

STAY IN POWER WHATEVER IT TAKES

Fraud and Repression in the 2011 Elections in the Democratic Republic of Congo

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ABSTRACT

In 2011 the Democratic Republic of Congo (DRC) held its second competitive presidential and legislative elections since it gained its independence in 1960. While it was expected that these elections would reflect a significant improvement over those in 2006, they were marred by such grave irregularities that the outcome was described by most election observer missions as lacking credibility. This article draws on the reports of election observer missions, statements from key stakeholders and media reports in order to discern the most salient dynamics of electoral misconduct in the DRC in 2011. Given the nature and degree of electoral fraud, the article argues that the election debacle was not the result of technical and accidental factors but was the product of a systematic and state-sponsored design to rig the elections in favour of the incumbent president and members of Parliament from his political camp. In order to quell popular protest against stolen elections the incumbent used illegitimate and excessive violence aimed at terrorising the people and forcing actual and potential protesters into submission. This analysis suggests that the democratic project in the Congo has experienced a dramatic reversal. In order to safeguard the democratisation process it is crucial that national and international stakeholders tackle the foundations of this type of electoral authoritarianism.

INTRODUCTION

The 2006 DRC elections were sponsored by the international community but the 2011 electoral process was a test of the Congo's capacity to run an autonomous

election. In 2006 the international community funded 91% of the entire electoral process (Commission Electorale Nationale Indépendante 2012) and the UN mission in the Congo was a key partner.

By contrast, the Congolese government funded more than 75% of the elections held on 28 November 2011 (Commission Electorale Nationale Indépendante 2012) and the UN mission was not central to the organisation of the process. Of interest to observers was whether the 2011 electoral process would be an improvement, in accordance with the theory that the 'democratic' quality of elections improves over time (Lindberg 2006).

Drawing on the reports of election observer missions and statements from other independent organisations, on audio and video materials, newspaper reports and online material, this article shows that the 2011 elections were not only administratively chaotic, fraud and violence were deliberately introduced in order to ensure that the incumbent president, Joseph Kabila, stayed in power and members of his majority party would dominate the National Assembly.

In assessing the reports of the observer missions the article also highlights the vacuity of those produced by the African observer missions and the ambiguity of those drawn up by Western observer missions.

The international observer missions' weak denouncement of the electoral fraud and the international community's lack of decisiveness in confronting this blatant electoral misconduct undoubtedly strengthened the resolve of the incumbent regime to cling to political power and proceed with business as usual after the compromised electoral process.

The article also highlights the characterisation of the electoral process as 'generally peaceful, with few incidents', as reported by most observer missions and news agencies. Instead, it argues, it is precisely the deliberate and systematic deployment of state-sponsored violence and intimidation that imposed the flawed electoral outcome on the people, leaving Congo with a legitimacy crisis.

The argument is presented in four sections. It starts with a theoretical discussion of the relationship between elections and autocracy and of the political rationality of electoral fraud and violence. Some pertinent concepts drawn from this discussion guide the analysis of the 2011 electoral debacle. Secondly, it sketches the broader social and political context within which the 2011 electoral process took place. Thirdly, it discusses critically the evidence that points to systematic and state-sponsored electoral fraud. Fourthly, it analyses the aftermath of the electoral process and the nature of the violence used by the state against Congolese citizens in order to demonstrate that, far from being incidental, this campaign of terror was an integral part of the election-rigging strategy.

ELECTIONS AND AUTHORITARIANISM

The literature on elections has placed at the centre the problem of their quality, with scholars such as Elklit & Reynolds (2005) proposing a 'framework for the systematic study of the quality of elections'. In assessing the quality of elections several scholars have turned the spotlight on the problem of electoral malfeasance, which has routinely characterised countries that democratised after the fall of the communist bloc.

Of the 35 countries studied by Levitsky & Way (2010), 14, mostly from Eastern Europe, moved on to become stable democracies. However, the rest, most of which are found in Asia and Africa, simply became 'competitive authoritarian regimes' (Levitsky & Way 2010). These are countries in which democratic institutions exist and competitive elections take place regularly, but systemic electoral fraud and abuse weight the system heavily in favour of the incumbents.

Elections under these regimes are not just 'window dressing', opposition candidates can and do win, but such victories are rare (Levitsky & Way 2010). This assessment is echoed by other scholars, who have also noted the ritualistic and formalistic function elections play in many countries where autocrats embrace them for the legitimacy they bring, without exposing their regimes to the uncertainty inherent in any authentic democratic electoral process (Schedler 2002; Birch 2007; Magaloni 2010).

Magaloni (2010) refers to such regimes as, in essence, dictatorships 'hidden behind elections'. As Schedler (2002, p 37) puts it, 'the dream [of these regimes] is to reap the fruits of electoral legitimacy without running the risks of democratic uncertainty'. These regimes seek electoral legitimacy in order to maintain the unobstructed flow of foreign aid in an era where international institutions and Western countries make democratisation a key condition for aid.

Elections may also be used by authoritarian regimes in order to demonstrate their popularity to opposition groups, who are faced with the choice of joining the ruling regime or remaining stranded in the political wilderness (Schedler 2002). In the case of the Congo, as will become clear below, it seems that the need to secure foreign aid and international legitimacy has been the dominant reason why the ruling regime undertook to organise elections without the political will to submit itself to democratic uncertainty.

With such external pressures it is no wonder that the literature on elections, particularly in sub-Saharan Africa, is replete with accounts of massive and systematic vote rigging and state sponsored violence in countries such as Nigeria (Omotosho 2008; Omotola 2010), Rwanda (Reyntjes 2004), Zimbabwe (Dorman 2005), Kenya (Cheeseman 2008) and Uganda (Makara, Rakner & Svåsand 2009; Tangri & Mwenda 2010).

