

Elections in danger and political crisis in the DRC


Is the European Union
up to the democratic
and security challenges?



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Democracy is not just a matter of holding elections. It requires everyone, including the government and the party in power, to respect the rule of law. It requires viable institutions that guarantee the fundamental rights of all citizens, including minorities. It requires the constant vigilance of a dynamic civil society.

Kofi Annan (2003)

Editor's note

Since the phase of writing this document ended on 15 May 2016, it does not take into account the latest developments that have since occurred in the DRC and EU, particularly the publication of the **Conclusions of the Council** of the European Union of 23 May 2016

Table of Contents

Introduction	3
Recommendations: courses of action for the European Union and its Member States	6
Part I: Assessment of the political and pre-electoral situation	10
The perilous strategy of those in power with regard to the electoral process	10
Tensions and new power relations within the Congolese political landscape	12
Shrinking of the democratic space: repression and violations of human rights	13
Weakness of the European Union's response	15
Part II: Challenges to be overcome with a view to the organisation of elections in 2016	17
Technical challenges	17
Political challenges	18
Security challenges	19
Judicial and legal challenges	20
Conclusion: the EU's foreign policy put to the test by the Congolese crisis	21
Abbreviations	24

Introduction

The Democratic Republic of Congo (DRC) is currently being impacted by numerous concerns and tensions surrounding the organisation of the **next electoral cycle**. This cycle, the **third** after the adoption of the new Constitution in 2006, was initially supposed to start in 2014 and lead to the organisation by the end of 2016 of no less than eleven elections (both direct and indirect) at a local, provincial and national level. At the time of writing this position, it seems more than likely that this cycle will not be able to be completed within the constitutional time frames. In fact, the multiple delays of which the process is blamed now make this outcome unachievable. The Congolese people's main concerns now concentrate on the presidential election which, according to the Constitution, should lead to the election of a new president before 19 December 2016. This election, announced for 27 November 2016, warrants special attention since the Constitution prohibits the current president, Joseph Kabila, from standing for a third term of office. A democratic transition of power between the current president and his successor would be a historic event: such a democratic transition of power between presidents has never happened before in the DRC.

Unfortunately, in view of the developments that occurred in 2015 and the start of 2016, **doubting President Kabila's willingness to step down at the end of his second term** seems justified. In this climate of uncertainty with regard to the electoral process and the president's intentions, tension is mounting in the Congolese political arena and among the population, despite the various consultations carried out by Joseph Kabila and

the call for "inclusive national dialogue" launched at the end of 2015 and supported by the European Union in particular. In order to ensure the smooth progress of this dialogue, the African Union (AU) recently appointed a facilitator. However, this facilitator has not yet achieved results, because he has not managed to achieve the support or confidence of the large majority of opposition leaders, who refused to participate in the dialogue. They see it as a trap aimed at obtaining a "*glissement*" (postponement) of elections with a view to, according to some, establishing a transition period leading to a sharing of power between political parties or, for others, enabling Joseph Kabila to remain in power *sine die* after 2016. Whether it is through this strategy of "*glissement*" or through a third consecutive term, which continues to be mentioned despite being against the Constitution, President Kabila's possible remaining in power is bringing to the surface **tensions** surrounding elections and the organisation of votes.

These developments are aggravating a **political situation which had already worsened since the last electoral cycle in 2011**, which was considered by numerous international observers to have been a failure. The last election featured considerable shortcomings in the prior preparation of elections and multiple examples of fraud, stuffing of ballot boxes and a flagrant lack of transparency at the time of compiling results¹. These events seriously damaged the credibility of results and led to a **serious crisis concerning the legitimacy of political institutions**². Considering the mounting popular dissatisfaction linked to economic difficulties and financial malpractice which is stifling employment

- ¹ EU's Electoral Observation Mission in the Democratic Republic of Congo, [Elections présidentielles et législatives - 28 novembre 2011: Final report](#).
- ² EurAc, Memorandum. [EU - Legislature 2014 - 2019. For a stronger commitment to peace and democracy in the Great Lakes region](#), October 2014.

In the PDF version, texts in this **colour** are interactive.



* Cover photo by Giampaolo Musumeci, Photographer, Journalist, Filmmaker, Milan, Italy.

and the economy as a whole³, the Congolese people's tolerance and patience regarding those in power seems to be wearing out. Through the next electoral cycle, the Congolese people are waiting not only for compliance with the Constitution and a peaceful democratic transition, but also a change at the head of the State which will enable them to benefit from a fairer distribution of wealth and improve their quality of life. The electoral issue could therefore lead the already tense situation to degenerate into violent protests or even riots.

However, numerous **obstacles** are still affecting the preparation of credible, free and peaceful elections within the time frames provided for by the Constitution. First of all from the point of view of the **legal and institutional framework**, particularly bodies in charge of ensuring the smooth organisation of the electoral cycle. Several observers have questioned the independence of these bodies, which clearly bear responsibility for the delay in the process and which are continuing to lose the confidence of the population. Then, the **growing restrictions of political freedom and freedom of expression** limit the capacity for action of civil society, the media and opposition parties. These restrictions are shrinking the democratic space and political participation in the DRC, and therefore constitute a major hindrance to the credibility of the electoral process.

The bringing together of these obstacles with the strategy adopted by the current president to remain in power, the growing political tensions, the will of the people for change and the lack of action by the international community is leading the DRC inexorably into crisis. Even worse, this crisis that is political in nature could rapidly degenerate and lead to **large scale violence** in which the Congolese population would be the first victim. Therefore, in addition to the weakening of the democratisation process as such, the current situation raises **the fundamental question of the security and stability of the country and region**. In fact, if the elections do not take place in

a peaceful and calm climate, they may lead to a dramatic deterioration of the security situation, as was seen recently in Burundi and Congo-Brazzaville, which in the case of the DRC would inevitably lead to a destabilisation of the entire region.

The **EU and its Member States**, as the primary partners of the DRC and faced with this situation and the risks facing the country and region, **must accept their own responsibility in this**. Peace and democracy are conditions that are necessary for sustainable development and **the establishment of shared prosperity between Central Africa and the European continent**. Confronted by the increased terrorist threat on European soil, the presence of conflicts close to the EU's borders (Ukraine, Syria, Iraq and Libya) and an internal political crisis linked to the reception of migrants within the European area, the EU no longer seems to be giving the same level of attention as in the past to the Great Lakes region. However, the EU has everything to lose from a new large-scale security and humanitarian crisis in Central Africa.

The same also applies to the "effectiveness of the aid" given by the EU and its Member States to countries in the region, the results of which are endangered by the political crisis in the DRC. Given the resulting European investment in peace-building and development in Central Africa, the EU cannot afford to push this commitment aside. It is the very credibility of the EU, as an organisation promoting human rights and democracy, which is at stake. In addition, the EU's support for democracy and the protection of human rights constitutes the true **added value of European cooperation** compared to the approach of the DRC's other international partners. It is particularly important for the EU to put these principles back at the heart of its relations with the DRC, at a time when it finds it difficult to assert its role with regard to this partner, "in a context in which other players such as China, South Africa, Angola, Brazil or even Egypt are reinforcing their presence,

particularly economically, and their influence in the region”⁴. It is therefore a delicate but decisive time, given the significance of the challenges linked to the electoral process in the DRC.

Through this position, the European Network for Central Africa (**EurAc**) and the Open Society European Policy Institute (**OSEPI**) firstly hope to **draw the attention of European political decision-makers**, at all levels of power, regarding the seriousness and risks of the situation in the DRC. It is then a question of subjecting them **to courses of action** in order to, on the one hand, support the electoral

process in such a way as to help the country get out of the political crisis and, on the other hand, to adopt strong measures aimed at preventing this crisis from leading to a security crisis (see *Recommendations*). These courses of actions stem from an **assessment of the pre-electoral political situation** in the DRC (see *Part I*), an analysis of the various **challenges to be taken up** with a view to the organisation within reasonable delay of elections planned as part of the third electoral cycle (see *Part II*), and **responses that the EU and its Member States should make** to each of these challenges (see *Conclusion*).

⁴ Paule Bouvier and Jean Omasombo Tshonda, “2015: année électorale en perdition”, in Stefaan Marysse and Jean Omasombo Tshonda, *Conjonctures congolaises 2015 - Entre incertitudes politiques et transformation économique*, Cahiers Africains no. 87, L’Harmattan, March 2016, p.39-40.

