



AFRICA POLICY BRIEF

The Democratic Republic of Congo: The Great Electoral Robbery (and how and why Kabila got away with it)

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Although the election of Félix Tshisekedi as president of the Democratic Republic of Congo (DRC) was hailed as ‘the first peaceful transition since independence’, the election was anything but a democratic exercise. Indeed, Martin Fayulu was the real winner, not Tshisekedi. Suspected electoral fraud at the legislative elections has returned a parliament in which Kabila’s Common Front for Congo coalition (Front commun pour le Congo – FCC) holds a large majority. This will allow Kabila to keep real power in most domains of government. By endorsing this outcome in the knowledge that it was fraudulently obtained, the West and Africa have robbed the Congolese people of their choice.

INTRODUCTION

DRC’s outgoing President Joseph Kabila, who was barred from standing for a third term, has found an entirely novel way of hanging on to power. African presidents have previously achieved this by amending or interpreting their

constitutions or by simply not organising presidential polls.¹ Joseph Kabila’s second and constitutionally last term ended in December 2016. He was unable to create the legal conditions for an additional term but managed to remain in power for two more years through a strategy the Congolese nicknamed ‘le glissement’. Under pressure from internal public opinion and international players, he was forced to organise elections which eventually took place on 30 December 2018. In this brief, we look at the weeks before the elections and at the unexpected results. We discuss the reaction of international partners, with a focus on the African multilateral institutions. We conclude by showing how Kabila managed to remain de facto in power by striking a deal with an opposition candidate and by having his electoral platform fraudulently win the parliamentary and provincial elections.

TOWARDS ELECTIONS

On 24 January 2019, Félix Antoine Tshisekedi was inaugurated as the fifth president of the DRC. For the first time in the country’s history, a president left office to be replaced by an elected successor, the son of the legendary opposition leader Etienne Tshisekedi, who had opposed Mobutu from the late seventies

onwards and continued his struggle against the Kabila regime. After his father's death in February 2017, Félix Tshisekedi became president of the historical opposition party Union for Democracy and Social Progress (Union pour la démocratie et le progrès social – UDSP).

This historic moment is not the result of a transparent democratic process – quite the contrary. Félix Tshisekedi was declared the winner of an unlikely electoral coup d'état based on manipulated results and an unexpected alliance.ⁱⁱ In reality, he obtained less than a third of the votes of his main competitor Martin Fayulu.

Outgoing President Kabila's second term had come to an end on 19 December 2016, but by delaying elections, he managed to remain in office for two more years. However, under pressure from Congolese public opinion led by the Episcopal Conference of the DRC (Conférence épiscopale nationale du Congo – CENCO) and the international community, with neighbouring countries in a leading role, it became clear that he would not succeed in amending the constitution and standing for a third term. Instead, he appointed a candidate from within his party to succeed him. In August 2018, after an intense struggle among powerful interest groups within the regime, Ramazani Shadary from Maniema province was put forward as the presidential majority's compromise candidate. In November 2018, six weeks before the elections, the main political families of the opposition met in Geneva. They united in a single platform: Lamuka ('Awake' in Lingala) and, encouraged by international players, agreed on a single presidential candidate: Martin Fayulu. Yet, 24 hours after Fayulu's designation, Félix Tshisekedi and Vital Kamerhe reneged on their promises, left Lamuka and set

up a new coalition called Cach (Cap pour le changement).

The electoral campaign was launched with three main candidates for the presidency: Shadary on behalf of outgoing president Kabila and his supporters; Fayulu for Lamuka with the support of opposition leaders Moïse Katumbi and Jean-Pierre Bemba, who were barred from participating, and Félix Tshisekedi, who could rely on his traditional UDPS constituency and the supporters of Vital Kamerhe. The expectation of many observers, both local and international, was that the Kabila camp was going to have Shadary elected independently of the vote of the people. The controversial 'voting machines' were feared to be the most important instruments for fabricating the required fake results.

