 304; Mujaju A B ‘Civil society at bay in Uganda’ in Nzongola-Ntalaja & Lee *op cit* at 42; Nzongola-Ntalaja & Lee ‘Introduction’ *op cit* at 2.
168 See Huntington *op cit* at 316; Wiseman *Democracy in black Africa* *op cit* at 186; Idem *The new struggle for democracy in Africa* *op cit* at 132, 165, 172-173; Ibrahim *op cit* at 114-117.
169 Ottaway *op cit* 316.
170 See Van de Walle N ‘Economic reform and the consolidation of democracy in Africa’ in Ottaway *op cit* at 15; Clapham C & Wiseman J A ‘Conclusion: assessing the prospects for the consolidation of democracy in Africa’ in Wiseman *op cit* at 222.
Poverty and underdevelopment also constitutes one of the most serious threats to democracy. Total economic collapse is incompatible with democracy and failure to improve the economic situation can disappoint the masses who fought for political change as a prerequisite for economic development. The consolidation of democracy remains extremely difficult, especially at times of economic crisis.\(^\text{172}\) It should therefore go hand in hand with efforts to economic recovery and reconstruction.

From a legal and political perspective and with regard to elections, the main challenges From the above, the existence of a legitimate Constitution, proper electoral laws and systems, an independent and impartial electoral commission really autonomous, well-resourced and independent from all, an independent and impartial judiciary, a political leadership committed to democracy and the rules of the democratic game, and a vibrant civil and political society that contribute to empowering the citizenry.

Suberu pointed out, the challenges in Africa are enormous, but not insurmountable.\(^\text{173}\) Democracy also belongs to Africa and is feasible in Africa.\(^\text{174}\) This reflection on the electoral laws and systems and on the recent elections organised in a relatively successful manner in the DRC after decades of authoritarian rule and wars clearly demonstrates that there are lessons that Africa can and should learn from the DRC experience in order to consolidate democracy beyond the electoral masses regularly called on and sometimes suspended or delayed on the continent.

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André Mbata B Mangu ‘Challenges to constitutionalism and democratic consolidation in Africa’

\(^{172}\) See Van de Walle N ‘Economic reform and the consolidation of democracy in Africa’ in Ottaway \textit{op cit} at 15; Clapham C & Wiseman J A ‘Conclusion: assessing the prospects for the consolidation of democracy in Africa’ in Wiseman \textit{op cit} at 222.


\(^{174}\) See Hinden \textit{op cit} 9, 14; Ilunga Kabongo ‘Democracy in Africa: Hopes and Prospects,’ in Ronen \textit{op cit} 35; Ake op cit 129-159.


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ILLUSTRATION: 4 seats, 220000 voters, 12 candidates, 3 lists of political parties and 3 independent candidates, electoral quotient (EQ) 220000: 4 = 55000

<table>
<thead>
<tr>
<th>Number of lists</th>
<th>Candidates</th>
<th>Political party or Independent list</th>
<th>Votes obtained</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>A</td>
<td>Party AA</td>
<td>11000</td>
<td>5.0</td>
</tr>
<tr>
<td>02</td>
<td>B</td>
<td>Party AA</td>
<td>7000</td>
<td>3.2</td>
</tr>
<tr>
<td>03</td>
<td>C</td>
<td>Party AA</td>
<td>5000</td>
<td>2.3</td>
</tr>
<tr>
<td>04</td>
<td>D</td>
<td>Party AA</td>
<td>79000</td>
<td>35.9</td>
</tr>
<tr>
<td>05</td>
<td>E</td>
<td>Party BB</td>
<td>18000</td>
<td>8.2</td>
</tr>
<tr>
<td>06</td>
<td>F</td>
<td>Party BB</td>
<td>20000</td>
<td>9.1</td>
</tr>
<tr>
<td>07</td>
<td>G</td>
<td>Party BB</td>
<td>17000</td>
<td>7.7</td>
</tr>
<tr>
<td>Candidate/ List</td>
<td>Votes</td>
<td>Votes/ EQ</td>
<td>First Distribution of Seats</td>
<td>Rest</td>
</tr>
<tr>
<td>----------------</td>
<td>-------</td>
<td>-----------</td>
<td>-----------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Party AA</td>
<td>102000</td>
<td>102000: 55000= 1.9</td>
<td>1</td>
<td>47000</td>
</tr>
<tr>
<td>Party BB</td>
<td>55000</td>
<td>55000: 55000= 1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Party CC</td>
<td>18000</td>
<td>18000: 55000= 0.3</td>
<td>0</td>
<td>18000</td>
</tr>
<tr>
<td>Independent A</td>
<td>26000</td>
<td>26000: 55000= 0.5</td>
<td>0</td>
<td>26000</td>
</tr>
<tr>
<td>Independent B</td>
<td>10000</td>
<td>10000: 55000= 0.2</td>
<td>0</td>
<td>10000</td>
</tr>
<tr>
<td>Independent C</td>
<td>9000</td>
<td>9000: 55000= 0.2</td>
<td>0</td>
<td>9000</td>
</tr>
</tbody>
</table>

The first distribution of votes after division of the total number of votes by the electoral quotient gives Party AA and Party BB one seat each. Based on the highest rest rule, a second distribution will take place for the two remaining seats. These two seats will be given to Party AA and independent candidate A.

