



## THE FOUNDATION FOR DEMOCRATIC ADVANCEMENT

### Electoral Fairness Research

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### **Contents:**

#### Political Background on Democratic Republic of the Congo

1. Laws and regulation on equality of political content of media and broadcasters
2. Laws and regulations on equality of candidate and party influence
3. Laws and regulations on equality of electoral finance
4. Laws and regulations on equality of voter say

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## **Political Background on Democratic Republic of the Congo**

President Mobutu was overthrown on 17 May 1997. Subsequently, the AFDL, headed by president Laurent-Desire Kabila, seized power. After seizing power, Laurent-Desire Kabila renames the country Democratic Republic of Congo (DRC) and wants to limit the influence of Uganda and Rwanda in DRC. Shortly after, he was accused of tribalism by the Congolese Rally for Democracy (RCD), an armed group composed of Tutsi refugees and demobilized Congolese soldiers.

President Laurent-Desire Kabila was assassinated in January 2001. His son Joseph Kabila, then commander in chief of the ground forces, succeeded him as the head of the state.

In October 2002, the new president was successful in negotiating the withdrawal of Rwandan forces occupying eastern Congo; two months later, the Pretoria Accord was signed by all remaining warring parties to end the fighting and establish a government of national unity. A transitional government was set up in July 2003. Joseph KABILA as president and four vice presidents represented the former government, former rebel groups, the political opposition, and civil society. The transitional government held a successful constitutional referendum in December 2005 and elections for the presidency, National Assembly, and provincial legislatures in 2006. The National Assembly was installed in September 2006 and KABILA was inaugurated president in December 2006. Provincial assemblies were constituted in early 2007, and elected governors and national senators in January 2007. The next national elections are scheduled for November 2011.

### **EXECUTIVE**

#### **Government**

Type: Republic; highly centralized with executive power vested in the president.

Independence: June 30, 1960 (from Belgium).

**Chief of state:** President Joseph KABILA (since 17 January 2001)

**Head of government:** Prime Minister Adolphe MUZITO (since 10 October 2008)

**Cabinet:** Ministers of State appointed by the president

**Elections:** under the new constitution the president elected by popular vote for a five-year term (eligible for a second term); elections last held on 30 July 2006 and on 29 October 2006 (next to be held on 27 November 2011); prime minister appointed by the president

**Constitution:** The DRC has had numerous constitutions, constitutional amendments, and transitional constitutions since independence. The currently operative constitution was approved by 84% of voters in a December 2005 referendum and officially promulgated in February 2006.

## Branches:

EXECUTIVE--President is head of state. The President nominates the Prime Minister, who is the head of government, and, together with his/her Cabinet, is approved by the parliament.

## LEGISLATIVE

The legislature consists of a Senate (108 seats; members elected by provincial assemblies to serve five-year terms) and a National Assembly (500 seats; 61 members elected by majority vote in single-member constituencies, 439 members elected by open list proportional-representation in multi-member constituencies to serve five-year terms)

Elections: Senate - last held on 19 January 2007 (next to be held on 13 June 2012); National Assembly - last held on 30 July 2006 (next to be held on 27 November 2011)

## JUDICIARY

Constitutional Court; Appeals Court or Cour de Cassation; Council of State; High Military Court; plus civil and military courts and tribunals

Administrative subdivisions: Eleven provinces including the capital city, Kinshasa.

## **THE CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO, 2005 (Adopted by the National Assembly on May 13, 2005, and approved by the Congolese people by the referendum of December 18 and 19, 2005.) (Preamble and selected Articles)**

### **PREAMBLE**

We, the Congolese People,

United by destiny and history around the noble ideas of liberty, fraternity, solidarity, justice, peace and work;

Driven by our common will to build in the heart of Africa a State under rule of law and a powerful and prosperous Nation based on real political, economic, social and cultural democracy;

Considering that injustice and its corollaries, impunity, nepotism, regionalism, tribalism, clan rule and patronage are, due to their manifold vices, at the origin or the general decline of values and the ruin of the country;

Affirming our determination to safeguard and consolidate national independence and unity by respecting our positive diversities and particularities;

Reaffirming our adherence and attachment to the *Universal Declaration of Human Rights*, the *African Charter of Human and Peoples' Rights*, the United Nations Conventions on the Right of the Child and the Rights of Women, particularly to the goal of equal representation of men and women in the institutions of the country, as well as to the international instruments relating to the protection and promotion of human rights;

Driven by the will to see all African States united and working together with a view to promoting and consolidating African unity through the continental, regional and sub-regional organizations in order to offer better perspectives for development and socio-economic progress to the peoples of Africa;

Committed to the promotion of mutually beneficial international cooperation and the rapprochement of the peoples of the world, while at the same time respecting their respective identities and the principles of sovereignty and territorial integrity of each State;

Reaffirming our inalienable and immutable right to organize ourselves freely and to develop our political, economic, social and cultural life in accordance with our own genius;

Conscious of our responsibilities before God, the Nation, Africa and the World;

Declare to solemnly adopt this Constitution.

