

# Will the DRC's 'sacred union' deliver electoral reform?

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The so-called 'sacred union' (union sacrée) coalition decreed by Democratic Republic of the Congo President Felix Tshisekedi has shifted the balance of power in his favour, at least for now. The crucial question is whether he will seize the moment and take advantage of the sacred union to reform the country's electoral system and improve security ahead of the 2023 election.

## Key findings

- ▶ The ‘sacred union’ is proving to be effective, with President Felix Tshisekedi having a new majority in Parliament.
- ▶ The president has won some key allies, including Jean-Pierre Bemba, Moïse Katumbi, and Front Commun pour le Congo (FCC) dissidents Modeste Bahati Lukwebo and Christophe Mboso N’Kodia Pwanga supporting his vision.
- ▶ The president has priorities for the remainder of his mandate, including electoral reform and security in the eastern Democratic Republic of the Congo (DRC).
- ▶ The debate on election-related reform gained momentum with parliamentary approval and the senate’s deliberations over the recommendations by the National Assembly’s legal and political affairs commission.
- ▶ The absence of consensus on reform among political and social actors could breed tensions in the long run.
- ▶ There are divisions over the content, timeframe and government’s due diligence over the process.
- ▶ There is also confusion as to whether a census will be completed or be used as a delaying strategy to postpone the 2023 elections.

## Recommendations

For the government:

- ▶ Build consensus on the reform agenda by taking concrete steps to make the process as consultative as possible and creating a consultation framework for political actors to exchange views regularly.
- ▶ Be clear that, as part of the electoral reform agenda, constitutional provisions on presidential term limits are not manipulated and that the amendment’s aim is principally to readjust the electoral system and ensure that it aligns with the constitution.
- ▶ Use local and independent expertise in the DRC on election issues. This will guarantee local ownership and popular support, which are important for implementation and sustainability.
- ▶ Establish the new Commission Électorale Nationale Indépendante (CENI) with fair and equitable representation of the main

social and political actors, and preserve its independence, fair treatment of election results and member accountability.

- ▶ Issue a clear timeframe for all election-related initiatives ahead of 2023.

For the international community:

- ▶ Continue to support the government to implement the planned reform, going beyond pledges to provide technical and financial assistance to the reform process, and ensure a timely completion of the census.
- ▶ Work with the government, opposition political leaders, civil society organisations and religious leaders to conduct a transparent and inclusive reform process ahead of the 2023 election.

For civil society:

- ▶ Engage independently in the electoral reform process to reflect citizens’ concerns about fairness and transparency.

## Introduction

In 2018, the Democratic Republic of the Congo (DRC) held the presidential election initially slated for December 2016. Through a controversial deal between a fragment of the opposition coalition, the Cap Pour le Changement (CACH) and the then-ruling FCC, Felix Antoine Tshisekedi was declared the winner and was sworn in as president. Although many actors, including the Catholic Church's National Episcopal Conference of the DRC (CENCO) questioned the validity and raised doubts about the electoral commission's declaration, Tshisekedi took power. It was considered a historical peaceful power transfer from one elected leader to another.

Nevertheless, Tshisekedi and CACH did not have power within the Congolese Senate and National Assembly, both dominated by the FCC. Two years later, however, the DRC finds itself in yet another political impasse characterised by inside battles to gain control over key state institutions.

Tshisekedi has become a leader without much influence on government's key decisions in a country affected by myriad political, social, economic and security challenges. He has been unable to improve living conditions or security for the people. As with previous power-sharing deals, the CACH-FCC coalition failed to deliver good governance and security for the 90 million citizens yearning for the benefits of the first peaceful transfer of power between two DRC presidents.

In addition, the persistent lack of state authority, rampant impunity and absence of legitimate state institutions fulfilling their responsibilities have fed the political impasse and cyclical instability mainly in the eastern DRC. The state seems to have been captured by political forces more interested in neutralising each other than addressing the country's crises.

On 6 December 2020, Tshisekedi declared in a speech that ending the CACH-FCC coalition would enable his government to deliver on his promises to alleviate poverty and eradicate growing insecurity. The announcement followed consultations with various social and political actors and was made with the tacit support of external partners, including the United

States and Belgium. However, this shows only the president's intention to regain control of various levers of power to chart a new course to his rule.

Recent political developments seem to have effectively shifted the balance of power and Tshisekedi looks set to rule unhindered. Yet, many questions remain unanswered, including those about the priorities of the government and his real intentions. Among other things, will the new political landscape in the DRC facilitate, at least, the reconfiguration of the country's electoral and governance systems.

This report unpacks the ongoing debate in the DRC on electoral reform. It seeks knowledge and understanding of the positions of main political actors and to appraise whether the new political alliance could facilitate normative, structural and institutional reforms to address the country's crises.

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To gather relevant data, the author reviewed reports written or published by national and international organisations involved in the DRC's political process. This was followed by field research in the DRC from 8 to 20 March 2021, during which interviews and discussions were conducted with politicians, political parties, ordinary citizens and civil society activists. While analysing the data and drafting the report, follow-up discussions were held with social and political actors between April and May to clarify specific issues.

The introduction to the report is followed by a brief analysis of the significance of the new balance of power in the DRC. Key priorities for the new coalition are then discussed, followed by an analysis of the ongoing debate on reform as it relates to the 2023 election. The impact of the new political reconfiguration on security in the eastern region of the DRC is then explored. The final section presents scenarios on potential risks and challenges ahead of the 2023 general election.

## Tshisekedi takes charge – what's next?

During his address to the nation in December 2020, Felix Tshisekedi announced the end of the coalition that brought him to power and the creation of a new political majority in Parliament.<sup>1</sup> Citizens, DRC partners and civil society organisations believed that the project was fraught with risks as the decision had both political and security implications. Yet, Tshisekedi moved swiftly to dictate the pace and trajectory of what he called the 'union sacrée'. He invited political actors regardless of political affiliation to show support to his new vision in moving the country out of stagnation.