The first weeks of the campaign were relatively calm, with candidates travelling relatively freely throughout the country and able to address their potential voters but became grimmer when on 13 December a fire destroyed an Independent National Electoral Commission (Commission Electorale Nationale Indépendante – CENI) warehouse in Kinshasa. Many voting machines and vehicles were destroyed. In the same period, campaign rallies became more violent in cities such as Lubumbashi, Kalémie and Mbuji-Mayi. An ethnic/political clash in Yumbi, on the border with Congo-Brazzaville, caused the death of at least 535 citizens, resulting in more than 16,000 people fleeing across the border. The CENI postponed the elections in Yumbi, Beni and Butembo, districts considered pro-Fayulu. In this polarising climate, the elections, scheduled for 23 December, were postponed for another week.

THE TRUTH OF THE BALLOT BOXES?

On Sunday 30 December 2018, two years after the constitutional end of Kabila's term, the

Congolese electorate went to vote amid irregularities, confusion and intimidation. That same evening – thanks to the voting machines – the authorities received the first results and realised that Shadary's scores were too far behind the other two main candidates to proclaim him winner of the elections, and that Martin Fayulu would most probably obtain an absolute majority. The regime approached the Tshisekedi camp and offered their candidate the presidency to avoid power falling into the hands of Fayulu, and more importantly, those of his powerful backers Bemba and Katumbi.ⁱⁱⁱ This scenario allowed Kabila's FCC to remain in control, in combination with its overwhelming victory in the parliamentary and provincial elections which were held under the same fraudulent conditions as the presidential poll. This also meant that Kabila would remain at the centre of the parallel networks which have governed the country since Mobutu's days.

On 10 January 2019, the CENI proclaimed the results of the presidential elections: Tshisekedi was declared winner with 38.6 % of the vote, fewer than 700,000 votes ahead of Martin Fayulu (34.8 %). FCC candidate Ramazani Shadary was third with 23.8 %. But leaked data from CENI's voting computers and data collected by CENCO's 40,000 observers gave an entirely different picture. According to these figures, Martin Fayulu secured a crushing victory with about 60 % of the votes, with Tshisekedi and Shadary lagging far behind with around 19 % each.^{iv} Fayulu immediately challenged the results, but the constitutional court confirmed them.

Likewise, the official results of the parliamentary and provincial elections were highly suspicious, as the FCC, whose presidential candidate officially obtained under 25 % of the vote (and in reality significantly less), secured an absolute majority in the national and provincial

assemblies. However, it was not possible for CENCO to compute the results for these elections independently because they were not displayed at the compilation centres, thus rendering verification impossible.^v That the FCC's candidate obtained less than 20 % of the vote at the presidential poll, while the FCC secured a large majority in Parliament, is, of course, not credible. Nevertheless, the fraud in these elections has turned out to be crucial, as the FCC's majority in the National Assembly and the Senate, which is indirectly elected by the provincial assemblies, allows the FCC to keep Tshisekedi on a leash.

AFRICA AT THE FOREFRONT

Between the publication of the official results and the inauguration of the new head of state, an intense round of diplomatic arm-wrestling took place between different African institutions. Since the fall of Goma in November 2012 during the M23 crisis, African multilateral institutions had successfully claimed ownership over the Congolese conflict as an African issue. The result of the diplomatic competition between African and Western interests on the one hand, and between African institutions like the Southern Africa Development Community (SADC), International Conference of the Great Lakes Region (ICGLR), East African Community (EAC) and the African Union (AU) on the other hand, was the deployment of an entirely SADC-steered new United Nations Organization Stabilization Mission in the DRC (MONUSCO) peace-keeping brigade which effectively contributed to the neutralisation of M23. This was a decisive turning point in the role played by the different players in the Congolese conflict. Africa had assertively and successfully taken the lead.

In the last years of Kabila's second term and the two years of his glissement, it became

increasingly clear that the African multilateral organisations considered stability in Congo as one of their top priorities, aware as they were of the devastating impact another implosion of the DRC could have on the wider region and its individual countries.