Elections are highly strategic political processes as they are ultimately about the conquest of power. For this reason, a number of authors have analysed them using game theory. For instance, Magaloni (2010) analyses several scenarios and various conditions under which an authoritarian regime can either decide to rig elections and manage public protest or 'tie their hands willingly not to commit fraud by delegating power to an independent electoral commission'.

According to Magaloni's analysis of electoral fraud in an electoral autocracy, the incumbent is more likely to commit fraud than the opposition. However, based on the theory of rational choice, the incumbent weighs up the cost and the gains of committing electoral fraud, particularly the cost of rigging elections and repressing protesters. Magaloni's conclusions are particularly relevant to this study. She concludes that autocrats will only leave the electoral management body free to organise fair elections if the opposition credibly threatens to contest the elections and the autocrats know they can win without fraud. She further argues that 'opposition unity and a credible threat of massive civil disobedience make it harder for autocrats to steal elections, but other factors also matter' (Magaloni 2010, p 763).

The players' strategic calculations are also shaped by structural factors, including the opposition's access to economic resources, the state's capacity to enforce fraud and the international environment, such as international observers' reports, international courts and international media. Whether or not the autocrat will commit fraud will ultimately depend on the expected behaviour of the repressive apparatus. Magaloni (2010, p 763) rightly states that 'despite a mass revolt, despots will be able to rig the elections with impunity if the military (and other regime insiders) agrees that the best course of action is to repress'.

The political system in the Congo has most of the characteristics of an 'electoral autocracy' or a 'competitive authoritarianism' (Matti 2010). Though opposition parties are given a relatively meaningful platform from which to organise and contest the ruling regime's policies and actions and civil society activists are provided with the space to voice their issues, the political structure is, by and large, built around the person of the incumbent president, who has the ultimate and unquestionable control of the security apparatus and the public treasury.

The ruling elite projects a 'democratic façade' (Booysens 2007) rather than any substantive commitment to democratic governance. As this article will show in relation to the electoral process, major institutions which are supposed to protect and deepen the democratisation process are partisan or are strongly influenced by the president and his close allies. As Magaloni's analysis suggests, such a regime, when faced with the possibility of an electoral defeat, makes use of its nastiest tricks to remain in power unless the opposition or international pressure forces

it out. Let us first consider the historical and socio-political context in which the electoral contests in Congo took place.

CONTEXT OF THE 2011 ELECTIONS

In the first post-colonial elections in Congo, in 1960, Patrice Lumumba emerged as prime minister and Joseph Kasa-Vubu as president. This initial electoral and democratic experience was overturned when Lumumba was assassinated in 1961 and the civilian government was deposed and replaced by a military regime led by Joseph-Desiré Mobutu (Mobutu Sese Seko), with the support of his Western patrons.

During the long Mobutu dictatorship there was a one-party system in which elections were organised but were never competitive. Following the demise of the Mobutu regime and the death of his successor, Laurent Désiré (Mzee) Kabila, democratic elections were planned as a means of putting an end to long years of impunity and illegitimate governance. These elections were part of a broad conflict-resolution settlement agreed upon at Sun City, South Africa, in 2002 by belligerents, unarmed opposition groups and civil society.

In 2006, under the stewardship of the international community, the Congo experienced the first competitive elections since its independence. Due to the slow progress of integrating the army and the power balance that emerged from the peace accord, the elections were contested both at the polling stations and on the battle field, with armed confrontation ensuing during the electoral process between forces loyal to the main two presidential contenders, Joseph Kabila and Jean-Pierre Bemba.

Bemba, whose military capacity was inferior and who was under intense pressure from the international community, conceded defeat after a failed court challenge. He was later arrested and transferred to the International Criminal Court (ICC) to answer accusations of war crimes committed by his troops in Central Africa. The trial is ongoing.

The 2011 elections were equally contentious, with new dynamics coming to the fore. The ruling regime hastily amended the Constitution, changing the electoral process from majoritarian to simple majority plurality. The constitutional amendment, passed in the face of controversy and protests from opposition parties and civil society, meant that to be declared the winner of the electoral race a contender needed only a simple majority.

While the presidential majority justified the amendment, citing the need to minimise the cost of elections and prevent further societal fragmentation and tension in the wake of the second round of elections, the move gave Kabila an unfair advantage.

Of the 13 candidates in the presidential race, two contenders were particularly noteworthy. The entry of the veteran politician and leader of the Union for Democracy and Social Progress (UDPS), Etienne Tshisekedi, into the presidential race took the Congolese ruling political class by surprise. Tshisekedi, who comes from Kasai region, has been a prominent politician since Congo's independence. He worked closely with President Mobutu in various capacities before mounting, together with fellow politicians, the strongest unarmed opposition to Mobutu's dictatorship.

His party was instrumental in pushing for the organisation of the national sovereign conference, from which he emerged as the country's prime minister. However, he never really managed to govern as Mobutu and his allies blocked any reforms that might cause them to lose power. Tshisekedi's party had excluded itself from the electoral process in 2006, when it boycotted the voter registration process. After the 2006 presidential election Tshisekedi retreated from active political life while he underwent medical treatment abroad.

Many believed the condition of his health and his intransigent attitude to the incumbent regime would result in a decision not to participate in the 2011 presidential race. The confirmation of his intention to run for the presidency shook the ruling political elite, prompting it to prepare for a tougher battle, given the popularity of the veteran opposition leader and the dubious record of the incumbent.