Using existing laws, promises and the fear that a threatened new election might see many National Assembly members lose their seats, he won over most of former-president Joseph Kabila's coalition. Some members of the pro-Kabila camp took a strategic and opportunistic decision to avoid losing their seats and positions should an election materialise.

### The sacred union's 57-member cabinet with 14 women was approved by 82% of Members of Parliament

In a political fashion common to leaders on the African continent, Tshisekedi outmanoeuvred his predecessor, Kabila. He now has the majority in the National Assembly headed by Christophe Mboso N'Kodia Pwanga. Pwanga is a former FCC parliamentary member and a veteran politician who, according to many observers, does not entertain further political ambitions that could clash with those of the president.<sup>2</sup>

By mobilising the 'bureau d'age' elderly leadership of the National Assembly, Tshisekedi has also ousted from Senate and Parliament radical, staunch Kabila allies such as Alexis Thambwe Mwamba and Jeanine Mabunda. Those initial political gains, and the nomination of three constitutional judges, reinforce the president's resolve to remain in control. He also intends to finally assume some power over other key government institutions, while facilitating the return to prominent positions of leaders Kabila sidelined during his term.<sup>3</sup>

After months of negotiation and speculation, the appointment of a new prime minister, and subsequently government, reflect Tshisekedi's ambitions to refine his approach to politics and governance outside the 2018 power-sharing deal.

Sacred union supporters argued that reconfiguring the political landscape and supporting the president would improve service delivery, but opposition leaders denounced the dictatorial move, pointing to Tshisekedi's strategy to secure re-election. The sacred union might have ended internal CACH and FCC rivalries and lifted some of what the president called impediments to government's responses to the country's numerous challenges, but it faced criticism.

Opposition Lamuka's leader Martin Fayulu raised concerns about the undemocratic nature of the process and pointed to the absence of citizen consultation, which has stymied accountability.<sup>4</sup> In the same vein, some civil society leaders considered the move unconstitutional as it perpetuates a corruption-induced neo-patrimonial system, which fuelled the collapse of the DRC.<sup>5</sup> As one opposition leader put it ironically, 'the president now has the constitutional court he wanted, the parliament he wanted, the same goes for the Senate, the prime minister and the government. It remains to be seen what he can do with them and how our citizens will respond.'<sup>6</sup>

## New government, old priorities and challenges

The contradictions of the sacred union emerged with the complex negotiations for the new government causing delays in its setting.<sup>7</sup> When it was finally sworn in by Parliament in April 2021, the new government team opted for a delicate balance between young leaders and established political actors and allies. These include Deputy Prime Minister Eve Bazaiba from Jean-Pierre Bemba's Movement for the Liberation of Congo (MLC) and Moïse Katumbi's ally Christophe Lutundula as minister of the environment and foreign affairs.

The 57-member cabinet with 14 women received the approval of 412 members of Parliament (out of 500) to implement the government programme articulated by the prime minister. The programme centres on four priorities: security mainly in the east, national reconstruction projects, promotion of the rule of

law and improving the living conditions of citizens. As one Member of Parliament (MP) noted, 'with the sacred union of the nation and the government of Sama Lukonde, the country is set to win the battle of transformation and development.'<sup>8</sup>

Some civil society organisations<sup>9</sup> and political actors welcomed the programme but were sceptical of the commitment of members of the new political coalition, the timeframe, the financial implications and the delivery. According to some political and social actors, the \$7 billion budget approved by the National Assembly is insufficient to resolve the country's numerous and deep-seated challenges.<sup>10</sup> They note that the government's programme will require an additional \$36 billion over the next three years for which there does not appear to be a concrete resource mobilisation plan or strategy.<sup>11</sup>

### Some fear the bulk of the budget will cover government expenses rather than services citizens need most

For most social and political actors, none of the issues in the programme is new and various governments have failed to uplift the living conditions of citizens. Quite often, governments have made announcements on socio-economic projects without investing much to fulfil them. They have become disillusioned with the litany of promises and programmes with fancy names but without impact on their lives.<sup>12</sup> Against this backdrop, some actors fear that, as with previous administrations, the bulk of the budget might cover the government's own expenses more than what matters the most to citizens.<sup>13</sup>

According to research conducted by the Institute for Security Studies (ISS), the health and education sectors have remained in a deplorable state, while roads and basic infrastructure are almost non-existent. The research found that the gross domestic product per capita was 40% of its value at independence in 1960 and more than 60% of citizens will live below US\$1.90 even after 2040.<sup>14</sup> The DRC ranks 175 out of 189 countries on the World Bank 2020 Human Development Index.<sup>15</sup> It is a country where everything requires urgent attention and where key development initiatives are all priorities.

Among the underlying structural reasons for the DRC's numerous and longstanding challenges are bad governance and fraudulent electoral processes, which often lead to political violence as means to access and maintain power. For 20 years, the country has been embroiled in multiple multifaceted violent conflicts that continue to undermine its potential to be one of the most prosperous and peaceful countries in Africa.

Donors and international actors with considerable DRC interests and engagements see post-2019 developments as an opportunity to re-engage the leadership and assist in designing and implementing citizens-centred governance and socio-economic reforms. These include the United States, United Kingdom, France, Germany and former colonial power Belgium.

In a joint statement, these actors expressed support for and encouraged the newly appointed government to undertake key reforms to address chronic instability and rampant poverty. Donors also called on the government to undertake reforms to allow for a genuine expression of the will of citizens and create conditions for the improvement of their socio-economic situation.<sup>16</sup> Donors' expression of support is essential in the country's quest for peace and stability.