Recommendations: courses of action for the European Union and its Member States

On the basis of the analysis developed in this document (see *Part I, Part II and Conclusions*), **EurAc** and **OSEPI** are making the following recommendations to various players in European politics regarding the DRC:

On a political and diplomatic level

Member States (MS):

(1) Consolidate the **coordination and coherence of the language of messages** issued by Member States and the EU to the Congolese authorities; (2) Develop, within the Council of the European Union, **a common position on key issues**, particularly the support for democratic change of government, compliance with the Constitution, protection of human rights in the DRC, and the possibility of envisaging sanctions for those responsible for acts of violence and political repression; (3) Grant **a clear and strengthened mandate to European diplomacy** to defend this position with the Congolese authorities;

MS - European External Action Service (EEAS)- European Parliament (EP):

(1) Communicate in a much stronger and more coherent way to the Congolese authorities about the EU's engagement and determination to **defend the compliance with the articles of the Congolese Constitution** that enshrine the principle of democratic change of government, such as the number and duration of authorised presidential mandates, or even the method of holding presidential elections (Articles 70 and 220); (2) Express more strongly the **EU's refusal to see President Kabila remain in power beyond 2016** by

seeking a third term and/or through a "glissement" of the electoral process;

EEAS - European Commission (EC):

Use all the political, financial and technical means available in order to establish a regular **political dialogue** with the highest Congolese authorities, as provided for by Article 8 of the Cotonou Agreement. This dialogue shall make it possible to question the Congolese Presidency about the importance of compliance with the Constitution and human rights. More broadly, this dialogue should aim to support the holding of free, inclusive, transparent, credible, peaceful and organised elections within the constitutional time frames;

EEAS, and more specifically the EU's High Representative for Foreign Affairs, Federica Mogherini:

(1) Work tirelessly with the Member States in order to develop a **common and coherent position for the EU regarding the aforementioned key issues**; (2) **Visit the DRC as soon as possible** in order to defend this joint position with the highest Congolese authorities. This visit should also help to **strengthen the political role of the EU Delegation** in the DRC, which, by virtue of the Lisbon Treaty, has the mandate to conduct a dialogue with the Congolese authorities with a view to supporting the objectives of its development policy in the country;

MS - EEAS - EC:

Make the financial support of the EU and its Member States for the Independent National Electoral Commission (CENI)'s work organising elections conditional upon not only (1) the publication of a plan for disbursing the funds provided for by the Government

for the organisation of elections, but also **(2)** the publication of a credible electoral calendar, based on independent technical analysis, **(3)** compliance with the Constitution, **(4)** the establishment of an environment enabling civil society and the political opposition to democratically carry out their respective roles, and **(5)** the inclusive, transparent and peaceful holding of elections;

EEAS:

Given the difficulties encountered through the establishment of an “**inclusive national dialogue**” in the DRC, despite the appointment by the AU of Edem Kodjo as facilitator, the EEAS should play a proactive and leading role in the definition and clarification of the mandate and the objectives of this dialogue; In order to do this, the **EU's Coordinator** for the Great Lakes region should actively and very rapidly collaborate with the AU and other Special Envoys in the region [of the United Nations (UN), International Organisation of the Francophonie (IOF) and the United Nations], in such a way as to **establish a delegation of international co-facilitators** in the “inclusive national dialogue” whose main role shall be to define the mandate and the objectives of the dialogue, in such a way as to restore confidence in the process and enable the participation of all political players.

On the level of the protection of freedoms and human rights

MS - EEAS - EP:

(1) Communicate in a much stronger and more coherent way about the EU's engagement and determination to defend the rights and freedoms of Congolese citizens, such as freedom of expression, association and assembly; **(2) Condemn the policy of arresting and detaining** political opponents, defenders of human rights and members of civil society, and **demand the immediate and unconditional liberation** of all prisoners of conscience;

EEAS - EC:

Use the **Programmes d'Appui à la Réforme de la Police en RDC (PARP) (Support Programme for Reform of the Police in the DRC)** and **d'Appui à la Réforme du Secteur de la Défense en RDC (PROGRESS) (Support Programme for Reform of the Defence Sector in the DRC)**, funded as part of the 11th EDF, as levers to **strengthen the EU's political dialogue** with the Congolese authorities regarding the responsibility of the Congolese security services in the worrying shrinking of the democratic space. Without rapid, significant and satisfactory progress on the subject, the EU must eventually **envisage stopping its financial support for the police and defence sectors**;

EEAS - EC:

Use the **Programme d'Appui à la Réforme de la Justice en RDC (PARI) (Support Programme for Reform of the Justice Sector in the DRC)** funded as part of the 11th EDF, as a lever to strengthen the **EU's political dialogue** with the Congolese authorities **regarding the importance of establishing an impartial and independent judiciary** in the DRC. Without rapid, significant and satisfactory progress on the subject, the EU must eventually **envisage stopping its financial support for the justice sector** in the DRC;

MS - EEAS - EP:

Beyond any reasonable doubt with regard to the involvement of members of the Congolese security services (ANR, PNC, Presidential Guard, FARDC): **(1)** The MS, EEAS and EP should clearly announce the application of **targeted sanctions** against **members of the political leadership and the security services** responsible for these violations; **(2)** Immediately set in motion the **mechanism of strengthened political dialogue** provided for by the Cotonou Agreement (strengthened Article 8 and consultations pursuant to Article 96), which may potentially lead to a suspension of any aid programme, except for actions of a humanitarian or emergency nature, in direct support of the people or in support of the political transition and ending the crisis.

On the security level

EC-EEAS:

Use the **PROGRESS programme**, financed as part of the 11th EDF, as a lever with a view to **encouraging** the Congolese authorities to **develop a specific strategy** to ensure that the **armed Congolese forces** play their role in the security and peacefulness of the electoral process and, more generally, the protection of the civilian population, even in the event of escalations;

MS-EEAS:

Encourage the UN's Stabilization Mission in the Democratic Republic of Congo (MONUSCO) to continue or even further develop its human, logistical and technical capacity in order to support the Congolese security forces in their assistance role for the peaceful and calm holding of elections;

MS - EEAS - EC:

Strengthen **Congolese civil society** by increased direct financing of projects linked to the **prevention** of conflicts and violence, the **protection** of the population, monitoring of acts of violence and the establishment of **mechanisms for the peaceful resolution of conflicts**;

MS - EEAS - EC:

With a view to preventing the political crisis in the DRC from leading to a major security crisis, **evaluate the risks** of an escalation of armed violence in the DRC, particularly by carrying out a **mapping of the various regions** where violence linked to the electoral processes of 2006 and 2011 took place and, on this basis, establishing a **strategy to prevent them** encouraging the activation of domestic, regional and international mechanisms aimed at preventing an escalation;

EC - MS - EP - EEAS:

Adopt a policy of **"zero tolerance" with regard to any act of inciting violence and any actual violence perpetrated as part of the electoral process**. If an act of inciting violence and/or an act of violence occurs, they should undertake to collaborate with the existing frameworks for international cooperation such as the International Criminal Court, in order to publish

statements of warning to prevent and discourage acts of violence during the pre-electoral and electoral period;

MS - EEAS - EP:

Use in a preventative and effective way, i.e. before it is too late, targeted **sanctions mechanisms** against anyone who has committed **armed violence** in the DRC with the aim of disrupting the proper holding of elections. In particular, the EU should **publicly communicate** about the existence of these sanctions, before such violence occurs.

On the level of technical support for the electoral process

MS - EEAS - EC:

Make the financial support of the EU and its Member States for the Independent National Electoral Commission (CENI)'s work organising elections conditional upon not only **(1)** the publication of a plan for disbursing the funds provided for by the Government for the organisation of elections, but also **(2)** the publication of a credible electoral calendar, based on independent technical analysis, **(3)** compliance with the Constitution, **(4)** the establishment of an environment enabling civil society and the political opposition to democratically carry out their respective roles, and **(5)** the inclusive, transparent and peaceful holding of elections;

MS - EEAS - EC:

Encourage the CENI and the Congolese Government to put in place an **independent mechanism which leads to a technical verification of the time frames and resources necessary for the organisation of elections**, notably the revision of the electoral register, the enrolment of electors, the ordering of electoral kits and the logistics of voting operations;

MS - EEAS - EC:

Support the action of **Congolese civil society** by increased direct financing of projects linked to the electoral process, such as **monitoring of the electoral process** (observation mission), the **appropriation of the process by the population and an outreach campaign** (civil and electoral education) and **political advocacy**.

From a regional and medium term perspective

MS - EEAS - EC - EP:

Revise the EU's strategy for the Great Lakes region adopted in 2013⁵. This strategy is being visibly hindered on several levels, notably due to the undermining of the principle of democratic change of government by the ruling class in various countries, including the DRC.

