

**CONGO'S ELECTIONS:
MAKING OR BREAKING THE PEACE**

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TABLE OF CONTENTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS.....	i
I. INTRODUCTION	1
II. THE ORGANISATION OF THE ELECTIONS.....	2
A. THE ENORMITY OF THE TASK.....	2
B. PROBLEMS WITH THE ELECTORAL PROCESS	4
1. Delays	4
2. Security	5
3. Manipulation of the media.....	7
4. Accusations of fraud	8
5. The census and the distribution of seats in parliament	9
6. Monitoring the elections	10
7. The UDPS	11
III. A RETURN TO ARMS? THE RCD AND THE CRISIS IN NORTH KIVU.....	14
A. THE RCD'S FRAGMENTATION	14
B. MUTINIES IN THE EAST	15
C. THE SITUATION IN NORTH KIVU	17
D. WHISPERS OF A REBELLION IN SOUTH KIVU	18
E. ELECTIONS AND CONFLICT	19
F. THE WAY FORWARD.....	21
1. Political solutions.....	21
2. Military solutions.....	21
IV. CONCLUSION	22
APPENDICES	
A. MAP OF THE DEMOCRATIC REPUBLIC OF THE CONGO	24
B. MAP OF THE KIVUS	25
C. RESULTS AND PARTICIPATION RATES IN THE 2005 REFERENDUM	26
D. DISTRIBUTION OF SEATS IN THE NATIONAL ASSEMBLY.....	27
E. MAIN POLITICAL PARTIES AND PRESIDENTIAL CANDIDATES.....	28
F. GLOSSARY	29
G. ABOUT THE INTERNATIONAL CRISIS GROUP	30
H. CRISIS GROUP REPORTS AND BRIEFINGS ON AFRICA.....	31
I. CRISIS GROUP BOARD OF TRUSTEES	33

CONGO'S ELECTIONS: MAKING OR BREAKING THE PEACE

EXECUTIVE SUMMARY AND RECOMMENDATIONS

As the Congo approaches its first free elections in 40 years, the stability of the country remains at risk, for three main reasons. First, one of the main former rebel groups, the Congolese Rally for Democracy (RCD), is unpopular and stands to lose most of its power at the polls: this has triggered a resurgence of violence in the east, which is likely to intensify before and after elections, as dissident RCD troops attack the newly integrated national army. Secondly, the vote has not been adequately prepared. With few safeguards in place against fraud, rigged polls could rapidly undermine stability after the elections and produce unrest in cities. Thirdly, the country's long-time political opposition, Etienne Tshisekedi's Union for Democracy and Social Progress (UDPS), will boycott the voting, unhappy with the other main parties' unwillingness to negotiate with it. This is likely to cause unrest in the two Kasai provinces and Kinshasa, where Tshisekedi enjoys substantial support.

The east is the most immediate flashpoint. Elections will radically change the political landscape. The RCD, whose military wing once controlled over a third of the country, will likely go from being a major national player to a small, regional party. This probability is tightly linked with fighting in the east, where dissatisfied RCD elements remain a security hazard, particularly in the Kivus. In North Kivu, former RCD units have refused army integration. Led by Laurent Nkunda, they have repeatedly attacked other, integrated units, most recently causing the displacement of 50,000 to 70,000 civilians around Rutshuru. The fighting has taken on an ethnic tinge, as the dissidents are all Congolese Hutu and Tutsi. This has exacerbated tensions within the province, where these communities have long-standing land conflicts with other ethnic groups. Unless prompt action is taken to address these underlying political grievances and to arrest the armed dissidents, further fighting is inevitable.

The potential for electoral fraud is considerable. The ministry of justice has failed to push through laws designed to guarantee judicial independence. The courts that will need to investigate and adjudicate election disputes remain politicised. A draft law to regulate campaign finance has also been shelved. At the same time, former belligerents retain parallel chains of command

in the security forces charged with securing elections and have not been reluctant to influence and intimidate voters. In Kinshasa and Lubumbashi, these forces have been used to harass political parties and disperse demonstrations. The national police are poorly trained, and the new army is weak, deeply politicised and mostly still not integrated.

The elections are likely to be postponed a sixth time, due to logistical and legislative delays, in which case they would be held after the 30 June 2006 deadline established by the peace deal. The new constitution adopted by referendum in December 2005 and promulgated in February 2006 stipulates that transitional institutions remain in place until elections are held, suggesting that such a further delay is legally possible. However, the UDPS would likely use the missed date to mobilise demonstrations in an attempt to upset the process, and other groupings that anticipate poor electoral results, like the RCD, might well join.

The question is political, not legal. It is important to complete the electoral process without further delay, or at most the minimal delay necessitated by technical requirements. Lengthy postponement to extend the privileges of political elites would not be acceptable. A realistic date by which to hold presidential and national assembly elections if they must be postponed again would be 12-13 August. Efforts should be made to maintain a dialogue with the dissatisfied elements, not to permit them a veto over the electoral process but in order to preserve the inclusiveness of that process to the greatest degree possible and to keep the peace after the elections.

Elections are a step in the right direction, but if not carried out properly they could trigger further unrest. If the population and leaders conclude change cannot come peacefully through the ballot box, they may well resort to violence to contest the results. The transitional authorities and the international community have the responsibility to ensure that these elections – the first with multiparty choices since 1965 – are a genuine milestone marking the end to the Congo's long conflict.

RECOMMENDATIONS

To the Transitional Government of the Democratic Republic of the Congo:

1. Hold the first round of the presidential and national assembly elections no later than 12-13 August 2006 and complete the electoral cycle by holding local elections as quickly thereafter as possible.
2. Promptly provide a plan for the distribution of ballots and voting materials to avoid further delays in the electoral calendar and ensure free and fair elections.
3. Accept an independent body to help resolve quarrels between candidates during the electoral period, such as the "committee of the wise" proposed by the UN Mission in the Democratic Republic of the Congo (MONUC), which would be composed of eminent officials from the region and act in close coordination with the electoral commission.
4. Commit to an early census after the elections and to redistribution of parliamentary seats in accordance with its results.
5. Deploy the presidential guard to cities only immediately before a presidential visit and withdraw it immediately thereafter so it cannot be used to influence the electoral process unduly, and withdraw it also from Kindu, Kisangani and Mbandaka, where it has committed numerous human rights violations.
6. Keep the army in its garrisons during the election period, except for border areas and places where militia seriously threaten the local population.
7. Give the High Authority of the Media sufficient resources to monitor and resolve disputes over media activity during the electoral process, including to open offices with sufficient and properly funded staff in all provinces.
8. Give the courts sufficient resources to monitor and resolve election disputes, including for the Supreme Court to send more judges to its provincial branch offices.
9. Discuss the report of the Lutundula commission on war-time contracts and publicise its findings widely.
10. Encourage the political parties to publicise their finances widely, including in the media.
11. Demonstrate commitment to implement the objective of the new constitution to achieve gender parity in national, provincial and local institutions by including all stakeholders, particularly women, in

the electoral process, including by encouraging all parties to discuss gender issues in their platforms and otherwise acting to ensure significant representation of women in elected bodies.

12. Deal with the dissidents in North and South Kivu by both peaceful and military means:
 - (a) establish a land tenure commission and strengthen the land registry to prevent future disputes;
 - (b) discuss ethnic reconciliation openly in the east during the electoral campaign; and
 - (c) ensure that all army brigades are adequately fed and paid so they no longer present a security hazard and use the integrated brigades to arrest notorious trouble makers, such as Laurent Nkunda, in coordination with MONUC.

To political parties participating in the elections:

13. Agree to make every effort to nominate women for at least 20 per cent of the appointive positions in government, judicial and public administration bodies, including ministries, after the elections.

To the Members of the International Committee for Support of the Transition (CIAT):

14. Support creation of a body of eminent, independent personalities from the Central Africa region that can help resolve quarrels between parties during the electoral period, along the lines of the "committee of the wise" proposed by MONUC.
15. Visit Goma, Bukavu and Uvira to speak with local authorities about the growing unrest in the Kivus and support a genuine mechanism for local reconciliation.
16. Strengthen the judicial system by financing deployment of more judges to the Supreme Court's provincial branch offices and provide them with adequate resources to process electoral disputes.

To the Independent Electoral Commission and Observers from Congolese Civil Society Groups and Foreign Missions:

17. Coordinate efforts so that observers are present at the largest possible number of polling stations.

To the United Nations Security Council, the Secretary-General and MONUC:

18. Devise a coherent strategy for dealing with the insurgents in North Kivu that:

- (a) addresses the grievances of the local communities, in particular land tenure problems, and helps the local and national government set up a commission to explore more effective dispute settlement mechanisms;
- (b) reinforces the legal system so it can impartially investigate human rights abuses and demarcates land holdings in the province; and
- (c) prepares with the Congolese army an operation to arrest Laurent Nkunda, using integrated brigades and closely monitored to prevent abuse of civilians.

To Donors:

19. Consider creating a fund to support the campaigns of women candidates, including through training and financial assistance.

Nairobi/Brussels, 27 April 2006

CONGO'S ELECTIONS: MAKING OR BREAKING THE PEACE

I. INTRODUCTION

The approaching presidential and legislative elections will be the Congo's first multiparty polls since 1965. Although Mobutu Sese Seko held six national elections during his 32-year rule, these were within a one-party system and essentially symbolic, with voters mostly able only to approve or reject one list.¹ The winners were inevitably party cadres with little accountability or interest in change. Mobutu won the presidency in 1970, 1977 and 1984 with over 99 per cent approval.

The roots of democratisation date back to 1980, when thirteen members of parliament signed a letter to Mobutu demanding political reforms. Mobutu arrested them and banished them to remote detention centres. In 1982, when they were briefly released, this Group of Thirteen created the Union for Democracy and Social Progress (UDPS) in spite of a ban on political parties. The leader, Etienne Tshisekedi, became the head of the democracy movement, which organised large demonstrations in Kinshasa in the late 1980s that helped bring an end to the one-party state by 1990 and launched a tumultuous period of democratisation that led to the National Sovereign Conference (CNS). More than 2,800 delegates from over 200 political parties and civil society organisations used that forum to draft a constitution, spell out policy guidelines for a new government and, on 15 August 1992, elect Tshisekedi prime minister with 71 per cent of the national conference's votes. However, four months later Mobutu wrested power back by naming a competing government and co-opting moderates from his cabinet. UDPS stalwarts regard the national conference as the last true expression of the Congolese people's will.

Democratisation was cut short by Mobutu's reluctance to give up power and two wars that from 1996 to 2003 devastated the country. The first (1996-1997) was led by Laurent Kabila against Mobutu. The second war, which began in 1998, pitted Kabila against his former Rwandan and Ugandan allies, who armed rebel groups in the east that came to control over half the country. The belligerents signed various peace deals, most notably in Lusaka in 1999. The approaching elections are meant to be

the culmination of the peace process that was launched at that time.²

Some of the armed groups have always been lukewarm about multi-party democracy. The rebels of the Congolese Rally for Democracy (RCD) were particularly reluctant to participate in the peace process, as most Congolese saw them as a Rwandan proxy force, and they stood to lose most of their gains in elections. In the end, international pressure and a popular outcry made isolation appear more costly than joining a transitional government. In December 2002, representatives from the major domestic belligerents, as well as from civil society and the political opposition, signed the Global and Inclusive Agreement in Pretoria.³

The new government came into office in June 2003 with the task of unifying the country, creating a national army, and holding elections.⁴ The deal created a sprawling power structure, with President Joseph Kabila flanked by four vice presidents, a 620-seat parliament and 36 ministries divided between the eight signatories to the peace deal, and an army that was to be integrated gradually.⁵

² Laurent Kabila was assassinated in 2001 and succeeded by his son, Joseph.

³ See Crisis Group Africa Report N°44, *Storm Clouds Over Sun City: The Urgent Need to Recast the Congolese Peace Process*, 14 May 2002; Crisis Group Africa Report N°37, *The Inter-Congolese Dialogue: Political Negotiation or Game of Bluff?*, 16 November 2001. The signatories were the former government of Joseph Kabila; the Congolese Rally for Democracy (RCD) of Azarias Ruberwa; the Movement of Liberation of the Congo (MLC) of Jean-Pierre Bemba; the RCD-National of Roger Lumbala; the RCD-Liberation Movement (RCD-ML) of Mbusa Nyamwisi; the Mai-Mai; and the political opposition and civil society.

⁴ Article II: "The goals of the transition are – 1. The reunification, the pacification, the reconstruction of the country, the restoration of territorial integrity and establishment of the authority of the state over the whole of the national territory; 2. National reconciliation; 3. The formation of a restructured and integrated national army; 4. The organisation of free and transparent elections at all levels allowing for the setting up of a constitutional and democratic regime; 5. The establishment of structures that will lead to a new political order".

⁵ Other positions divided up included over 270 in state-run companies, 105 in the various institutions in support of democracy, and hundreds in local territorial administration

¹ Elections were held in 1970, 1975, 1977, 1982, 1984 and 1987.

Progress on all fronts has been hampered by institutional weakness, inefficiency and a lack of political will. Power-sharing in the administration, security services and the courts has progressed slowly or not at all. The power-sharing formula "1+4" between the four major power centres – Kabila's government, the RCD, the political opposition and the Movement of Liberation of the Congo (MLC) – undermined progress in many areas.⁶ In the words of a parliamentarian: "Even though they had signed the peace deal, each belligerent tried to keep the institutions weak, corrupt and factionalised. They tried to get during the transition what they could not get during the negotiations in South Africa".⁷

This slow pace has allowed spoilers to sabotage the peace process. Former RCD soldiers unhappy with the transition mutinied in Bukavu in May 2004, Kanyabayonga in November 2004 and Rutshuru in January 2006. Mai-Mai in the Kivus and Katanga clashed repeatedly with the newly integrated national army (FARDC) in 2005 and 2006, and pockets of other militia persist in Ituri.

Elections have to be understood in this troubled political context. There have been notable successes: 25.6 million voters have registered, of whom 70 per cent turned out for the referendum on 18-19 December 2005, which approved a new constitution. Civil society organizations played a significant role in promoting voter registration and participation in the referendum and were particularly successful in mobilising women, who constitute 51 per cent of the electorate. However, the referendum is a poor gauge for the elections. Adopting the new constitution was seen by most people as a necessary step toward peace and was supported by most major parties. The stakes are higher now, when the political fortunes of the parties are on the line.