Weekly protests by UDPS supporters during the election period, violent clashes between supporters of Tshisekedi and special presidential guards at the Ndjili airport, and post-electoral unrest are only a few examples of the intensity of the political battle the Tshisekedi candidacy brought with it.

The entry into the presidential race of Vital Kamerhe, former president of the National Assembly and founder and leader of the Union Pour la Nation Congolaise, meant that Kabila might have to share votes with him in areas such as the Kivus, which, in 2006, voted overwhelmingly for Kabila, according to the results announced by the then Independent Electoral Commission (CEI). With these two candidates entering the presidential race, Kabila's re-election was not guaranteed, even if opposition parties failed to agree on a single candidate.

The constitutional change mentioned above was intended to ensure that a simple majority would secure the incumbent's victory. However, as this article shows, even Kabila's simple majority victory, announced by the Independent National Election Commission (CENI) came at the cost of state sponsored fraud and violence.

Created on 28 July 2010 to replace the CEI, the CENI acquired a new multiparty management team in March 2011 and obtained the mandate to organise the 2011-2013 cycle of elections only in April 2011, giving it a mere seven months

to prepare for the elections in a country as vast as Western Europe and devoid of basic infrastructure, particularly in the countryside. The task was daunting and many analysts considered it impossible to achieve in the time available.

The CENI only acknowledged the problem after the election: 'the late appointment and swearing in of the members of CENI have had consequences on the unfolding of the electoral process, namely the very short timeframe for the preparation and the conduct of the polling' (Commission Electorale Nationale Indépendante 2012). However, given the constitutional deadline of 6 December for the inauguration of the newly-elected president, the CENI, under pressure from the ruling political elite who sought to avoid being accused of remaining in office illegitimately after 6 December deadline, committed to doing the impossible and, as a result, delivered a disorganised, chaotic and fraudulent election.

From the start the CENI lacked transparency and did little to build trust among political parties and candidates beyond a few briefings of parties about the evolution of the electoral process. It also failed to defuse accusations of electoral fraud made long before the poll date. For example, members of the UDPS and other opposition parties protested weekly in an attempt to obtain greater transparency in the voter registration process and the voters' roll and requested access to and control of the servers that were to be used.

There was no response to their demands. The European Union Observer Mission expressed regret about the lack of transparency in the clean-up of the voters' roll, about which the CENI was unable to produce any report. The head of the CENI, Pastor Ngoy Mulunda, was presented as a member of civil society, but was widely perceived as a close ally of the incumbent president.

The pastor, who comes from Joseph Kabila's Katanga province, is believed to be one of the co-founders of the president's party and is reported to have been a member of Kabila's campaign team during the 2006 electoral process (Mission d'observation électorale de l'union européenne, July 2013). During the post-conflict transition period he presided over a non-governmental organisation called the Oecumenical Peace Program, Conflict Transformation and Reconciliation, which undertook to collect weapons from war-torn regions in exchange for bicycles and, later, \$100. This national programme operated with huge support from the Congolese government and international donors.

Though the configuration of the election management body during the 2011 electoral cycle had a clear political character, with emphasis placed on political inclusiveness, Mulunda's close connections with the ruling regime did not help to project the image of an independent body. Three months before the elections a national officer of the CENI told the author: 'I do not see how Ngoy Mulunda will sit there and declare the defeat of his political boss Joseph Kabila' (Anonymous interviewee, September 2011).

Other state institutions that played significant roles during elections were also deeply partisan and could thus not be relied upon to treat all candidates equally. This was particularly the case with the Superior Council of Audiovisual and Communication (CSAC), the Supreme Court of Justice and the security establishment (police, army, republican [presidential] guards and intelligence).

On the basis of the law of 11 January 2011 and the electoral law, the CSAC is supposed to ensure freedom of the press, guarantee the right to diverse, reliable and objective information and provide candidates and political parties with equitable access to public and private media during the election campaign. However, this institution failed to regulate impartially access to the public broadcasting station, which acted as the mouthpiece of the ruling party. In addition it arbitrarily disconnected television channels such as RLTV and Canal Futur Tv, which belonged to opposition candidates (Mission d'observation électorale de l'union européenne, 14 July).

In the absence of a Constitutional Court, the Supreme Court of Justice was the institution that adjudicated electoral disputes and certified the election results. The Supreme Court of Justice was expected to be loyal to the incumbent regime, which had appointed all the judges, making 17 other appointments shortly before the polls and delaying the establishment of the Constitutional Court, which would have required an impartial mechanism.

In August 2011 the electoral law was amended to institute an opaque mechanism of adjudication of electoral disputes. The change required a shift from public presentation of evidence and arguments to an inquisitorial system which allowed the judge to collect the information necessary to make a decision (Mission d'observation électorale de l'union européenne, 14 July).

As a result, the final arbiter of election disputes was a highly politicised and opaque organ whose crucial decisions are not even written down and distributed to the individuals involved or to the public.

As for the security forces, countless reports from the United Nations Organization Stabilization Mission in the DR Congo (MONUSCO) human rights office and other human rights organisations have shown that the army, the police and the intelligence services have not transformed into republican institutions. At the height of the political battle, as will become clear below, these forces were instruments of illegitimate violence deployed against opposition party candidates and members.

It is in this autocratic context that the 2011 elections were held. The fact that opposition candidates could freely hold public rallies and criticise fearlessly the failures of the incumbent regime should not make one lose sight of the structural politicisation of state institutions and the huge imbalances in the distribution of resources for election campaigns. Observer reports, candidates, voters and civil

society bodies denounced grave irregularities and massive fraud in the conduct of the elections.