## **TITLE I GENERAL PROVISIONS**

### **Chapter 1 The State and Sovereignty Section 1 The State**

#### **Article 1**

The Democratic Republic of the Congo is, within its borders of 30 June 1960, a State based on the rule of law, independent, sovereign, united and indivisible, social, democratic and secular.

Its motto is “Justice-Peace-Work.”

#### **Article 2**

The Democratic Republic of the Congo consists of the city of Kinshasa and 25 provinces which possess legal personality.

The distribution of powers between the State and the provinces takes place in accordance with the provisions of Title IV of this Constitution.

#### **Article 3**

The provinces and the decentralized territorial entities of the Democratic Republic of the Congo possess legal personality and are managed by local authorities.

They enjoy administrative freedom and managerial autonomy with regard to their economic, human, financial, and technical resources.

#### **Article 4**

New provinces and territorial entities may be created by dismemberment or by reorganization under the conditions prescribed by the Constitution and by law.

## **Section 2**

### **Sovereignty**

#### **Article 5**

National sovereignty belongs to the people. All power emanates from the people as exercised directly by way of referendum or elections or indirectly through their representatives.

The law determines the conditions for the organization of elections and of the referendum.

Suffrage is universal, equal and secret. It is direct or indirect.

Without prejudice to the provisions of Articles 72, 102 and 106 of this Constitution, all Congolese of both sexes who are over the age of eighteen and enjoy their civil and political rights are entitled, under the conditions prescribed by law, to vote and to stand at elections.

#### **Article 6**

Political pluralism is recognized in the Democratic Republic of the Congo.

Every Congolese who enjoys his/her civil and political rights has the right to create a political party or to become a member of a political party of his/her choice.

The political parties participate in the expression of the popular will, the strengthening of the national conscience and civic education. They form and exercise their activities freely while respecting the law, public order and morality.

The political parties are obliged to respect the principles of pluralist democracy, national unity and sovereignty.

The political parties may receive public funds from the State for the financing of their electoral campaigns and other activities under the conditions defined by the law.

#### **Article 7**

No one may establish, in any form whatsoever, a single party on all or part of the national territory.

The establishment of a single party constitutes a crime of high treason punishable by law and not subject to the statute of limitations.

#### **Article 8**

Political opposition is recognized in the Democratic Republic of the Congo. The rights linked to its existence, its activities and its fight for the democratic conquest of power are sacred. They may not be subject to limits other than those which are imposed by this Constitution and the law on all parties and political activities.

An organic law determines the status of political opposition.

## **Chapter 2**

### **Nationality**

#### **Article 10**

Congolese nationality is one and exclusive. It may not be held together with another nationality.

The Congolese nationality is obtained either by origin or by individual acquisition.

Of Congolese origin are all persons who belong to ethnic groups whose members and territory formed what has become the Congo (presently the Democratic Republic of the Congo) upon its independence.

An organic law determines the conditions for the recognition, acquisition, loss and recovery of Congolese nationality.

### **TITLE II**

## **HUMAN RIGHTS, FUNDAMENTAL LIBERTIES AND THE DUTIES OF THE CITIZEN AND THE STATE**

### **Chapter 1**

#### **Civil and Political Rights**

#### **Article 11**

All human beings are born free and equal in dignity and rights. However, the enjoyment of political rights is granted to Congolese [nationals] only, save for exceptions provided by the law.

#### **Article 12**

All Congolese are equal before the law and have the right to equal protection by the law.

#### **Article 13**

No Congolese person may, in matters of education or access to public functions or any other matter, be subject to any discriminatory measure, whether it results from a statute or from a measure of the executive, on the ground of his/her religion, family origin, social condition, residence, views or political convictions, or membership of a certain race, ethnicity, tribe, cultural or linguistic minority.

#### **Article 14**

The public authorities see to the elimination of all forms of discrimination against women and ensure the protection and promotion of their rights.

They take in all areas, and most notably in the civil, political, economic, social and cultural areas, all appropriate measure in order to endure the full realization of the potential of woman and their full participation in the development of the nation.

They take measures in order to fight all forms of violence against women in their public and private life.

Women are entitled to equitable representation in national, provincial and local institutions.

**Article 15**

The public authorities are responsible for the elimination of sexual violence used as an instrument in the destabilization and displacement of families.

**Article 16**

The individual is sacred. The State has an obligation to respect and protect him/her.

All persons have the right to life, physical integrity and to the free development of their personality, while respecting the law, public order, the rights of others and public morality.

No one may be held in slavery or in a similar condition.  
No one may be subject to cruel, inhumane or degrading treatment.

No one may be submitted to forced or compulsory labor.

**Article 17**

Individual liberty is guaranteed. It is the rule, detention the exception.

No one may be prosecuted, arrested, detained or sentenced except by virtue of a law and in the manner which the latter prescribes.

Any person accused of a violation of the law is presumed innocent until his/her guilt has been proven by a final judgement.