The convergence of views on the importance of broad-based reforms from civil society organisations, political actors, the government and international partners reinforces the need to give them adequate attention. Reform will not turn around the situation overnight, but it could remove an impediment that has for decades stymied tangible socio-political and economic progress for citizens. To do so however, there must be political will and consensus to bring citizens back into the political process.

### Electoral reform needed

DRC election-related issues have always been subject to intense and sometimes violent debates. At their core is the lack of confidence among political actors in the electoral system and processes, and their attempts to control them to secure or maintain power. This, in turn, affects the integrity of the electoral system and, by extension, the legitimacy of the leadership that emerges.

Since 2006, every electoral process in the DRC has been marred by violence and controversy. Outcomes have

been perceived mostly as lacking credibility. According to many, fear of losing power with a transparent vote from citizens dissatisfied with poor governance, corruption and poor government performance forced Kabila to control the electoral process to his advantage. For example, in 2011, to secure his re-election, Kabila opportunistically amended the electoral laws, eliminating the presidential run-off, and imposed a national, provincial and local threshold for competition among political parties. The replacement of MPs was also controversial as it was based on family affiliation and a dynastic regime.<sup>17</sup>

The 2011 electoral process brought the DRC to violence and government-led repression. Violence was also manifested in 2016 when Kabila sought to either suspend the electoral process or delay it to remain indefinitely in power. Protests erupted across the country, while some armed groups intensified attacks on government forces and civilians to oppose the delay or an extension of Kabila's rule beyond his second constitutional term.

The 2018 election that finally took place after two years of delay was marred by severe repression targeting social activists, opposition leaders and even religious leaders. This highlighted once more the need to restore the credibility of the electoral process as a basis for government legitimacy.

For DRC partners, civil society actors and political leaders, a credible electoral process could contribute significantly to peace. It should capture the free expression and will of citizens in support of the political agenda, while depriving armed groups of justifications for violence. More importantly, a credible electoral process in 2023 and the reinforcement of credible national institutions for checks and balance could help the DRC turn a page. Chronically flawed and contested electoral processes and outcomes over two decades could make way for a strengthened system that puts citizens at the heart of a process toward democracy and effective governance.<sup>18</sup>

Electoral reform is generally a long process involving several actors, steps, procedures, consultations and a consensus-building exercise. It involves constitutional and legal changes or institutional transformation. For years, many social and political actors have called for comprehensive election reform.<sup>19</sup>

These actors include the National Episcopal Conference of the DRC (CENCO), the Episcopal Peace and Justice Commission, the Coalition of Citizen Election Observation Mission and the Action for Transparent and Peaceful Elections, among others. They have long maintained pressure on political leaders and the government to clean up the existing electoral system, laws and regulations, eliminating weaknesses that threaten genuine expression DRC citizens' will. The reform targets specifically the electoral laws and the Independent National Electoral Commission (CENI) as detailed in the next sections.

### **Addressing the weaknesses in electoral laws**

The 2023 presidential election might still be relatively far away but the debate on the conditions for a new electoral experience in the DRC free from past controversies rages on. Apart from pushing the DRC towards democracy, the actors are increasing pressure on the government to take measures or show commitment to improved electoral management. The delayed appointment of the government, four months after the prime minister's 15 February 2021 nomination, made some civil society actors warn about another postponement or 'glissement, which many believe is prominent.'<sup>20</sup>

### **Credible 2023 elections and institutions that provide checks and balances could help the DRC turn a page**

Indeed, constitutional provisions<sup>21</sup> and a body of laws<sup>22</sup> define the election-related legal framework of the DRC and guide all aspects and steps of the electoral cycle. These included voter and candidate registration, conditions applied to potential candidates, campaigns, access to media, the vote, the tally, results, disputes settlement, and electoral frauds or contraventions.

Civil society organisations and political actors are unanimous that the national legal and legislative provisions of the DRC electoral process have been a two-decade work in progress and one still seeking perfection. Some actors explain that many provisions remain vague, making their interpretation and, to

some extent, their implementation challenging. They cite the constitutional provision on gender equality, which has hardly been respected.<sup>23</sup>

They also highlight that some provisions are at best contradictory and incompatible with international legal instruments on elections. Even though the DRC signed in 2008 the African Union African Charter on Democracy, Elections and Governance, it is yet to ratify it. This remains a gap to fill not only as a diplomatic formality but as a government commitment to meeting international standards.

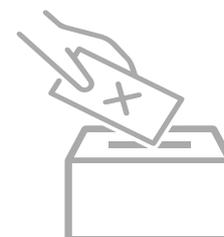
Many social and political actors interviewed in Kinshasa indicated that the DRC does not have coherent legal provisions on campaign financing and on timelines for settling electoral disputes. They added that, among other things, the legal provisions introducing a national threshold for parties to win a seat in Parliament need further debate and amendment. So, too, do the replacement of a deputy when a vacancy arises in Parliament and the laws on DRC citizens living abroad.

Some constitutional provisions related to the presidential election also raise concerns and need adjustments. As it currently stands, the presidential election takes place in one round and the president can be elected with even less than 50% of national votes.<sup>24</sup> The existing legislation on electoral corruption also remains weak on vote buying.<sup>25</sup>

### Interviewees in Kinshasa said the DRC lacks coherent legal provisions on campaign financing and on timelines for settling electoral disputes

Since 2019, there have been sets of electoral reform proposals. The first was submitted for debate in the National Assembly in July 2020 by a group of MPs known as the G13. This group was the initiative of Christophe Lutundula, an opposition MP, former Kabila collaborator who is now close to Moïse Katumbi. It consisted of political leaders from the former presidential majority (FCC was the dominant coalition in the National Assembly until December 2020), the opposition or minority political parties and civil society. The group aimed to build consensus on electoral reform, proposing measures to reinforce transparency of voting operations, certification of results, the voting system and electoral management procedures.