This principle constitutes the basis of various Peace Agreements signed in the region, and its undermining is seriously weakening the establishment of the rule of law in the region;

MS - EEAS - EC - EP:

Develop a truly **comprehensive approach regarding the DRC**, in order to use in an optimal and coherent way the various tools available to the EU to support the emergence of a process of peaceful and sustainable democratisation. This integrated approach means that the EU has a set of **objectives that are common** to all of its competent departments, in the form of **clear policies** and the use of the **most appropriate tools** to realise these objectives in each of the sectors concerned (political dialogue, reforms/governance, support for civil society, technical and budgetary support etc.).

⁵ European Commission and European External Action Service, *A Strategic Framework for the Great Lakes Region*, JOIN (2013) 23 final, 19 June 2013.

Part I: Assessment of the political and pre-electoral situation

⁶ The presidential and legislative elections took place in 2006 and the provincial and senatorial elections took place in 2007.

⁷ “RDC: vers un troisième mandat pour Joseph Kabila en 2016”, *Jeune Afrique*, 2 July 2013.

The adoption in **2006** of the new Constitution, and the organisation in the same year and in 2007 of the first democratic elections in the DRC⁶ since 1964 constitute the first encouraging steps in the democratisation process. These were carried out thanks to the significant political and financial support of the international community, particularly the EU and some of its Member States. The main problem: the **local elections** which, according to the 2006 Constitution should have brought to an end this first electoral cycle, were postponed, and, ten years later, they still have not been organised.

Since then, the **democratisation process** has faced new social, political, economic and security challenges, and several manoeuvres undertaken by the political leadership have contributed to **endangering it**. We should mention in particular the modification in January **2011** of the Constitution establishing **a first-past-the-post system for the presidential election**. In reaction, the EU reduced its support for the holding of presidential and legislative elections in November 2011. These elections were marred by significant flaws in terms of preparation and numerous **irregularities** during the collection and compilation of results. As a consequence of this, the **credibility of the election results** has been seriously reappraised. Congolese and international observers have clearly pointed the finger at the CENI for its lack of transparency and its too close proximity to those in power. The failure of the 2011 elections caused a **generalised crisis of legitimacy** among political institutions, exacerbated by the **new postponement of local elections** (expected since 2006) and **the postponement of provincial and senatorial elections**. Elected in 2007,

the provincial deputies and Congolese senators are still in office and continue to be paid as such, since 2011, in breach of the Congolese Constitution.

Several other **developments that have occurred since 2015** have helped to aggravate the Congolese people's crisis in confidence regarding the political sphere and State institutions and have helped to create a climate of generalised suspicion that is increasingly worrying. This *Part I* briefly goes back over these developments which have contributed to pushing the DRC into a profound political crisis.

The perilous strategy of those in power with regard to the electoral process

We have previously said that the tensions are mainly forming around the issue of a possible **third term** for the current president, Joseph Kabila. The Congolese Constitution sets out that a president cannot have more than two consecutive terms (Articles 70 and 220). Thanks to a mobilisation of civil society and a section of the Congolese political class, the much-feared “unlocking” of Article 220⁷ did not take place in the end. Since this Article of the Constitution can be considered as “locked”, **President Kabila must therefore leave office at the end of his second term**, i.e. on 19 December 2016. Nevertheless, he has not yet revealed his intentions, preferring to not to reveal them and adopt an **ambiguous silence** which fuels speculation. He therefore bears a significant responsibility in the establishment of the current climate of distrust and tension among the population and the Congolese political class.

Despite the impossibility of seeking a third (consecutive) term immediately, **it has now become quite clear that the president is trying to remain in power beyond 2016**, probably encouraged in this direction by influential members of his entourage. Several scenarios can be envisaged in this regard.

Joseph Kabila may choose a **strategy of remaining in power “from below”**, by announcing his stepping down at the end of 2016 and appointing a **successor** from among the members of his party. This would allow him to keep his grip on executive power through the intervention of a third person that he trusts, and possibly putting himself forward for the following presidential elections. However, President Kabila seems to prefer a strategy of **remaining in power “from the top”**, which would consist of a “*glissement*” of elections beyond the deadline fixed by the Constitution and which would lead to a period of transition, and possibly would allow him to remain in office⁸ or even run for another term at the end of this period. As time passes, the more it seems that Kabila has chosen to favour this strategy, as shown by several developments that have occurred in the last few months⁹.

First of all, there is the **attitude of the CENI** which, despite the fact that it was reformed after the failure of the 2011 elections, is still made up of figures who for the most part come from the political class and, some of whom are close to the presidential majority. The CENI has continuously delayed the holding of elections planned by the 3rd electoral cycle, each turn using arguments relating to the electoral calendar, and the lack of budgetary means available for the organisation of elections (for details see *Part II*). This attitude, as well as the announcement in October 2015 of the resignation of Abbot Malu Malu from his position as the president of the CENI¹⁰, have led to a delay in the organisation of various elections, which today seems impossible to make up for, and a **seemingly inevitable postponement of some of these elections beyond 2016**.

Three other memorable events seem to validate that the “*glissement*” strategy has been adopted by the regime. First of all, **the Government’s attempt to change the Electoral Law in January 2015**, by making the holding of presidential and legislative elections conditional upon a prior general census of the population. Following strong opposition by the opposition parties, civil society and those on the street who criticised a new manipulation by the leadership to by-pass its constitutional obligations, this draft bill to reform the Electoral Law has finally been abandoned¹¹.

Then, the announcement on 2 March 2015 by President Kabila of the **implementation of the drawing up of province boundaries** provided for by the 2006 Constitution. This redrawing of boundaries consists of the creation of 26 new provinces, compared to 11 previously¹². The Congolese authorities’ sudden desire to hastily apply these provisions that have been laid down since the adoption of the Constitution in 2006 has given rise to incomprehension from observers who see it as a possible new attempt at political manipulation. The redrawing of province lines involves numerous expenses that were not provided for in the national budget or provincial budgets. This division requires significant financial resources, which must allow the establishment of administrative infrastructures needed for the smooth functioning of the new provinces and the organisation of the electoral process. However, these infrastructures have not yet been set up or have only been so partially. Faced with these new budgetary and logistical constraints, how can the 1600 electoral districts be put in place by the deadline laid down by the Constitution?

On 11 May 2016, the **Congolese Constitutional Court** issued a ruling authorising President Kabila to remain in power in the event that the presidential election cannot be held within the constitutional time limits. This decision aims to grant a certain legality to Joseph Kabila remaining in power in the event of the postponement of the presidential

⁸ Article 70 of the Constitution stipulates, in paragraph 2, that “at the end of his term, the President of the Republic shall remain in office *until the newly elected President is sworn in*”.

⁹ “RDC: Joseph Kabila autorisé à se maintenir au pouvoir si la présidentielle est repoussée”, *Le Monde*, 11 May 2016.

¹⁰ “L’Abbé Malumalu démissionne”, *Radio Okapi*, 2 October 2015.

¹¹ “RDC: l’Assemblée supprime le projet de loi électorale à l’origine des manifestations meurtrières”, *Le Monde*, 24 January 2015.

¹² The territorial reorganisation of the DRC started on 30 June 2015. It led to a redrawing of the boundaries of the old provinces of Katanga, the two Kasai provinces, Bandundu, Equateur Province and Orientale Province into 21 new provinces. The drawing of the boundaries of the provinces of Maniema, North Kivu, South Kivu, Bas-Congo and the city province of Kinshasa remains unchanged.

election beyond 2016¹³ (for details see *Part II*).

Tensions and new power relations within the Congolese political landscape

Faced with growing pressure from the opposition, on 1st June 2015 President Kabila opened a **national consultation** session regarding the future elections, which follows two other consultation exercises carried out in autumn 2013 and autumn 2014 respectively. Through these procedures, President Kabila hoped to consult a maximum number of figures from national political life regarding four tricky issues raised by the elections: the electoral calendar, the funding of elections, the securitisation of the elections and the new territorial division.

In June 2015, the President therefore started a consultation with a large fringe of parties involved in the electoral process including among them the judges, ambassadors, students, press barons, representatives of various churches, civil society, and leaders of political parties from the governmental majority and from the opposition. However, the consultation led to **controversy** among the opposition, especially when the various parties were split about the attitude that they should adopt. A number of them in the end decided to boycott it, in line with the *Regroupement des Forces Sociales et Politiques* (Regrouping of Social and Political Forces), made up of the *Union pour la Nation Congolaise* (UNC - Union for the Congolese Nation) of Vital Kamerhe and the *Mouvement de Libération du Congo* (MLC - Movement for the Liberation of Congo) of Jean-Pierre Bemba. The *Union pour la Démocratie et le Progrès Social* (UDPS - Union for Democracy and Social Progress) of Étienne Tshisekedi made his participation conditional upon the consultation being held under international mediation. However, other opposition formations have agreed to take part, including the *Rassemblement Congolais pour la Démocratie* (RCD - Congolese Rally for

Democracy), the *Mouvement pour le Renouveau* (Movement for Renewal) and the Labour Party¹⁴.