**Article 22**

All persons have the right to freedom of thought, conscience and religion.

All persons have the right to express their religion or their convictions, alone or together with others, both in public and in private, by worship, teaching, practices, carrying out of rites and a religious way of living, subject to respect for the law, public order, morality and the rights of others.

**Article 23**

All persons have the right to freedom of expression.

This right implies the freedom to express their opinions and convictions, in particular by speech, in print and through pictures, subject to respect for the law, public order, and morality.

**Article 24**

All persons have the right to information.

The freedom of the press, the freedom of information and broadcasting by radio and television, written press or any other means of communication are guaranteed, subject to respect for the law, public order and the rights of others.

The law determines the conditions for the exercise of these liberties.

#### **Article 25**

The freedom of peaceful meetings without weapons is guaranteed subject to respect for the law, public order and morality.

#### **Article 26**

The freedom of demonstration is guaranteed.

All demonstrations on public roads or in open air oblige the organizers to inform the competent administrative authority in writing.

### **Chapter 2**

#### **Economic, Social and Cultural Rights**

#### **Article 36**

Work is a sacred right and duty for every Congolese.

The State guarantees the right to work, protection against unemployment and an equitable and satisfactory pay, thus ensuring the worker as well as his/her family of a life in accordance with human dignity, together with all other means of social protection ...

#### **Article 37**

The State guarantees the freedom of association.

The public authorities cooperate with the associations which contribute to the social, economic, intellectual, moral and spiritual development of the population and to the education of its citizens.

#### **Article 43**

All persons have the right to a school education. It is provided by national education.

National education consists of public establishments and approved private establishments.

The law defines the conditions for the creation and functioning of these establishments.

The parents have the right to choose the way in which their children are educated.

Primary education is compulsory and free in the public establishments.

#### **Article 44**

The eradication of illiteracy is a national duty, the fulfilment of which the Government must

elaborate a specific program.

#### **Article 45**

Education is free.

All persons have access to establishments of national education without discrimination on grounds of origin, race, religion, sex, political or philosophical opinions, physical, mental, or sensorial condition in accordance with their capacities.

#### **Article 49**

Aged and handicapped persons have the right to special measures of protection with regard to their physical, intellectual and moral needs.

The State has the duty to promote the presence of handicapped persons in national, provincial and local institutions.

An organic law determines the conditions for the application to this right.

### **Chapter 3**

#### **Collective Rights**

#### **Article 50**

The State protects the rights and legitimate interests of Congolese nationals inside as well as outside the country.

Subject to reciprocity, foreign nationals who are legally present in the national territory enjoy the same rights and liberties as the Congolese, with the exception of political rights.

#### **Article 51**

The State has the duty to ensure and promote the peaceful and harmonious coexistence of all ethnic groups of the country.

It also ensures the protection and promotion of vulnerable groups and of all minorities.

#### **Article 58**

All the Congolese have the right to enjoy national wealth.

The State has the duty to redistribute the wealth equitably and to safeguard the right to development.

#### **Article 60**

The respect of human rights and fundamental liberties guaranteed by the Constitution is incumbent on the public authorities and all persons.

#### **Article 61**

**In no case, not even when the state of siege or the state of emergency has been proclaimed**

**in accordance with Articles 87 and 88 of this Constitution, is a derogation admissible from the following rights and fundamental principles:**

- The right to life;
- The prohibition of slavery and servitude;
- The principle of legality of offenses and penalties;
- The right to a defense and the right to a remedy;
- The prohibition of imprisonment for debt;
- The freedom of thought, of conscience and religion.**

## **Chapter 4**

### **The Duties of the Citizen**

#### **Article 64**

All Congolese have the duty to oppose any individual or group of individuals who seize power by force or who exercise it in violation with the provisions of this Constitution.

Any attempt to overthrow the constitutional regime constitutes an offense against the nation and the State, an offense which is not subject to the statute of limitations. It is punished in accordance with the law.

#### **Article 85**

When grave circumstances constitute a present threat to the independence or the integrity of the national territory or when they provoke the disruption of the proper functioning of the institutions, the President of the Republic proclaims a state of emergency or a state of siege after coordination with the Prime Minister and the Presidents of the two Chambers.