The G13 proposed the amendment of article 220 of the 2011 constitution to reintroduce a run-off in the electoral system. What is referred to as 'Lutundula's law' garnered some support from social and political actors as a parliamentary working document. Specifically, the G13 called for the removal of the national threshold<sup>26</sup> for parties to win a seat in the national assembly. Instead, it proposed that parties have candidates in at least 60% of the national electoral districts. It also seeks to prohibit an individual's dual or multiple candidacies in provincial and national elections, a situation



MANY ELECTORAL PROVISIONS ARE VAGUE, MAKING IMPLEMENTATION DIFFICULT

that often leads to elected officials holding several elected mandates.

Furthermore, the group calls for governors to be directly elected by citizens to improve accountability to the populace and eradicate corruption such as that observed for two decades. Finally, the G13 calls for traceability of votes and harsher measures against electoral fraud, abuses of position and corruption.

The second initiative, by Joseph Olenghankoy's National Council on the Agreement and Electoral Process (CNSA), or the Conseil national de suivi de l'Accord de la Saint-Sylvestre, was made public in May 2021. The CNSA issued recommendations to guide the review of electoral laws. Its proposals are aligned with those of the G13. According to the CNSA, the proposals emanated from a tripartite consultation and evaluation of the 2018 electoral process by CENI, the government and CNSA. Despite unanimity on the laws to be amended, restructuring the electoral commission appears highly contentious.

### **Restructuring the independent national electoral commission**

Addressing CENI shortcomings is crucial to holding a credible, transparent and fair election in 2023. It is essential to improve the functioning of the electoral monitoring body and increase transparency, neutrality, fairness and independence in voting, while promoting accountability of CENI officials.

### **The proposed CENI law recommends excluding those affiliated with a political party in the previous five years**

Since the 2018 DRC elections, social and political actors have deemed it vital for a credible election in 2023 to reform CENI and renew its mandate. Similar to his proposed amendments to the electoral laws, Christophe Lutundula proposed amending provisions<sup>27</sup> on CENI's composition, functioning and activities. The proposed changes centre on restructuring CENI, appointing new members and financing the electoral process.

The proposed new CENI has 15 members, up from 13.<sup>28</sup> The majority parties or coalitions, the opposition

and civil society each appoint five members. The CENI president is elected by his peers following nominations by civil society representatives. The proposed legislation recommends the exclusion of members or individuals affiliated with or having represented a political party over the previous five years.

Once appointed, the new members no longer represent their initial organisations and, therefore, cannot be forced to resign or be replaced. This is to protect their independence from external pressure. The proposed law makes it compulsory for all members of the electoral commission to declare their assets at the beginning and at the end of their tenure, whether the assets were acquired before or during the tenure. Members are expected to refrain from undertaking any business or participating in any tenders connected to the electoral commission's activities.

A plenary assembly is the decision-making organ, also in charge of planning and orientation. With the plenary, the new law proposed an organ, 'the Bureau'<sup>29</sup> to manage and coordinate CENI's activities.<sup>30</sup> The new law also provides for a special funding mechanism for the election to respect constitutional planning and prevent delays. It also allows for stricter monitoring and evaluation.

Political actors had two main observations on CENI's restructure and functioning. First was agreement that the proposed formula is essential to free the institution from political influence and corruption. Still, they pointed to the past three electoral cycles in the DRC and recounted the controversies around its members and leaders and the performance of the electoral monitoring body. Member cooptation by the government and the 'fabrication' of various electoral results also make depoliticisation essential, they stressed.<sup>31</sup> Yet, this is delicate objective where political actors have a well-entrenched habit of political manipulation.

According to the Congo Research Group, the depoliticisation of the electoral commission is a complex, if not impossible, task for DRC's current leaders. The politicisation of the electoral monitoring body has roots in the history and the trajectory of the DRC's political developments since the Sun City Agreement signed in South Africa in 2003.<sup>32</sup> In addition, the past two decades have been marred by the behaviour of 'independent' members unable to resist political pressure.<sup>33</sup> Given the

conditions that created the sacred union, raising an independent and politically neutral CENI is a challenge.

The second observation touches on whether the proposed amendments will truly be what most citizens hope for in an unquestionable normative and institutional electoral framework. The proposed amendments were adopted by the National Assembly in April and then transmitted to the Senate for approval in June. Pieces of the legislation have gone to the Constitutional Court for constitutional validation and the president signed them into law in early July.

Social and political actors continue to raise doubts over the content<sup>34</sup> as promulgated by the president, and the government's genuine political will to effectively implement what is proposed.<sup>35</sup> As one national MP indicated, 'it is as if the government deliberately wants to maintain the weaknesses in the existing legislative framework and the electoral commission to its advantage.'<sup>36</sup>

Religious leaders also expressed concerns that the adopted law falls short of their expectations for an electoral body that is less vulnerable to political manipulation.<sup>37</sup> Some civil society actors, while denouncing a reform *ad minima*, argue that the sacred union has tested government's commitment to genuine reform and should be closely monitored.<sup>38</sup> The opposition FCC has also voiced concerns about the process.<sup>39</sup> As a result, a crisis of confidence has emerged, including among some of sacred union allies.<sup>40</sup>

In his speech during the inauguration of the new coalition in the parliament in March 2021, the newly appointed National Assembly speaker reassured Congolese citizens of the government's willingness to hold the 2023 election in good conditions and on time. He indicated that electoral reform ahead of 2023 is a government priority. Therefore, 'laws related to the electoral process as well as the legislation related to the organisation, and functioning of the CENI, are high on the parliament's agenda.' He also insinuated that reform would require a constitutional review.<sup>41</sup>

The challenge remains mobilising political and social actors to reach consensus on the *modus operandi*, its content and its understanding, and appropriation by Congolese citizens. In that sense, signing the Lutundula proposals into law is not the end of the road, particularly if consensus is not achieved in the process and its outcomes. Moreover,

the debate could drag on about constitutional change to align the proposed amendments with constitutional provisions. Indeed, the amendment of the electoral laws and the restructuring of the electoral commission will gain ground and have an impact if the political culture of winner-takes-all is brought under control.