Once the consultation had ended, the President announced on 28 November the convening of an “**inclusive national political dialogue**”¹⁵. This once again led to numerous questions, since its objectives and outline remain vague. Its detractors criticise the fact that its conclusions would solely stem from President Kabila’s interpretation. On several occasions the opposition demanded that a dialogue be established with the CENI rather than with the political authorities. It is the CENI that has the mandate to manage the technical and logistical organisation of elections. Numerous members of the opposition announced their intention to boycott the dialogue because they see it as a new manoeuvre by the President with a view to postponing the holding of elections beyond the constitutional deadline and prolong his term of office through the opening of a transition period¹⁶.

At the same time as these initiatives, and in reaction to the dangerous strategy by the leadership as described above, **the power relations within the Congolese political scene have changed**. First of all, by the creation of the “**G7**”, a new opposition platform made up of parties that have decided to leave the presidential majority that brings together several “heavy weights” from Congolese politics¹⁷. By the defection of **Moïse Katumbi** who announced, just a few days after the creation of the G7, that he was stepping down from his position as governor of Katanga as well as the party of President Joseph Kabila, the *Parti du Peuple pour la Reconstruction et la Démocratie* (PPRD - Party of the People for Reconstruction and Democracy). He justified this decision by denouncing the fact that “everything has been put in place to not comply with the Constitution”¹⁸. On 30 March 2016, Moïse Katumbi was appointed as the G7’s “joint candidate” for the presidential election¹⁹. On 1st May 2016 he was also appointed as the “opposition’s joint candidate” by the political

¹³ “DRC: Joseph Kabila autorisé à se maintenir au pouvoir si la présidentielle est repoussée”, *Le Monde*, 11 May 2016.

¹⁴ “RDC: L’opposition boude toujours les consultations du président Kabila”, *RFI*, 6 June 2015.

¹⁵ “DRC: Joseph Kabila annonce la convocation du dialogue politique national”, *Radio Okapi*, 28 November 2015.

¹⁶ “RDC-Dialogue: le G7 et la dynamique de l’opposition désapprouvent la désignation d’Edem Kodjo”, *Radio Okapi*, 19 January 2016; “RDC: la Dynamique de l’opposition ne participera pas au dialogue”, *Radio Okapi*, 13 April 2016.

¹⁷ “RD Congo: qui sont les frondeurs du « G7 » qui s’opposent à Joseph Kabila?”, *Jeune Afrique*, 5 February 2016.

¹⁸ “DRC: Moïse Katumbi quitte le PPRD, parti au pouvoir”, *Jeune Afrique*, 29 September 2015.

¹⁹ “DR Congo: qui sont les frondeurs du “G7” qui s’opposent à Joseph Kabila?”, *Jeune Afrique*, 05 February 2016.

platform “*Alternance pour la République*” (AR - Change for the Republic) which brings together 16 small opposition parties²⁰. On 4 May 2016, Moïse Katumbi announced his candidacy for the presidential election, confirming that he was the candidate appointed by the following three opposition movements: the G7, AR and the *Collectif des nationalistes* (the Nationalists Collective)²¹.

These developments prefigure an **increasingly likely arm wrestle between Moïse Katumbi and Joseph Kabila**. Moïse Katumbi’s defection is a heavy blow for the regime, given his popularity in the East of the DRC, and also in a large number of foreign capitals. Moïse Katumbi’s candidacy represents a particularly difficult challenge to overcome for President Kabila because it brings the political battle to his own “fiefdom” of Katanga, as well as the business environment. These new power relations have weakened the presidential camp and strengthened the political opposition which up to now has been quite weak. This leads to fears of an exacerbation of the **nervousness** among the presidential clan and a possible increase in **repression**.

On 6 April 2016, the **AU appointed Edem Kodjo as facilitator of an “inclusive national political dialogue”** announced by President Kabila, with a view to unfreezing the situation. This appointment was rejected by the opposition parties, who have little trust in M. Kodjo. They have declared that the only developments that they are ready to envisage as part of the dialogue concern “compliance with the Republic’s Constitution, democratic change in accordance with the Constitution and the organisation of free, pluralistic, transparent and credible elections within the constitutional time limit”²². On 11 April 2016, Edem Kodjo announced the convening of the dialogue and the establishment of a preparatory committee, prior to the holding of actual meetings. After this announcement, the reactions of the main opposition parties were generally negative. The UDPS, the *Dynamique de l’opposition* and the G7²³ reasserted their reluctance to participate in the dialogue

without all the participating parties being committed to strictly comply with the Constitution. With regard to the establishment of the preparatory committee, it is, at the time of writing this position, still ineffective. Edem Kodjo planned that it would be made up of 12 seats for the majority, 12 seats for the opposition and 6 seats for civil society. At the time of appointing the candidates for these positions, conflicts arose within the opposition²⁴ and within civil society²⁵.

Shrinking of the democratic space: repression and violations of human rights

At the same time as the political crisis caused by the regime’s strategy, there has been a disintegration of the rule of law in the DRC, mirrored by a restriction of the democratic space, a multiplication of violations of human rights and freedoms, and also by the judiciary’s lack of independence. All this risks affecting the credibility of the electoral process and suggests a worrying deterioration of the pre-electoral context.

In fact, we can observe an **intensification of the measures of intimidation and repression**, particularly extra-judicial executions, a disproportionate use of force against the population, threats to freedom of expression and arbitrary arrests and detentions of political opponents, defenders of human rights and journalists, particularly during peaceful political gatherings²⁶. Any person speaking out against President Kabila remaining in power is likely to be harassed by the armed forces (FARDC and Military Police), police (PNC) or intelligence agency (ANR). This situation has existed for several months already and is making any speaking out or activity relating to the electoral process dangerous.

The Government’s submission in January 2015 of the draft bill for the review of the Electoral Law, making the organisation of elections conditional upon the national census (see above), led to fierce popular

²⁰ “RDC: une coalition d’opposants présente Moïse Katumbi pour la présidentielle 2016”, RTBF, 1st May 2016.

²¹ “RDC: Moïse Katumbi se déclare candidat à la présidence”, Radio Okapi, 5 May 2016.

²² “RDC-Dialogue: le G7 et la dynamique de l’opposition désapprouvent la désignation d’Edem Kodjo”, Radio Okapi, 19 January 2016.

²³ “RDC: début du dialogue inclusif cette semaine, selon Edem Kodjo”, RFI, 12 April 2016.

²⁴ “Comité préparatoire du dialogue: l’UDPS réclame «la paternité» de la liste de l’opposition”, Radio Okapi, 27 April 2016.

²⁵ Including, on the one hand, Cathy Kalanga’s civil society platform in all its diversity (who due to her political past within the PPRD party is considered as being close to those in power) and, on the other hand, the development and human rights NGOs, such as *Agir pour des Elections transparentes et Apaisées* (AETA), the *Synergie Congolaise pour les Elections* (SCE) and the *Nouvelle Société civile Congolaise* (NSCC).

²⁶ Human Rights Watch, *RD Congo: Des manifestations ont fait l’objet d’une répression sanglante. Il faut mettre fin aux tirs illégaux et aux arrestations arbitraires*, 24 January 2015, p.5.

²⁷ UN's Office of the High Commissioner for Human Rights, *UN Human Rights office urges probe into excessive use of force in DR Congo protests*, UN News Centre, 23 January 2015.

²⁸ Kenneth Roth, *Remarks during News Conference in Kinshasa, Democratic Republic of Congo*, Human Rights Watch, 22 July 2015.

²⁹ "Kinshasa: des centaines de corps inhumés dans une fosse commune à Maluku", *Radio Okapi*, 4 April 2015.

³⁰ This operation, carried out by the PNC from November 2013 to February 2014, aimed at stopping crimes perpetrated by members of a criminal gang from Kinshasa called the Kulunas. This operation was strongly denounced for the abuses committed by police officers. Human Rights Watch reports that 51 men and young boys were killed as part of this operation and at least 33 others have been the victims of forced disappearances.

³¹ Coordinator of the platform *Société Civile de la RDC*, President of the NGO *Synergie Congo Culture et Développement*, and cofounder of the coalition *Sauvons le Congo*.

³² "RDC: marche pacifique le 16 février pour la libération d'un défenseur des droits de l'Homme", *Jeune Afrique*, 6 February 2015.

³³ Amnesty International, *Ils sont traités comme des criminels. La RDC fait taire des voix discordantes pendant la période préélectorale*, November 2015, p.38.

³⁴ The "Y'en a marre" movement of Senegal and the "Balai citoyen" movement of Burkina Faso were notably present.