This report analyses the approaching elections within this tense political climate and highlights three sources of conflict. The first is how the polls will be conducted: if they are not perceived as free and fair, the legitimacy of the new government will be compromised and challenged by the losers. The second comes from the UDPS boycott, which could create unrest in the areas where the party is popular, in particular in the Kasais and Kinshasa. The third comes from the RCD, which once controlled a third of the country but stand to lose most of their power. Clashes between ex-RCD insurgents and the national army in January 2006 serve as a reminder of the fragility of the peace process.

and embassies. See Crisis Group Africa Report N°104, *Security Sector Reform in the Congo*, 13 February 2006.

⁶ "1+4" refers to the power-sharing agreement in the peace deal, which gave the presidency to Kabila, flanked by four vice presidents, from his own party, the RCD, the MLC and the political opposition.

⁷ Crisis Group interview, Kinshasa, November 2005.

II. THE ORGANISATION OF THE ELECTIONS

In April 2006 the electoral commission approved lists with 33 presidential and more than 9,500 legislative candidates from 269 parties.⁸ Only a handful of parties, however, will field candidates in all districts due to cost. In addition, despite articles in the new constitution that require the government to work to promote equal representation at all levels of government, only four of the presidential candidates and ten per cent of the legislative candidates are women.

While all parties have platforms, personalities and ethnic affinities, not issues, will decide contests. All parties have tried to win the allegiance of customary chiefs and local leaders, even if the former cannot in theory participate. Most parties are strongly linked to a particular region, for example the Movement for the Liberation of the Congo (MLC) to Equateur and the RCD to North Kivu. Only Kabila's People's Party for Reconstruction and Democracy (PPRD) may win more than 10 per cent of the vote in each of the ten provinces.⁹

A. THE ENORMITY OF THE TASK

The peace deal entrusted organisation to the electoral commission, led by a civil society delegate, the Abbé Apollinaire Malu Malu. The process was planned in several phases, including voter registration, constitutional referendum and then legislative, presidential and local elections.¹⁰ The electoral commission has established eleven provincial headquarters with 64 liaison offices.¹¹ The process is the largest electoral undertaking ever

⁸ The list of presidential candidates was approved by the Supreme Court on 16 April 2006. It has not yet approved a definitive list of candidates for the national assembly.

⁹ See Appendix D for a list and brief discussion of the most important parties and presidential candidates.

¹⁰ Local elections have been postponed, however. Local administration in the Congo is organised as follows: the largest entity is the province; then, urban areas, which are divided into cities and communes; rural areas are divided into districts, territories, sectors and chiefdoms. When held, the local polls they will include direct election of deputies in the provincial assembly, urban councillors, municipal councillors, and councillors of sectors and chiefdoms. In turn, the provincial assembly will elect senators to the national parliament, governors and vice governors; the urban council will elect mayors and deputy mayors; the municipal council will elect local magistrates (*bourgemestres*) and their deputies; the sector and chiefdom council will elect the heads of sectors and their deputies.

¹¹ Donors contributed to a technical assistance support project (APEC) managed by UNDP in collaboration with MONUC.

supported by the international community, with the UN, the European Commission and other donors contributing \$422 million.

Registration sites were set up in 9,000 centres. Despite comprehensive planning, the organisers underestimated the task. The Congo has little infrastructure: there are only 500 kilometres of paved road in the whole country, and vast areas have no telephones.¹² In some places, commission workers were forced to carry generators and computers for over 30 kilometres. Equipment broke down and was delayed for weeks. Eventually, the UN mission (MONUC) diverted many of its helicopters to aid in the transport of the cumbersome registration kits.¹³

The payment of electoral agents was an additional challenge. Since the commission could not set up the necessary financial structures in time, the UN Development Program (UNDP) began in September 2005 to pay out \$15 million directly to over 200,000 employees and 45,000 police officers.¹⁴ In numerous centres, electoral agents protested or refused to register voters because they had not been paid. These problems have persisted. In March 2006, election workers in Bandundu province went on strike because they had not been paid for over three months.¹⁵

Voter registration was carried out between June 2005 and February 2006.¹⁶ As there were not enough kits to cover the entire country, this was done on a rotational basis, with up to three provinces processing voter cards at any one time before the kits were sent elsewhere.¹⁷ To encourage participation, especially in the face of a UDPS call to boycott the process, the government declared the voter card a valid form of identification. For a population often harassed by security forces – the lack of an identity card was a frequent reason for arrest and fines – this was a

strong motivation. The electoral commission managed to register over 90 per cent of the estimated electorate.

Voters in the 18-19 December 2005 referendum spent little time on the details of the constitution, whose approval was considered a step toward peace. The vote in favour was over 80 per cent. There were numerous problems, however. Some offices ran out of ballots and other voting materials. Results from more than 5 per cent of polling stations had to be declared void due to insufficient information or the absence of signed witness statements.¹⁸ Because of the highly centralised process – ballots were counted locally, but compiled and validated in Kinshasa – it took weeks for results to be announced. It is important to make sure these flaws do not recur.

THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

Several laws have set the stage for the political competition during the run-up to elections. The most important of these are the electoral law and the constitution.

The constitution was approved in a referendum on 18-19 December 2005 and promulgated by President Kabila on 18 February 2006. It stipulates that all institutions of the transition will remain in place until new elections are held, implying that, legally, elections could be held after 30 June 2006. Its most salient features are:

- **Decentralisation.** It creates a new unitary model that divides the current ten provinces into 25, plus the capital Kinshasa. These provinces will manage 40 per cent of the country's revenues and be run by a locally elected provincial assembly. The creation of new provinces could cause conflict, since in Katanga and elsewhere resource-rich areas will be separated from poorer parts. The new government has three years to set up the new provinces and their institutions.
- **Power-sharing.** The country will be governed by a semi-presidential system based on the French model. The president will have power to dissolve the national assembly, thereby weakening the legislature's ability to counterbalance executive powers and undermining the office of the prime minister, chosen by parliament. The prime minister and the president, who share executive power, determine national policy. Ministers, most high-ranking civilian officials and military officers are nominated by the president upon proposal by the

¹² Michael Brown, Philippe Ngwala, Albert Songo and Leonard Wande, "Combating Low-level Corruption on the Waterways in the Democratic Republic of the Congo", Innovative Resource Management, Inc., October 2004, p. 6.

¹³ The kits included a generator, a computer, a digital fingerprint machine, an ID card printer and a digital camera. MONUC had already brought election materials to the capitals of each territory, but this was insufficient.

¹⁴ Crisis Group electronic communication, UN official, Kinshasa, March 2006.

¹⁵ Crisis Group interview, election officials, Kinshasa, March 2006.

¹⁶ The voter registration law required a sophisticated digital registration procedure necessitating kits including a finger print scanner, laptops and digital cameras. UNDP purchased 10,000 of these kits.

¹⁷ Kinshasa was first to begin registration, followed by Bas-Congo and Province Orientale in the second phase, with Katanga and the two Kasais next, then the Kivus and Maniema. Equateur and Bandundu were last.

¹⁸ "Mission d'observation électorale de l'Union Européenne en RDC, Referendum 2005, Rapport Final", p. 40.

prime minister. Parliament is unlikely to criticise the executive too robustly as it would be poorly positioned in any confrontation. The president's strong powers could lead to strife if former belligerents feel disadvantaged by them.

- ❑ **Term limits.** The parliament and president are to be elected for five years each. The president can only be reelected once.
- ❑ **Amendment.** The constitution can be changed by a three-fifths majority in parliament. In the event a proposed amendment receives only an absolute majority, it can be put to a popular referendum. Certain articles, however, cannot be changed, including presidential term limits, independence of the judiciary and the principle of political pluralism.

President Kabila approved the electoral law on 9 March 2006. It provides guidelines for how elections are to be prepared and run, sets electoral districts and establishes dispute resolution procedures.

Direct elections are to be held for president, members of parliament, provincial assemblies, urban councils, municipal councils and sector councils. Senators, provincial governors, mayors, *bourgemestres* and the heads of sectors will be indirectly elected.

The president is to be elected directly by the people. If no candidate receives a simple majority in the first round, there will be a run-off between the top two candidates. Members of parliament and provincial assemblies will be elected through open lists, in which voters can select their favourite candidate from a party's list. The alternative option of using blocked lists, whereby votes can only be cast for parties rather than individuals, was rejected. In a political system where parties are weak and their internal discipline minimal, blocked lists would have been advantageous to parties.

The 500 members of the lower house, the national assembly, will be elected from 169 districts. While the elections are supposedly based on proportional representation, over a third of the electoral districts (62) have only one seat, so will be decided on a winner-take-all basis. The small size of these 62 districts could create conflict if minorities feel under represented. The Banyamulenge population, for example, is spread over three electoral districts and may not have any representatives in parliament.

There are to be 108 senators, four from each of the new 25 provinces and eight from Kinshasa. Senators will be chosen indirectly by the provincial assemblies. As the 25 new provinces will take three years to establish, there may be no senate in the interim. No limit has been set to the

number of parties, which now count 269. The proliferation of parties was used by Mobutu in the 1990s as a tool to divide the opposition by filling the political arena with friendly movements. The high number of parties could weaken the parliament by diluting genuine opposition.

B. PROBLEMS WITH THE ELECTORAL PROCESS

On 9 March 2006, President Joseph Kabila promulgated the electoral law. This allowed the electoral commission to begin to register candidates and print ballots. The 9,000 registration offices will each be divided into three to five polling booths for a total of 53,000 booths.¹⁹ While the precise date has not been finalised, the first round is officially still set between 26 June and 2 July. However, electoral officials are saying that it will be impossible to keep to this date, and the polls will have to be postponed again, to late July or early August.²⁰ The electoral commission should finish distributing voting materials as soon as possible so this calendar does not slip again. The government and international community will need to ensure the process is completed by holding local elections soon thereafter.

1. Delays

Delays in the process have prompted officials to overlook numerous irregularities in their desire to hold elections before 30 June 2006. These delays are due to government inefficiency, but are also a deliberate ploy by various parties to slow the transition. The numerous obstacles make a further postponement – the sixth – all too likely.

It took a year to set up the electoral commission as parliament dragged its feet. Further delays ensued as other key laws were bogged down. The peace deal made legislation a tedious process, with decisions to be taken by an often elusive consensus in the post-conflict environment.²¹

¹⁹ The final number will depend on the electoral law. Most polling stations will be in the same buildings as the registration offices, with some new sites for particularly remote villages.

²⁰ The electoral calendar originally was 10-24 March 2006 registration of candidates; 5-9 April publication of candidate lists; 18 May-16 June campaign; 18 June first round presidential and legislative elections; 14 July results announced. Crisis Group interviews with MONUC and electoral commission officials, Kinshasa, April 2006.

²¹ Laws go through the following steps: 1) drafting; 2) approval by a government commission; 3) approval by the council of ministers; 4) examination by a national assembly commission; 5) national assembly approval; 6) examination by a Senate commission; 7) Senate approval; 8) joint parliamentary

Above all, there has been a lack of political will to move ahead with elections. Parliamentarians have blamed the main political parties, who enjoy the benefits of their positions.²² State offices are some of the most lucrative employment opportunities in the Congo, prompting officials to prolong their tenure. For example, two laws needed to protect judicial independence were submitted to the ministry of justice in 2004, which referred them to the defunct Permanent Commission of Congolese Law for study, where they have languished.²³ Parliamentarians have also been accused of too much travelling, with generous per diems. At any given time, some 100 of the 500 seats in the national assembly were empty, and many committees were unable to muster quorums.²⁴ In July 2005, days after the transition was extended, Kabila turned down a request for an extraordinary session to discuss the national budget,²⁵ and the parliament did not reconvene until October.

Passing the constitution and electoral law and conducting voter registration took much longer than planned due to these delays. Although the electoral commission has announced that the first round will take place sometime between 26 June and 2 July, and the deadline set by the peace deal is 30 June, it has not yet put together a plan for distributing ballots and other materials. The new constitution stipulates that all institutions of the transition will remain in place until elections are held, suggesting that legally some further delay may be possible.²⁶ However, this would risk new instability.

The delays have already caused or threaten several important problems:

- ❑ **Local elections have slipped.** The electoral commission indicated that it would be difficult to organise three simultaneous elections. It now talks of holding local elections after inauguration of the new government. According to the new constitution, local polls will elect provincial assemblies, which will in turn elect senators and governors. It is not clear, however, how the 108 senators will be elected, and the country may be without a senate for some

commission approval; 9) Supreme Court approval; and 10) promulgation by the president.

²² Crisis Group interview, member of parliament, Kinshasa, December 2005.

²³ These are the law on the status of judges and the law on the organisation and functioning of the Supreme Council of Judges. See "S.O.S. Justice – Quelle justice pour les populations vulnérables à l'Est de la RDC?", Global Rights, August 2005, p. 39.

²⁴ Crisis Group interview, member of parliament, Bukavu, December 2005.

²⁵ Crisis Group interview, member of parliament, March 2006.

²⁶ See Text Box, p.4.

time.²⁷ It is vital to hold local elections as soon as possible in order to name new administrative officials and for the government to plan for senate elections. No date has yet been set, and the electoral commission does not have enough money in its budget for local elections.

- ❑ **Key laws not passed.** There will be no laws on campaign finance or independence of the court system before the elections. Their absence favours the more affluent parties, particularly those in power and with access to state resources, and will compromise the neutrality of courts in settling disputes. Lack of funding is also a particular obstacle for women, as many are independent candidates without party funding.
- ❑ **Urban unrest.** Delay of the elections beyond 30 June could become a rallying cry for parties unhappy with the electoral process, in particular the UDPS, which is likely to call for demonstrations in Kinshasa and the Kasais.

In order to avoid unrest that further incremental postponements would cause, the electoral commission needs to set a final, realistic date for presidential and national assembly elections. The lists of candidates for both sets of contests are supposed to be approved by the end of April 2006, and a company will be identified to print the ballots by the first week of May 2006. The printing process will take between four and six weeks, and the distribution of the ballots will take roughly the same amount of time. Counting twelve weeks from 8 May 2006, and adding a margin of error of two weeks, the electoral commission should target 12-13 August 2006 as the date. Given the experience of the referendum, when the electoral commission gave orders to keep the polls open for a second day at the last moment, voting should be held over two days, not the one currently planned.²⁸ Local elections should be held no more than three months later.

2. Security

The numerous security threats that could be provoked by or jeopardise the elections include:

- ❑ urban unrest linked to the UDPS boycott, especially in Kinshasa, Mbuji-Mayi and Lubumbashi;

²⁷ According to the constitution, each of 25 new provinces will have four senators, and Kinshasa will have eight. However, it will take three years to set up the new provinces, whose exact borders must be defined by a law. In the meantime, it is not clear in which constituencies senators will be elected.