## **1. Laws and regulations that pertain to the political content of the media and broadcasters before, during, and after an election**

### **Main Research Findings:**

1. The Constitution guarantees the freedom of expression, freedom of opinion, freedom of speech and freedom of the media in the DRC. Citizens are free to express their opinions and convictions, subject to respect for the law, public order, and morality. (Source: DRC Constitution, Articles 23.)
2. The state guarantees the right to information and freedom of the press, subject to respect for the law, public order, and morality. (Source: DRC Constitution, Articles 24.)
3. The state guarantees the right to peaceful meetings and demonstration, without weapons and subject to respect for the law, public order and morality. (Source: DRC Constitution, Articles 25-26.)
4. The law liberalized state-run media in 1996. The law outlined the modalities governing freedom of the press and established media plurality, independence, and neutrality. This allowed for a wide variety of print, radio, television, and other news sources to become available in the DRC. The law authorized every individual and legal entity to set up a media company, radio station, or television station, subject to respect for the law, public order, morality, and respect for others' rights. (Source: Law No. 96/002.)
5. Media ownership concentration laws do not restrict ownership of media outlets. The law ensures that all audio-visual communication is free and available to everyone and that every individual or legal entity has the right to produce, transmit, and receive media. Public media is pluralist and a single opinion or group of individuals cannot monopolize it for their benefit. This includes political parties and political representatives. (Law No. 96/002, Article 51 and 53.)
6. There is vast number of media sources and institutions available in the DRC. The Ministry of Press and Information reported 94 Radio Stations, 45 television stations, and 201 newspaper institutions operating throughout the country in 2004. The top radio station is National Radio (state-owned), followed by Golfe FM (privately owned). Of the top three television stations, only National Television is a public channel. And of the three most popular news agencies, only Agence Congolaise de Presse is state-owned. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 72; Ministry of Press and Information, Activity Report of the Commission responsible for checking the conformity of press activities, Kinshasa, January 2004, 2-3.)
7. The plurality of news sources in the DRC is limited to the capital and other urban centers. Information is, and is becoming more widely available, to the marginalized rural population, however, illiteracy is rampant in the outlying provinces and rural areas (67.2%). Radio broadcasts are the most popular and utilized form of media in these areas. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 76-77.)

8. Media outlets can broadcast foreign media programs, subject to respect for the law, public order and morality. However, access to international media is expensive and limited to the urban centers and the wealthy. The government monitors international news. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 74, 76-77.)
9. Rural inhabitants make up between 50 and 60% of the population of the DRC. (Source:
10. Upon request, the government may subsidize private broadcast and print media companies if half of their content is cultural, educational, and social. (Source: Law No. 96/002, Section 18.)
11. Despite a vast number of sources, pro-opposition and pro-government positions divide the majority of media outlets, and each side only provides information that will advance those interests. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 77.)
12. Media in the DRC is relatively independent, which facilitated electoral competition during the 2006 campaign. However, presidential candidates, eliminating any chance for neutrality, owned the majority of radio and television stations and newspapers operating in the DRC. (Source: International Crisis Group, "Securing Congo's Elections: Lessons from the Kinshasa Showdown," Policy Briefing Africa 42:2 (2006), 10.)
13. State-run media disseminates the ruling party's viewpoint and agenda. Any news relative to opposition political movements is assigned negligible time on radio, television, and in print. The government does not enforce freedom of the press; to the contrary, it works to silence the opposition in order to satisfy its interests. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 77.)
14. Political forces control media outlets, both directly and indirectly. Politicians invest in media not to share information or make a profit, but to help gain and maintain power and influence in the DRC. (Source:
15. In 2004, the law established the High Council for Audiovisual Media and Communication (HAM) and the Constitution guaranteed it legal personality in 2005. The HAM is an independent democracy-supporting institution with a mandate to guarantee the liberty, neutrality, and protection of media outlets in accordance with the law. It is the regulator of both print and broadcasting sectors of the media. (Source: DRC Constitution, Article 212.)
16. The HAM ensures equitable access of political parties, associations and citizens to the official means of information and communication. (Source: DRC Constitution, Article 212.)
17. In order to prevent political manipulation of state-run media, the HAM drafted a Code of Conduct with the participation and support of various media outlets, representatives of public institutions, and political party representatives. It ensures parties and candidates equitable access to public media during election campaigns. (Source: Democratic Republic of Congo Ministry of Human Rights. Implementation of the African Charter on Human and Peoples Rights (Period – From July 2003 to July 2007), Kinshasa, June 2007. )

18. HAM guidelines allowed presidential candidates to broadcast their campaign messages and participate in political debates during the campaign period. Every candidate was allocated 90 minutes of radio and television airtime, allowed to take part in two debates and express their political message three times on TV, and expected to broadcast pre-recorded campaign messages within the legal time frame of the electoral campaign. (Source: International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 22.; Denis Kadima and Dieudonné Tshiyoyo 2009, “Chapter 4: Democratic Republic of Congo” IN Denis Kadima and Susan Booysen (eds) Compendium of Elections in Southern Africa 1989-2009: 20 Years of Mulitparty Democracy, EISA, Johannesburg, 117-118.)

19. Despite efforts and official rules to govern and promote fair conduct during the election campaign, reports that both the public and private media violated these regulations are common. Political parties levelled criticism against the HAM for its inability and unwillingness to enforce guidelines and for its alleged pro-Kabila position. (Source: Denis Kadima and Dieudonné Tshiyoyo 2009, “Chapter 4: Democratic Republic of Congo” In Denis Kadima and Susan Booysen (eds) Compendium of Elections in Southern Africa 1989-2009: 20 Years of Mulitparty Democracy, EISA, Johannesburg, 117-118.)

