



Elections and *Democracy* in the Democratic Republic of the Congo: The Dilemma of Peace, Justice and Impunity

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According to Paul Collier (2009), elections in the poorest countries will not necessarily lead to democracy but rather *democracy*. “If there are no limits on the power of the winner, the election becomes a matter of life and death ... The result is not democracy ... democracy does not deliver either accountability or legitimacy” (15, 24). Apart from poverty, a post-conflict environment is another fragile element which can make elections hazardous (83). It would appear that the recent Presidential and legislative elections in the Democratic Republic of the Congo (DRC) in November 2011 turned out to be one such case of such *democracy*, following in the footsteps of the elections in Kenya in 2007, Zimbabwe in 2008, and Cote d’Ivoire in 2010.

Observing organizations, both international and national, reported major cases of fraud and partiality during the DRC elections. Despite the criticisms, the Electoral Commission (CENI) did not attempt to investigate or explain the irregularities, and announced President Joseph Kabila’s victory over the popular opposition party leader Etienne Tshisekedi. President Kabila was sworn in for a second term, witnessed by the Supreme Court. Tshisekedi, who rejected the CENI’s poll results and declared himself the “elected president”, continues to contest the vote. Attempted negotiations between the two parties produced no results. At least 24 people died from political violence that erupted two days before the elections, and 542 others were arrested by Presidential Guards and security forces (see Human Rights Watch 2011a; 2011b).

This policy brief argues that the elections were negatively influenced by a culture of impunity with regard to gross violations of human rights and international humanitarian law; something that has become a lingering issue in the DRC and the Great Lakes region. Serious human rights violations committed by high ranking government officials and rebel groups are rarely punished (although some non-state belligerents have been indicted by the International Criminal Court). As a consequence, they can easily be used as a tool to assist the candidates in the elections. Efforts aimed at securing legitimacy and accountability have been sidelined, in the interest of achieving ‘negative’ peace and stability, which results in a vicious cycle.

1 This policy brief contains the personal views of the author, and does not represent the views of institutions with which the author is (or has been) affiliated.

History of Impunity in the DRC and Great Lakes Region

According to the United Nations Commission of Human Rights (UNCHR 2005: 6), the definition of impunity is “the impossibility, ... of bringing the perpetrators of violations to account ... since they are not subject to any inquiry that might lead to their being accused, arrested, tried, and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.” Impunity arises “from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, ... by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished” (UNCHR 2005: 7).

Indeed, the DRC has suffered for more than a century of impunity since the era of personal fiefdom of the Belgian King Leopold II, in which Hochschild (1999: 3) affirms that between five to eight million people perished. Even after the Congo’s independence in 1960, a long-time armed conflict, extreme poverty and dictatorship continued without cases of prosecution by those in key leadership positions. Two consecutive wars in the late 1990s further complicated the impunity issue with the involvement of various actors from neighbouring countries. Although the war ‘officially’ ended in 2003, massive displacement and physical and sexual violence remain a common practice. A total of 5.4 million died from conflict from 1998 to 2007 in the DRC, constituting the highest death toll of all conflicts since the end of World War II (IRC 2008) and more than 123,000 people were displaced in the first quarter of 2011 alone (Essa 2011).

The illegal exploitation of natural resources is a major contributing factor to the conflict. Since 2001, the UN Security Council (2001; 2003) has highlighted the relationship between the exploitation of resources, arms trafficking and conflict. Those responsible for these acts, both Congolese and foreigners, were named in the UN’s reports. Although the UN Security Council has passed a series of resolutions² demanding that the concerned states should conduct investigations, the DRC and its neighbours have failed to act. The UN Mapping Report (OHCHR 2010) revealed that the most serious human rights violations in the DRC between 1993 and 2003 were committed by the DRC and neighbouring governments. The establishment of viable judicial mechanisms was recommended but concrete progress has not been made.

Impunity had a negative impact on the 2011 election. The state has been directly implicated in the majority of the 188 human rights violation cases documented in the eleven months prior to the elections.³ Most violations targeted members or supporters of popular opposition parties (MONUSCO 2011). The NGO Journaliste En Danger (JED) registered at least 160 cases of assaults on press freedoms, almost half of which took place from October to December 2011. This

2 UNSC Resolutions 1493 (2003), 1596 (2005), 1533 (2004), 1856 (2008), and 1906 (2009).

3 Of 188 violations, 82 directly involved the Congolese police, and 42 the National Intelligence Agency (MONUSCO 2011, para. 64).

number is worse than the previous elections in 2006 in which 125 cases were reported (JED 2011). Since the 2006 elections, six human rights activists and journalists have been killed.⁴

Unlike the previous elections that were led by the UN, the 2011 elections were organized by CENI, and the entire process was marred by censorship and manipulation. A former political advisor of President Kabila, who is also his cousin, was appointed as CENI's President. The voting system was changed from a two- to a single-round one, lowering the bar for election victory. President Kabila monopolized the public media. Besides this, 'voters' under eighteen years old and double voters were found to be registered in his stronghold provinces (France 24 2011). On the polling day, pre-filled ballot boxes with marked ballot papers were seen at the polling stations, and missing ballot papers were transported to polling stations after the voting closed (Wallis 2011). Moreover, voting results were lost from some of the opposition territories (Boisbouvier 2011: 11).