²⁸ The last-minute decision to keep polls open caused considerable confusion, as many voting centres did not receive the word and closed. Crisis Group interviews, electoral officials, Kinshasa, January 2005.

- renewed attacks by RCD dissidents in the east; and
- fighting between the army and Mai-Mai militia in northern and central Katanga.

In addition, serious tensions between political parties in Katanga could lead to clashes between their supporters.²⁹ While the European Union (EU) will deploy a small force to boost MONUC, the plan is to deploy 400 to 450 soldiers in Kinshasa and have 800 to 1,000 on standby outside the country,³⁰ with a mandate limited mostly to potential evacuation of election monitors and ensuring security at Kinshasa airport. This force is not likely to deter fighting in the east or riots in urban areas, including Kinshasa, problems that will be left mostly to the Congolese.

Election security will be provided by the Congolese police, with the army in support if there is major violence. These forces remain politicised and themselves could be used to skew elections. The international community has funded the training and equipping of over 39,000 police. This training lasts only six days, however, and is insufficient to instil discipline in a feeble force.³¹ The police were largely bystanders during the war and are no match for armed factions that might try to influence elections. Although the specialised units in Kinshasa, including 1,000 integrated police and 4,000 members of a rapid reaction unit, are well equipped and trained by the EU and by France, South Africa and Angola respectively, there are few equivalents elsewhere.³²

Army troops are still beholden to the former belligerents, who have continued to use their commanders in the army to protect economic and political interests. In particular, ex-Mai-Mai and former soldiers from the RCD and Kabila's former army are likely to intimidate voters and jeopardise the safety of the polling stations.

North Kivu is the province where political allegiances of the security forces are most pronounced. When the peace deal signatories divided up provincial military and civilian leadership, the RCD obtained both its military command and governorship. This allowed the former rebels to retain control over the security services in and around Goma. The units in these areas – with the exception of the newly

deployed 5th integrated brigade – are ex-RCD. The 83rd and 81st brigades have balked at army integration and refused orders from Kinshasa.³³ Albert Semana, the provincial head of the national intelligence service, named new security officials in October 2005 without conferring with the ministry of the interior.³⁴

Similarly, in areas formerly controlled by the Mai-Mai, rival parties are at a distinct disadvantage. In Fizi territory, South Kivu, Mai-Mai have prevented RCD officials, their former battlefield enemies, from holding meetings or setting up offices.³⁵ Strong anti-Tutsi sentiment in the militia and the army's weak control over them will make it difficult for RCD candidates to campaign in many rural areas of the Kivus. This has accentuated RCD disaffection with the electoral process.

In Katanga, Kabila's former Congolese Armed Forces (FAC) and the presidential guard have intimidated parties opposed to the president. General John Numbi, the air force head, continues to influence the security apparatus, where he was regional commander before the transition. For example, after an alleged secession attempt in Lubumbashi in April 2005, he flew in to preside over the provincial security council meeting, a function that should have been the governor's.³⁶

These connections have allowed Kabila's associates to intimidate opponents, with Lubumbashi becoming a hotbed of opposition.³⁷ Both southern Katangans and

²⁹ See Crisis Group Africa Report N°103, *Katanga: The Congo's Forgotten Crisis*, 9 January 2006.

³⁰ The EU has not yet announced where these other troops will be based. The informal indications are that it will be in Gabon. Crisis Group interviews, Brussels, April 2006.

³¹ Donors are working through a platform managed by UNDP. The 39,000 police include mobile, territorial and rapid reaction units. The six-day training is for the territorial police, the bulk of the force. Specialised units receive longer training.

³² For more information on army and police reform, see Crisis Group Africa Report N°104, *Security Sector Reform in the Congo*, 13 February 2006.

³³ "Goma: les soldats d'expression kinyarwanda de la 82eme brigade disent non au brassage", www.radiookapi.net, 23 September 2005; Crisis Group interviews, Goma, December 2005.

³⁴ "Nominations a la Direction de sécurité et des renseignements /Nord-Kivu", www.radiookapi.net, 26 October 2005. The minister of interior complained formally but no steps were taken to prevent the new officials from taking up their posts.

³⁵ Crisis Group interview, local organisations, Uvira, December 2005.

³⁶ He has close ties to high security officials, in particular Katumbwe bin Mutindi, head of the National Intelligence Agency (ANR) for Katanga; Scoda Kasongo, head of the ANR for Lubumbashi; and Colonel Timothée Mujinga, head of military intelligence for Katanga. These go back: in the early 1990s, Numbi led a violent group, Youth of the Union of Federalists and Independent Republicans (JUFERI), Katumbwe was the allied mayor of Lubumbashi, while Mujinga was in charge of intelligence for JUFERI. Reportedly this youth group helped perpetrate the killing of hundreds of Kasaians in Katanga in 1993 and was responsible for the ethnic purges of survivors from Katanga. Crisis Group interviews, local officials, Lubumbashi, November 2005; "Report on the situation of Human Rights in Zaïre", presented by Roberto Garreton, UN Special Rapporteur, December 1994, UN Documents E/CN.4/1995/67, primarily sections 107 and 108.

³⁷ For in-depth discussion of Katanga, see Crisis Group Report, *The Forgotten Crisis in Katanga*, op. cit.

immigrant Kasaians claim to be marginalised and persecuted by Kabila's regime. Several organisations have drawn on this discontent, including the UDPS and the Solidarité Katangaïse.³⁸ Security officers have collaborated in attacks against UDPS offices in Lubumbashi and have done nothing to prevent harassment of UDPS and Solidarité Katangaïse. While parties close to Kabila easily get permission to demonstrate, similar requests by UDPS and parties tied to southerners are denied.³⁹

The presidential guard has also created tensions between political parties. The army does not control Kabila's 12,000-15,000 guard, which has deployed to key airports around the country, including Lubumbashi, Kisangani, Bukavu, Kindu, Mbandaka and Goma. While ostensibly deployed to protect the president's official travel, it is often present for months before and after the visits. When Kabila is present, it disarms or removes local armed forces. This caused bitter arguments in Kisangani in 2004 with former RCD troops.⁴⁰ In Lubumbashi, the guard has harassed diplomats and MONUC staff, in particular when MONUC began deploying there in November 2005.⁴¹ While it is not known to have harassed political parties, many question the size and range of deployment of a force entirely controlled by the president, who is also a candidate. It needs only be deployed immediately before a presidential visit and so should be withdrawn from Kindu, Kisangani, Bukavu and Mbandaka, where it has committed human rights violations.⁴² The government should also go forward with plans to downsize the guard before elections.

The former belligerents' security and intelligence services have not yet been integrated, with the former considered something too sensitive to be shared. In Kinshasa, the president's military office (*maison militaire*) controls the intelligence services and the national migration office.⁴³ The weakening of the RCD in South Kivu, northern Katanga and Maniema after the May 2004 mutiny in Bukavu gave the government greater control there. In Uvira, Kindu and Kalemie, areas formerly under RCD

control, the intelligence services are now under officials loyal to Kabila.⁴⁴

In general, Kabila has greater control over the security forces than other parties. As has been seen, these forces can be used to intimidate and influence elections at the local level, in particular Katanga and the Kivus. The RCD and the MLC may be tempted to behave similarly in North Kivu and Equateur, respectively. To avoid harassment of election workers and voters, troops should be kept in barracks in the run-up to elections, with exceptions for border areas and areas where militias threaten the local population, such as parts of Ituri, the Kivus, and Katanga.

3. Manipulation of the media

There are 119 radio stations in the Congo, more or less throughout the country; 52 television stations, some half of which broadcast in Kinshasa; and 176 newspapers and magazines, most with limited circulation.⁴⁵ Most media are affiliated with or owned by politicians. Although the state-run media are supposed to provide balanced election coverage, they favour Kabila's party.

At the beginning of the transition, the state-run media were controlled by the former belligerents in their respective strongholds. Management of the national radio and television, like top positions at other state enterprises, was supposed to be shared between the peace deal signatories. However, it was not until August 2005 that its management was integrated and a director named from Kabila's party. This has led to bias. During the referendum campaign, state media granted much more time to parties supporting the constitution: of television time dedicated to the referendum, 43 per cent went to those in support and 8 per cent to opponents.⁴⁶ On state radio, the ratio was 32:1. In January 2006, Kabila's People's Party for Reconstruction and Democracy (PPRD) televised its national congress live for over four hours. No other party received similar coverage. This earned the station a minor sanction from the state media watchdog: not to broadcast political programs for 48 hours.

The media watchdog has insufficient funding and offices in only five provinces in the east and Kinshasa.⁴⁷ Most donor funding and attention has focused on election logistics, with little invested in the media or courts. The High Authority of the Media should be given money

³⁸ The Solidarité Katangaïse is a non-governmental organisation popular among southern Katangans that has campaigned politically.

³⁹ Crisis Group interview, local NGO, Lubumbashi, June 2005.

⁴⁰ "Kisangani dans la fièvre de la visite du Chef de l'État", www.radiookapi.net, 15 October 2004. Similar disputes have broken out in Bukavu.

⁴¹ Crisis Group interviews, UN officials, Lubumbashi, December 2005.

⁴² "Cinq éléments GSSP condamnés à Kisangani", 7 July 2005, www.radiookapi.net; "U.S. Department of State Report on Human Rights Practices 2005 – Congo, DR", <http://www.state.gov/g/drl/rls/hrrpt/2005/>.

⁴³ Crisis Group interview, military expert, Kinshasa, November 2005.

⁴⁴ Crisis Group interviews, Congolese army officers and government officials, Kinshasa, Uvira and Bukavu, November and December 2005.

⁴⁵ "Mission d'observation électorale", op. cit., pp. 31-32.

⁴⁶ The rest of the time was devoted to neutral reporting and analysis of information.

⁴⁷ Crisis Group interview, UN official, Kinshasa, April 2006.

to open offices in all provinces with sufficient staff to monitor and investigate abuses.

The peace deal established the media watchdog as one of five institutions for support of democracy.⁴⁸ It is responsible for preventing partisan manipulation of state-run media and monitoring for speech inciting violence or hate. As with its four sister institutions, the president is named by civil society, while its twenty other posts are divided between all signatories of the peace deal.⁴⁹ These divisions have made it hard for its president, Modeste Mutinga, to take strong measures. The failure to apply stronger sanctions after the PPRD congress was symptomatic. A Lubumbashi station televised a speech by representatives of the National Union of Congolese Federalists (UNAFEC), allied to Kabila in Katanga, calling for Katanga's enemies – the UDPS and the Solidarité Katangaise were meant – to be sought out and burned.⁵⁰ The station was suspended for two weeks, and local courts did not press charges. About the same time, the media watchdog suspended three Kinshasa papers for several months after they published articles claiming Kabila has sent money to finance schools in Tanzania.⁵¹ The disparity in the penalties suggests bias.⁵²

4. Accusations of fraud

As could be expected in a giant country emerging from long years of war, there have been numerous allegations of electoral fraud. With 80 per cent of the population below the poverty line, politicians have ample opportunity to buy votes.⁵³ Affluent parties, such as the PPRD and the MLC, have a great advantage. Parties are already spending

money on local leaders and voters. All have begun distributing T-shirts and other gifts and using government positions to travel. A vice governor noted: "Each time we inaugurate a road or donate medicine to a clinic it becomes an opportunity for campaigning".⁵⁴

There are few laws to prevent the use of public funds for campaigning. Drafts on campaign and party financing have not been voted on and legislators doubt they will be before elections.⁵⁵ Neither the code of conduct the parties signed nor the electoral law has provisions regulating campaign finance or vote buying.⁵⁶ Poorer parties will be hard pressed to stage rallies, buy media time and go to more remote areas. Of 269 registered parties, only ten to fifteen will be serious contenders, and only four or five will be present in all electoral districts.

Parties in power have a distinct advantage through access to state funds. The former government, the opposition, the RCD and the MLC were each allocated a vice president, 94 deputies, 22 senators, seven ministers and four vice ministers. They were also allowed to appoint the 230 managerial positions in state-run companies, as well as 90 positions in the five civic institutions. Assuming full payment of salaries, and without accounting for money made illegally, their officials earn some \$500,000 monthly.⁵⁷ Officials pay dues into party treasuries that range between 10 and 20 per cent of wages,⁵⁸ suggesting these parties take in \$50,000 to \$100,000 a month. Likewise, access to state resources is a source of corruption. An audit of state-run companies revealed that millions of dollars were being embezzled.⁵⁹

In June 2005, a parliamentary commission led by opposition politician Christophe Lutundula completed a review of contracts signed by the belligerents during the war, revealing numerous instances, particularly in the mining sector, where authorities used office to negotiate

⁴⁸ The other four institutions are the Independent Electoral Commission, the National Observatory of Human Rights, the Truth and Reconciliation Commission and the Commission for Ethics and Against Corruption. The last three mentioned suffer from political squabbling and lack of resources and are barely functional.

⁴⁹ In each body, the PPRD, RCD, MLC, civil society and political opposition have three members, the RCD-ML, RCD-N and the Mai-Mai two.

⁵⁰ "Anybody who wants to divide the Katangans, we will arrest him and burn him". A transcript of the speech can be found in *Le Potentiel*, 17 October 2005, http://www.lepotentiel.com/afficher_article.php?id_edition=&id_article=16143.

⁵¹ "Three independent newspapers suspended for three months", press statement by Journalistes en Danger (JED), 20 September 2005. Kabila's links to Tanzania, where he was raised and schooled, is a sensitive issue, as many in Kinshasa call him a foreigner.

⁵² Crisis Group interview, local NGOs, Kinshasa, November 2005.

⁵³ There is a lack of reliable statistics for the Congo but the World Bank estimated in 2002 that around 80 per cent of the urban population is poor and at least as much of the rural population. World Bank Poverty Reduction Strategy Paper, March 2002, p. 14.

⁵⁴ Crisis Group interview, Kinshasa, November 2005.

⁵⁵ Crisis Group interview, parliamentarians, Kinshasa, November 2005.

⁵⁶ Political parties signed a code of conduct in August 2005.

⁵⁷ Deputies and senators have monthly salaries of \$1,500, ministers \$4,000 and vice ministers \$3,200. Salaries of the directors of state-run enterprises vary widely, up to \$10,000 monthly. The presidents of the five civic institutions have ministerial rank and equivalent salaries. The vice presidents have a budget, including for their cabinets, of \$200,000 a month, and the president \$500,000. In reality much of this money is never paid. Crisis Group interview, parliamentarian, Kinshasa, November 2005.