20. Radio Television Nationale Congolaise (RTNC) is the state broadcaster and the National News Agency (ACP) the state print media. Both are required to be independent, objective, neutral, and account for the principle of equality. The RTNC and ACP cannot be monopolized by one person or group.(Source: SADC Media Law: A Handbook for Media Practitioners vol. 3. “A comparative overview of media laws and practice in Lesotho, Tanzania and the Democratic Republic of the Congo.” (Konrad Adenauer Foundation, Johannesburg, 2005), 105-149.)

21. Incumbent President Kabila, his administration, and other affiliated political partners, dominate media in the DRC. The opposition must rely on private networks to get their political message across during and between campaigns. (Source: Denis Kadima and Dieudonné Tshiyoyo 2009, “Chapter 4: Democratic Republic of Congo” IN Denis Kadima and Susan Booysen (eds) Compendium of Elections in Southern Africa 1989-2009: 20 Years of Mulitparty Democracy, EISA, Johannesburg, 117-118.)

22. There is no body to enforce compliance with this act and no consequence for non-compliance. There are no provisions for media not controlled by the state and no provisions limiting media ownership. (Source: SADC Media Law: A Handbook for Media Practitioners vol. 3. “A comparative overview of media laws and practice in Lesotho, Tanzania and the Democratic Republic of the Congo.” (Konrad Adenauer Foundation, Johannesburg, 2005), 105-149.)

23. The government has the power to temporarily shut down television or radio stations at any time. (Source: SADC Media Law: A Handbook for Media Practitioners vol. 3. “A comparative overview of media laws and practice in Lesotho, Tanzania and the Democratic Republic of the Congo.” (Konrad Adenauer Foundation, Johannesburg, 2005), 115.)

24. The state grants media licenses. Any person wanting to operate broadcast or print services is required to obtain a license from the Ministry of Information, Press, and National Communication and register with the HAM. (Source: Law 96/002, Section 22.)

25. The law is silent on this process. (Source: SADC Media Law: A Handbook for Media Practitioners vol. 3. “A comparative overview of media laws and practice in Lesotho, Tanzania and the Democratic Republic of the Congo.” (Konrad Adenauer Foundation, Johannesburg, 2005), 120, 122.)

26. The law states that no more than 40% of shares in a broadcasting or print company can be owned by a foreign person or foreign company. Any person with 51% or more of shares in a broadcasting or print company is not allowed to acquire more than 49% of shares in another broadcasting or print company in DRC. (Source: Law No. 04/017, Section 8, 2004.)

27. The law provides for various press offenses and penalties, ranging from fines to imprisonment. (Source: Law No. 04/017)

28. Private broadcasters are responsible for programming content. Education, information and entertainment are a required part of programming. Content must not contain material that is contrary to the law, the public interest, good morals and national security. Political issues shall be addressed with impartiality. Broadcasters cannot air political debates or discussion that does not conform to the law. (Source: SADC Media Law: A Handbook for Media Practitioners vol. 3. “A comparative overview of media laws and practice in Lesotho, Tanzania and the Democratic Republic of the Congo.” (Konrad Adenauer Foundation, Johannesburg, 2005), 133-134.)

**29. The law provides that if a broadcaster – through speech, words, writing, script, or image – incites the public to commit an offense, the broadcaster is liable.** These offenses include:

- to incite a member of the public to commit stealing, killing, public destruction;
- to destabilize national security;
- to incite members of the public to hatred, violence, ethnicity, or racism;
- to commit an offense against the head of state by means mentioned above; and
- incite members of the army or security services to:
  - o discourage of members of the army and the population with the intention to endanger the nation; and
  - o directly or indirectly, deliver to any foreign forces secret documents, information or formulae. (Source: Law No. 96/002, Article 76.)

30. Although the Criminal Code is not directed to the media in particular, it contains prohibitions on defamatory statements and insults against other people, which affects the media directly. Penalties range from imprisonment for periods between 8 days and 5 years and/or fines from 25 to 1000 FC (\$2 USD). (Source: SADC Media Law: A Handbook for Media Practitioners vol. 3. “A comparative overview of media laws and practice in Lesotho, Tanzania and the Democratic Republic of the Congo.” (Konrad Adenauer Foundation, Johannesburg, 2005), 145.)