ORGANISED AND STATE-SPONSORED ELECTORAL FRAUD

It is now common knowledge that the 2011 presidential and legislative elections in the Congo were marred by systematic irregularities that affected irretrievably the credibility of the results announced by the CENI. While, when the presidential election results were published on 9 December 2011, the fraud accusations were mainly confined to the opposition camp, after the publication of the legislative election results from January 2012, the outcome of the electoral process was criticised by both the opposition and the presidential camp as fundamentally flawed.

This inconsistency reveals the incoherence of members of the presidential camp, who defended the result of the presidential race as credible, but joined the opposition in denouncing the systematic manipulation of the results of the legislative elections, while fully aware that both elections were run concurrently by the same officials and in similar dubious circumstances.

In setting out the evidence and analysis, which point to organised and state-sponsored electoral fraud, this article draws on the observer reports of the following organisations: Carter Center, European Union (EU) observer mission, National Network of Civil Society Organizations for the Observation and Monitoring of Elections in Congo (RENOSEC), La Voix des Sans Voix, the National Episcopal Conference of Congo (CENCO), the African Union (AU), the Southern African Development Community (SADC), the International Conference on the Great Lakes Region (ICGLR), the Economic Community of the Central African States (ECCAS) and the Common Market of East and Southern Africa (COMESA).

WESTERN OBSERVER MISSION REPORTS

The Carter Center, which had a team of 74 observers, was one of the first international and independent organisations to declare that the results lacked credibility. In a report setting out the main grounds for its scepticism, the team casts doubts on the unrealistically high turnout and quantity of votes for Kabila in Katanga, one of his strongholds, and contrasts this with the national average and the low turnout and number of spoiled and lost votes in Kinshasa, a Tshisekedi stronghold.

In a public statement issued on 10 December, the Center said a number of aspects of the results lacked credibility. Notably, in Katanga, voter turnout was at or near 100% in more than a dozen districts, the number of spoiled ballots

was extremely low, the rate of collection of results sheets from polling stations was also 100% and, in four districts, vote totals for Kabila were at or very close to 100%. These factors, coupled with the loss of a significant number of polling station results, led the Center to conclude that the CENI's overall management of the results process was poor and the results lacked credibility.

The Center also noted a discrepancy in the number of voters and the number of invalid ballots between the presidential and legislative elections results:

A close reading of legislative election results leaves certain questions about the credibility of the results. The number of voters differs between the two elections in some districts, most notably for Walikale, where a difference of 28,810 was recorded between the two votes, and Malemba-Nkulu in Katanga, which recorded a difference of 5,405. The rate of invalid ballots is also noteworthy, reaching almost 10 percent in the district of Tshangu in Kinshasa. Katanga recorded the lowest rates of invalid ballots in both presidential and legislative elections. The discrepancy in the rate of invalid ballots is also noteworthy, as in the case of Tshangu district of Kinshasa where the rate reached 10 percent in the legislative poll, while the presidential ballot yielded just 3.6 percent. This difference is possibly reflective of the enormous complexity of a legislative ballot with 1,575 candidates for 15 seats. However, Kinshasa, notable as an area of Tshisekedi support, stands in contrast to Kabila's vote bank in Katanga that recorded the lowest rates of invalid ballots in both presidential (2.7 percent) and legislative elections (5.6 percent). Other patterns are evident in the district results, but more thorough analysis is impossible unless the CENI releases polling station results.

Carter Center October 2012

Further discrepancies between the presidential and legislative results were revealed by the CENI itself, when it applied for the results of the legislative elections in seven districts be cancelled, citing cases of violence, of which the Carter Center could find no independent record either in the press or elsewhere. Questions were raised about how election-day violence made it impossible to tabulate the legislative results but not the presidential results, since the two processes were simultaneous.

The Carter Center report highlights certain aspects of the results published by the CENI which defy common sense:

The results published for at least two constituencies in Katanga province were implausible because their validity would have meant

that every registered voter was able to vote on Election Day, that all voters voted for Kabila, and that all voters correctly marked their ballots.

Carter Center October 2012

Though the report falls short of characterising the process as marred by organised fraud and systematic manipulation of results in favour of the incumbent, it nevertheless mentions elements which suggest that that was the case. The report mentions the lack of transparency and active fraud by voting centre officials:

Problems ranged from general disorganization and related loss of results to the tampering of results forms by voting center officials. The Center also found there to be a lack of transparency in the tabulation process overall. Independent observers and party or candidate agents were not accorded access to all steps of the compilation process.

Carter Center October 2012

As a result of these problems, the Carter Center states in its final report that it is 'unable to provide independent verification of the accuracy of the overall results or the degree to which they reflect the will of the Congolese people' (Carter Center October 2012). Put differently, it said: 'we do not know who actually won the presidential election'. This conclusion is a retraction of the early assessment, published on 10 December 2011, which stated that the irregularities did not necessarily affect the ranking of the contenders: 'This assessment does not suggest that the final order of candidates is necessarily different from that announced by CENI, only that the results process is not credible' (Carter Center October 2012).

This statement was used by members of the majority to legitimate the outcome. It is thus unfortunate that after documenting such systematic irregularities the Carter Center could, at such an early stage, make an unfounded pronouncement which could be used by the incumbent regime to regain legitimacy in the wake of blatant electoral fraud.

The European Union Observer Mission also noted widespread irregularities, but fell short of vehemently condemning what appeared to be organised electoral fraud in favour of the incumbent regime and majority party parliamentarians. It stated in its report: 'In the light of numerous irregularities and fraud observed during the electoral process, the Observer mission of the European Union states that the results published by the CENI lack credibility.' The EU mission noted a host of problems with the conduct of the electoral process. First, the legal framework was violated in many respects. For instance, the legal time lines for

publication of the list of registered voters and the list of polling stations and the display of the voters' register in polling stations were not met.