⁵⁸ Crisis Group interviews, political parties and international NGOs, Kinshasa, November 2005.

⁵⁹ "Commission d'examen des rapports d'audit des entreprises publiques – rapport final", (the "Bakandjeja Commission"), submitted to parliament on 20 November 2005.

deals of little or no profit to the state but which brought them generous kickbacks.⁶⁰ This report has not been discussed in parliament and is unlikely to be touched before elections.

It will not be possible to prosecute corrupt officials in the next few months, and parliament is unlikely to regulate the use of campaign funds. However, voters should be given all available information regarding candidates who are tainted by strong evidence of corruption or human rights abuses. It is important, therefore, for parliament to discuss the Lutundula report and media and civil society groups to inspect the legal records of candidates. Parties should also be called upon to publish financial records and give details about their campaign financing.

5. The census and the distribution of seats in parliament

The numbers of voters registered is important not only for elections, but also for distribution of parliament seats. Due to time constraints, the electoral commission had to base its operations on a 1984 census. Together with the National Institute for Statistics, it made a projection of the current population, in accordance with which registration sites were set up. The proportional distribution of sites and voters by province, however, does not correspond to the 1984 population levels. In 1984, for example, Province Orientale was the most populous province (4.3 million), followed by Katanga (3.9 million).⁶¹ The estimates used, however, indicate that Katanga is now the most populous, with some 400,000 more voters than Province Orientale. This does not account for the high mortality rates in Katanga during the war – in certain areas more than double rates in the west – and for the violence that led to the flight of over 750,000 Kasaians, many of whom did not return, in 1993.⁶²

Congolese organisations and parties have also complained that the electoral commission did not adequately map out locations of the registration centres. In the Kasais, Province Orientale and Bas-Congo, many voters had to

walk over 50 kilometres to register.⁶³ Pressure from influential parties made a difference in provinces like Bandundu and Equateur, where the MLC pushed the commission to open sufficient centres and extend the registration period. Nonetheless, due to security and logistical problems, in 310 counties (*groupements*), mainly in Bandundu, Equateur, Province Orientale and Katanga, no such centres were opened.⁶⁴

At the beginning of voter registration in June 2005, the UDPS called for a boycott, claiming the transitional government had not lived up to the peace deal and should resign. This was a factor in low registration rates in the capital and the two Kasai provinces. As registration numbers were used to allocate seats in parliament, the questionable population projections and the boycott may have caused inequities. The electoral commission and the government should promise a new census after elections, followed by redistribution of seats in parliament.

WOMEN AND THE ELECTIONS

During the Sun City peace talks, women's groups throughout the country organised to make sure their concerns were taken into consideration in the transition. During the registration period, women's organisations helped mobilise and train women, who constitute 51 per cent of the electorate and helped ensure a high female turn-out during the constitutional referendum in December 2005.⁶⁵ Nevertheless, there are few women in the transitional government: only six of 65 ministers and deputy ministers and 10 per cent of parliamentarians.⁶⁶

There are no provisions to ensure the adequate representation of women in the approaching elections. While Article 14 of the new constitution stipulates that government will work towards equal gender representation in national, provincial and local institutions, no law has been passed to mandate minimum levels of candidacies or offices. Numerous women's groups lobbied for party lists that would be "zebra-ed" equally between male and female candidates at the national and local levels, but this was not included in the electoral law. Political parties were

⁶⁰ "Report of the Parliamentary Commission on the Examination of the Validity of Contracts Signed During the 1996/7 and 1998 Wars" (the "Lutundula Report"), at www.freewebs.com/congo-kinshasa.

⁶¹ "Zaire: Recensement scientifique de la population", Institut National de la Statistique, 1984. Kivu was the most populous province but has since been split into three provinces.

⁶² The projections are based on a study made by the National Institute for Statistics in 1993. It projected the following growth rates between 1984 and 2000: Kinshasa, 127 per cent; Bas-Zaire, 68 per cent; Bandundu, 60 per cent; Equateur, 55 per cent; Province Orientale, 45 per cent; Kivu, 67 per cent; Katanga, 86 per cent; Kasai Oriental, 72 per cent; and Kasai Occidental, 60 per cent.

⁶³ Crisis Group interviews, local non-governmental organisation Ligue des Electeurs, Kinshasa, as well as members of parliament, Kasais and Province Orientale, March 2006.

⁶⁴ "Mission d'observation électorale", op. cit., p. 25.

⁶⁵ "Référendum 2005: Rapport finale, Mission d'Observation Électorale de l'Union Européenne en RDC", 21 February 2006, p. 41. While there are no reliable data on female turn-out, EU election observers believe it may have been much higher than the male vote.

⁶⁶ Crisis Group interview with UNIFEM official in Kinshasa, April 2006

encouraged but not required to promote equal representation in their lists,⁶⁷ and only four of 33 presidential candidates and 10 per cent of legislative candidates are female.⁶⁸

Women have been disproportionately affected by the war. A 2004 study conducted in the East concluded that 40,000 had been raped, and security specialists consider sexual violence to be the most widespread form of criminality in the country today.⁶⁹ Indeed, there are indications sexual violence may have increased during the transition.⁷⁰ It will be an important test for the incoming government to implement the principles of the constitution to address discrimination against women, in particular sexual violence.

6. Monitoring the elections

Provisions for election monitoring and sanctioning of abuses are inadequate. While the electoral law allows for eight observers and six witnesses at polling stations, in many areas parties and civil society groups will not have sufficient resources. Votes will be counted on site, and official witnesses are to sign documents attesting to the conduct of the polls as well as any irregularities. In a few urban centres, international observers will also be present, but there will be only around several hundred for 53,000 polling stations. Given the size of the country, it is essential that civil society groups coordinate with foreign observers to make sure they distribute their efforts evenly across the country. Recent experiences in Liberia and Uganda show that poor coordination can compromise the efficiency of monitors.

The lack of monitors will be particularly acute in central Katanga, where fighting between Mai-Mai and the army has displaced up to 200,000 people, making the region a virtual no-man's land. Insecurity could prevent voting,

⁶⁷ Article 13 of the electoral law states: "Each list [of candidates] is put together taking into consideration equality between men and women... However, not realizing equality between men and women during the coming elections is not a reason for rejecting a list."

⁶⁸ The presidential candidates are Catherine Nzuzi wa Mbombo for the Popular Movement for the Révolution (MPR), Marie Thérèse Nlandu for the Party for Peace in the Congo (CONGO PAX), Wivine Nlandu for the Union for the Defense of the Republic (UDR) and Justine Kasavubu for the Movement of Democrats (MD).

⁶⁹ "Focus on rampant rape, despite end of war," IRIN News, March 8, 2004; Crisis Group interview with senior security specialists, Kinshasa, November 2005.

⁷⁰ In one centre in Bukavu, cases rose from 50 cases a month to 200 between 2002 and 2004. *Seeking Justice: The Prosecution of Sexual Violence in the Congo War*, Human Rights Watch Report, March 2005.

lead to rigging and discourage monitors. Six electoral districts with around one million voters and seventeen legislative seats are affected by the violence.⁷¹ In April 2006, the UN decided to deploy around 1,000 troops from its Burundi mission to Katanga, which will bring its presence in the province to over 1,500 by the time of elections.⁷²

The few safeguards outside the polling centres against intimidation, hate speech and bribery are in the hands almost entirely of the decrepit justice and police system. There are some 2,000 judges in the country, roughly one per 30,000 citizens. The judicial police, in charge of investigating and reporting crimes to the prosecutor's office, are far fewer. At last count in 2003, there were only 161 outside Kinshasa.⁷³

If elections are disputed, the cases will be brought before the competent court. According to the electoral law, the Supreme Court has jurisdiction for presidential and legislative elections and the courts of appeal for the provincial elections.⁷⁴ All are highly politicised. Supreme Court judges were named by Kabila before the transition began and have shown themselves partial. In December 2005, parliament passed an amnesty that would have freed those accused of assassinating Laurent Kabila in 2001. His son and successor sent the law to the Supreme Court, which interpreted it to grant amnesty for all political crimes except assassination of a head of state. Many Congolese lawyers criticised the decision's legal basis.⁷⁵ In February 2006, the court ruled that legislators who had left their parties during the transition would have to give up their positions, despite clear language in the transitional constitution guaranteeing their tenure.⁷⁶

Other levels of the judiciary are also influenced by the executive. Although the constitution gives the supreme

⁷¹ The electoral districts are: Mitwaba, Pweto, Bukama, Malemba Nkulu, Manono and Moba.

⁷² Crisis Group interview, UN official, New York, April 2006.

⁷³ "S.O.S. Justice", op.cit., p. 65. This does not include judicial police inspectors, who do similar work.

⁷⁴ In addition, the *tribunaux de grande instance* will judge disputes pertaining to urban and municipal elections, while the *tribunaux de paix* will look at issues relating to local elections.

⁷⁵ The law grants amnesty for all political crimes. The Supreme Court ruled that the assassination of the head of state was not political. Other questionable judgements involved the naming of governors in 2004 and the sharing of positions in state-run companies in 2005.

⁷⁶ This decision was seen to be aimed at the president of the national assembly, Olivier Kamitatu, who had been dismissed from the MLC in December 2005. 130 deputies and 40 senators would also be affected, as many left their parties after taking their seat. However, Articles 100, 101 and 106 of the transitional constitution and the internal rules of parliament clearly guarantee tenure for the length of the transition.

council of judges the authority to name, promote and sanction judges, in practice the minister of justice does so. He is also able to award new posts at his discretion. A human rights official says, "if the ministry of justice doesn't like your stance on an issue or a case, they will send you to languish in Equateur".⁷⁷ The judges' union has repeatedly condemned this state of affairs and has written to parliament denouncing the minister's unconstitutional behaviour.⁷⁸ Laws to implement judicial independence, as the constitution foresees, are vital but two have been blocked by the minister.

Nevertheless, the international community has treated dispute resolution for the time being as a technical matter. UNDP will give courts computers and other equipment, set up a communications network between the courts and train judges. The *Organisation de la Francophonie* is sending a delegation of legal experts to Kinshasa but its role is limited to technical advice. Judges and government officials unanimously rejected direct involvement of foreign judges during a seminar on dispute settlement in February 2006.⁷⁹ The Supreme Court has set up branches in most provinces to deal with electoral disputes but the three judges in each are poorly paid and too few to deal with the numerous complaints that could arise. In Equateur, for example, a dispute between legislative candidates in Gbadolite would be handled 400 kilometres away in Mbandaka. Donors should give these branches resources and support deployment of more judges.

In March 2006, MONUC proposed creation of a "committee of the wise", composed of five eminent officials from the Central African region, to constitute a moral authority that could try to resolve informally quarrels arising between candidates. According to the draft terms of reference, it would provide advice on:⁸⁰

- ❑ misuse of government resources for campaigns;
- ❑ misconduct by civil servants or election officials;
- ❑ discrimination or incitement based on ethnicity or religion;
- ❑ abuse of the political parties' code of conduct; and,
- ❑ other complaints submitted by political parties.

This would avoid tedious proceedings in courts that most parties consider biased. The committee, which would give greater clout to the media watchdog and the electoral

commission in case of political disputes, would have a secretariat and work closely with the electoral commission, which has in principle agreed to support it and to propose the idea to parties at the end of April.⁸¹ The international community should ensure that the personalities chosen are independent and respected by the Congolese political elite.

7. The UDPS

The UDPS has refused to participate in an electoral process that it perceives as tilted against it. As one of the most popular parties, its boycott could have serious consequences for the legitimacy of the incoming government and spark unrest in Kinshasa and the Kasais. It is one of the oldest and best-known parties and, with the 75 year-old Tshisekedi at its helm, has been the transitional government's most serious opponent. The corruption and inefficiency of the current government has enhanced its credibility, and many Congolese still honour it for spearheading the democracy movement against Mobutu.

Tshisekedi has spent much of his career in opposition, but also has at times compromised with those in power. He commands the support of much of the youth and educated middle class in Kinshasa and has strong backing from members of his Luba tribe in the capital and the Kasais. Many diplomats and Congolese politicians, however, see him as a stubborn old-timer, who believes in opposition for opposition's sake.

Tshisekedi served under Mobutu for fifteen years as justice and interior minister and vice president of the national assembly before he broke away in 1980 and became the leading opposition figure. Between 1990 and 1997, he served briefly as prime minister three times, with cabinets too poorly organised to influence Mobutu's grip on power. Observers have suggested the UDPS is good at criticising while pointing out Tshisekedi's lacklustre performance in office.⁸² A minister's comment that "it is easy to criticise. He wants to die in eternal opposition", is echoed by many politicians in Kinshasa.⁸³

Tshisekedi initially welcomed Laurent Kabila, hoping he would pursue the democratic transition. The new president, however, banned opposition parties and banished

⁷⁷ Crisis Group interview, Kinshasa, December 2005.

⁷⁸ "Le gouvernement de la RDC doit arrêter de torpiller la magistrature", press communiqué of 30 human rights NGOs, 10 December 2004.

⁷⁹ Decision resulting from a seminar held in Kinshasa in February 2006.

⁸⁰ Crisis Group telephone interview, high-ranking MONUC official, Kinshasa, March 2006.

⁸¹ The other civic institutions have also agreed in principle to the body: the media watchdog, the anti-corruption commission, the truth and reconciliation commission and the human rights observatory.

⁸² Georges Nzongola-Ntalaja, *The Congo From Leopold to Kabila: A People's History* (London, 2002), pp. 199-200. Others argue that Tshisekedi never had enough time in office to make concrete changes.

⁸³ Crisis Group interview, Kinshasa, November 2005.

Tshisekedi to his home town in Kasai Oriental. The UDPS did not make another significant appearance until the beginning of the Inter-Congolese Dialogue in 2001, in which it participated as part of the political opposition. According to delegates at the negotiations, Tshisekedi acted as if still prime minister, offending the belligerents with his arrogance.⁸⁴

When the MLC struck a deal with Joseph Kabila to share power on 17 April 2002, excluding the other delegations, the RCD and the UDPS formed the Alliance for Saving the Dialogue. While Tshisekedi dissolved the alliance as soon as the negotiations resumed, he was sharply criticised for allying with the RCD, and many Congolese, especially in the Kivus, saw him as beholden to the Rwandans. Over 30 opposition parties fought to name the vice president to which the Global and Inclusive Agreement signed in December 2002 entitled them. While Tshisekedi was arguably the most popular candidate nationally, he had long since fallen out with much of the political elite, who also resented his perceived lack of pragmatism, one opposition politician complaining, "Tshisekedi was frozen in 1992".⁸⁵ In addition, politics was still dominated by former Mobutu figures with bitter memories of Tshisekedi. In the end, he was sidelined by a coalition of 26 parties, closely tied to Kabila, which named Arthur Zahidi Ngoma as vice president in May 2003. During the transition, Zahidi Ngoma has repeatedly sided with Kabila on key issues.