31. It is an offense to contribute to a publication or distribute information that does not contain the actual name and address of the author or printer. The penalty upon conviction is imprisonment for up to 2 months and/or a fine of not more than 2000 FC. The penalty for causing unrest or spreading false information likely to alarm, worry, or excite the population against the authorities is imprisonment of up to a year and/or a fine of 500 FC. (Source: SADC Media Law: A Handbook for Media Practitioners vol. 3. “A comparative overview of media laws and practice in Lesotho, Tanzania and the Democratic Republic of the Congo.” (Konrad Adenauer Foundation, Johannesburg, 2005), 145.)
32. Any transgression of press laws can result in suspension of broadcasting or print media services for a period no longer than 3 months. Broadcasters face fines of up to 10,000 FC if they broadcast without being registered with HAM, use a frequency not assigned to it, or broadcast not in accordance with technical specifications. If interference is caused to any other broadcaster’s signal the penalty is up to 20,000 FC. (Source: Law No. 04/017, Section 52 and 57.)
33. Libel and slander are the most common press offenses and imprisonment is the principal sentence. (Source: Law No. 04/017)
34. Anyone who commits any offense outlined by law or not directly mentioned by law are subject to imprisonment for no more than 15 days and a fine of 2,000,000 FC [*sic*] if the offense does not require heavier punishment. (Source: Law No. 96/002, Section 81.)
35. An explanation for ‘heavier punishment’ is not set out in the law. The law also states that any broadcaster or publisher that contradicts the law, public order and good morality, will be punished accordingly. Again, this punishment is not specified. ((Source: SADC Media Law: A Handbook for Media Practitioners vol. 3. “A comparative overview of media laws and practice in Lesotho, Tanzania and the Democratic Republic of the Congo.” (Konrad Adenauer Foundation, Johannesburg, 2005), 132.)
36. Legislation involving human rights protection is not consistent with constitutional provisions. Parliament has yet to align the criminal code with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Punishment.
37. Crimes against journalists and media outlets occur regularly. Reports of media personnel being imprisoned, abused, attacked, and fired for insulting the authorities, defaming politicians, endorsing candidates other than the ruling party, are common. Cuts to radio or television signals and bans on select TV channels by the ruling government are common. In practice, the government determines the content of the media. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 73, 74.)
38. Journalists and media professionals cannot be denied access to information or be intimidated in any way when exercising their profession, provided they comply with the applicable laws. (Source: Law No. 04/017, Section 5.)
39. The right to freedom of expression and opinion in the media is undermined and restricted

because these rights are subject to the law, public order, and rights of others and morality.  
(Source:

40. There is no law that compels media owners to reveal their full identities. No transparency of ownership means that the same person or persons that disseminate the same information can own many stations. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 78.)

41. The media do not receive funding from the government, and it is difficult to access the already limited advertising markets. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 79.)

42. Professional journalism practices are limited in the DRC. Not only does this sector lack training and an awareness of press laws, its employees are underpaid to such an extent that they compromise ethical and professional standards to make ends meet. (Source: SADC Media Law: A Handbook for Media Practitioners vol. 3. “A comparative overview of media laws and practice in Lesotho, Tanzania and the Democratic Republic of the Congo.” (Konrad Adenauer Foundation, Johannesburg, 2005), 112-113.)

43. Journalists largely disregard the ethics code designed to guide their conduct. Many are connected to politicians and other government actors and are more concerned with promoting their employer than with impartial or fact-driven reporting. Rather, information reflects the interests of the government. As a result, media content is not objective, balanced, or fair. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 75.)

44. Freedom of the press and opinion exists in the DRC, however, journalists practice self-censorship to appease their employer and avoid harassment, abuse, and arrest. The media sector is a target for manipulation by the government, and the government determines the content of the news. The press often neglects social issues such as the cost of living, unemployment, education, health and taxes. The state does not allow the media to address issues related to the army, embezzlement, and corruption. (Source: Media Sustainability Index: Democratic Republic of the Congo, 2009, 76.)

45. Journalistic abuse and defamation are covered in the 1996 Press Law (Article 73), the Congolese journalists Code of Ethics (Article 5) and the Criminal Code (Article 75). Defamation is thus criminalized by virtue of it being in the Criminal Code. (Source: FDA researchers assessment of DRC Criminal Code, Press Law, and Code of Ethics.)

46. The state requires that freedom of speech complies with public order, good morals, and the rights of others. (Source: Organic Law No. 11/001 of 10 January 2011 on the composition, allocation and operation of the High Council for Audiovisual and Communication, Article 5.)

47. The state does not ownership of a audiovisual company in print or electronic media by a legal persons and/or foreign natural to exceed 40 percent. Any company which holds more than 50 percent ownership in any media company cannot hold equal or greater than 40 percent ownership in another media company for foreigners, and equal or greater than 49 percent for

nationals. (Source: Organic Law No. 11/001 of 10 January 2011 on the composition, allocation and operation of the High Council for Audiovisual and Communication, Article 7.)

## **Research Excerpts:**

### DRC Constitution:

#### **Article 23**

All persons have the right to freedom of expression.

This right implies the freedom to express their opinions and convictions, in particular by speech, in print and through pictures, subject to respect for the law, public order, and morality.

#### **Article 24**

All persons have the right to information.

The freedom of the press, the freedom of information and broadcasting by radio and television, written press or any other means of communication are guaranteed, subject to respect for the law, public order and the rights of others.

The law determines the conditions for the exercise of these liberties.

#### **Article 25**

The freedom of peaceful meetings without weapons is guaranteed subject to respect for the law, public order and morality.

#### **Article 26**

The freedom of demonstration is guaranteed.