Challenges facing electoral commissions are not particular to the DRC. In Africa controversies abound whenever countries approach elections. If many countries have opted for independent or autonomous institutions to manage their electoral processes, it is to guarantee the integrity of the vote. Yet, increasingly, governments are observed to attempt to maintain influence over the election's management institutions. In some instances, such as in Gabon, the government suspended the independent electoral commission and transferred its responsibilities to the interior ministry.<sup>42</sup>

### A crisis of confidence has emerged over the CENI law, including among some allies in the sacred union

In Senegal in 2019 and Côte d'Ivoire in 2020, similar debates took place around controversial composition, activities or neutrality of the electoral commissions. The 2021 presidential election in Benin, formerly known as a beacon of democracy, highlights the regression noted about national electoral commissions. Such moves lose sight of the indispensable impartial role of the electoral commission for peaceful elections that deliver uncontested results.<sup>43</sup> The DRC could be the exception as it now has the opportunity to get the proposed reforms right. This is an important step towards a credible and violence-free electoral process in 2023.

### Elephant in the room: census before or after the 2023 election?

Although election-related reform dominates the debate in the DRC, the issue of population census recurs. Some social and political actors believe that the plan to have data on the DRC's demography is urgent not only for the next electoral cycle but for development planning. Others believe the census argument is being manipulated to delay or postpone the 2023 election.<sup>44</sup>

The debate on the DRC's population census dates back to the signing of the Sun City Agreement in 2003. Participants in the intra-Congolese dialogue, which resulted in the agreement, made a census a *sine qua non* condition before any election. But this provision has never been upheld and all elections since 2006 have taken place without a census.

The last census conducted in the DRC dates back to 1984 and recorded 30 million Congolese citizens. This was an increase from 13.5 million in 1958, two years before the country's independence. According to the United Nations Population Fund, the current population of the DRC is estimated at 92.4 million.<sup>45</sup> For the 2018 general election, 40.02 million voters were registered according to CENI.<sup>46</sup>

In 2019, then-prime minister Ilunga Ilunkamba announced his government's plan to inject US\$1 million to revive the census. There was not much progress. Before Ilunkamba's, various governments had attempted to launch the census. From prime minister Adolphe Muzito in 2011 to Augustin Matata Ponyo in 2014, plans were devised and budgets projected without being implemented. Technical, financial and political impediments stood in the way. The estimated cost for the operation varied between US\$170 million and US\$350 million.

In September 2020, the National Office for the Identification of the Population (Office national pour l'identification de la population) issued a programme with a budget close to US\$350 million. The census would have to be completed in 2022, a year before the election. Mobilising the resources of the government and its development partners remains an uphill task, yet it is still possible.

The relevance of the census, even though a developmental issue, goes beyond cost to the controversies it raises ahead of the 2023 polls, as was the case for the last electoral cycle. The president's party added to the controversy when its leaders repeatedly called for the completion of the census before the next electoral cycle in 2023.<sup>47</sup> This position is not shared by public opinion, including some sacred union allies.

In an interview granted to *Jeune Afrique* in March 2021, the new senate head Lukwabo Bahati made it clear that the census argument should not be an excuse to delay the election.<sup>48</sup> In the same vein, opposition candidate Martin Fayulu reiterated his opposition to the census-before-

election argument.<sup>49</sup> Most of the civil society actors believe it is a diversion strategy that will be opposed by public protests if pursued by the government.<sup>50</sup>

In his January 2019 inaugural speech as president, Tshisekedi announced his willingness to complete the census to speed up planning and development of the country. This made the census part of the development agenda of the government, but it is caught up in a political context where trust is thin among political and social actors. Irregularities in the voter registration processes for the 2006, 2011 and 2018 elections fuelled the reluctance of citizens and political actors to entertain the census, making its completion difficult before 2023.

Despite the cost, a census is vital to reduce controversy ahead of the 2023 polls, as happened in 2018

Unless guarantees are provided and consensus is reached among key political actors and citizens on the implications for the voters roll, the census remains, as one civil society leader indicates, 'a tool that could be manipulated and used as an excuse to delay the 2023 elections.'<sup>51</sup> A census is due to be completed every decade to inform public policy design and governments' responses to citizens' needs. This has never been the case in the DRC. If conducted, the census could determine government and development partners' investments in socio-economic infrastructures, including roads, schools and health facilities. That the DRC has not completed a census for more than 30 years means it is operating on assumptions and estimations.

### **2023 election: will things fall apart?**

The sacred union has provided Tshisekedi with the means to consolidate his leadership with the objective of remaining at the helm of power beyond 2023. With this set ambition, many observers express scepticism on the timely holding of the election, which also depends on the successful completion of the associated ongoing reform.

In April 2021, Tshisekedi's supporters asked the National Assembly to reconsider the presidential mandate following the sacred union, calling for adjustments or

an extension. Their request was not successful. However, civil society and religious leaders are on guard, increasing pressure and engagement so that the government can keep its commitments to restore popular legitimacy to political leadership.<sup>52</sup> In addition, and as sacred union members, Moïse Katumbi and Jean-Pierre Bemba attach importance to and will exert pressure that the election take place on time because they intend to contest. Some members of these parties point to the election's budgetary provisions in government's plans as a key indicator in support of electoral reform.<sup>53</sup>

A high-profile member of the presidential party claimed that the aim of the Union for Democracy and Social Progress is to remain in power and exercise it freely.<sup>54</sup> Having control of key levers of power, the challenge remains the sustainability of his political strategy, his performance and the level of loyalty of those in the sacred union.