After the UDPS lost its bid for the vice presidency, it left the transition and became its staunch critic. Ample ammunition was provided by the government's many shortcomings, and UDPS criticisms rang true for many in the capital, where the intrigues and corruption of the political elite were well known, and the misery and squalor had not been alleviated. Tshisekedi's reputation as a principled, if somewhat stubborn and dogmatic, opposition leader earned him considerable respect. In opinion polls in Kinshasa, Tshisekedi has consistently ranked first or second behind Kabila with between 15 and 25 per cent support.⁸⁶ But due to his on-again, off-again relation to Mobutu, alliance with the RCD and unchanging, stolid rhetoric he can no longer rally the crowds he did during

the Mobutu era. Many support him by default, however, as he is not tainted by scandals.

Tshisekedi found his opportunity to rally educated young people on 30 June 2005, the original end date for the transition. The transitional constitution allowed for two six-month extensions in case of problems related to the organisation of elections. Tshisekedi, however, questioned the decision to prolong the transition, claiming the real reason was the moral and political bankruptcy of the government, which had failed to live up to its goals. He announced that the transition would end on 30 June 2005, and all parties should return to the negotiating table.

The international community, however, had little sympathy for these complaints. With few exceptions, they saw no alternative to a peace process they had supported and, to a large extent, bankrolled for two years. In the words of a Western diplomat: "We have to make modifications, it is true, and the performance of the transitional government has not been stellar – but we can't throw this all away".⁸⁷ In tense anticipation of the 30 June 2005 deadline, donors accelerated training of Congolese security forces, in particular riot police. On 30 June and 1 July some 3,000 police were deployed in Kinshasa with riot gear. They efficiently broke up all gatherings, tear-gassed Tshisekedi's house and supporters, and arrested several hundred. Diplomats and the government considered the handling of the demonstration as a resounding success for law and order.⁸⁸ Its costs in terms of the democratic process were very much an afterthought.

While some members of the transitional government and the international community had been ready to negotiate with the UDPS before 30 June 2005, the easy suppression of its rallies deflated the party and reduced its immediate influence. Nonetheless, it instructed its followers not to register to vote and to boycott the constitutional referendum. While the boycott was successful in some parts of the country – around a million people in the Kasais and Kinshasa did not register – it failed to stop the electoral process.

Tshisekedi's strong personality has been both an asset and a liability for his party. His reputation has made the party what it is and galvanised support in an era when most Congolese have lost faith in politicians.⁸⁹ But his allegedly autocratic party management and lack of pragmatism has led to many defections. Of the thirteen founders from 1982,

⁸⁴ Crisis Group interviews, members of the PPRD and RCD, Kinshasa, November and December 2005.

⁸⁵ Crisis Group telephone interview, member of political opposition, Kinshasa, February 2006.

⁸⁶ Polls in the Congo are notoriously unreliable, as they often cover only voters in Kinshasa and other major towns. One of the most recent by BERCI, conducted in all provincial capitals in July 2005, put Kabila (36 per cent) ahead of Tshisekedi (25 per cent) and Jean-Pierre Bemba (11 per cent). As the UDPS is not well known in rural areas outside of the Kasais, its final result would likely be lower.

⁸⁷ Crisis Group interview, Kinshasa, June 2005.

⁸⁸ Crisis Group interview, diplomats, Kinshasa, June and July 2005.

⁸⁹ "Politique" has become a derogatory word that connotes trickery and corruption for most Congolese.

only Tshisekedi remains – five died, while seven defected.⁹⁰ Other prominent members have left, including Theophile Mbemba, Faustin Birindwa and Frederique Kibassa. Mobutu coopted Mbemba and Birindwa, the former as governor of Kinshasa, the latter briefly as prime minister. Kibassa left the UDPS later and became close to Laurent Kabila.

In his New Year's speech in 2006, Tshisekedi surprised the nation by declaring the UDPS would stand in the elections. As conditions, however, he asked for voter registration sites to be reopened in Kinshasa and the Kasais.⁹¹ Malu Malu, the head of the electoral commission, refused this as costly and time-consuming. However, he said he would do so if instructed, indicating that the real problem was political, not technical.⁹² His position was supported publicly by the U.S. ambassador as well as the Belgians and British.⁹³ By March 2006, despite the intervention of dignitaries such as the UN's Kofi Annan and President Denis Sassou Nguesso of the Congo (Brazzaville), it was clear that neither side wanted to compromise, and no UDPS candidates have registered as candidates.

The UDPS has grassroots support in Kinshasa and the Kasais, where the referendum turnout was relatively low, as well as in Matadi and Lubumbashi.⁹⁴ In Kinshasa over half the voters – 700,000 people – voted against the constitution. Using a conservative estimate of 20 per cent

support in Kinshasa, 30 per cent support in the Kasais and 10 per cent in Bas-Congo, Province Orientale and Katanga, 2.5 million people could vote UDPS out of a total of 25 million voters. If the difference between the referendum turnouts in central and western provinces was principally due to the UDPS call for a boycott, the party's potential vote might be as high as 3.8 million.⁹⁵ Excluding a tenth of the electorate and as much as a third of the population of the Kasais could have a long-term impact on the political scene and trigger unrest in Kinshasa, Mbuji-Mayi and Katanga.

⁹⁰ The defectors are: Charles Dia Oken-a-Mbel, Paul-Gabriel Kapita Shabani, Gabriel Kyungu wa ku Mwanza, Protais Lumbu Maloba Ndiba, François Lusanga Ngiele, Symphorien Mbombo Lona and Edmond Ngoyi Mukendi Muya Pandi. Most were co-opted by Mobutu.

⁹¹ He also demanded that the UDPS be included in the electoral commission in order to assure transparent elections and that his faction be registered as the only UDPS party. There are presently three parties using the name. Frederique Kibassa, ex-president of UDPS, defected and claimed he had a right to the name as he had signed many of the original statutory documents. Kibassa used his later closeness to Kabila to advance his claim. Nonetheless, Tshisekedi's UDPS was officially recognised as a party in September 2004. Another UDPS, belonging to Ngoy Mukendi, registered at the same time. Neither of these others has any popular support, and Kinshasa papers have suggested the confusion was deliberately created by the current minister of the interior, Theophile Mbemba, who also defected from the UDPS and is now a member of the PPRD.

⁹² Press conference by Malu Malu in Kinshasa, February 2006. He explained that the technical problem was essentially the limited time for organising elections. If politicians, however, extended the electoral calendar, the registration centres could be reopened.

⁹³ Crisis Group telephone interview, MONUC official, Kinshasa, February 2006.

⁹⁴ In Mbuji Mayi, for example, where over half a million voters registered, only 1 per cent cast a ballot.

⁹⁵ Turnout in areas without UDPS support was much higher: 74 per cent in the Kivus, Province Orientale and Equateur. Elsewhere, it was lower: Kasai Orientale (30 per cent), Kasai Occidental (32), Katanga (57), Bas-Congo (61), Bandundu (46) and Kinshasa (51). However, in Kinshasa, Bas-Congo and Bandundu, this could be due partly to general disaffection with the transition felt by people close to the capital media.

III. A RETURN TO ARMS? THE RCD AND THE CRISIS IN NORTH KIVU

The RCD is positioned to lose substantial ground in the polls. While at one point it controlled almost a third of the country, it is unpopular with most Congolese and will probably not win more than 30 to 50 seats in parliament and some minor positions in government.⁹⁶ Disaffected politicians have taken advantage of pockets of well-equipped former RCD troops in the east, who have refused to join the army integration process.

The combination of a splintering political leadership, a military wing left to its own devices and dismal electoral prospects has led to mutinies in the east. In January 2006, dissident RCD soldiers led by Commander Laurent Nkunda attacked the North Kivu town of Rutshuru, the third major clash led by Nkunda since the beginning of the transition.⁹⁷ There are growing numbers of discontent troops in South Kivu, who may join them as well, and there is likely to be a resurgence of violence in the run-up to elections.

A. THE RCD'S FRAGMENTATION

When the RCD entered the transitional government, tensions among the former Rwandan-backed rebels almost caused the party to collapse.⁹⁸ The RCD has always lacked cohesion, due in part to an absence of ideology and popular support, but also to interference from its patrons. Rwanda invited several disparate groups to Kigali in August 1998 to create the movement: Hutu and Tutsi leaders from North and South Kivu, former Mobutists trying for a comeback, and an assortment of local leaders and academics, who were

included due to their local or international popularity.⁹⁹ All these figures had in common was opposition to Laurent Kabila's regime.

Frequent power struggles revealed the lack of unity. The RCD split several times, reflecting fierce competition between Rwanda and Uganda, which each controlled factions as their alliance in occupation of the east during the 1998-2002 war fell apart. Uganda engineered the breakaway of the RCD-Liberation Movement (RCD-ML) in 1999, shortly after losing control of Kisangani to the Rwandans. Uganda also encouraged a founding member of the RCD, Roger Lumbala, in 2001 to establish an RCD-National and used the faction as a cover for its exploitation of diamond resources in Bafwasende district.¹⁰⁰ Within the main RCD, which stayed loyal to Rwanda, leadership switched from Ernest Wamba dia Wamba to Emile Ilunga in 1999, then to Adolphe Onusumba in 2000 and finally to Azarias Ruberwa at the beginning of the transition in 2003. Defections were also common. Most former Mobutists as well as other prominent figures such as Arthur Zahidi N'Goma and Wamba dia Wamba left by the start of the transition, denouncing Kigali's interference and charging that key economic and military decisions as well as negotiations with Kabila had to be cleared with Rwanda.¹⁰¹

Many leaders of the rebellion were Congolese Hutu and Tutsi, with strong ties to Kigali. While Rwanda could trust them, the prominence of an ethnic minority of no more than one million in a movement that controlled so much of the Congo proved detrimental.¹⁰² Anti-Tutsi sentiment had been high for years due to local conflicts over land tenure in the Kivus, Mobutu's manipulation of citizenship

⁹⁶ The RCD has support only among the Hutu and Tutsi population of North and South Kivu, where they could win twenty to 30 seats. If they field locally known candidates elsewhere, they could win another ten to twenty seats.

⁹⁷ Nkunda is the son of a Tutsi cattle herder in Masisi. After teaching in a local school, he joined the Rwandan Patriotic Front (RPF) rebellion against Juvenal Habyarimana in the early 1990s. He later joined Laurent Kabila's AFDL and then the RCD in the Congo, where he was an intelligence officer and held various key positions in the military leadership. In May 2002, he led the suppression of a brief mutiny in Kisangani, and troops under his command killed over 160 civilians. When the transition began, he was made military regional commander of Kasai Oriental, but refused, saying that it would not be safe for him to travel to Kinshasa and Mbuji-Mayi. He officially left the army but began plotting a mutiny with other former RCD officers.

⁹⁸ For more information on the RCD and the conflict in the Kivus, see Crisis Group Africa Report N°91, *The Congo's Transition is Failing: Crisis in the Kivus*, 30 March 2005.

⁹⁹ The most important figures in each group were: Hutu and Tutsi leaders: Azarias Ruberwa, Moise Nyarugabo, Bizima Karaha, Benjamin Serukiza, Emmanuel Kamanzi, Eugene Serufuli and Deogratias Bugera; Mobutists: Vincent de Paul Lunda Bululu, Jose Endundo, Alexis Thambwe Mwamba, Banza Mukalay and Kin-Kiey Mulumba; and local leaders and academics: Ernest Wamba dia Wamba, Arthur Zahidi N'Goma, Mbusa Nyamwisi, Norbert Katintima, Joseph Mudumbi, Emile Ilunga, Shambuyi Kalala, Adolphe Onusumba, Mm. Collette Ram, and Oda Nyangi.

¹⁰⁰ Other, smaller splinter groups include the RCD-Congo, the RCD-Authentique, and the RCD-Original, all of which have meagre followings and no armed wings.

¹⁰¹ Crisis Group interview, former high ranking RCD leaders, Kinshasa, December 2005.

¹⁰² This is a high estimate. Tutsi in North and South Kivu probably number around 100,000 to 200,000, while Hutu total around 500,000 to 700,000. Crisis Group interviews, local leaders, Kivus, November 2005; voter registration figures from the Independent Electoral Commission. The total population of the territories of Masisi and Rutshuru and the town of Goma is around 1,500,000, of which perhaps half are Hutu and Tutsi.

and general prejudice against "Hamites".¹⁰³ The massacres committed under command of the predominantly Tutsi officer corps of Laurent Kabila's army in the 1996/1997 war and during the 1998-2002 occupation by an abusive Rwandan army and its RCD allies accentuated these feelings. As a result, the party is seen by the non-Kinyarwanda speaking population of the Kivus as synonymous with Rwandan aggression.

The RCD participated in the transition against the will of many hard-line members, who tried on several occasions to undermine it. According to an RCD parliamentarian, "The RCD did not think the transition would continue until the organisation of elections. They thought the process would fail, and they would return to arms. That's why they did not change their military movement into a political party and favoured military solutions".¹⁰⁴

Joining the transition divided the RCD. Many members, once in Kinshasa, began to denounce Rwandan influence in their party. In addition, it was then clear it would do badly in elections. The transitional constitution's requirement that parties be representative of all provinces further weakened the RCD, as opportunists joined from provinces like Bas-Congo, Equateur and Bandundu, where there was no real support.¹⁰⁵ Many of the 116 members of parliament named by the RCD officially left the party but, due to the legislative rules, Ruberwa was not able to take their seats away. The most recent senior defections were Banza Mukalay, former vice minister for public works, in March 2006 and Mumba Gama, the secretary general, in April.¹⁰⁶

Some Hutu and Tutsi, on the other hand, complained Ruberwa was not adequately representing their communities' interests and that Kabila's party was absorbing the other belligerents rather than sharing power. Appointments of provincial military and civilian positions marginalised the RCD in South Kivu, Maniema, Province Orientale and Katanga, where the local population was glad to be rid of what they perceived to be foreign aggressors.