All demonstrations on public roads or in open air oblige the organizers to inform the competent administrative authority in writing.

#### **Article 212**

A High Council for Audiovisual Media and Communication with legal personality is established.

It has the mission to guarantee and ensure the liberty and protection of the press as well as of all means of mass communication in respect of the laws.

It supervises the respect for good practice standards with regard to the information and the equitable access of political parties, association and citizens to the official means of information and communication.

The composition, competences, organization, and operation of the High Council for Audiovisual Media and Communication are determined by organic law.

Law No. 96/002: Providing for the licensing and registration of the print and broadcast media.

Article 8: Every individual has the right to freedom of opinion and of expression. By freedom of opinion and of expression is meant the right to inform and be informed, to have one's opinions, one's sentiments and to communicate them without let or hindrance, regardless of the means used, subject to respect for the law, for public law and order, for the rights of others and good behaviour.

In the area of audio-visual communication, freedom is the principle and prohibition is the exception, subject to respect for the law, for public law and order, for the rights of others and good behaviour.

Article 22: Requires every media print company to submit an application for a license to the Minister of Information and Press containing the following information:

- the title or name of the newspaper;
- place of publication;
- particulars of the owner and the director of publication;
- physical address of the company
- place of publication;
- proof of citizenship of the head of the publication and/or the owner of the enterprise;
- certificate of good morality of the applicant (obtained from the police);
- the police clearance of the owner and/or the head of the publication;
- documents proving that the owner or head of the publication is a journalist.

Article 51: Audio-visual communication is free. Every natural person or legal entity has the right to produce, transmit, and receive all of the products of audio-visual communication.

Article 53: Public audio-visual communication is pluralist. It cannot, under any circumstances, be monopolized for the benefit of a single opinion or a single group of individuals.

Article 57: Provides that every applicant for a radio or television license submit the following information:

- the name of the station;
- name, date and birth and the physical address of the owner and head of broadcaster;
- the physical address of the company;
- a copy of the police clearances of the director of programming or the head of the company;
- certificate of good morality of the director of programming or the head of the company;
- a license granted by the Ministry of Posts, Telephony and Telecommunication for the installation of the equipment;
- the company registration number; and
- a schedule of programs intended to be broadcast.

Law No. 06/006: Governing the Conduct of Elections

Article 111: All candidates must enjoy equal time and space in the print and electronic media,

and free access to the public media.

Law No. 04/017, 2004: Providing for the High Authority of the Media (HAM).

Organic Law No. 11/001 of 10 January 2011 on the composition, allocation and operation of the High Council for Audiovisual and Communication :

**Article 5**

Freedom of the press, information and emission by radio and television, written or other means of mass communication are guaranteed subject to compliance of public order, good morals and the rights of others.

No journalist or media professional shall be harassed or in any way if he/she is in the proper exercise of his profession, nor be denied access to sources of information.

**Article 7**

Without prejudice to the law on commercial companies, the share capital held legal persons and/or foreign natural can not exceed 40% of the shares in an audiovisual company, in print or electronic media under Congolese law.

Similarly, any corporation and / or physical holds more than 50% of shares in audiovisual company or existing press can no longer hold an equal or greater than 40% for foreigners and 49% for nationals in another broadcasting, print media or electronic.

## **2. Laws and regulations that pertain to the influence of political candidates and parties before, during, and after an election**

### **Main Research Findings:**

1. In 2006, the DRC held its first multi-party election in over 30 years, wherein transitional president Joseph Kabila secured his position as President of the Republic. (Source:
2. The President is elected by direct universal suffrage by an absolute majority for a term of five years that is renewable only once. If the first ballot does not produce a majority a run-off vote is required to take place within 15 days. (Source: DRC Constitution, Article 70, 71.)
3. Presidential candidates must be of Congolese nationality, be at least 30 years old, enjoy civil and political rights, and not be subject to the exclusions provided for by electoral law. (Source: DRC Constitution, Article 72.)
4. The following are ineligible presidential candidates: those deprived of their civil and political rights; those sentenced for crimes of war, genocide and crimes against humanity; those sentenced for bankruptcy; those suffering from total mental incapacity certified medically during the 5 years preceding the elections; civil servants, agents of public administration, representatives of public or mixed enterprises, and members of the Armed Forces and National Police who cannot demonstrate, on the deadline for the deposit of candidatures, evidence that they have requested to be released from their duties. (Source: Electoral Law.)
5. Every presidential candidate must include a non-refundable \$50,000 USD (46,343,000 FC) deposit with their application. The fee for parliamentary candidates is \$250 USD (110,000 FC). Despite a national per capita income between \$120 and \$300 USD in 2005 (UNICEF), 33 candidates presented themselves for the presidential ballot. (Source: SITO: States in Transition Observatory. Election Watch/DRC, January –July 2011, “Measuring the Democratic Republic of the Congo’s Electoral Environment According to the SADC Guidelines Governing Democratic Elections,” [www.statesintransition.org](http://www.statesintransition.org).)
6. The government includes the President, Vice-presidents, Ministers and Vice-ministers. Parliament is composed of the National Assembly – 500 representatives elected by voters for a renewable mandate of 5 years – and the Senate – 120 members representing the provinces, elected by the Provincial Assemblies by proportional representation. Parliament controls the Government and public companies, establishments, and services. The judicial power is independent, exerted by the Supreme Court of Justice, the Courts of Appeal, and the civil and military courts. (Source: DRC Constitution, Article 100.)
7. President Kabila and his party, the People's Party for Reconstruction and Democracy (PPRD), did not secure enough votes to form a majority in the National Assembly (PPRD 111/500). Therefore, Kabila formed an alliance of 30 parties and 27 independent personalities representing all of the provinces. This coalition, the Alliance of the Presidential Majority (AMP), commands a significant majority in parliament, dominating the National Assembly, the Senate, and most of the Provincial Assemblies. (Source: Herbert F. Weiss, “Voting for Change