### Catholic Church leaders have asked the government to start early with voter education, election-related planning and training of local observers

In publicising its 'Agenda 2023' – the roadmap to the 2023 election – CENCO attempts to build momentum and set the pace for reform, drawing governmental attention to steps to avoid postponement. As a preventive approach, Catholic Church leaders have invited the government to start early with voter education, election-related activities planning and training of local observers.<sup>55</sup>

Tshisekedi's decision to stand and his chances of winning a second term hinge on substantial progress in political and electoral reforms and the results of the military campaign in the eastern DRC.

### **Sacred union, state of siege and the security in the east?**

After two years of a coalition government, Tshisekedi realised<sup>56</sup> that his record and legacy could be empty and his time as president would not bring significant changes. At the time of the next electoral competition, he might not have convincing arguments to mobilise voters to his side. In this sense, the two years of his five-year presidential term have neither provided political stability nor ended volatility in the eastern region of the DRC, two concrete indicators of his performance. Chronic political instability as a result of electoral fraud has a bearing on the ongoing armed violence in the east.

Violence<sup>57</sup> continues unabated in the Kivus and in Ituri province. Data collected by the Kivu Security Tracker (KST) show continuous increases. 'In 2018, KST recorded 914 civilian deaths caused by armed actors. In 2019, this toll had risen to 1 070. In 2020, it was 1 569. And 2021 has started on the same trajectory as 2020.'<sup>58</sup>

According to armed conflict location and event data on civilian casualties in the DRC, 2 319 civilians lost their lives between January

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DATE OF DRC'S  
LAST CENSUS

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and March 2021.<sup>59</sup> In spite of military operations launched since October 2019 against negative forces, civilians continue to bear the brunt of armed groups' attacks. The DRC remains home to 5.2 million internally displaced persons while hosting close to 529 000 refugees from neighbouring countries.<sup>60</sup>

The Forces armées de la république démocratique du Congo (FARDC) and the Congolese National Police (PNC) often claimed victories over some strongholds of the armed groups only to find them active elsewhere attacking civilians. Military pressure on the Allied Democratic Forces (ADF) in Beni Territory pushed them in various directions, including Ituri province's Boga and Tchabi, where recurrent attacks target civilians even in internally displaced camps.<sup>61</sup> Humanitarian agencies continue to warn that humanitarian needs will be higher in 2021 than 2020, as displaced and local populations face armed violence, food insecurity, floods, disease outbreaks and natural disasters.<sup>62</sup>

As an emergency reaction to the rampant attacks on civilians, the government decreed a state of siege. North Kivu and Ituri provinces were placed under a state of siege. The measure was an attempt to curb the violence and restore safety to the population in a quick turnaround operation.

Although it is too early to assess the impact of the strategy, it appears that a month after its launch, the government was compelled to extend it. The DRC's political actors and civil society leaders are divided over its relevance, its geographic scope and its efficiency in addressing the violence that has affected the DRC over two decades. The DRC has seen other military operations<sup>63</sup> at various times with a limited impact on armed groups. Citizens fear government forces' abuses as has been reported in the past by human rights organisations.

The resilience of armed groups is fuelled by factors including continuous collaboration between some FARDC officers and rebels, defective disarmament, demobilisation and reintegration, and active local and regional supply and support networks. Deficient national stockpile management, impunity, absence of comprehensive local conflict resolution and mediation strategies, and persistent neglect of structural and circumstantial roots of violence also play roles.

If the government does not incorporate these elements into its approach, the siege or any military operations are likely to record only temporary victories. Restoring peace in the eastern region of the DRC presents the government with an argument to claim a partial success that could weigh in the electoral process in 2023.

## Scenarios and implications

The ideal scenario for the DRC going forward would be the successful completion of thorough electoral reform and tangible military gains. This could play to the advantage of the government and increase the incumbent's chances of winning a second term. In this case, the scene is set for a less-controversial electoral process in 2023. By extension, successes on both fronts could be the foundation on which the DRC could finally enter a new era of democratic construction.

### The most likely scenario is half-baked reform, tailor-made to suit the Tshisekedi's ambitions

Democracy would include consolidation of the rule of law, adequate response against corruption and impunity, socio-economic pro-poor programmes and peace and stability interventions. In this scenario, the government embraces the reform process diligently, builds broad consensus among political and social actors, and key DRC partners, while mobilising resources and adhering to a clear timeframe. The proposals and institutional amendments are supported by citizens, adopted by Parliament, approved by the Senate, validated by the constitutional court and signed into law by the president. The census, or at least acceptable voter register, is completed and resources provided to the restructured electoral commission to execute technical operations ahead of the vote.

The most likely scenario, however, is half-baked reform, tailor-made to suit the president's ambitions, with minor concessions to opposition forces. That the author of the new electoral laws and CENI restructuring is a deputy prime minister and foreign affairs minister could be either an incentive or an impediment to reform.

The opposition sees the involvement of a cabinet member as a government push to have one-sided reform or no reform at all. In this scenario, the reform process goes ahead since the sacred union has a majority in the National Assembly, but this will not be without confrontations, resistance or protests. The government could argue that reform processes are not linear and not all are achievable overnight, while the opposition will insist that a comprehensive approach is key to a clean 2023 election.

The worst-case scenario is that the process stalls. Persistent disagreements on the reform cause delays, while fear of losing power in an open and transparent process makes political actors reluctant to proceed with the reform, maintaining the status quo. Two issues are likely to feed into this scenario: lack of consensus on the constitutional amendment to the electoral system and the appointment of the members of the electoral commission. In between, the issue of the census could become an impediment.

Social and political actors are calling for the reinstatement of the run-off and a direct election of senators and governors. However, there is a fear that opportunistic forces might want to open a controversial debate on the constitutional term limit. Furthermore, the appointment of representatives of various political and social actors might be highly contentious.