The display of campaign posters on public buildings continued unabated. The electoral process was marked by the active participation of civil servants and state officials and the use of state resources for election campaigns. Many governors and city and municipal mayors ran for Parliament without resigning from their existing positions.

The report also notes the delay in establishing the Constitutional Court as the highest court in the land and the constitutional arbiter of electoral disputes. In its absence, the Supreme Court of Justice failed to investigate complaints about the presidential race.

With regard to the transparency and integrity of the electoral process, the EU mission noted a number of deficiencies that irreparably affected public trust in the process and, ultimately, its credibility.

Among these were the political composition of the electoral management body; the lack of an audit of the voters' roll, despite incessant demands for one from opposition parties; the opaque clean-up process of the voters' roll, for which the electoral management body was unable to produce a report; the fact that the voters' roll was revised after voters' cards were issued, which meant that individuals with multiple registrations were still in possession of their multiple cards during the voting period.

CENI allowed voting to continue in certain areas up to five days after the prescribed voting day. The mission states that it was informed that several incidents of fraud, ballot-box stuffing, violence caused by popular anger about abuses by electoral officers and acts of intimidation and attacks on polling stations took place all over the country on election day.

The high number of voters on the derogation or omission list (3.2-million – 17% of the total number of voters) raised concerns. The fact that witnesses and observers were denied access during the tabulation and compilation process at provincial and national levels did not build trust in the process and the outcome.

Despite documenting these irregularities and widespread incidents of fraud, mainly in favour of the incumbent regime, the EU observer mission's post-election statement appears soft and too diplomatic. It does not convey strong condemnation and delegitimation of the electoral process. When asked by journalists whether the electoral outcome was acceptable, the head of the mission responded: 'It is not for us to state whether these elections are acceptable, it is for the Congolese people to make such pronouncement.' This statement may be suitable as a public relations exercise, however, given the huge influence of EU countries on political outcomes in the Congo and their uncontested leverage, failure to denounce electoral fraud can be construed as implicit support for the incumbent regime.

DOMESTIC OBSERVER MISSION REPORTS

The Catholic Church in the Congo (through the National Episcopal Conference of Congo (CENCO) and local non-governmental organisations such as the Voice of the Voiceless – La Voix des Sans Voix (VSV), a reputable Congolese human rights organisation which had 261 observers deployed in seven provinces, unambiguously denounced the elections as reflecting organised fraud in favour of the incumbent regime by the very people entrusted with organising them.

The National Episcopal Conference had deployed some 6 000 observers in polling stations around the country. These observers were trained to observe elections and communicate with their coordination centre in Kinshasa using the short message service (SMS). Immediately after the voting, government ordered telecommunications companies to interrupt their SMS services throughout the national territory, a move interpreted as deliberate obstruction of independent communication of the true results.

Notwithstanding these efforts by the government to curtail free circulation of information, the CENCO managed to receive the necessary data and analysis on which to base its assessment of the election results. On 12 December 2011 Cardinal Monsengwo, the archbishop of Kinshasa, declared that ‘after analysing the results released by the CENI on Friday, 9 December 2011, it is indeed normal to conclude that they do not conform to truth or justice’ (Radio Okapi). The archbishop referred to results at the disposal of the Catholic Church observer mission and stated that these could be of assistance to the Supreme Court of Justice when it adjudicated electoral disputes.

On 11 January 2012, days after the Supreme Court of Justice confirmed the flawed results and after Kabila had been sworn in, amid national protests and international isolation, the assembly of the Catholic Bishops of Congo (Conférence Episcopale Nationale du Congo) issued an even stronger statement:

Based on the final report of the observer mission of the national episcopal commission of the Congo (CENCO) and on testimonies from various dioceses and other sources, it appears that the electoral process has taken place in many places in chaotic climate. Observers have noted several deficiencies, incidents of blatant and in all likelihood planned fraud, several unfortunate incidents leading to human death, disorder, and in certain places, a climate of terror deliberately maintained and exploited in order to stuff the ballot boxes. This is not all. What now takes place with compilation of results for legislative elections is unacceptable. It is a shame for our country.

The statement goes on to suggest that these incidents, far from being isolated, reflect a political culture and a systematic plot to go against the will of the people:

Rule of law cannot be built within a culture of fraud, lies and terror, of militarisation and blatant abuse of the freedom of expression ... In the current context, the wounded and frustrated people of the Congo powerlessly watch a process that does not reflect their will and which simply amounts in many respects to a deal making process among certain political actors.

In the statement the bishops called for the electoral management body to correct the results or resign and warned the incumbent regime against ruling in defiance of the true will of the people.

The national observer mission put in place by a coalition of NGOs under the umbrella of RENOSSEC claimed to have deployed 12 350 observers around the country. After documenting a long list of incidents of irregularity and fraud, mainly committed by politicians belonging to the presidential camp (RENOSSEC December 2011), RENOSSEC concluded that the electoral process lacked credibility, called into question the legitimacy of political leaders and endangered the Congo's young democracy. Its report concluded:

As one can see, the electoral process in the DRC has its highs and lows. Organisation of elections within a short period of time (9 months) has had negative effects on the results. Except for the fact that elections were organised within the constitutional timeframe and for other positive elements, the organisation of elections has brought to the fore serious problems which affect the credibility of the results, the legitimacy of leaders and endangers the young democracy.