The RCD also felt side-lined in Kinshasa. Ruberwa, as head of the defence and security commission, failed to make the security services answer to the ministry of interior and hence to him instead of Kabila. The *maison militaire*, the president's advisory body on military matters, retained considerable control over the army well into 2004.¹⁰⁷ The ranks of former rebel officers were not confirmed until the middle of that year, and many continued to be paid the same wages as foot soldiers for over a year during the transition. An RCD brigade commander who went for training in Kinshasa in December 2003 said: "We went from earning between \$400 and \$1000 a month in the RCD to \$12 a month. When we arrived in Kinshasa, we slept in bunk beds in the barracks and ate out of the pot with other soldiers. We saw Kabila's officers continuing to receive the same salaries as before the transition".¹⁰⁸

By January 2004 the ex-RCD military felt besieged. "We decided to give the transition a chance", one dissident said. "But by early 2004 we saw that it wasn't worth it".¹⁰⁹

B. MUTINIES IN THE EAST

The RCD's fate has been radically different in North and South Kivu.¹¹⁰ In North Kivu, the bastion of the movement with a large Hutu and Tutsi population, the party has maintained control over much of the province, in particular the town of Goma. In South Kivu, where there is only a small Hutu and Tutsi presence, the RCD has almost vanished.

Just before the transition began, the RCD – allegedly under Rwanda's influence – put numerous figures in power in Bukavu who inevitably clashed with the new military authorities. For the most part, these were officials sentenced in absentia for the 2001 assassination of Laurent Kabila.¹¹¹ While Joseph Kabila wanted them arrested, their fate was supposed to be decided by an amnesty law under discussion in parliament. A newly deployed former Kabila commander's attempt to crack down on these dissidents triggered fighting that split Bukavu in half, with dissidents seizing a part of the town next to the Rwandan border. Banyamulenge commanders from throughout the Kivus and Katanga flocked to Bukavu, where Colonel Jules Mutebutsi led the mutineers. In May 2004, renewed fighting broke out on a much larger scale, and Mutebutsi

¹⁰³ Edith Sanders, "The Hamitic Hypothesis: Its Origin in Time", in Robert O. Collins (ed.), *Problems in African History: The Precolonial Centuries* (New York, 1996).

¹⁰⁴ Crisis Group interview, Kinshasa, March 2006.

¹⁰⁵ This requirement was intended to prevent parties from being ethnic or regional organisations. All parties were required to include leaders from all ten provinces as well as Kinshasa. Crisis Group interview, RCD official, Kinshasa, November 2005.

¹⁰⁶ Others who left the party include Joseph Mwewa, Mathieu Kazadi, Michel Tshibuabua, Katebe Katoto, Kabasele Tshimanga and Mboyo Ilumbe.

¹⁰⁷ The role of the *maison militaire* has decreased considerably since 2004 although it remains influential.

¹⁰⁸ Crisis Group interview, Bukavu, December 2004.

¹⁰⁹ Crisis Group interview, Goma, August 2005.

¹¹⁰ See also Crisis Group Report, *Crisis in the Kivus*, op. cit.

¹¹¹ This included the previous regional commander, Colonel Deo Mirindi, the governor, Xavier Chiribanya, Major John Bahati, Major Joseph Kasongo and Major Chap Chap.

was joined by ex-RCD units from Goma led by Laurent Nkunda. Under strong international pressure, Nkunda and Mutebutsi fled to Goma and Rwanda, respectively.

The mutiny triggered a backlash against the civilian Tutsi and Hutu communities of South Kivu, and 20,000 to 30,000 fled to refugee camps in Rwanda and Burundi. In August 2004, one such camp, in Gatumba, Burundi, was attacked and 160 Tutsi were killed.¹¹² This prompted Ruberwa to suspend RCD participation in the transition and call members back to Goma. As usual, politicians and military officers on both sides used ethnicity to justify their actions. For Kabila, whipping up anti-Tutsi sentiment has long been a means of raising support. For RCD Hutu and Tutsi hardliners, the claim that their community is in danger has served as a pretext to carve out a fiefdom in North Kivu, where they still control the army and the economy.

In response to the mutinies of Kanyabayonga and Bukavu, a new RCD military regional commander was sent to Goma, General Gabriel Amisi, to persuade the dissidents to integrate their troops into the national army. One of six army integration camps in the country was opened in Mushaki, 60 kilometres north of Goma, in March 2005 to integrate the armed groups in the provinces, and 6,000 troops arrived from all over the country to take part in the process.¹¹³ In August 2005 the 4th integrated brigade was formed under the command of Colonel Bonané, a Tutsi officer close to Governor Eugene Serufuli, and was dispatched to Ituri.

General Amisi's successes, however, were short-lived. The conditions in Mushaki camp were poor, and in April 2005 soldiers from there, many of whom were ex-FAC and ex-MLC, began harassing the local Hutu population. Around 200 Congolese Hutu and Tutsi fled weekly to refugee camps in Rwanda.¹¹⁴ In August 2005, Laurent Nkunda's call for the government to be overthrown provoked widespread desertions by former RCD units, many of whom joined him in his base in the Masisi territory. Amisi was incapable or unwilling to execute the warrant Kinshasa issued for Nkunda's arrest, even though his whereabouts were well known. The dissident commander even visited Goma often in 2004, although these visits became less frequent and more secretive in 2005.¹¹⁵ Aggravating matters further, Governor Serufuli distributed hundreds of weapons to local

Hutu communities in 2004 and 2005, allegedly for self-defence. This led to increased crime and violence.¹¹⁶

In September 2005, the newly integrated 5th brigade, with 2,500 troops and commanded by Colonel She Kasikila, was deployed to Rutshuru from its training camp in Nyalake to the north. Its arrival in Rutshuru had an ambiguous impact. Kasikila, a former Mai-Mai from the Nande ethnic group, was biased against the Kinyarwanda-speaking population. Locals reported several incidents when he severely sanctioned Hutu or Tutsi but let Nande offenders go unpunished.¹¹⁷ On 3 January 2006, a protestant minister was assassinated on the road from Rutshuru to Butembo. Kasikila's soldiers captured the culprits, members of the Kinyarwanda-speaking community, but handed them over to the local population in Kiwanja, close to where the incident took place. A mob burned three of the suspects alive.¹¹⁸

Nonetheless, Kasikila launched a campaign against crime, and security improved considerably. His troops carried out cordon and search operations in and around Rutshuru, seizing some 350 weapons.¹¹⁹ Soon after his arrival, local Hutus felt safe enough to accuse the 12th ex-RCD brigade that had been there before of abuses. Several weeks after their deployment, the 5th brigade unearthed several mass graves around Rutshuru. Local residents claimed the bodies – estimated to be at least several hundred – stemmed from Rwandan army massacres against the local Hutu population in 1996-1997.¹²⁰

In mid-January 2006, Kasikila was ambushed while patrolling in the Virunga national park. His soldiers hunted down and executed the Hutu and Tutsi perpetrators. In retaliation, on 18 January, members of Nkunda's group attacked positions of the 5th brigade, capturing six towns in the territory of Rutshuru. Nkunda's forces – estimated between 200 and 400 – were joined by soldiers from the 83rd and 81st brigades.¹²¹ According to numerous sources in Goma, Governor Serufuli ordered these troops to join Nkunda but told them to withdraw when Amisi moved a

¹¹² While the Burundian FNL rebels claimed responsibility, other sources indicated that Mai-Mai may also have participated. See "Burundi: The Gatumba Massacre – War Crimes and Political Agendas", Human Rights Watch, September 2004.

¹¹³ The troops were mostly former Mai-Mai, RCD and RCD-ML from North Kivu, but also included MLC from Equateur.

¹¹⁴ Crisis Group electronic correspondence, UN official, August 2005.

¹¹⁵ Crisis Group interview, local administrators, Goma, February 2006.

¹¹⁶ "Arming Civilians Adds Fuel to the Fire", Human Rights Watch Report, 13 July 2005.

¹¹⁷ Crisis Group interview, local administrative officials, Rutshuru, March 2006.

¹¹⁸ Crisis Group interview, local community representatives, administrative officials, Rutshuru, March 2006.

¹¹⁹ "Nord Kivu: nouvelle saisie d'armes de guerre a Rutshuru", 30 October 2005; and "Nord-Kivu: 150 armes récupérées au Masisi et a Rutshuru", 17 November 2005, www.radiookapi.net.

¹²⁰ Crisis Group interviews, local residents, Rutshuru, October 2005.

¹²¹ Crisis Group telephone interview, national army officers, Rutshuru and Goma, January 2006.

battalion up from Goma and MONUC deployed troops.¹²² The fighting displaced 50,000 to 70,000 civilians, some to Uganda. Skirmishes between the army and dissident troops continued into February 2006.

Shortly afterwards, the dissidents published a letter denouncing the government's "non-assistance to the populations of Rwandan ancestry who, according to them, are marginalised by the other communities in the Congo".¹²³ The letter was signed by Captain Jean Mugema, who identified himself as the spokesperson for the "Popular Intervention Brigade" and said Nkunda was also involved. While Mugema claimed to be defending the rights of his community, customary chiefs, including Hutu and Tutsi leaders, denounced the attacks and called for Nkunda's arrest.¹²⁴

Despite the efforts of local chiefs to assuage tempers, the insurgency exacerbated ethnic tensions. When Amisi sent a battalion from Goma to secure Rutshuru after the dissidents had left, the population demanded the departure of the newly deployed Tutsi commander, Major Francois Kamanzi. The protest degenerated into an ethnic affair, with the Nande population clamouring for the departure of all Rwandans from the Congo and threatening the local Hutus. Both groups took to the streets with machetes but the police and local leaders brought the situation under control.¹²⁵

Several delegations, including Minister of Defence Adolphe Onusumba and Vice Minister for Security Tharcisse Habarugira, both RCD members, visited Goma from Kinshasa to try to defuse the situation. Their pressure and that of Amisi and local leaders led to 1,400 troops leaving the 83rd brigade in early February to join the national army in Goma.¹²⁶ Nkunda can still count on many allies, however. During Onusumba's visit to the 83rd brigade in Kitchanga, the commander told him that if the army attacked Nkunda, the brigade would rally to his side.

Ethnic tensions are exacerbated by a local Nande Mai-Mai militia in northern Rutshuru. Led by commanders such as Jackson Kambale, it is based north of Goma close to Miliki and Bunyatenge, has refused to enter the national army,

and periodically raids the local population. MONUC estimates it at 400 combatants.¹²⁷ In October and November 2005, the army and MONUC conducted joint operations in the Virunga national park, aiming to pressure foreign armed groups and the Mai-Mai to demobilise. Some 120 Mai-Mai surrendered during the operations, and 188 shortly after. However, many of these abandoned the demobilisation process and returned to their villages in February 2006, saying they needed to protect their communities against Nkunda. Hutu leaders have complained that the Nande are rearming and are a threat, while Nande say the same of Nkunda and the Hutu and Tutsi combatants.

C. THE SITUATION IN NORTH KIVU

Neither MONUC nor the Congolese have done enough to deal with Nkunda. Army commanders admit they will not be able to mount an effective offensive without logistical and military support from MONUC.¹²⁸ They also fear that, without a political settlement with RCD military and civilian leaders, any attack would cause local troops to join Nkunda. Electoral politics in Kinshasa dominates the attention of many international and domestic actors, and momentum for solving the crisis in North Kivu has been lost.

As noted, there are two ex-RCD brigades left in North Kivu, the 81st and the 83rd, which have not been integrated into the national army and which are closely linked to the civilian RCD leadership in Goma, in particular Governor Serufuli, who is alleged to have given them some money from his budget as recently as January 2006.¹²⁹ Some of the brigade commanders were recruited by Serufuli into his Local Defence Force, which was officially disbanded and integrated into the national army in 2003.¹³⁰ Serufuli supplied troops, fuel and vehicles for Nkunda's offensive on Bukavu in May 2004.¹³¹ He and a non-governmental organisation he created, Everybody for Peace and Development (TPD), were accused by human rights

¹²² Crisis Group interviews, senior officials, Goma, March 2006. Serufuli denies these allegations.

¹²³ "Nord Kivu: des soldats dissidents se dotent d'une 'Brigade d'intervention populaire'", www.radiookapi.net, 1 February 2005.

¹²⁴ "Les communautés ethniques du Nord-Kivu exigent l'arrestation de Laurent Nkunda", 27 January 2006, www.radiookapi.net.

¹²⁵ Crisis Group interview, international journalist present in Goma at the time, January 2006.

¹²⁶ Médard Muyaya, "Situation sécuritaire à Rutshuru: Plus de 1,400 soldats insurgés réintègrent les FARDCs", *Le Potentiel*, 8 February 2006.

¹²⁷ Crisis Group interview, MONUC official, Goma, December 2005.

¹²⁸ Crisis Group telephone interview, Congolese army general, Kinshasa, January 2006.

¹²⁹ Crisis Group telephone interview, government official, Goma, January 2006.

¹³⁰ When Serufuli came to power in 2000, he recruited and armed a Local Defence Force of between 10,000 and 15,000 troops. These were demobilised or integrated into the Congolese army in 2003 but Serufuli maintained close contacts with his former commanders.

¹³¹ Stephanie Walters, "Continuing Instability in the Kivus", ISS Briefing Paper, October 2004.

organisations of complicity in the fighting around Kanyabayonga in November 2004.¹³²

While Serufuli's room to manoeuvre has been limited by deployment of the 5th brigade and a battalion of ex-FAC military police in Goma, he maintains links with the insurgents. According to people close to him, he met Nkunda several times in late 2005 in Goma and continues to support him.¹³³ A senior security officer in Goma said: "Nkunda is our brother and I can't deny that some Tutsi brothers here might be supporting him".¹³⁴

Nkunda himself, according to UN and army sources, may still have between 400 and 1,200 troops under his control, as well as the sympathy, after their most recent defections, of some 1,000 to 2,000 81st and 83rd brigade troops in North Kivu. He continues to recruit, especially children. Amnesty International documented cases involving dozens of children in March 2006 alone.¹³⁵ This suggests he is preparing for another offensive soon. Nkunda is also well equipped with heavy weapons and ammunition.¹³⁶ While he has links to affluent businessmen in Goma, the sources of his supplies and money are not certain.