³⁵ Amnesty International, *Ils sont traités comme des criminels. La RDC fait taire des voix discordantes pendant la période préélectorale*, November 2015, p.31.

³⁶ La Lucha, *Retour sur l'arrestation de 18 militants de la Lucha à Goma en date du 15 mars 2016*, 22 March 2016.

³⁷ Amnesty International, *Ils sont traités comme des criminels. La RDC fait taire des voix discordantes pendant la période préélectorale*, November 2015, p.38.

³⁸ *Idem*.

opposition, which was expressed through three days of protests in Kinshasa and in other significant cities in the country. These **protests were firmly repressed** by the Congolese security services²⁷. Human Rights Watch reported that "members of the police and the Republican Guard shot dead at least 38 people in Kinshasa and another 5 people in Goma. Dozens of other people have been injured, and at least 5 people in Kinshasa were the victims of forced disappearances"²⁸. Means of communication (internet, mobile telephone etc.) were cut for two days.

At the beginning of April 2015, Congolese citizens reported the presence of a **mass grave** containing more than 400 bodies on the periphery of the Fula-Fula cemetery in Maluku, about 80km from Kinshasa²⁹. These dead bodies were buried on the night of 19 March by members of the Congolese armed forces. The armed forces maintained that they had buried still-born babies and "unclaimed" adults. But the explanations put forward by the armed forces were not convincing and fuelled suspicions among the population: why bury these bodies at night, in anonymous graves, without announcing these burials? The circumstances in which this operation took place suggest that this grave was used to conceal the bodies of victims of abuse committed by the government. The bodies may be those of people who disappeared during the January protests and/or during Operation Likofi³⁰. Several families of victims made complaints on 5 June 2015 demanding justice and that light be shone on this case. However, the Government has still not yet opened up an investigation or exhumed the bodies, preventing the identification of the bodies.

Civil society was also targeted. On 21 January 2015, human rights defender **Christopher Ngoyi**³¹, one of the spearheads of the January protests, was arrested during one of these protests³² and held for twenty days by the ANR (intelligence agency)³³. The cases of **Lucha** and **Filimbi**, two citizen movements created by Congolese youth, are particularly

representative of the threats suffered by civil society. These movements openly declared themselves against a possible third term of President Kabila. On 15 March 2015, an experience exchange meeting bringing together several dozens of activists of various nationalities³⁴ on the theme of "Youth and citizenship" was held in Kinshasa. The security services burst in during the meeting and arrested and arbitrarily detained about thirty attendees. Since then, all of them have been released except for **Fred Bauma** and **Yves Makwambala**, who are militants within the Congolese movements Lucha and Filimbi respectively. They were held for about two months in ANR prison cells, where they suffered poor treatment, and were then charged and transferred to the Makala prison in Kinshasa where they are still currently located³⁵. During a peaceful protest by Lucha in Goma, organised on 15 March 2016 to demand the release of Fred Bauma and Yves Makwambala after one year of detention, **18 other militants** from the movement were arrested. According to Lucha, they were subjected to torture during their interrogation and were threatened with being put in detention³⁶. According to our information, other leaders of civil society organisation are regularly the subject of threats as a result of their positioning in favour of the organisation of presidential elections within the constitutional time frame, and also against the "inclusive national dialogue" recently convened by President Kabila.

The freedom of meeting, assembly and expression of **opposition parties** is also hindered, in Kinshasa and in the provinces, such as for example in Goma and Lubumbashi. In January 2015, during the attempt to amend the Electoral Law, member of the opposition, including **Cyrille Dowe, Jean-Claude Muyambo, Ernest Kyaviro and Vano Kalembe Kiboko** were placed in police custody by the ANR for periods lasting 40, 50, 86 and 145 days respectively³⁷. They were placed in secret detention, without charged, without access to a lawyer and for a period that significantly exceeded the permitted 48 hours³⁸. Arrests of local opposition

leaders also took place during the same period. Members of the **G7** were also subject to intimidation, arrests and acts of vandalism³⁹. Meetings organised on 24 April 2016 by the opposition close to Moïse Katumbi were suppressed by the security forces by firing tear gas and live bullets⁴⁰. On 26 April this year, the offices of the *Union des Nationalistes Démocrates et Fédéralistes* (**UNADEF** - Union of Democratic and Federalist Nationalists) in Lubumbashi were also vandalised⁴¹. On 4 May 2016, a few hours before **Moïse Katumbi** officially announced his candidacy for the presidential election, the Congolese Ministry of Justice announced the opening of a judicial enquiry against him. The judicial authorities accuse him of having used “mercenaries” and assert that they have “documentary evidence that several former American soldiers who are currently in Katanga are in the service of M. Katumbi”⁴². On 11 and 13 May 2016, clashes took place in Lubumbashi between the police and Moïse Katumbi’s supporters⁴³.

A report by Amnesty International of November 2015 previously criticised “the policy of arbitrary arrests, prolonged secret detentions carried out by the ANR (intelligence agency) and proceedings based on falsified or illegal accusations which violate rights to liberty, freedom of expression, association and peaceful assembly”⁴⁴. The situation does not seem to be improving in 2016. This leads to significant questioning about the **independence of the judiciary**, which is considered by many as being manipulated by those in power to effectively suppress political opponents. Amnesty International also points to the role of the **ANR**, whose agents behave as though they are above the law⁴⁵. They are among the main parties responsible for acts of violence and intimidations against members of the opposition and civil society.

Weakness of the European Union's response

Faced with this increasingly worrying context of crisis, the EU’s response has remained **limited**, just like the weakness of the position adopted for several months with regard to President Kabila and his Government. The messages issued by the EU were limited to calling on the various political forces in the country to remain calm and avoid tensions, without however expressing a clear position with regard to the repeated attempts by the leadership in office to short-circuit the electoral process⁴⁶. The absence of a firm and distinct position by the EU regarding the issue of Joseph Kabila’s possible third presidential term is the most striking example of this.

In 2014, after a follow-up visit by Electoral Observation Mission of the EU (EOM), the EU insisted upon the need to organise an inclusive political dialogue and the need to keep the democratic and political space open. Despite these recommendations not largely having been followed by the Congolese authorities, the EU’s official position has not however hardened. Up to now the EU has remained frozen on this line of **support for “inclusive national dialogue”**⁴⁷, without making additional diplomatic efforts to try to address the fact that this dialogue is still suffering from a lack of credibility and confidence among the opposition parties and civil society organisations, Edem Kodjo being considered close to those in power and therefore ill-equipped to unite people. Although the EU has declared itself willing to **financially support** the electoral process, it forgets to condemn the lack of willingness by the Congolese Government to organise elections and the delay shown by the electoral process⁴⁸. And the numerous attacks against human rights and the fundamental freedoms described above have too rarely been criticised by the EU⁴⁹. Therefore **EurAc** and **OSEPI** believe that the EU’s message has not adapted or reacted sufficiently faced with the breadth of deterioration of the political context described previously.

³⁹ “RDC: le siège du parti d'opposition Unadef à Lubumbashi détruit par des inconnus”, *RFI*, 27 April 2016.

⁴⁰ “RDC: l'ONU critique la dispersion d'une manifestation à Lubumbashi”, *RFI*, 25 April 2016.

⁴¹ “RDC: le siège du parti d'opposition Unadef à Lubumbashi détruit par des inconnus”, *RFI*, 27 April 2016.

⁴² “RDC: Katumbi face à la justice, l'affaire des « mercenaires » expliquée à ceux qui ont raté le début”, *Jeune Afrique*, 11 May 2016.

⁴³ “Heurts entre la police et des partisans de l'opposant congolais Moïse Katumbi à Lubumbashi”, *France 24*, 11 May 2016 ; “RD Congo : Moïse Katumbi a été « brutalisé » par les forces de l'ordre, selon ses avocats”, *Jeune Afrique*, 13 May 2016.

⁴⁴ Amnesty International, *Ils sont traités comme des criminels. La RDC fait taire des voix discordantes pendant la période préélectorale*, November 2015, p.5.

⁴⁵ *Ibidem*, p.33.

⁴⁶ “Discours de S.E.M. Jean-Michel Dumond, Chef de la Délégation de l'Union européenne en République démocratique du Congo à l'occasion de la Fête de l'Europe”, *La Prospérité*, 10 May 2016.

⁴⁷ EEAS, *Déclaration locale de l'Union européenne suite à l'annonce du lancement du dialogue national*, 19 November 2015; EEAS, *L'UA, l'ONU, l'UE et l'OIF soulignent la nécessité d'un dialogue politique inclusif en RDC et leur engagement à appuyer les acteurs congolais en vue de la consolidation de la démocratie dans leur pays*, 16 February 2016.

⁴⁸ *Idem*.