Political parties and international observers were not allowed to attend the counting process. Armed forces and war-related materials were also deployed in an apparent attempt to intimidate the population in making their choices. The Carter Center (2011), the European Union Electoral Observation Mission (2012), and la Voix des Sans Voix (VSV 2012), criticized the election process for its lack of credibility, transparency and for its irregularities. The Catholic Church, which deployed the largest number of observers across the Catholic-dominant country, strongly accused the government of "treachery, lies and terror" (CENCO 2012). A group of nine senators requested for the immediate resignation of the CENI leadership and reorganization of the elections (Voix du Kasai 2012).

Involvement of Criminals in the Elections

According to DRC Electoral Law 06/006, those responsible for war and genocide crimes or crimes against humanity are not eligible to stand as candidates in elections (Independent Electoral Commission 2006). Nevertheless, in some cases this law was not applied, while in others it was simply a case of no official arrest warrant being issued with regard to certain candidates. Collier (2009: 27) reminds us that in such poor countries as the DRC, elections can be attractive to criminals for personal security reasons, as holding public office can provide immunity from prosecution.

The DRC's 2011 elections included at least two criminal candidates. One presidential candidate, Antipas Mbusa Nyamwisi, is a former rebel leader whose militia carried out a massacre in 2002. His fighters killed along perceived ethnic lines, targeting any person who appeared to be from the Hema and Bira groups, resulting in more than 1,000 deaths (Kron 2011). After the war, Nyamwisi became Congo's Minister of Foreign Affairs in 2007, and Minister of Decentralization and Urban and Regional Cooperation in 2008.

4 These include Serge Maheshe, Patrick Kikuku, Didace Namujimbo, Wabihu Kasuba, Bruno Koko and Floribert Chebeya (see UN Human Rights Council 2010).

Another candidate for the National Assembly, Sheka, is a leader of a Mai Mai rebel group. The group was involved in the mass rape of 303 women, children, and men in 13 villages in eastern DRC over four consecutive days in 2010 (MONUSCO 2010). This was conducted in collaboration with the Rwandan rebel group, FDLR (Democratic Forces for the Liberation of Rwanda), and combatants led by a former member of Rwandan-backed rebel group CNDP (National Congress for the Defence of the People), as well as the Armed Forces of the DRC (FARDC). At least 200 fighters in total participated in this malicious act, with some sources estimating the number to be 300-400 (MONUSCO 2010; footnote 2). The Mayi Mayi Sheka group has also carried out attacks on mines and forcibly recruits children into their ranks (UN Security Council 2011b). Congolese authorities supported by the UN attempted to arrest Sheka in July 2011 without success (Kron 2011). On the polling day on 28 November 2011, the UN Sanctions Committee added his name to a list of 31 persons of Congolese, Rwandan and Ugandan nationalities, against whom a freeze on personal assets and travel bans apply (UN Security Council 2011b). The effectiveness of the list is highly questionable, however, given the reality of the clandestine and largely unhindered circulation of assets.

The presence of national and foreign armed groups influenced the vote in favour of President Kabila, especially in the east. Bosco Ntaganda, a former leader of the CNDP, used the elections for the enhancement of his own security and wealth. He controlled a key mineral smuggling route to Rwanda, and maintained a senior post in the FARDC in return for backing Kabila's re-election (UN Security Council 2011a: para. 279). Ntaganda travelled often to Rwanda despite the travel ban imposed on him (para. 597). An arrest warrant for Ntaganda was issued by the International Criminal Court (ICC) in 2006 for his systematic use of child soldiers. Yet, the government failed in its legal obligation to hand him over to the ICC as President Kabila regarded him as being critical to the 'peace process' (Human Rights Watch 2010). To make matters worse, Ntaganda was promoted to the position of general in the FARDC in 2009 when the CNDP was integrated into the national army. Since then, he led military operations against the FDLR, supported by the UN peacekeeping forces, causing a high level of casualties among civilians. In 2012, the DRC government reversed its position on the issue of Ntaganda's arrest and he is currently in a state of mutiny against the government.

Conclusion

The DRC elections highlighted the results of chronic impunity in that country and led to the loss of life. They also served to clearly demonstrate the considerable dangers of postponing justice. The mix of a culture of impunity and *democracy* is a potent one, and while punishment for past atrocities may have the potential to undermine reconciliation, it is also clear that "[i]mpunity ... can be an even more dangerous recipe for sliding back into conflict" (UN Security Council 2004a: para. 55).

President Kabila's doctrine of "peace first, justice later" in reality brings neither justice nor peace. It is highly imperative that international and national institutions and civil society take a more proactive approach in the development of policy in two areas. First, it is necessary to

reconfirm and promote the notion that justice, peace and democracy are not mutually exclusive or contradictory objectives, but rather are mutually reinforcing imperatives (UN Security Council 2004b). Secondly, the decade-long (and as yet unsettled) issue of establishing an international judicial mechanism in the Congo's conflict in order to end the culture of impunity must be made a top priority. Progress made on these issues will significantly raise the chances of the realization of meaningful long-time stability.

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