If civil society's protests against the appointment of Ronsard Malonda as president of the electoral commission are an indication, similar actions can be expected in the months to come. The changes in the balance of power in the National Assembly had an impact on the opposition representation within the electoral commission, in the light mainly of the split of the FCC.

## Conclusion

The DRC's citizens and international partners justifiably have high expectations since the first peaceful power transfer took place in 2019. They expect a new political bargain that will shape the political elite's response to the numerous challenges confronting the country. Political violence, armed groups' activism, corruption, unemployment and fraudulent electoral processes have characterised the DRC since the signing of the Sun City Agreement. The envisaged political reconstruction

project has stalled. It is now time to rethink state building and begin reinforcing the good governance architecture to maximise the fragile gains of the past two decades.

The ongoing debate and proposals on electoral reform are an opportunity for social and political actors to chart a new course for governance. The reform seeks to address some perennial problems undermining political predictability and stability, and should be encouraged, supported and completed promptly. The normative and institutional frameworks provide an incentive to define a new social and political contract between leaders and citizens on what matters for national development, peace and stability. The credibility of the legislative amendment and the electoral monitoring body could signal an era of transparency, independence, impartiality and integrity, starting with the upcoming election.

There are challenges ahead, including the temptation to circumvent or ignore the voices of the discontented on the reform's agenda. The timeframe might also be problematic. Yet further delay, manipulation or absence of transparency in the process are important risk factors for the government, its partners and citizens.

It must be made clear, too, that electoral reform alone cannot and will not resolve the DRC's entrenched, complex and multifaceted difficulties. They should be accompanied by the reinforcement of checks and balances with the electoral monitoring body and within national institutions. Without these, the election may not induce good governance nor democratic rule. Electoral reform constitutes part of the larger institutional reform that the DRC needs to harness its vast potential to improve the living conditions of its people.

Progress with reform and security in turbulent DRC zones will determine the political survival of the president, his re-election and his legacy to transform the political culture and incentives for violence. This would reassure sceptics about the true meaning of the sacred union. The result should be the ability of the DRC to control its borders and protect its citizens.