SADC and Angola were particularly influential during the last year of Kabila's second term. They pressurised the regime, together with Congolese actors spearheaded by CENCO, to sign the December 2016 Sylvester Agreement. This agreement stipulated that Kabila would quit office before the end of 2017 and hand over power to an elected successor instead of creating the constitutional conditions for a third term. In 2017, Kabila lost two important allies in SADC: in November, Emerson Mnangagwa replaced Robert Mugabe in Zimbabwe, and in South Africa, the African National Congress (ANC) resisted Jacob Zuma's attempt to arrange his own succession. In December 2017, Zuma was replaced by Cyril Ramaphosa as ANC chairman, and two months later Ramaphosa became president of South Africa. At the end of 2017, it looked like Joseph Kabila had lost his major allies on the continent, apart from Presidents Nkurunziza of Burundi and Magufuli of Tanzania, and that the African multilateral institutions would take the lead to accompany Congo in a political transition. The fact that Rwandan President Paul Kagame was elected AU chairman for 2018 contributed to this feeling: his AU presidency brought him into a very strategic position to steer the continent's reaction to the Congolese electoral process.

THE ELECTORAL HOLD-UP ENDORSED

In the days and hours before Tshisekedi's inauguration, intensive diplomatic activity took place within and between African multilateral institutions, with SADC and the AU as key arenas. After the announcement of the final results and Tshisekedi's victory, an intensive

intra-African diplomacy effort was deployed with sometimes contradictory signals, culminating in two statements with opposite messages, both launched from Addis Ababa on 17 January. First, SADC congratulated and encouraged the Congolese government and the CENI for holding 'generally peaceful elections' and called upon the international community to respect Congo's sovereignty and support the government. Only hours later, another meeting was held at the initiative of AU chair Paul Kagame with different African countries and institutions but without being an official AU meeting. The heads of state and government present agreed to dispatch urgently a high-level delegation to the DRC to interact with all Congolese stakeholders, with the view of reaching a consensus on a way out of the post-electoral crisis. They called upon the Congolese government to postpone the process to create the space for this interaction. But the Congolese authorities refused that scenario, the constitutional court endorsed the results of the electoral commission on 19 January, and the AU delegation's visit, scheduled for 21 January, was cancelled. On 24 January, Félix Tshisekedi was inaugurated as the DRC president.

The neighbouring countries and the wider region faced a sharp dilemma. On the one hand, there was a new political construction coming from a grossly manipulated electoral process with no guarantees for sustainable stability in Congo in the medium- to long-run. On the other hand, this new construction was seen as the only way to avoid immediate chaos and violence. It was very clear that proclaiming Ramazani Shadary, Kabila's anointed successor, as winner would have triggered violent popular protests. It was equally clear that the establishment would never quit and relinquish power to Martin Fayulu, who obtained three times as many votes as Tshisekedi. After a brief hesitation, the African multilateral institutions

opted for short-term stability, and almost immediately after that, Western diplomacies did the same. They all endorsed Tshisekedi's presidency.

Congolese public opinion likewise accepted the official results with a lot of pragmatism. That Kabila did not manage to secure a third term and was unable to crown Ramazani Shadary as his successor, and that he was succeeded by an opposition member without major violence and chaos, was already much more than many people had dared to hope for. But of course, most people were aware that this was not the outcome of a transparent democratic process.

Félix Tshisekedi started his presidency with a few signs that he genuinely wanted to improve the human rights situation and take up the struggle against the overwhelming corruption that Mobutu institutionalised and the Kabila regimes continued to practice. But the real instruments of power and control remained in the hands of the Kabila camp. The initial arm-wrestling for control resulted in the first clash over the indirect elections for the Senate, where the FCC obtained more than 80 % of the seats.^{vi} This is a strong signal that the DRC is not heading towards a power-sharing coalition. The definitive evidence of the post-election power balance will be in the appointment of a prime minister. This creates the very ambiguous situation in which Congo's partners, if they want to make the political alternation a reality, have to protect and reinforce the space for Congo's new president, despite the fact that he did not win the election and is faced with a parliament controlled by the Kabila camp.