**DISTRIBUTION OF SEATS AMONG CANDIDATES OF EACH LIST**

<table>
<thead>
<tr>
<th>Political Party Independent Candidate</th>
<th>Seats</th>
<th>Candidates</th>
<th>Votes</th>
<th>Observation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party AA</td>
<td>02</td>
<td>A B C D</td>
<td>11000</td>
<td>Candidate A and D elected</td>
</tr>
<tr>
<td>(highest rest 47000)</td>
<td></td>
<td></td>
<td>7000</td>
<td></td>
</tr>
<tr>
<td>(no rest)</td>
<td></td>
<td></td>
<td>5000</td>
<td></td>
</tr>
<tr>
<td>(rest 18000)</td>
<td></td>
<td></td>
<td>79000</td>
<td></td>
</tr>
<tr>
<td>Party BB</td>
<td>01</td>
<td>E F G</td>
<td>18000</td>
<td>Candidate F elected</td>
</tr>
<tr>
<td>(no rest)</td>
<td></td>
<td></td>
<td>20000</td>
<td></td>
</tr>
<tr>
<td>(rest 18000)</td>
<td></td>
<td></td>
<td>17000</td>
<td></td>
</tr>
<tr>
<td>Party CC</td>
<td>00</td>
<td>H I</td>
<td>10000</td>
<td></td>
</tr>
<tr>
<td>(rest 18000)</td>
<td></td>
<td></td>
<td>8000</td>
<td></td>
</tr>
</tbody>
</table>

The electoral quotient (EQ) 220000: 4 = 55,000 was used to distribute the votes among the candidates.
| Independent A | 00 (rest 26000) | 26000 | Independent candidate A elected |
| Independent B | 00 (rest 10000) | 10000 |
| Independent C | 00 (rest 9000)  | 9000  |

In the light of the results above, Party AA won 2 seats and its candidates A and D are elected. Candidate F on Party BB list and independent candidate A are also elected thanks to their highest rests (26000 and 20000) after Party AA (47000).

The Constitution provides that the DRC is an independent, sovereign, united and indivisible, social, democratic and secular state.\textsuperscript{175} Despite some federal features,\textsuperscript{176} this is a unitary and decentralised state based on the principle of

\textsuperscript{175} Art 1 of the DRC Constitution.
\textsuperscript{176} Federal features include the bicameralism of Parliament whose one chamber, the Senate, is elected to represent the provinces; the division of power between the central and the provincial spheres of the government; and the fact that provinces have their own executive and legislative authorities.
separation of powers both vertical\(^{177}\) and horizontal\(^{178}\). The DRC comprises the
capital city of Kinshasa and twenty-five provinces.\(^{179}\) However, this provision will
come into operation within a period of thirty-six months following the inauguration of
the political institutions. In the meantime, the DRC will continue to comprise the
capital city of Kinshasa and ten provinces - namely Bas-Congo, Bandundu, Equateur,
Kasai Occidental, Kasai Oriental, Katanga, Maniema, Nord-Kivu, Province Orientale
and Sud-Kivu - as under the previous (interim) constitutional dispensation.\(^{180}\)
Kinshasa and the provinces are divided in a number of decentralised territorial
entities. Decentralised territorial entities are cities, which consist of autonomous
towns or metropolitan municipalities known as *communes*, sectors and
chieftaincies.\(^{181}\) An Act of Parliament deals with their composition, organisation,
functioning as well as their relationships with the state and the province.\(^{182}\) New
provinces and territorial entities may be established in terms of the Constitution and
the law.\(^{183}\)

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\(^{177}\) Distribution of powers between the national or central and the provincial spheres of government.

\(^{178}\) Separation of powers as it is traditionally known, that is between the executive, the legislature and
the judiciary.

\(^{179}\) Art 2 of the DRC Constitution.

\(^{180}\) Art 226 of the DRC Constitution.

\(^{181}\) Art 3 of the DRC Constitution.

\(^{182}\) Art 3 of the DRC Constitution.

\(^{183}\) Art 4 of the DRC Constitution.