## Notes

- 1 <https://www.theafricareport.com/53665/drc-felix-tshisekedi-terminates-coalition-with-joseph-kabila/>
- 2 Interview with a political leader in Kinshasa, March 2021
- 3 For example, the deal helps Bahati Lukwebo recover the control of his AFDC political party and members
- 4 See <https://www.rfi.fr/fr/afrique/20201231-rdc-martin-fayulu-sort-du-silence-et-critique-l-union-sacr%C3%A9-de-f%C3%A9lix-tshisekedi>
- 5 Interview with a civil society leader in Kinshasa, March 2021
- 6 Interview with a civil society actor in Kinshasa, March 2021
- 7 Political actors from the opposition as well as civil society point out that the new government results from compromises and deals that could undermine the government as the elections draw near. They add it does not offer strong guarantee of sustainability. Interviews with some FCC members (who remain in opposition), Lamuka as well as Civil society leaders.
- 8 Interview a political leader in Kinshasa, March 2021
- 9 Interview with civil society actors in Kinshasa, March 2021.
- 10 Interview with civil society actors in Kinshasa, March 2021.
- 11 Interview with a political party leader in Kinshasa, March 2021
- 12 In 2006, the then President Joseph Kabila announced his program named "Six Chantiers": Infrastructure, water and electricity, health, education, housing and jobs creation. At the end of his terms, many citizens point at the unfulfilled promises
- 13 Interview with a civil society leader in Kinshasa, March 2021
- 14 See Kouassi Yeboua, Jakkie Cilliers and Stella Kwasi, Waking the sleeping giant: development pathways for the Democratic Republic of the Congo to 2050, ISS Report, March 2021. See also <https://www.financialafrik.com/2021/04/29/rdc-les-partenaires-internationaux-assurent-le-gouvernement-sama-lukonde-de-leur-soutien/>
- 15 <https://www.worldbank.org/en/country/drc/overview>, accessed April 2021
- 16 See Declaration commune des Partenaires de la République démocratique du Congo, issued on 29 April 2021, see <https://www.financialafrik.com/2021/04/29/rdc-les-partenaires-internationaux-assurent-le-gouvernement-sama-lukonde-de-leur-soutien/>
- 17 See Articles 101.3 of the constitution of the DRC, accordingly, in a situation of vacancy in the parliament, the replacement comes from the family of the deceased or incapacitated MP.
- 18 See for example UN, Transitioning from stabilization to peace: An independent strategic review of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 2019.
- 19 Interviews with civil society leaders in Kinshasa, March 2021
- 20 Interviews with civil society leaders in Kinshasa, March 2021
- 21 See 2011 Constitution of the DRC, art 161, 211 et 212.
- 22 See Electoral Law n°06/006, modified in 2011, 2015, 2016 and 2017.
- 23 Art. 13.3 of the electoral law, n°06/006, modified in 2011, 2015, 2016 and 2017
- 24 See 2011 Constitution of the Democratic Republic of the Congo
- 25 Telephonic interview with civil society actor, April 2021.
- 26 According to this requirement, parties need to have at least 1 percent of the national vote to have a seat in the parliament, a measure many say was to eliminate weak parties and force for grouping. But minority parties believe it stymies their democratic rights.
- 27 Organic Law No.13/013 of 28 July 2010, amended by the Organic Law No.13/012 of 09 April 2013.
- 28 Organic Law No.13/013 of 28 July 2010, amended by the Organic Law No.13/012 of 09 April 2013, Art. 10.
- 29 The "Bureau" is made of 1. Président : société civile; 2. Vice-Président : Majorité; 3. Rapporteur : Opposition; 4. Rapporteur adjoint : Majorité; 5. Questeur : Société civile; 7. Questeur adjoint : Majorité
- 30 See Christophe Lutundula, RDC: Loi Luntundula, presentation synthétique, available on <https://congovirtuel.com/information/rdc-reforme-ceni-presentation-synthetique-de-la-loi-lutundula/>
- 31 Interview with civil society leaders in Kinshasa, March 2021
- 32 Under the Auspices of the SA Government, the Suncity Peace Agreements were signed by DRC warring factions (RCD, MLC,) political actors and civil society to end wars and chart the political reconstruction of the country through a power sharing deal.
- 33 See Congo Research Group, GEC Report, Reforme de la CENI, de necessaires garde-fous a l'impossible depolitisation, Janvier 2021
- 34 See <https://www.rfi.fr/fr/afrique/20210610-rdc-des-alli%C3%A9s-du-camp-pr%C3%A9sidentiel-d%C3%A9noncent-le-projet-de-loi-de-r%C3%A9forme-de-la-c%C3%A9ni>
- 35 Opposition leader Martin Fayulu remains radically opposed to the process and insists on larger consultations to build stronger case for the proposed amendments.
- 36 Interview a FCC political actor in Kinshasa, March 2021
- 37 See for example <https://www.aa.com.tr/fr/afrique/rdc-l-eglise-catholique-et-le-camp-kabila-s-opposent-%C3%A0-la-congolit%C3%A9/2300969>
- 38 Interviews a civil society leader in Kinshasa, March 2021
- 39 See <https://www.rfi.fr/fr/afrique/20210610-rdc-des-alli%C3%A9s-du-camp-pr%C3%A9sidentiel-d%C3%A9noncent-le-projet-de-loi-de-r%C3%A9forme-de-la-c%C3%A9ni>
- 40 Telephonic interview with political actors, July 2021
- 41 See <https://cas-info.ca/2021/03/rdc-christophe-mboso-annonce-des-reformes-electorales-et-invite-les-confessions-religieuses-et-la-societe-civile-a-designer-leurs-representants-a-la-ceni/>
- 42 See for example <https://www.jeuneafrique.com/mag/538671/politique/elections-africaines-quelles-credibilites-pour-les-commissions-electorales/>
- 43 See M. Hounkpe and M. Fall, Les Commissions electorales en Afrique de l'Ouest: Analyse Comparee, FES, Deuxieme Ed, 2011. Also, Peter Penar Et Al, La Gestion des elections en Afrique: Qualite des processus, confiance publique sont des questions centrales, Synthese de Politique No.35, Afrobarometer, 2016
- 44 Interviews with opposition leaders, Kinshasa, March 2021.
- 45 <https://www.unfpa.org/data/world-population/CD>
- 46 <https://www.radiookapi.net/2018/09/03/actualite/en-bref/rdc-la-ceni-entame-laffichage-des-listes-provisoires-des-electeurs>
- 47 <https://www.radiookapi.net/2021/03/09/emissions/dialogue-entre-congolais/elections-2023-ludps-exige-dabord-le-recensement>
- 48 See <https://www.jeuneafrique.com/1141475/politique/rdc-modeste-bahati-lukwebo-felix-tshisekedi-avait-pense-a-moi-pour-le-poste-de-premier-ministre/>
- 49 <https://cas-info.ca/2021/03/rdc-martin-oppose-au-recensement-comme-prealable-a-lorganisation-des-elections-en-2023/>
- 50 Telephonic interviews with civil society activists, April and May 2021
- 51 Interview with a civil society leader, April 2021
- 52 Telephonic interviews with members of political parties, May 2021
- 53 Interviews with political leaders in Kinshasa, March 2021
- 54 Interview in Kinshasa, March 2021, see also <https://actualite.cd/2021/04/22/rdc-ludps-se-prepare-pour-ne-plus-faire-des-arrangements-en-2023-et-obtenir-deja-la>
- 55 <https://www.election-net.com/rdc-elections-en-2023-voici-la-feuille-de-route-de-la-cenco/>
- 56 The president delivered a speech on 6 December noting the lack of progress over his two years a President. See <https://www.theafricareport.com/53665/drc-felix-tshisekedi-terminates-coalition-with-joseph-kabila/>
- 57 Actors of the violence include local and foreign armed groups and some elements of the FARDC and the PNC. Violent extremist groups

have also extended their areas of influence in the region. The Allied Democratic Forces (ADF) continue to wreak havoc. In March 2021, the US designated the Allied Democratic Forces (ADF), notorious for indiscriminate attacks on civilians in Beni Territory, a foreign terrorist organisation. According to the US State Department, the ADF is a franchise of the Islamic State of Iraq and Syria (ISIS) as part of its expansion in central Africa and Southern Africa. See [www.state.gov/state-department-terrorist-designations-of-isis-affiliates-and-leaders-in-the-democratic-republic-of-the-congo-and-mozambique/](http://www.state.gov/state-department-terrorist-designations-of-isis-affiliates-and-leaders-in-the-democratic-republic-of-the-congo-and-mozambique/).

58 <https://blog.kivusecurity.org/is-the-state-of-siege-a-step-in-the-right-direction/>

59 Ibid

60 <https://gho.unocha.org/fr/r%C3%A9publique-d%C3%A9mocratique-du-congo#footnote-paragraph-918-2>

61 At the beginning of June 2021, attacks attributed to the ADF killed 57 civilians in the IDPs camps in Chabi and Boga town in the Ituri Province. ADF have been seeking an exit from South Irumu and had staged frequent incursions into these areas since 2019.

62 See <https://www.acaps.org/country/drc/crisis/complex-crisis>

63 At least since 2009 against the CNDP led by Laurent Nkunda, 2012 against the M23, 2016 against the ADF and 2019 against foreign and national armed groups

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