Nkunda is helped by army weakness in the area and the integration process' failure. Many troops demobilised in the Mushaki camp – between 200 and 800 – have joined him.¹³⁷ General Amisi has little control over both ex-RCD brigades and the ex-RCD-ML troops further north. The army's several brigades in the territories of Walikale, Beni and Lubero are ill disciplined and, as was clear in the November 2004 fighting, not capable of taking on a well-armed and determined group. A battalion of military police, mostly ex-FAC from Kananga, also deployed to Goma in late 2005 but many opted for demobilisation due to poor and irregular pay. In early February 2006, the minister of defence announced the 2nd brigade would replace the 5th integrated brigade in order to calm North Kivu but it deployed slowly, taking over a month to arrive. The air force commander, General John Numbi, arrived

in Goma with two Sukhoi fighter jets, which are too fast to be of much use in counterinsurgency operations and are probably intended to intimidate the dissidents.

D. WHISPERS OF A REBELLION IN SOUTH KIVU

After the mutiny in Bukavu and deployment of non-RCD brigades from the west, the RCD was sidelined in South Kivu. With a commander from Kabila's former army at the helm of the military region and most of its hard-line officers purged, the RCD kept a low profile. The major security problems for over a year after the Bukavu crisis were elsewhere. Mai-Mai troops, particularly around Uvira, refused integration and fought with the national army. Rwandan rebels of the Democratic Forces for the Liberation of Rwanda (FDLR) and renegade Rasta militia around Walungu raided the local population, killing dozens.

In September 2005, 47 Banyamulenge, Congolese Tutsi from South Kivu, crossed the border from Rwanda.¹³⁸ The group consisted of soldiers who had participated in the May 2004 mutiny in Bukavu and had since been staying in a camp in Rwanda. They were intercepted in the Rusizi plain by the FDLR, who handed them over to an army battalion commanded by a Munyamulenge. The mutineers escaped and fled to Muramvya, a small village in the high plateau populated by Banyamulenge. While their intention was unclear, they were poorly armed – the FDLR reportedly confiscated only eleven weapons.¹³⁹ It was not just a matter of going home, as some were relatively senior.¹⁴⁰ Pressure from Rwanda to remove Congolese dissidents and a desire to re-launch an insurgency are more likely motives.¹⁴¹

Around the same time, a group of 150 Banyamulenge deserted from an army integration camp in Luberizi, South Kivu and fled to the mountain village of Kajembwe. The two events caused tensions within the army. Many of the army's Banyamulenge in South Kivu were once

¹³² "Democratic Republic of Congo: Civilians Attacked in North Kivu", Human Rights Watch Report, 12 July 2005, pp. 27-28. In Resolution 1596 of 1 November 2005, the UN Security Council imposed sanctions on TPD, Nkunda, the TPD organisation he created and Mutebutsi for violation of the arms embargo.

¹³³ Crisis Group interview, administrative official, Goma, March 2006.

¹³⁴ Conversation related to Crisis Group by an official of an international NGO, Goma, December 2005.

¹³⁵ "Democratic Republic of the Congo: Alarming Resurgence in Recruitment of Child Soldiers in North Kivu", Amnesty International, press release, 31 March 2006.

¹³⁶ Crisis Group interviews, administrative officials, Goma, March 2006.

¹³⁷ Crisis Group interview, senior officials, Goma, March 2006.

¹³⁸ Banyamulenge are largely descendents from a clan of Rwandan Tutsi who emigrated to the high plateau in South Kivu in the nineteenth century. They are named after Mulenge, a village in South Kivu where they settled. Crisis Group interview, MONUC and Congolese officials, Bukavu, October 2005.

¹³⁹ Crisis Group interviews, MONUC officials, Bukavu and Uvira, and Banyamulenge leaders, Bukavu and Kinshasa, November 2005.

¹⁴⁰ The group includes the former head of the division of mines in Bukavu, Dada, as well as two of Mutebutsi's deputies, Colonels Bisogo and Mukalay.

¹⁴¹ UN officials and NGOs had criticised Rwanda for harbouring the dissidents. Just before the group crossed the border, Rwanda handed over several civilians who had participated in the mutiny to Congolese authorities.

commanded by General Patrick Masunzu, who led a rebellion against the RCD in 2002, capturing the main town in the high plateau, Minembwe, and allying himself to Kabila. In 2005, he was promoted to general and made deputy commander of Kasai Occidental. In Kinshasa, during the above infiltration incident, Masunzu accused two of his commanders of conspiring with the mutineers.¹⁴² These commanders subsequently joined the deserters in Kajembwe.

To a large extent, unrest in the high plateau is due to Masunzu's poor management of his troops, who accuse him of taking their salaries and not helping other officers to obtain important positions.¹⁴³ The highest rank Kinshasa gave any of his commanders was major. When Masunzu was sent from Kinshasa to investigate in October 2005, many soldiers refused to obey his command and deserted to Kajembwe, including his deputy, Major Mitabo. Masunzu was reportedly left with no more than 50 Banyamulenge soldiers in Minembwe.¹⁴⁴ Despite the urgings of the regional military commander in Bukavu to leave, he has remained in Minembwe.

Although the unrest among Masunzu's troops is largely due to personal mismanagement, it is also indicative of the community's discontent with the transition. Many Banyamulenge harbour bitter memories of discrimination by Kinshasa and other communities. Army integration is a particularly delicate subject, as many Banyamulenge soldiers in Kabila's army were killed in camps at the beginning of the RCD rebellion in 1998.¹⁴⁵ Other communities remember massacres perpetrated by troops under Tutsi command during the two wars. Politicians on both sides have taken advantage of these sentiments. The Mai-Mai senator Mahano Ge Mahano from South Kivu, for example, has accused the Banyamulenge of preparing another rebellion.¹⁴⁶

In this context, it takes little to provoke a crisis. On 7 February 2006, a dispute broke out between a Munyamulenge commander and a fellow officer at the

Kitona integration camp in Bas-Congo. The second officer's death shortly afterwards due to a heart condition prompted attacks against other Banyamulenge in the camp, seriously injuring several.¹⁴⁷ While the situation was brought under control, Banyamulenge commanders in South Kivu indicated this would make it difficult to persuade their soldiers to integrate.¹⁴⁸ On 21 February 2006, seven more Banyamulenge officers and five soldiers deserted from Uvira to join their comrades in the high plateau.

The unrest in the high plateau is not yet directly linked to the mutiny in North Kivu. However, given the ethnic tensions in the region, any fighting within the Banyamulenge community could spread. The dissident Banyamulenge commanders, led by Major Rukunda, have made their support for the RCD clear.¹⁴⁹

There are still several thousand Mai-Mai in South Kivu over whom the national army has little control and who have old conflicts with the Banyamulenge community. There have been numerous massacres between the Bembe, Fuliro and Banyamulenge militia since 1996. Mai-Mai in Uvira and the Rusizi plain have already accused the Banyamulenge of a new rebellion and both sides have issued threats.¹⁵⁰ It is important to negotiate a solution with the defectors, because the situation is not sustainable and, left untreated, will degenerate.

E. ELECTIONS AND CONFLICT

The electoral law divides the country's 169 territories and communes into districts that will elect the 500 national assembly deputies. With an electorate of 25.5 million, districts with fewer than 51,000 voters will only get one deputy. There are an estimated 80,000 Hutu and Tutsi voters in South Kivu and perhaps 500,000 in North Kivu.¹⁵¹ As the Banyamulenge of South Kivu are divided between three electoral districts, in each of which they are a small minority, it will be almost impossible for their leaders to

¹⁴² The two commanders were Major Nkubuinka and Major Rukunda. Nkubuinka was the officer to whom the FDLR handed over the infiltrators, while Rukunda was his superior as deputy brigade commander in Uvira.

¹⁴³ Crisis Group interviews, Congolese army commanders, Uvira, November 2005.

¹⁴⁴ Crisis Group interview, Banyamulenge leaders, Uvira and Kinshasa, November 2005.

¹⁴⁵ According to Banyamulenge leaders, this includes some 150 soldiers in the Seta military camp in Kinshasa, as well as dozens in Kapalata and Kamina camps.

¹⁴⁶ Mahano Ge Mahano published a communiqué in *L'Avenir* on 17 February 2006, available at <http://www.digitalcongo.net/fullstory.php?id=64678>; Crisis Group telephone interview, senior Mai-Mai commanders, South Kivu, March 2006.

¹⁴⁷ Crisis Group telephone interview, MONUC officials and Banyamulenge leaders, Kinshasa, February 2006.

¹⁴⁸ Crisis Group telephone interview, Banyamulenge leaders, Kinshasa, February 2006.

¹⁴⁹ Crisis Group telephone interview, UN officials, Uvira and Bukavu, March 2006.

¹⁵⁰ Crisis Group interview, local NGO, Uvira, March 2006.

¹⁵¹ This is a rough estimate. Only 13,659 voters registered in the Minembwe area, where much of the Banyamulenge population lives. It is possible another 25,000 registered in Fizi, Uvira and Mwenga and that 50,000 Hutu registered in the high plateau of Kalehe. In the territories of Masisi, Rutshuru and Nyiragongo and the town of Goma in North Kivu, around one million people registered, perhaps half Hutu and Tutsi.

win national assembly seats.¹⁵² It is also unlikely that the Banyamulenge, probably no more than 100,000 in a province of three million, will get more than one or two of the 36 seats in the South Kivu provincial assembly.¹⁵³ As the provincial assembly elects senators and governors, the Banyamulenge will likely be excluded from these posts as well.

There are many Banyamulenge in the RCD leadership, as there were in the rebel movement that brought Laurent Kabila to power in 1997. Men such as Vice President Azarias Ruberwa and the parliamentarian, Moise Nyarugabo, both from the sparsely populated high plateau of South Kivu, stand little chance of becoming either senators or members of parliament.¹⁵⁴

The RCD has lobbied to make Minembwe into a territory, which would guarantee a parliament seat for the Banyamulenge. In the Sun City peace deal, the signatories agreed to accept the new territories created by the belligerents. During the transition, however, most parties backtracked, leaving the RCD alone in insisting on maintaining the territories created in Bunyakiri and Minembwe.¹⁵⁵ Kabila's party argued Minembwe might be too small to become a territory, and the ministry of interior is to make a determination.¹⁵⁶ In early 2006, this dispute caused the RCD to threaten to withdraw from the transition. While Kabila has insisted the problem will be resolved, he is under intense pressure from the Fuliro, Bembe and Vira communities, who claim that Minembwe would cut into their territories.

There are many more Hutu and Tutsi in North Kivu, where 928,000 voters registered in the territories of Masisi, Rutshuru, Goma and Nyiragongo. Perhaps 30 to 40 per cent were Hutu or Tutsi, which would guarantee six to eleven seats in the national assembly if they vote on ethnic lines. However, the PPRD has been making inroads in Rutshuru, while the Hutu/Tutsi alliance the RCD has tried to forge is falling apart. Hutus in Rutshuru, in particular

east of the Virunga national park, have broken with Serufuli in the last year, repeatedly denouncing the manipulation of identity by Hutu and Tutsi leaders in Goma and disavowing any rwandophone identity.

There are historical reasons. Hutu organised an association of agriculturalists of the Virungas (MAGRIVI) in the early 1990s to defend their interests as the region became increasingly violent. This was linked to the Habyarimana regime in Rwanda and is alleged to have collaborated with the Interahamwe who fled to the Congo after the 1994 genocide.¹⁵⁷ Serufuli was also active in MAGRIVI and tried to create what he called a rwandophone alliance between Tutsi and Hutu but many of his fellow Hutu from Rutshuru resent what they see as Rwandan manipulation. When the rwandophone alliance protested in Goma in December 2004 against deployment of the national army in North Kivu, the Hutu mayor expressed his disapproval. The unearthing of mass graves in Rutshuru in September 2005 further fuelled resentment against Serufuli and the Tutsi.

Kabila's party has capitalised on this resentment by using two Hutu leaders – parliamentarian Sekimonyo wa Magango, a MAGRIVI founder, and Senator Nyabirungu Mwene Songa, a professor at the University of Kinshasa. In August 2005 Vital Kamerhe, secretary general of Kabila's party, visited Masisi and Rutshuru with these two on a campaign tour. Another party, the Party of Nationalists for Integral Development (PANADI), which also had ties to Habyarimana, is likewise active in the region and could take votes from the RCD.¹⁵⁸

Even if Serufuli and the RCD win all the Hutu and Tutsi votes in North Kivu, they will have only 20 to 30 per cent support in the province, as the Nande are more numerous, and the Hunde, Nyanga and Rega have old grievances with the RCD. Serufuli thus would not keep his position as governor, an ambition he has expressed to several diplomats in Kinshasa.¹⁵⁹

Serufuli and the PPRD have held extensive informal discussions about his future. The PPRD would like to co-opt him and drive a wedge between the Hutu and Tutsi communities in the east. They may even be willing to support his gubernatorial candidacy in the provincial assembly.¹⁶⁰ Serufuli's support for the dissidents should be seen as brinkmanship in order to improve his negotiating

¹⁵² Banyamulenge live in the territories of Uvira, Fizi and Mwenga.

¹⁵³ In the South Kivu provincial assembly, Fizi will get two or three seats, Mwenga three or four seats and Uvira six seats.

¹⁵⁴ Other Banyamulenge leaders include Bizima Karaha, the minister of foreign affairs in Laurent Kabila's first government and now a member of parliament; Benjamin Serukiza, the vice president of the truth and reconciliation commission; and Thomas Ntiratimana, the vice governor of South Kivu.

¹⁵⁵ Several cities and communes were maintained that Kabila had created, but for the most part these were projects launched by Laurent Kabila in 1997 and concerned towns that had grown so much that they merited legal recognition as cities and communes. This included Mwene-Ditu and Tshikapa.

¹⁵⁶ Crisis Group interview, PPRD officials, Kinshasa, March 2006.

¹⁵⁷ "Report on the situation of human rights in Zaire, prepared by the Special Rapporteur, Roberto Garretón", UN document E/CN.4/1997/6/Add1, 16 September 1996.

¹⁵⁸ Ibid.

¹⁵⁹ Crisis Group interview, diplomats, Kinshasa, November and December 2005.

¹⁶⁰ Crisis Group interview, PPRD officials, Kinshasa, March 2006.

position and as hedging his bets in case there is a hiccup in the transition and he needs to resort to his old alliances. In early 2006, a high-ranking official in Goma asserted that, "Serufuli has already gone over to Kabila. But he's still betting on two horses and continues to back Nkunda".¹⁶¹ However, many officials around Kabila, especially those from the Kivus, resent Serufuli and want him replaced as governor.

F. THE WAY FORWARD

The burgeoning crisis in the eastern Congo must be addressed both militarily and politically. Leaders in Kinshasa and Goma need to cope with ethnic reconciliation issues before the elections. Politicians should speak frankly about land issues, past massacres and ethnic hatred. At the same time, spoilers who use ethnicity as a pretext to protect their interests must be isolated and arrested.

