



Centre for the Defence of Human rights and Democracy

## Democratic Republic of Congo: Assessing the state of Democracy since 2006

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## **1. Introduction**

From 07 to 11 April CDHD held workshop sessions on the assessment of the state of democracy in the Democratic Republic of Congo (DRC). The project objectives consisted in assessing the quality of democracy in DRC from 2006 to 2013 and evaluate this democratic evolution in order to reveal strengths and weaknesses of this democratisation process.

Participants recognised the importance of democracy as the best way so far through which human political and socioeconomic aspirations are widely fulfilled; they also acknowledged the value of democracy assessment as one of the most important means to uncover the true progress of democratisation and an opportunity to improve from past mistakes.

Below are facts and recommendations on the quality of democracy in the DRC that were discussed during workshop sessions. They are organised according to the existing state's main institutions –the executive, the legislative and the judiciary; and they also focus on the electoral commission. Since the overall quality of democracy in the DRC is negative, it was important to focus on recommendations that would address the weaknesses of the democratisation process and would suggest a way forward.

## **2. General recommendations**

The Congolese government should ensure the application of democratic principles at national and local level by:

- Opening up political systems toward the application of civil and political rights and participation of the civil society in the political process
- Speed up the process of decentralisation through which the implementation of development plans policies will be improved
- Monitoring and assessing the state of democracy through the establishment of different specialised institutions whose investigations should provide the government with directive to tackle challenges
- Safeguarding the process of democratisation by avoiding repealing electoral legislations that are a cornerstone for building a Congolese democratic society

### **3. Facts and specific recommendations**

#### **A. The executive branch**

##### *Facts*

- The checks and balances of power between the executive branch, the parliament and the judiciary have been compromised. The executive branch is exercising more power on the parliament which is unable to efficiently control government's actions and call to account ministers. The justice is still an instrument of the executive branch and is used to strengthen the power of the ruling party and its leaders.
- The DRC is still among the most corrupted countries in Africa; according to independent investigations, certain officials in the executive have been involved in corruption deals and mismanagement of public funds.
- The ruling party is consolidating itself by establishing a platform that attracts opposition parties by providing financial advantages, government posts or other forms of reward to their leaders
- Social and economic development plans which have been adopted by the government have not given considerable results; most of their policies are still unimplemented, and the ones which have been developed have rarely reached their objectives.

##### *Recommendations*

- The government whose most officials belong to the ruling party should ensure the principle of separation of powers with the parliament and the justice and promote accountability between state's institutions. The mechanism of checks and balance of power should be observed as stipulated in the constitution so that accountability is properly assessed.
- Strong punitive measures against officials involved in corruption should be introduced and executed. In this regard, the public prosecutor should be enabled to prosecute officials accused of mismanagement of public funds.
- The ruling party controlling the executive branch should avoid attracting opposition parties into its sphere in order to safeguard a true democratic competition and debate between parties.
- The government should be pragmatic in implementing its social and economic development plans and avoid giving unrealistic programmes. The development plans calendar should be observed and programmes should be given as much efforts as possible.

## **B. The Legislative branch**

### *Facts*

- The power of the Congolese parliament has been hijacked by the executive branch in a way that the principle of checks and balance of power between the two institutions is almost absent. Accountability of cabinet ministers before the parliament is but a complaisance
- The parliament is used as an instrument of the ruling party to pass laws and especially to edict electoral legislations in its favour.
- Accountability of members of the parliament to their voters is almost inexistent; once elected, leaders do not report back to their voters and do not consult them on different matters. Most of them have been elected on baseless criteria such as ethnic, friendship etc.