Incidents of irregularity and fraud witnessed by RENOSSEC observers included: delay in the delivery of ballots, late opening of polling stations, non-existent polling stations, relocation of certain voting centres and polling stations without notice to voters, possession and free circulation of ballot papers by individuals, high profile politicians found in possession of ballot papers with their name and the name of the incumbent president pre-marked, insufficient ballot papers and even absence of electoral material, insecurity and panic in certain places on election day, violence and the destruction of voting materials by angry crowds protesting against fraud and other irregularities, panic and fear caused by intimidation and attacks by armed men, obstruction of access by witnesses and observers to voting stations and provincial and national compilation (tallying) centres, vote

buying, stuffing of ballot boxes and instances of state authorities (governors or members of Parliament) chasing away observers and forcing people to vote for them and Kabila.

The results process was chaotic, with 1.4-million ballot papers from 3000 polling stations, 2000 of them in Kinshasa, lost and lack of security in the transfer of results envelopes from voting stations to tallying centres. Results documents from polling stations were tampered with. CENI's results, distributed on a CD-ROM, deviated from the results published by electoral officials and captured by witnesses and observers at voting centres. CENI reported results from polling stations that did not exist or did not open their doors. Many of these instances are contained in the RENOSEC report.

The VSV (January 2012) confirmed the patterns of electoral fraud, concluding that:

given all the incidents of irregularities, fraud and attempted fraud which characterised the elections of the 28 November 2011 in the DRC, La Voix des Sans Voix, based on evidence drawn from the sample of its electoral observation mission, believes that these elections were not transparent and therefore lacked credibility, with the greatest loser being the Congolese people who are disillusioned and disappointed by political actors' insatiable quest for power.

The VSV emphasised the deliberate and organised character of these irregularities and cases of fraud and attempted fraud:

The VSV believes the irregularities are not a function of inexperience of the electoral management body as some political actors would like us to believe. They are rather a product of long and careful preparation from the beginning to the end in order to manipulate electoral results.

In order to support its charge of organised fraud and deliberate disorganisation of the electoral process, the VSV pointed to the strange similarity of irregularities across the country, such as insufficient ballot papers in opposition strongholds and, an oversupply in presidential camp strongholds and possession of pre-marked ballot papers by members of the presidential camp.

It is revealing that most cases of blatant fraud implicated members of the presidential camp (often electoral officers, parliamentary candidates, provincial governors, policemen and soldiers). Only CENI could distribute genuine electoral materials. Discrepancies between the declared number of voting stations and the actual voting stations and between the results displayed in voting stations and

local tallying centres and those published by the CENI on its CD-ROM point to fraud organised in favour of Kabila and his supporters by the very institution whose mandate it was to organise free and fair elections.

AFRICAN OBSERVER MISSION REPORTS

Only the African observer missions hailed the electoral process as a success. In a joint statement issued on 30 November 2011, the African Union (AU), Southern African Development Community (SADC), the International Conference on the Great Lakes Region (ICGLR), the Economic Community of the Central African States (ECCAS) and the Common Market of East and Southern Africa (COMESA)

hail the Congolese people's determination to hold the second democratic elections on 28 November 2011 ... welcomes the successful holding of the elections despite the numerous challenges which the country is confronted with and have noted the technical and logistical challenges that over shadowed the holding of the elections.

In his capacity as chairperson of the SADC Organ on Politics, Defence and Security Cooperation (Troika) and President of the Republic of South Africa, Jacob Zuma also congratulated the people of the Congo on 'the successful conclusion of the Presidential and Parliamentary elections' (The Presidency, 5 December 2011).

Citing reports from the SADC Election Observer Mission led by South African Cabinet minister Nosiviwe Mapisa-Nqakula, which included 198 observers deployed in 10 provinces, the statement insisted that 'elections in the DRC were conducted in accordance with the DRC Electoral Law, the SADC Principles and Guidelines Governing Democratic Elections and the July 2002 Durban OAU Declaration on The Principles and Guidelines Governing Democratic Elections in Africa'.

This pronouncement is a blatant misrepresentation of reality. Most of the statements from African regional bodies were issued on 30 November, while voting was still in progress in several places. These African observer missions, which are known to suffer from insufficient personnel and inadequate material resources for such complex tasks, did not bother to wait for the end of the voting process and the publication of the provisional results.

Thus it is unclear on what grounds they characterised the electoral process as 'successful'. Zuma's congratulatory statement was issued while ballot boxes were still being shipped from South Africa to Congo, even after the official election date. Some Congolese nationals claim to have seen pre-marked ballot papers at

OR Tambo airport in South Africa, ready to be transported to Congo days after election day.

Perceptions of widespread electoral fraud spurred protests by members of the Congolese diaspora in many South African cities (Mail & Guardian Online, 5 December 2011). Given these active efforts to ignore the reality of organised and state sponsored electoral fraud in the Congo, the statements of African leaders and their observer missions are not only unfounded but politically oriented.

The statements hail the apparent broad participation of the Congolese people in the elections but say nothing about the quality of the elections and the legitimacy or credibility of the outcome. For these reasons the statements of African leaders and observer missions are like a smokescreen aimed at obstructing deeper understanding of the electoral process and at propping up the fraudulent incumbent regime.

KEY PERPETRATORS OF THE ELECTORAL FRAUD

Pastor Ngoy Mulunda, head of the CENI, is believed to have orchestrated this vast electoral fraud. Politicians in both the opposition and presidential camps regarded him as the main instigator of the botched electoral process and called for him to be replaced. Donor countries also demanded his removal.

This focus on one individual was hypocritical and failed to implicate Mulunda's political masters. Jean Claude Muyambo whose party, Congolese Solidarity for Democracy and Development (Scode), was a member of the presidential camp, publicly contested the results of the legislative elections, blaming Augustin Katumba Mwake, Kabila's powerful advisor, for his failure to win a seat in the national legislature. He claims that Mwake instructed Mulunda which candidates should be elected and which excluded (www.youtube.com/watch?v=yob0jbe056w). These practices, which amount to behind-the-scenes deal-making, are what the Catholic bishops had in mind when they stated: 'what now takes place with compilation of results for legislative elections is unacceptable. It is a shame for our country.'