1. Political solutions

North Kivu has been violent for thirteen years. During the last electoral season, 1993, when elections were scheduled but not held, disputes between the communities led to the killing of more than 7,000 civilians by government troops and militias. Land quarrels have existed at least since the forced immigration of Rwandan labour to Masisi by the Belgians in the last century. Around 300,000 people were brought to the Congo from Rwanda between 1937 and 1955.¹⁶² Conflict over land was exacerbated by creation of the Virunga national park in 1925, which takes over 2,000 of the 5,820 square kilometres of Rutshuru territory, leaving 850,000 people to live on the rest. The land registry and the courts that are supposed to resolve disputes barely function, and the local conflict resolution structures are skewed against Hutus and Tutsis and in favour of the seven other communities, who have formed a group against them.¹⁶³

The wars, in which Hutus and Tutsis played key roles, have created further resentment. Many Tutsi youths from the Kivus joined the Rwandan Patriotic Front (RPF)

rebellion in 1990. When it came to power after the 1994 genocide, many Congolese Tutsi moved to Rwanda, some into government jobs. This was followed by the massive arrival of predominantly Hutu refugees around Goma, Bukavu and Uvira in 1994. The back and forth border movement has contributed to the mistrust of other communities.

The new government should urgently address land reform by setting up a commission on land tenure. A stronger land registry is needed to demarcate ownership impartially. The government should also reinforce local courts so they can provide competent dispute resolution mechanisms. The erosion of the rule of law throughout the country has made violence appear the only way to assert rights.

Moreover, politicians and community leaders need to launch a frank national dialogue on ethnic reconciliation. The Hutu and Tutsi communities have both been the victim of massacres and individual Hutu and Tutsi commanders, often backed by Kigali, have in turn perpetrated them. The ethnic violence in North Kivu in 1993 and the massacres both of and by Tutsi in Makobola (1999), Kasika (1999), Kisangani (2002) and Gatumba (2004) all need to be investigated, as does the siege of Bukavu in 2004.¹⁶⁴ The transitional government has neglected reconciliation, though it was one of the main goals set in the peace deal. The Truth and Reconciliation Commission has been paralysed by political interests and mismanagement, while talks on an international tribunal have stalled. The feeling in Kinshasa is that no one is interested in looking into the past but it is crucial to revive a discussion of justice, reconciliation and accountability during the electoral period.

2. Military solutions

It is difficult to imagine a negotiated solution with Laurent Nkunda. Evidence suggests his troops were responsible for serious human rights abuses during the Kisangani massacre in 2002, the Bukavu mutiny in 2004 and the North Kivu fighting in late 2004. The UN has denounced him and asked member states to freeze his assets, while the transitional government issued an international warrant for his arrest in September 2005. Nkunda has recently demonstrated again that he will use any means necessary to undermine stability in the east.

¹⁶¹ Crisis Group interview, Goma, March 2006.

¹⁶² Chris Huggins and Koen Vlassenroot, "Land, migration and conflict in the eastern DRC", in *From the Ground Up* (Pretoria, 2005), pp. 129-130.

¹⁶³ The structure is called the Baraza of chiefs of different communities of North Kivu. Nine ethnic groups are represented in the structure, which is divided between the Hutu and Tutsi and the other communities – a Group of Two and a Group of Seven, as they are called. Leadership positions are elected, and Hutu and Tutsi have been excluded from the top posts. Crisis Group interview, civil society representatives, North Kivu, March 2006.

¹⁶⁴ Other massacres perpetrated by the Rwandan army and the RCD include: in and around the Rwandan refugee camps in 1996 and 1997, Kavumu in 1998, Ziralo in 2001, Walungu in 2003 and Nabiondo in 2004. Banyamulenge massacres include Baraka in 1996 and of Tutsi officers in army camps in Kinshasa, Kamina and Kisangani in 1998.

Local and national officials should convince ex-RCD officers with Nkunda to integrate into the national army. This approach has already led 1,500 83rd brigade soldiers to break with Nkunda. The transitional government also needs to work with community leaders to isolate the hardliners. Community-based efforts coupled with a real threat of military action succeeded in demobilising 14,000 soldiers in Ituri in 2004 and 2005.

MONUC is central to these steps. Its air and logistical support was essential for the national army's operations in Ituri and against the ADF-NALU in 2005. It says it lacks a mandate for offensive operations against Nkunda but in October 2004 the Security Council asked it to help Congolese authorities "ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice".¹⁶⁵ It is also authorised to "use all necessary means, within its capabilities and in the areas where its armed units are deployed, to deter any attempt at the use of force to threaten the political process and to ensure the protection of civilians under imminent threat of physical violence, from any armed group, foreign or Congolese".¹⁶⁶

IV. CONCLUSION

Elections are a step in the right direction. Congolese – in particular women, who turned out in large numbers – have shown their support for the process by registering heavily and voting for the constitution. Most are tired of a transitional government that shows little interest in lifting the population out of misery and has used power for personal enrichment. The ballot box is a way out of this situation. However, if not held properly, elections may just legitimise the status quo, while creating a new class of disenfranchised politicians who could try to challenge the result with violence. This is especially true in the east, where RCD hardliners could try to fuel chaos in North Kivu in the hope of maintaining a grasp on power. The electoral commission should set the final and realistic deadline – no later than mid-August – to prevent the unrest that could be caused by numerous incremental postponements.

Elections are only a part of a functioning democracy. Real stability will only come if democratic institutions such as courts, media and parliament are given real clout and laws are enforced. Now, however, courts do not punish abuse of power, and there is no culture of public service. Political advancement still comes through graft and intimidation. The logic of the ballot has not yet replaced the logic of the gun; it has merely become an appendix to it.

To ensure stability in a post-conflict democracy, checks and balances are more important than a presidential election. In a country that has never known peaceful democracy but has experienced extensive conflict, a political system able to rein in strongmen and ensure representation of all stakeholders, including women and ethnic minorities, is essential. But the new system has flaws and will only be partially able to curb the power excesses that have marked past decades. The courts are weak, under-funded and politicised – current Supreme Court justices all owe their positions to the president. The prime minister and parliament will not be equal to a president who can dismiss them if they are too critical. Without adequate funding and clout, parliamentary commissions will be poorly equipped either to discuss draft laws or oversee the executive. Furthermore, the current electoral law does not provide for adequate representation of women and minorities in politics.

Political parties are also relatively weak. In a context of weak party discipline, in which parliamentarians often change allegiance, the absence of list voting will legitimise strongmen at the expense of parties and create opportunities for "buying out" legislators after elections. Political opposition will be diluted, with the main opposition party – the UDPS – sitting out the elections. The absence of a

¹⁶⁵ United National Security Council Resolution 1565, 21 October 2004. Quoted in "DR Congo: Arrest Laurent Nkunda for War Crimes", Human Rights Watch, press release, 1 February 2006.

¹⁶⁶ United National Security Council Resolution 1592, 30 March 2005.

practical limit to the number of political parties – currently around 269 – is likely to fragment opposition further.

The attitude of many international and national leaders has been to hold elections first and change the political system after. “Impunity and corruption are endemic to the Congo; they have existed here for decades”, a diplomat said.¹⁶⁷ While this may be true, most Congolese deplore these ills, which could be even more difficult to weed out after a legitimate government is elected.

At least some important change is needed now, during the election run-up. If graft and corruption skew the polls, the Congolese will suffer the consequences at least for the next five years. And if the polls are not fair and inclusive, new dissidents – in the east and elsewhere – could disrupt the fragile peace. Most Congolese will measure the peace dividend not by the sum of foreign aid but by whether the system that governs them shows sign of change. The Congolese leadership is mainly responsible for the elections. But donors, who fund over 50 per cent of the national budget and have paid over 80 per cent of the electoral costs, also bear large responsibility.

Nairobi/Brussels, 27 April 2006

¹⁶⁷ Crisis Group interview, Kinshasa, November 2005.

APPENDIX A

MAP OF THE DEMOCRATIC REPUBLIC OF THE CONGO



APPENDIX B

MAP OF THE KIVUS



APPENDIX C

RESULTS AND PARTICIPATION RATES IN THE DECEMBER 2005 REFERENDUM

Province	Participation Rate by per cent	Results			
		Yes		No	
		Total Votes	Per Cent	Total Votes	Per Cent
Kinshasa	51.95	700,269	50.29	692,141	49.71
Bas Congo	61.39	553,391	73.58	198,706	26.42
Province Orientale	69.62	1,487,794	86.19	238,453	13.81
Katanga	57.41	1,516,182	89.34	180,967	10.66
Kasai Occidental	32.07	359,282	59.81	241,396	40.19
Kasai Oriental	30.06	437,013	79.34	113,823	20.66
North Kivu	77.44	1,739,240	96.67	59,940	3.33
South Kivu	77.14	1,090,871	97.60	26,854	2.40
Maniema	76.20	427,777	95.46	20,338	4.54
Equateur	67.70	1,178,362	84.62	214,191	15.38
Bandundu	46.38	920,465	87.40	132,750	12.60
Total	57.63	10,410,646	83.08	2,119,559	16.92

Source: Independent Electoral Commission, www.cei-rdc.org

APPENDIX D

DISTRIBUTION OF SEATS IN THE NATIONAL ASSEMBLY

Province	Number of Seats
Kinshasa	58
Bas Congo	24
Bandundu	57
Equateur	58
Province Orientale	63
North Kivu	48
South Kivu	32
Maniema	12
Katanga	69
Kasai Oriental	39
Kasai Occidental	40
TOTAL	500

APPENDIX E

MAIN POLITICAL PARTIES AND PRESIDENTIAL CANDIDATES

Political party	Presidential candidate	Electoral prospects
People's Party for Reconstruction and Democracy (PPRD)	Joseph Kabila ¹⁶⁸	Favourite for presidential elections. Substantial support throughout country, especially in Katanga, his home province, and Kivus, where Kabila is seen by many as the person who secured peace. Benefits from access to state resources as current head of government as well as his 12,000 to 15,000-strong presidential guard.
Movement for the Liberation of the Congo (MLC)	Jean-Pierre Bemba	Led former Ugandan-backed rebellion. Has significant campaign funds. Popular in home province of Equateur.
Forces of Renewal	Mbusa Nyamwisi	Coalition that includes Olivier Kamitatu, a former MLC leader from Bandundu. Nyamwisi is popular in Nande community in home province of North Kivu and part of Province Orientale.
Coalition of Congolese Democrats (CODECO)	Pierre Pay-Pay	Pay-Pay held several ministerial positions and was governor of the Central Bank under Mobutu. Affluent, backed by many former Mobutists, and popular in home Kivus.
Unified Lumumbist Party (PALU)	Antoine Gizenga	Gizenga was a Lumumbist rebel in the 1960s. Has widespread support in home province of Bandundu and Kinshasa.
Congolese Rally for Democracy (RCD)	Azarias Ruberwa	A former Rwandan-backed rebel, Ruberwa is unpopular in most of country due to Tutsi origin and Rwanda links but has gained some support for anti-corruption stance. Popular with Hutus and Tutsis in Kivus.
Christian Democracy (DC)	Diomi Ndongala	Diomi is a former minister of mines who was dismissed on charges of corruption. Also president of popular football club in Kinshasa. Could win votes in home province of Bas-Congo and Kinshasa.

¹⁶⁸ Kabila belongs to the People's Party for Reconstruction and Development (PPRD) but is campaigning as an independent in order to get the backing of other parties.

APPENDIX F

GLOSSARY

ADF/NALU	Allied Democratic Forces/National Army for the Liberation of Uganda, Ugandan rebel group active in the north-eastern Congo
AFDL	Alliance of Democratic Force for the Liberation of the Congo, rebel movement which brought Laurent Kabila to power in the first Congo war (1996-1997)
ANR	National Intelligence Agency
BERCI	Office of the Studies of Research and International Consulting, a polling group
CEI	Independent Electoral Commission
CIAT	International Committee in Support of the Transition, a body in Kinshasa that coordinates the actions of the most important donors to the Congo
CNS	National Sovereign Conference, convened in 1991-1992 by Mobutu to usher in a transition to democracy
EU	European Union
FAC	Congolese Armed Forces, established in 1997 as the army of Laurent Kabila and later of his son Joseph
FARDC	Armed Forces of the Democratic Republic of the Congo, the new integrated army composed of former belligerents now participating in the transitional government
FDLR	Democratic Forces for the Liberation of Rwanda, rebel movement comprised mostly of ethnic Hutu from Rwanda operating in the eastern Congo
FNL	National Forces for Liberation, Burundian rebel militia
GSSP	Special Group for Presidential Security, Joseph Kabila's presidential guard
HAM	High Authority of the Media, state media watchdog
JUFERI	Youth of the Union of Federalists and Independent Republicans, militia that carried out campaign of violence against Kasaians in Katanga in 1990s.
MAGRIVI	Association of Agriculturalists of the Virungas, association of Hutu farmers in North Kivu
Mai-Mai	Local militia recruited along tribal lines in the eastern Congo and supported by Kabila during the war
MLC	Movement for Liberation of the Congo, party led by Vice President Jean-Pierre Bemba, former Ugandan-backed rebel movement
MONUC	The United Nations Mission in the Democratic Republic of the Congo, established in 1999, now including 17,000 peacekeepers
PALU	Unified Lumbumbist Party, led by veteran politician Antoine Gizenga
PANADI	The Party of Nationalists for Integral Development, Hutu party in North Kivu
PDSC	Democratic Social Christian Party, led by the veteran opposition leader Andre Boboliko
PPRD	Party of the People for Reconstruction and Democracy, President Joseph Kabila's political party
RCD	Congolese Rally for Democracy, former Rwandan-backed rebel movement led by Vice President Azarias Ruberwa
RCD-ML	Congolese Rally for Democracy-Liberation Movement, former rebel movement based in North Kivu, led by Mbusa Nyamwisi
RCD-N	Congolese Rally for Democracy-National, former rebel movement allied to the MLC led by Roger Lumbala
RPF	Rwandan Patriotic Front, ruling political party in Rwanda
RTNC	Congolese National Radio and Television, state-run media
TPD	Everybody for Peace and Development, non-governmental organisation based in Goma and tightly linked to Governor Eugene Serufuli
UDPS	Union for Democracy and Social Progress, major opposition party led by Etienne Tshisekedi
UNAFEC	National Union of Congolese Federalists, Katangan political party led by Honourable Kisimba Ngoy
UNDP	United Nations Development Program

APPENDIX G

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with over 110 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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