⁴⁹ EEAS, *Déclaration locale de l'Union européenne sur la situation des droits de l'Homme en République démocratique du Congo*, 21 October 2015.

The lack of response by the EU can in part be explained by the **absence of an common position between the various Member States**, which would prevent European diplomacy, and the EU's High Representative Federica Mogherini in particular, from issuing strong messages to those in power and the opposition and possibly playing a stronger mediation role. One can observe a **lack of symmetry in the positions of European States** with some of them having little interest in the issue of democracy in Central Africa, while others have already adopted quite firm positions with regard to the Congolese regime.

In particular, **France** drove the adoption in March of UN Resolution n° 2277 prolonging MONUSCO's mandate by one year and sending a strong message to the Congolese authorities regarding compliance with the electoral deadlines provided for by the Constitution⁵⁰. The day after the decision of 11 May 2016 by the Congolese Constitutional Court about the possibility of prolonging the term of President Kabila beyond 2016, the French diplomacy has demanded that the Congolese authorities focus on working on the "active and in good faith preparation of elections, which are the only source of popular legitimacy"⁵¹. More recently, **Belgium**, through its Minister for Foreign Affairs, warned the Congolese authorities and the opposition that "there will be consequences if the security situation continues to get out of control, and therefore there are violations of human rights"⁵². On 13 May 2016, **Great Britain's** special envoy for the Great Lakes region also announced that it would work with other European countries for the implementation of targeted sanctions against parties potentially responsible for acts of "political repression"⁵³.

But, alas, it should be mentioned that **other Member States do not want to see the EU adopt a firm position** with regard to the democratic change of government in the DRC. According to various well-informed sources, it is mainly **Italy** and **Spain** who would oppose the EU clearly taking a position on the issue of

President Kabila's third term and more generally the progress of the electoral process in the DRC.

Another element that explains the weakness of the European response: the EU **has not managed to put in place a structured political dialogue** with the Government and the Presidency, as provided for in Article 8 of the Cotonou Agreement. No clear calendar or agenda for dialogue has been drawn up and the details have not been established, mainly due to the lack of willingness among the highest Congolese authorities to participate in this dialogue. The dialogue initiated by the EU's Delegation therefore lacks regularity and structure. It essentially takes place at the ministerial level, with individuals who have little influence on the presidential strategy. However, electoral issues are essentially managed at the level of the Presidency and some members of the Government considered as close to President Kabila. This difficulty in implementing a real political dialogue is weakening the EU's diplomatic weight in the DRC.

One cannot fail to note the **gap between** the weakness of **the EU's** message and that of the majority of its Member States with the stronger and louder position of **other international players**, starting with the **United States** who have a much more marked and noticeable position, particularly through the threat of implementing economic and financial penalties aimed against high dignitaries in the Congolese Government⁵⁴. A strong position accompanied by the holding of diplomatic meetings between President Obama, his Secretary of State John Kerry or the United States' special envoy for the Great Lakes region and President Kabila. The contrast here with the EU is very obvious, both in terms of the tone of the messages issued and with regard to the level of diplomatic representation undertaken.

⁵⁰ Security Council, *Le Conseil de sécurité proroge d'un an le mandat de la Mission de l'ONU en RDC et insiste sur la tenue des élections et du dialogue politique*, 30 March 2016.

⁵¹ "RDC: la France appelle à la «préparation active» d'élections", *Radio Okapi*, 12 May 2016.

⁵² T. Migon, "Didier Reynders sur la RDC: 'S'il y a des dérapages, il y aura des conséquences'", *RTBF*, 29 April 2016.

⁵³ "EU sanctions mooted amid DR Congo crackdown", *The Daily Mail*, 13 May 2016; "RDC: Londres envisage des «sanctions ciblées» contre les responsables 'd'actes de répression'", *Radio Okapi*, 13 May 2016.

⁵⁴ "US to enforce DRC sanctions if President Kabila does not hold democratic elections", *International Business Times*, 11 May 2016.

Part II: Challenges to be overcome with a view to the organisation of elections in 2016

Technical challenges

After the announcement of a partial calendar in January 2014, on 12 February 2015 the CENI published a modified version of the **global calendar for the elections** for the DRC⁵⁵. The latter provided for the holding in 2015, first of all, of provincial and senatorial elections, and elections of province governors and, secondly, local, urban and municipal elections. The calendar plans for 2016 the holding of presidential and legislative elections. This calendar never received consensus among national political players and the local civil society. The various proposed due dates have been contested and the neutrality of the CENI has been called into question several times.

At the time of publishing this position (June 2016), none of the elections planned in the calendar have been able to be organised. The **publication of a new global electoral calendar** is therefore fundamental and much anticipated by the Congolese and the international community. The key question raised by this new timetable concerns the **date of the presidential election**. As described previously (see *Part I*), the population, a significant section of the political class and civil society hope that this election is held within **the time frame laid down by the Constitution** (November 2016). In fact, President Kabila's possible remaining in power beyond 2016 is bringing to the surface tensions surrounding the electoral process. However, one must not forget the importance of **city, municipal and local elections**, which have been expected since 2006, and senatorial elections which have been expected since 2011. The importance of city, municipal and local elections has always been highlighted by Congolese

civil society partners of **EurAc** and its members⁵⁶.

The reports of the EU's EOM follow-up mission (2014) and the IOF's mission to audit the **electoral register** (2015) highlighted the flaws in the electoral register. In particular, the IOF recommended to the CENI to implement the necessary reforms making it possible to lead to an inclusive electoral register that includes young people who have turned 18 since 2011⁵⁷, who represent nearly 7 million voters, and remove duplications and other anomalies. In the face of these requirements, **the CENI announced that it needed a period of 16 months**, from February 2016 (the date on which the CENI published the call for tenders for the supply of voter registration kits), **to rebuild the electoral register** in its entirety. According to the CENI, these technical restraints would not permit the holding of elections within the constitutional time frame. This argument is used in particular to justify the convening of the "inclusive national dialogue" aimed at finding an agreement between all the parties regarding the "*glissement*" of elections beyond 2016.

We should also point out a **lack of financial resources** granted to the CENI for the organisation of elections. At the time of publication of the global calendar in February 2015, the CENI announced a figure of 1,145,408,680 billion US dollars necessary for the organisation of elections planned for the third electoral cycle. This amount represents nearly a ninth of the total budget of the Congolese State. Kinshasa, which cannot cover the cost of the elections by itself, is counting on the financial support of the international community. Since the launch of the operations to prepare the elections, the

⁵⁵ CENI, *Décision du 12 février 2015 portant publication du calendrier des élections*.

⁵⁶ **EurAc**, *Memorandum. EU - Legislature 2014 - 2019. For a stronger commitment to peace and democracy in the Great Lakes region*, October 2014.

⁵⁷ "RDC-Elections: l'OIF recommande d'enrôler les nouveaux majeurs", *Radio Okapi*, 12 November 2015.

CENI regularly complains of **delays in the disbursement of funds by the Congolese Government**, which it requires to successfully carry out its mission⁵⁸.

Political challenges

The main political challenge facing the Congolese people and the international community seems to be the **strategy adopted by President Kabila** (see *Part I*). On the one hand, there is his **silence**: the fact that nothing has yet been announced about his intention about whether or not to leave his office on the date fixed by the Constitution (20 December) clearly fuels the climate of tension and the political crisis that is sweeping across the country. Thus, beyond the technical obstacles described above, the main hindrance for the organisation of this election before the end of 2016 seems to be of a political nature, namely **the regime's lack of willingness to organise the presidential elections** within the time frame laid down by the Constitution. It has now become **crucial that the President in office speaks out** in such a way as to reassure the political class and the population about his intention to comply with the Constitution and therefore not remain in power after 2016.

On the other hand, there is the possibility of **"glissement"** of at least some of the elections planned by the third electoral cycle beyond 2016, which is now more and more likely. In order to independently and credibly determine the necessary and reasonable time frames for carrying out the review of the electoral register and the logistical organisation of elections, the EU must in this regard encourage the creation of an independent mechanism which undertakes a technical verification of the necessary time frames. This will make it possible to bring together credible technical data which would constitute a consensual basis for discussion about the future of the electoral process carried out as part of the "inclusive national dialogue" called by President Kabila. This technical basis would make it possible to lead to a definition of a new electoral calendar accepted

by everyone, even if some elections are postponed beyond 2016.

If the presidential election is organised after 2016, it should nevertheless be clear, among part of the opposition and civil society that, **neither President Kabila or a potential candidate for the election should ensure the management of the transition period** which would arise from this potential **"glissement"**. In this way, the **"glissement"** could be considered as "acceptable" by the majority of players in the DRC since it could no longer serve the strategy of those in power aiming to by-pass its constitutional obligations.