Interestingly, Mulunda has, according to various sources, begun to reveal his crucial role in the rigging of the elections. As a result of the plan to remove him and his team from the electoral commission he reportedly complained that he had not received sufficient gratitude for having facilitated Kabila's victory.

Unsuccessful presidential candidate Vital Kamerhe has said of Mulunda's statements:

The revelations from Pastor Mulunda have proven what we already stated at the time ... that the electoral commission was not

independent. And today Pastor Mulunda only proved what we already said at the time. We all learned that Pastor Mulunda made a remarkable statement in *Kiluba kati* and we got the French translation. He stated that he is being paid in funny money despite having facilitated the election of Joseph Kabila. He said: 'what I announced then, was false'.

www.youtube.com/watch?v=_Z8mAmVgvpE

These revelations were confirmed by another independent source, which published a letter from Nday Ngoy Matembo, president of the cultural association Baluba-I-Bukata (Balubakat), dated 8 February 2013. While reproaching Mulunda for accusing Joseph Kabila of ingratitude, the letter congratulates him on helping his ethnic brother maintain the political power originating from Laurent Mzee Kabila. Given the neo-patrimonial and ethnic character of Congolese and African politics, the political practices these sources refer to are not implausible.

THE INTERNATIONAL COMMUNITY'S TOLERANCE OF LOW QUALITY ELECTIONS IN THE CONGO

Herman Cohen, the former US secretary of state and a member of the academy of US diplomats, confirmed, in a Voice of America interview published through social media on 4 January 2012, the systematic and organised character of what he described as 'flagrant and clumsy' electoral fraud.

There are not many countries in Africa where the outgoing president accepts the risk of losing, I think of only Zambia and Ghana. There aren't many where the president can lose elections. Why is the DRC different? The problem for the DRC is that the fraud was so blatant and clumsy that donors are embarrassed. They will make a budget for the DRC for next year, and Parliament will say: there was fraud there. So they have a big problem in Kinshasa ... African presidents are also embarrassed as donors. You cannot associate with something like this.

However, Cohen goes on, in the same interview, to suggest that the incumbent regime should remain in power regardless of the stolen elections: 'I think Kabila should remain president. You cannot change now. But he must get rid of his corrupt entourage and begin a program of reform.'

Cohen's tolerance of low quality elections in the Congo and his unquestioned support for incumbency is reflective of the stance most Western countries adopted

vis-à-vis the botched elections. His condescending position on the post-electoral political configuration provides an answer to Nzongola's question: 'Congolese vote, but who decides?' (Nzongola 2012).

BLOODBATH AND TERROR

The characterisation by international observers of the electoral process as generally peaceful, with isolated violent incidents, fails to capture the volatile security environment, the high degree of intimidation and the widespread violent response of the people to electoral fraud by CENI officials or members of the presidential majority. It also fails to account for state terrorism deployed by security forces to quell protests against the rigged electoral process.

For millions of Congolese who only wanted an opportunity to elect their president and legislators, the electoral process was far from peaceful. The pre-election period was marred by frequent incidents of violent repression by the police or members of the UDPS who, by means of weekly protests, demanded transparency in the registration process, the voters' roll, the process of cleaning up the voters' roll and access to CENI's central server.

The worst acts of intimidation and excessive deadly force took place on 26 November 2011 at the Ndjili airport, when presidential guards opened fire on UDPS members, killing more than 30 people, injuring hundreds of others and picking up the dead in full view of international and national media (MONUSCO & UN High Commission for Human Rights March 2012). In a bid to soothe national and international outrage, the minister of justice stated that an investigation of the incident would be carried out. However, to date, no such investigation has taken place.

This heavy handed attack on the closing day of the election campaign was a precursor to the extensive and systematic crackdown on opposition members in the period immediately after the announcement of the election results.

After the Supreme Court of Justice certified the results, opposition parties and civil society organisations called for people to protest and demand the restitution of the truth of the polls ('la vérité des urnes'). The UDPS claimed that its leader, Etienne Tshisekedi, had won, and Tshisekedi, who had declared himself the true winner, held an inauguration ceremony at his home in Limete, where he had been put under house arrest immediately after the announcement of the results.

UDPS members organised protest marches and public gatherings and attempted to escort Tshisekedi to the 'Palais de la Nation' (the president's office). All these efforts were violently crushed by the security forces (Radio Okapi, 26 January 2012; Cheik Fita, 26 January 2012; *Jeune Afrique*, 14 December 2011).

The party also called for a strike on 30 January 2012, which was observed

in places such as Mbuji Mayi, but was less successful in Kinshasa, where daily livelihoods depend on earnings (Radio Okapi, 30 January 2012).

The Catholic Church (7 January 2012) took the lead in raising consciousness about the necessity to reject the results. Under the leadership of the National Episcopal Conference of Congo (CENCO) and the Council of the Apostolate of Catholic Lay (CALCC), the church issued strong statements rejecting the results and challenging the legitimacy of those elected.

In keeping with the activist tradition of the march of Christians on 16 February 1992 to demand the re-opening of the National Sovereign Conference, which ended in a bloodbath as a result of brutal state repression, the church planned a number of protest actions, including a mass in St Joseph Church on 7 January 2012 and a countrywide march on 16 February 2012.