The new political constellation resulting from the manipulated elections is fragile. President Tshisekedi is in a very uncomfortable position between Kabila's FCC with its overwhelming majority in Parliament and in the provinces, and

international partners who are encouraging the new president to take as much space from Kabila as possible but at the same time are very aware that his presidency is the result of an undemocratic election.

Tshisekedi's relationship with the electorate is also complex. A considerable section of public opinion seems to give his presidency the benefit of the doubt. If he is not able to meet partly at least the huge expectations of change, public opinion might soon express its discontent and frustration, possibly even in a violent way. The riots in Kinshasa and in several cities of the Kasai during the hours and days following the senatorial election were an important indication. Félix Tshisekedi will have huge difficulties gaining control over the security services and has no experience at all in dealing with military and conflict-related issues. He will be very vulnerable to the manipulation of armed groups by local, provincial and national politicians.

The choice of the African multilateral institutions to endorse Tshisekedi's much contested 'victory' has been decisive. They decided to do so for short-term security reasons: it seemed the best and even only possible way to avoid chaos and violence. Félix Tshisekedi will have to give strong signals that he will be able to consolidate the relative calm. If not, the African institutions' attitude towards him and his presidency might change rapidly.

Above all, what are the chances that Félix Tshisekedi will be able to address the culture of kleptocracy that the Kabila regime inherited from Mobutu but failed to change? The FCC has consolidated its position in the institutions and seems determined to leave as little space as possible for Félix Tshisekedi to make a difference.

CONCLUSION

This outcome raises crucial questions. What had been hailed as ‘the first peaceful transition since the DRC’s independence’ has become a denial of democracy. On 13 March, Presidents Uhuru Kenyatta and Emmanuel Macron asked Tshisekedi to ‘emancipate himself from Kabila,’ while also stating that the electoral outcome was ‘contested and contestable,’ thus confirming the suspicion of fraud. But how can Tshisekedi ‘emancipate’ himself, knowing he is at the mercy of his predecessor through the majority Kabila commands in both houses of parliament and at the provincial level? By privileging what they saw as short-term stability, African and Western diplomacies have instead created the conditions for a potentially violent stalemate in the DRC. Indeed, the activities of armed groups remain intense in North and South Kivu, Tanganyika and Ituri, with high potential for further escalation and cross-border extension. Beyond this concrete outcome, Africa and the West have sent out a signal that may be disastrous for Africa and the world. While claiming to support genuine democracy, they have accepted an outcome they knew was anything but

democratic, and in so doing have betrayed the right of the Congolese people to elect their leaders. This signal strongly discredits their own alleged commitment to democracy and the exercise of political rights. This ambiguous policy is not just addressed to the Congolese, but to people elsewhere who struggle against fraudulent dictatorships that cling to power at any price.

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ⁱ Reyntjens, F. (2016) ‘The Struggle Over Term Limits in Africa. A New Look at the Evidence’. *Journal of Democracy* 27(3). 61-68.

ⁱⁱ Wilson, T., Blood D. and Pilling, D. (2019) Congo voting data reveal huge fraud in poll to replace Kabila. *Financial Times*, 15 January. Available at: <https://www.ft.com/content/2b97f6e6-189d-11e9-b93e-f4351a53f1c3>

ⁱⁱⁱ *Ibidem*.

^{iv} Rolley, S. (2019) ‘Elections en RDC: où se trouve la vérité des urnes?’. *RFI*, 15 January. Available at: <http://www.rfi.fr/afrique/20190115-elections-rdc-trouve-verite-urnes>

^v Telephone interview with abbé Donatien Nshole, General Secretary of CENCO.

^{vi} Berwouts, K. (2019) DRC: President Tshisekedi’s leash just got a little tighter. *African Arguments*, 2 April.