### *Recommendations*

- The Congolese government should promote the independency of the parliament by being truly accountable before it. The government should avoid using the parliament as its instrument in passing undemocratic laws. In this regard, the international community and the civil society should always condemn any attempt by the government that will breach the independency of the legislative branch.
- Voters should elect their leaders based on their merit and competency so that they are consulted by these leaders any time on any matters. In this regard populations should be educated to make a better choice and be informed of the importance of their vote.
- Parliaments should be accountable to their voters and should edict laws that are not in discordance with democracy
- The civil society should play the role of monitoring and assessing parliament's actions and decisions so that the process of democratisation is not at risk;

## **C. The Judiciary**

### *Facts*

- Since 2006 the Congolese justice is still compromised; the functioning of the judicial system is inefficient and reflects the performance of the current regime;
- Cases of bribes and corruption are always reported due in part to low salaries of judges and impunity;
- Equality before the law and fairness in the application of the law is still a myth; different factors impact on the outcome of judgements;

- The relationship between the justice and the executive branch is imbalanced; the public prosecutor is unable to take legal action against executive's officials;
- Access to justice is almost inexistent in many remote villages where judges are absent;
- There is an extraordinary impunity in the eastern provinces where rebels and militias operate; in many cases, criminals are not prosecuted and are (re)integrated in the official army upon their request despite their committed crimes.

### *Recommendations*

- The Congolese justice system should be reformed; since the Congolese government is not ready for this improvement, the international community should pressure the government to adopt mechanisms and measures that will guarantee the application of universal principles of justice such as equality, fairness and independency;
- The international community should facilitate access to justice in remote villages by assisting the DRC financially in establishing tribunals with judges;
- The Congolese government should enforce punitive measures so that corruption within the justice system is eradicated;
- Criminals of massive violation of human rights and humanitarian law in the eastern provinces of the DRC should be prosecuted and not (re)integrated into the army. Strong punitive measures may persuade citizens not to form or enrol into militias or rebel groups.

## **Elections**

### *Facts*

- The composition of the National Electoral Commission (CENI) has been contested by different opposition political parties. The former and actual presidents of the CENI have been accused of favouring the ruling party in winning the general elections of 2006 and 2011. The president of CENI who organised the 2011 general elections was under pressure of national stakeholders and international community over allegations of fraud elections, and was forced to resign in 2013. His predecessor who organised the 2006 general elections also resigned following flawed elections; he was re-appointed as the current president of CENI;
- The constitutions and electoral laws are always revised when the general elections date approaches; these amendments always happen to favour the ruling party.
- In 2010 the electoral law was amended by calling off the electoral runoff. The new the law which introduced a single electoral competition has been severely condemned by the civil society, political parties and the international community

since it removes the credible character of democratic elections and favours the ruling party.

- The current discussions concern the amendment of the constitution over the number of presidential terms; the ruling party is in the process of modifying the constitutional presidential terms so that the current president who is spending his last term continues to rule again.
- Elections are always characterised by violence mostly involving political parties and police forces. In both elections, incarceration, hostilities, cases of death etc have been reported in several parts of the country
- The electoral complaint mechanism is inefficient; most losers candidates resolve not to take the matter before the court since they already presage negative outcomes

### *Recommendations*

- The ruling party should avoid amending electoral laws for the sole purpose of prolonging its mandate on power. In case of the adoption of new amendments, the process of democratisation should not be jeopardised and the legitimacy of power should be protected.
- The number of presidential terms should not be changed. Any attempt to prolong the presidential term tenure would result in political crisis and undermine the democratisation process.
- Electoral violence remains a serious threat to the process of democratisation in DRC; therefore in order to ensure free and fair elections, the international community and the civil society should promote a strong collaboration with the ruling party and the government; independent observers should be present at each stage of electoral process and in all polling stations and elections centres.
- The provision on presidential electoral runoff should be revalidated in order to safeguard the legitimacy of power and the free and fair character of elections.
- The Congolese government should ensure a proper environment of elections where access to media for electoral campaign is equal to every candidate
- With the creation of a constitutional court, electoral matters should be dealt with objectivity and without delay. The government should guarantee the transparency of the court over electoral matters; the civil society should denounce any attempt that could compromise the transparency of the court.
- The DRC should improve national election legislations according to its commitment to different international treaties on civil and political rights.
- The Southern African Development Community (SADC), a regional organisation of which the DRC is a member, should have the duty to promote transparent vote by assisting financially and logistically the DRC in preparing the elections in time.