Without a change in strategy by President Kabila, the situation risks degenerating rapidly. Some opponents advocate a **"Congolese spring"**, in other words a popular uprising. The seeds have been sown for such protests: it is made up of poverty, inequality, repression, violence and a crisis of legitimacy of political institutions⁵⁹. The current political deadlock and the electoral postponement are triggers that are easy to use, and one cannot exclude now that citizens will descend onto the streets en masse, as they did previously in January 2015. Such a popular uprising could have **potentially significant consequences from a security point of view** (see below).

The **opposition's attitude** also represents a significant challenge for the running of credible and peaceful elections. The new power relations within the Congolese political landscape have weakened the President's party and strengthened the opposition (see *Part I*). The latter has a decisive role to play with a view to finding a **peaceful outcome** to the current crisis. We can hope for a **moderate and responsible response** from it to the President's dangerous strategy, and it should **channel the impatience and frustration of its supporters**. It should also participate actively in the emergence of a **negotiated crisis recovery** which is peaceful and respectful of the rule of law.

⁵⁸ "RDC: le gouvernement ne décaisse pas suffisamment de fonds pour les élections, selon la Ceni", *Radio Okapi*, 12 October 2015.

⁵⁹ Nadia Nsai, "Reynders mettra-t-il Kabila en garde contre le risque d'un printemps congolais?", *DaarDaar*, 27 April 2016.

If these challenges are not resolved rapidly, the stalemate of the crisis may have dramatic consequences in humanitarian and security terms (see below). It is therefore vital to establish a true **dialogue between the presidential majority and the opposition**. Unfortunately, there are numerous difficulties surrounding the establishment of an “inclusive national dialogue” (see *Part I*). Given the **distrust** among participants in the dialogue, the conditions of an inclusive and calm dialogue do not yet seem to have been met, which is endangering the possibility of reaching negotiated and peaceful crisis recovery.

Security challenges

The first challenge that is raised in the immediate term from a security point of view is an **intensification of the political repression and aggravation of human rights violations**⁶⁰, of which the population, civil society and the political opposition are victims (see *Part I*). Events that presage a worrying deterioration of the pre-electoral crisis which would make the holding of democratic, free and inclusive elections impossible. The **responsibility of the Congolese security services** (ANR, Presidential Guard, PNC and FARDC) is clearly incurred in the case of these escalations. The security service’s **feeling of impunity** probably encourages them to commit these acts of violence. However, these services **have an essential role in the securitisation and pacification within the electoral context**. It will be impossible for them to retain this role if they continue to use violence and excessive force against the population who they are supposed to protect.

The two other challenges arise from two credible risks: the stalemate of the political crisis surrounding the issue of the end of President Kabila’s term and the failure to establish an “inclusive national dialogue”. If they should occur, these risks would lead the DRC into a **period of serious political and institutional turbulence** which would compromise the electoral process and would irremediably under-

mine the already shaky legitimacy of the authorities and institutions in place.

First of all it is a question of the **consequences of a possible “Congolese spring”** (see above). It has long been believed that a popular mobilisation on the street was impossible in the Congo. The scale and duration of the mobilisation in January 2015 (6 days in total, including 3 days of protests) against the draft bill for the revision of the Electoral Law have clearly shown the contrary (see *Part I*). Instead they show that a significant part of the Congolese population, and young people in particular, is determined to oppose any change in the Constitution enabling President Kabila to remain in power beyond 2016. This **popular determination** is a warning. It could easily be reclaimed by the **opposition** if no political outcome to the current crisis is found. In fact, Article 64 of the Constitution stipulates that “any Congolese person has the right to defeat any individual or any group of individuals who takes power by force or who exerts powers in violations of the provisions of the current Constitution”. A particularly dangerous situation because, according to several sources met by **EurAc**, nothing would be able to stop the **anger in the street** once it has been released. And, in the event of such an uprising, the possibility of a **bloody repression** and serious escalations cannot be discounted.

This would then be the **recourse to armed violence to conquer power**, which would plunge the DRC into a **new major security crisis**. While situated in a socio-political context that is hard to compare with that in the DRC, the current political/security crisis in Burundi, prompted in 2015 by the announcement of the candidacy of President Nkurunziza for a third presidential term, should serve as a warning and lesson. The probability of recourse to armed violence in the DRC is no lower than in Burundi, quite the contrary. In fact, the manipulation of numerous armed groups present and active on Congolese territory for political purposes would not be a first in the DRC. The **consequence** of an armed battle to conquer power would be **dramatic for the**

⁶⁰ Arbitrary arrests, forced disappearances, threats and violence, particularly during protests.

country and its population, but also for the whole sub-region. From a humanitarian point of view, human rights, the stability of the rule of law and development, these consequences would be tragic, and in proportions that are even more significant than the nevertheless serious ones observed in the case of Burundi.

Judicial and legal challenges

The challenges that are concerned in this point are linked to the malfunctioning of the Congolese justice sector, both from a judicial point of view (application of laws) and legal point of view (interpretation of laws). From a judicial point of view, one should mention “the poor general functioning of Congolese justice”⁶¹, including a **lack of independence and impartiality**, that “creates a **context of impunity and lack of accountability**”⁶² of the **security services** responsible for acts of violence against the population. Several political opponents have recently been arrested and kept in detention wrongfully, with the complicity of the judicial services, and have faced proceedings the fairness of which is far from being assured⁶³.

From a legal point of view, it is the issue of electoral “*glissement*” that is focusing attention. More than 200 parliamentarians from the presidential majority lodged a request on 18 April 2016 before the **Constitutional Court**, to demand it to **interpret Articles 70, 103 and 105** of the Constitution in the case of postponement of the elections after 2016. These Articles related to the **duration of the mandates of the president, deputies and senators respectively**. In reaction, the opposition itself applied to the Constitutional Court for an **interpretation of Article 70 by virtue of Article 75**. In fact, the latter Article stipulates that **the President of the Senate shall ensure the interim** in cases in which the elections are not organised in time.

As already mentioned previously (see *Part I*), on 11 May 2016, the Congolese **Constitutional Court issued a ruling authorising President Kabila to remain in power** in the event that the presidential election can-

not not be held within the constitutional time limits. This ruling clearly makes Article 70 take precedence over Article 75. Although it is worrying that the Constitutional Court was asked to examine this issue, the Court’s decision is equally so. The Congolese Constitution is, as a whole, coherent and unambiguous with regard to the duration and number of authorised presidential terms. Interpreting Article 70 in an isolate manner, as the Court has done, hurts this coherence. It should be remembered at this point that **Article 220** of the Constitution stipulates that “(...) the number and duration of the terms of the President of the Republic (...) cannot be the subject of any constitutional revision”.

Some people fear the calling of a **referendum** inviting the population to vote on the opening up of a **revision of the Constitution**. In fact, the referendum is the last route available to President Kabila to obtain the change to the Constitution that he did not manage to obtain by parliamentary vote in 2015. As a reminder, this vote concerned the revision of Articles 70 and 220 of the Constitution which, up to present, “lock” the number and duration of presidential terms. Some observers questioned by **EurAc** believe that the figure of 580 million dollars laid down in the Congolese State budget for the population consultation in 2016 opens the way for the organisation of such a referendum. Opponents to the referendum believe that Articles 70 and 220 should be considered “**intangible provisions**” of the Constitution and they are therefore not likely to be revised, even through a referendum⁶⁴.

⁶¹ **EurAc**, *EU support to security sector reform in the DRC. Towards an improved governance of Congolese security forces?*, February 2016, p.11-12.

⁶² *Idem*.

⁶³ Amnesty International, *Ils sont traités comme des criminels. La RDC fait taire des voix discordantes pendant la période préélectorale*, November 2015, p.38.

⁶⁴ Paterne Murhula Batumike, “*Un troisième mandat pour Joseph Kabila ? Les scénarios possibles*”, *infos Grands Lacs*, 25 January 2016.

Conclusion: the EU's foreign policy put to the test by the Congolese crisis

Several developments that have occurred since 2015 have contributed to plunging the DRC into a deep political crisis (see *Part I*), namely **the perilous strategy of those in power**, which led to an irreversible delay taken by the electoral process, an **increase in tensions and the disruption of power relations within the Congolese political landscape**, and a **worrying shrinking of the democratic space**. The Congolese crisis involves several **challenges to be overcome** with a view to the peaceful organisation by the end of 2016 of at least part of the elections planned as part of the third electoral cycle (see *Part II*), from technical, political, security, judicial and legal points of view. This *Conclusion* presents in a succinct manner what should be, in the eyes of **EurAc** and **OSEPI**, the EU's response to each of these challenges:

Technical challenges

The **EU** has announced on several occasions in 2015 and 2016 that it remained willing to support the electoral process, **making its financial support conditional upon the publication of a redeveloped electoral calendar and a plan for the disbursement of funds** planned by the Government for the organisation of elections⁶⁵. The CENI and the Government are taking a long time to respond to these requirements. Considering the expectations of the population, part of the political class and Congolese civil society, the EU should encourage the CENI and the Congolese Government **to put in place an independent mechanism which will carry out the technical verification of the time frames and resources necessary for the organisation of elections**, particularly the revision of the electoral register, the registration of voters, the or-

dering of electoral kits and the logistics of voting operations.