Ignoring the last-minute decision by the mayor of Kinshasa, André Kimbuta, to prohibit the march (Radio Okapi, 15 February 2012), protesters gathered in their respective churches and started to march towards the central point of assembly, St Joseph Parish at Victoire-Matonge. The peaceful marchers were violently dispersed and beaten and some were arrested (Radio Okapi, 16 February 2012; *Jeune Afrique*, 16 February 2012). Those who had already arrived at the church were held there by the police until MONUSCO came to plead for them to be released (Radio Okapi, 17 February 2012).

Young sportsmen and 'kuluna' (young street criminals) were also used in several areas to beat up protesters and disperse them as they gathered in their local parishes and sought to start the march to St Joseph Parish.

Human rights and other organisations have documented widespread, systematic and deadly attacks on crowds and individuals who tried to protest against the stolen elections or who were suspected of being pro-Tshisekedi, particularly in Kinshasa, in the Kasai provinces, in Equateur and in Lubumbashi (*Congo Independent*; Human Rights Watch 21 December 2011, 2 December 2011; Amnesty 19 December 2011).

These acts of state terrorism were carried out mainly by the presidential guard (sometimes masquerading in police uniforms), by the police, the military and the National Intelligence Agency (ANR), forces that are accountable to their political patrons, who are, ultimately, the president and his cronies.

The pattern of attacks reveals the militarisation of the political sphere in the post-election period, particularly in cities, and the deliberate move to crush popular resistance to the stolen elections. First, cities were militarised. A few days before the announcement of the results military trucks (normally used on the battlefield) could be seen throughout Kinshasa. Heavy vehicles fitted with guns were placed on strategic corners or patrolled the city.

This military occupation of the city sent a strong message that attempts to protest would be suppressed violently. Hosts of individuals in military or police uniforms could be seen posted in key public places or walking the streets. In order to spread terror and quell any attempts to protest, the security forces often used live ammunition and shot indiscriminately into crowds or at individuals who crossed their path.

Instead of creating law and order, these forces pursued a political agenda: neutralising popular resistance by projecting terror through targeted and indiscriminate killings, random arrests and summary executions and a crackdown on public gatherings. The use of brute force against unarmed crowds and individuals instilled fear and ensured that people remained locked in their homes and dared not involve themselves in subversive action or even peaceful protest. Thanks to the omnipresent security machinery, the country, particularly the city of Kinshasa, resembled an occupied territory.

CONCLUSION

This article sought to outline what was specific and salient about the 2011 elections in the DRC. Organised and state-sponsored electoral fraud and repression constituted the main markers of the process.

Drawing on the reports of observer missions and media, the article sets out the material evidence of the electoral fraud. Apart from the African observer missions, whose public reports or statements are superficial, unprofessional and politically biased, Western organisations such as the European Union and the Carter Center agree with local organisations such as the CENCO, RENOSSEC and the VSV that the 2011 electoral process was marred by grave irregularities and that the results lacked credibility.

Unlike Western organisations, whose reports fell short of identifying the organised and state-sponsored nature of these grave irregularities, the national organisations strongly rejected the elections, maintaining they were fraudulent and manipulated for the sake of keeping the incumbent president and his political allies in power.

The article also shows that the incumbent regime's plan to rig the elections included the deployment of heavy state security machinery aimed at enforcing the flawed results by means of deadly violence and intimidation. It thus appears that electoral fraud is inseparable from the ensuing repression, which aims to prevent a popular uprising, to beat actual and potential protesters into submission and to impose the incumbent regime by force.

In this context, the characterisation of the electoral process by most observers and media houses as 'peaceful' or 'peaceful despite few violent incidents' is

problematic. Such assessments downplay the seriousness of the reported acts of violence and intimidation, ignore the far-reaching impact of acts of state terrorism deployed by security forces with total impunity and fail to understand the incumbent regime's reliance on illegitimate deadly violence to enforce the flawed results.

This analysis suggests that the democratisation process in the Congo is at great risk. The current legitimacy crisis may open the way for a relapse into armed contestation for political power. To avoid this sinister scenario it is paramount that the foundations of the Congo's electoral authoritarianism be tackled. This authoritarianism has to do with, among other factors, the monopolisation by the president of political power; the politicisation of the armed forces, the security establishment and the judiciary and the monopolisation of state resources by the president and his cronies.

The current electoral reforms, which have been preoccupied solely with changing the structure and composition of the CENI, are only scratching the surface of the problem. As long as the president and his cronies have unrestricted control over the means of violence and state financial resources and as long as the international community appears to be indifferent to the abuse of human rights and principles of good governance in the Congo, elections, far from being a democratic moment, will continue to be a nightmare for the majority of the people of the Congo.

Congo's experience with the 2011 elections supports Magaloni's argument that an autocrat who fears electoral defeat will use his or her nastiest tricks, including rigging and violence, to remain in power unless he or she is forced out by a multiplicity of factors, such as the unity of the opposition, the neutrality of the armed forces and the commitment of the international community to clean elections.

In light of the 2011 election experience in the DRC there is a need to conceptualise electoral and post-electoral violence as intrinsic to 'the game of electoral fraud'. As the Congo experience has shown, electoral fraud and violence are inseparable, particularly in countries marked by electoral authoritarianism. In this context, violence is part of the rigging strategy as the means through which fraud is perpetrated and enforced.

The analysis of the 2011 elections in the DRC also shows that, contrary to Lindberg's theory that the quality of elections improves over time, particularly after more than two or three consecutive electoral cycles, one should not take this positive evolutionary trajectory for granted. Unless the system of checks and balances is consolidated and the rule of law entrenched the quality of elections is likely to degenerate and there is a risk that the citizenry will become disillusioned about the usefulness of elections.

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