Regarding the issue of available funds, the 2016 budget of the Congolese State provided for nearly 580 million dollars (6.4% of the budget) for the popular consultation in 2016, including 40.7 million which should come from international partners. However, it is not stipulated that the elections would be financed with this money⁶⁶. The budget for elections has not yet been clarified and no disbursement plan, aimed at bringing clarity about the financial contribution of the Congolese State to the organisation of elections, has yet been signed⁶⁷.

Political challenges

The weakness of the EU's action concerns the absence **(1)** of structured and regular political dialogue with the presidency and **(2)** firmness in the messages addressed to the Congolese authorities (see *Part I*). From the first point of view, it is time that the **EU engaged its highest level of diplomatic representation in the political dialogue with the DRC**, notably through meetings between the EU's High Representative Federica Mogherini and President Kabila. Regarding the second aspect, the EU and its Member States must **adopt a clear and firm position against a potential third consecutive term** for President Kabila **or, in the case of "glissement" of presidential elections, his remaining in power beyond 2016**.

The **EU** has called the Congolese political class to participate in **dialogue** several times, without however playing a predominant role in this. The EU has preferred to leave the AU in charge of this up

⁶⁵ EEAS, *L'UE réaffirme sa disponibilité à soutenir l'organisation des élections en RDC*, 14 October 2015.

⁶⁶ "RDC: budget 2016 et financement des élections présentés à l'Assemblée", *RFI*, 26 October 2015.

⁶⁷ "RDC: le gouvernement appelé à signer le plan de décaissement pour organiser les élections", *Radio Okapi*, 7 October 2015.

till now. But difficulties encountered by the establishment of “inclusive national dialogue” in the DRC, particularly after the appointment by the AU of Edem Kodjo as facilitator, lead us to say that the **EU and its Member States should henceforth change approach**. European diplomacy should play a **proactive and leading role** in the preparation and holding of the “inclusive national dialogue”, particularly by helping to define and clarify the mandate and the objectives of this dialogue.

Security challenges

The EU has several tools enabling it to influence the security situation. It should start by **condemning as strongly as possible any new escalation by the Congolese security forces**, which has not necessarily been the case in the past (see *Part I*). As part of the 11th EDF, the EU finances the PARP and PROGRESS programmes aimed at supporting reforms of the Congolese police and army. The EU must therefore **use the PARP AND PROGRESS programmes as levers to strengthen its political dialogue regarding the carrying out of the electoral process and the worrying shrinking of the democratic space**. If necessary, with a view to fighting against the feeling of impunity, the EU should have recourse to the threat of **targeted sanctions against heads of the security services** in the event of new violations of human rights.

A significant constituent of the EU's external action in the Great Lakes region concerns the “prevention of conflicts”. In the context of elections, the EU must **strengthen Congolese civil society in its role of preventing conflicts and violence and protection of the population**. At the same time, the EU should assess the **risks of an escalation of armed violence** in the DRC and develop a **strategy to prevent this**. The EU must identify and use the appropriate instruments to avoid the political crisis in the DRC leading to a major security crisis. This strategy should aim to maintain a **dialogue between the presidential majority and the opposition parties**, and explore the possibility of using **individual sanctions**

mechanisms against any political leader who has used armed violence, before it is too late.

Judicial and legal challenges

As a partner of the DRC, the EU obviously only has a limited right of scrutiny in the (mal)functioning of Congolese justice, and it cannot in any case interfere in the management and decisions of the judiciary. Nevertheless, the EU should **call on the DRC's Government to free prisoners of conscience and closely monitor proceedings** against political leaders, defenders of human rights and militants.

As part of the 11th EDF, the EU is financing the PARJ programme aimed at supporting the reform of the justice sector. The EU should **use the PARJ programme as a lever to strengthen political dialogue with the Congolese authorities regarding the importance of establishing an impartial and independent judiciary in the DRC**. Without rapid, significant and satisfactory progress on the subject, the EU must eventually **envisage stopping its financial support for the justice sector** in the DRC.

On the basis of these responses, and more generally the analysis proposed in the whole document, **EurAc** and **OSEPI** have formulated **courses of action** so that the EU and its Member States, on the one hand, support the electoral process in such a way as to bring the DRC out of the current political crisis and, on the other hand, adopt strong measures aimed at preventing this crisis from leading to a security crisis (see *Recommendations*).

To conclude, it seems clear to use that the political crisis that is sweeping across the DRC constitutes an important test for the **EU's foreign policy**. In the current state of affairs, this policy lacks coherence and consistency, while it is urgent to increase the diplomatic pressure on the Congolese authorities and it is vital to deliver strong political signals in favour of the compliance with democratic principles and the protec-

tion of human rights. The expectations of Congolese and European civil society in this regard are far from being met. The EU is not the only one to blame, the finger can also be pointed at the majority of Member States who carry a heavy responsibility for the European diplomatic inertia (see *Part I*).

The Congolese crisis, just like the Burundian crisis, led us to question the effectiveness of the **EU's strategy for the Great Lakes region** adopted in 2013⁶⁸. Has it been shared and adopted by the EU's Member States engaged in the region? Has it sufficiently taken into account the highly political dimension of "good governance"? One can however wonder

whether this strategy is still appropriate for the challenges facing the region. It seems that the time has come for the EU to revise this strategy, because it is being hindered on several levels. Worse than this, the very principles of democratic change of government, which however are the basis of various Peace Agreements signed in the region, are today called into question by the ruling class of various countries (Burundi, Rwanda and the DRC). This reflection should lead the EU to develop a **truly comprehensive approach regarding the DRC, in order to use in an optimal and coherent way the various tools available** to it to support the emergence of a process of peaceful and sustainable democratisation.

⁶⁸ European Commission and European External Action Service, *A Strategic Framework for the Great Lakes Region*, JOIN (2013) 23 final, 19 June 2013.

Abbreviations

ANR	National Intelligence Agency (DRC)	OSEPI	Open Society European Policy Institute
AR	<i>Alternance pour la République</i> (Change for the Republic - platform of opposition parties)	PARJ	<i>Programme d'Appui à la Réforme de la Justice en RDC</i> (Support Programme for Reform of the Justice Sector in the DRC)
AU	African Union	PARP	<i>Programme d'Appui à la Réforme de la Police en RDC</i> (Support Programme for Reform of the Police in the DRC)
CENI	Independent National Electoral Commission	PNC	National Congolese Police (DRC)
DRC	Democratic Republic of Congo	PPRD	<i>Parti du Peuple pour la Reconstruction et la Démocratie</i> (Party of the People for Reconstruction and Democracy)
EC	European Commission	PROGRESS	<i>Programme d'Appui à la Réforme du Secteur de la Défense en RDC</i> (Support Programme for Reform of the Defence Sector in the DRC)
EDF	European Development Fund	UDPS	Union pour la Démocratie et le Progrès Social (Union for Democracy and Social Progress)
EEAS	European External Action Service	UN	United Nations
EOM	Electoral Observation Mission of the EU	UNADEF	<i>Union des Nationalistes Démocrates et Fédéralistes</i> (Union of Democratic and Federalist Nationalists)
EP	European Parliament	UNC	Union pour la Nation Congolaise (Union for the Congolese Nation)
EU	European Union		
EurAc	European Network for Central Africa		
FARDC	Armed Forces of the DRC		
G7	Group of 7 opposition parties		
IOF	International Organisation of the Francophonie		
MLC	<i>Mouvement de Libération du Congo</i> (Movement for the Liberation of Congo)		
MONUSCO	United Nations Stabilization Mission in the Democratic Republic of Congo		
MS	Member States		



Created in 2003, the European Network for Central Africa (**EurAc**) has 40 member organisations from civil society in 11 European countries. These organisations work on and in the Great Lakes region. They support civil society organisations in Burundi, the Democratic Republic of Congo (DRC) and Rwanda in their efforts to promote peace, the defence of human rights and development.

EurAc concentrates its activities on advocacy towards European institutions and political decision-makers, around 3 central themes for the Great Lakes region: (1) peace and security, (2) democratisation and (3) management of natural resources. Transversely from these fields, the improvement of governance and the strengthening of non-State players as a counter-power are priorities of our advocacy work.

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