in the DRC,” Journal of Democracy 18:2 (April 2007), 151.)

8. Eleven political parties were present in all provinces. Only Kabila's PPRD was present in all 169 districts. (Source: International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 17.)

9. Candidates are presented by political parties, political groups, or present themselves as independents. (Source: DRC Constitution, Article 101.)

10. The DRC bans the formation of a one-party state. The Constitution recognizes and guarantees political pluralism. Every Congolese who enjoys civil and political rights has the right to create or participate in the political party of their choice. (Source: DRC Constitution, Article 6.)

11. Political parties and associations can be established freely and without discrimination, subject to respect for the law, public order and morality. Political opposition, its right to form, organize and operate in a democratic framework is outlined in the Constitution and protected by law. (Source: DRC Constitution, Article 6, 8; Law No. 04/002, 2004).

12. Political parties are defined as an association of Congolese nationals sharing a similar ideology and social viewpoint, with the intention of obtaining and exercising state power democratically and within the confines of the law through the election process. Parties may not reflect the special interests of a particular family, tribe, ethnic group, province, race, religion, language, gender or other origin, or discriminate on these grounds. (Source: Law 04/002 (5a)).

13. Parties are required to abide by the electoral process, demonstrate a commitment to democracy, national unity and sovereignty, respect the republican and secular character of the state, and refrain from violence to gain or maintain power. (Source: Law 04/002 2004, 5 b)-e)).

14. Political parties are not permitted to take on a military character. The leader of the party who violates these provisions is subject to prosecution in terms of security laws. (Source: Denis Kadima and Dieudonné Tshiyoyo 2009, “Chapter 4: Democratic Republic of Congo” IN Denis Kadima and Susan Booyesen (eds) Compendium of Elections in Southern Africa 1989-2009: 20 Years of Multiparty Democracy, EISA, Johannesburg, 118-119.)

15. The founder of any political party must be Congolese; be at least 25 old; enjoy their civil and political rights; be in good physical and mental health; lead a decent life with morals; provide justification of training up to technical diploma level or at least the equivalent, or prove professional or political experience; reside in the DRC; never have been criminally convicted for a deliberate offense, except in case of amnesty and of judicial rehabilitation. (Source: Law No. 04/002.)

16. To register a party, an application is made by the founding members to the Minister of Home Affairs. The application must: be signed by at least 3 founding members; include the party constitution; outline the party's platform and vision; include a declaration related to the

assets and revenue sources it plans to use to realize its objectives; include a non-refundable administrative fee determined by the Cabinet; include the personal files of each founding member, containing information verifying nationality, good health, behaviour (including a criminal record), lifestyle, and morals. (Source: Law No. 04/002, Article 12).

17. Over 250 parties registered for the 2006 election; however, very few had popular support or influence. Most were small parties with no ideological platform, created to promote the limited interests of the founding individual. Most presidential candidates running against Kabila did not have the money, organization, or international backing to compete with the PPRD. One popular opposition leader boycotted the election, while another was imprisoned. Overall, the effectiveness of the opposition during the election was limited. (Source: Muzong Kodi, "Dream of a New Dawn," The World Today 62:3 (March 2006), 12.)

18. With so many parties active in government (70 in the National Assembly, 26 in the Senate), the opposition is inconsistent and essentially immobilized. Too much diversity presents too many opinions and loose coalitions to make parliament efficient. Smaller parties chose to join a coalition, the AMP, not based on ideological compatibility, but in order to access the resources and influence of the PPRD. (Source: Theodore Trefon, "Administrative Obstacles to Reform in the Democratic Republic of Congo," International Review of Administrative Sciences 7:702 (2010), 708.; International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 18.)

19. Political parties and independent candidates are entitled to register a complaint about the election with the CEI within 3 days after the announcement of results. The Supreme Court handles these disputes at no charge and announces its decision within 7 days. (Source: International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 59.)

20. Issue-based campaigning was virtually absent during the election period. Many personalized political parties did not play a role in the inter-election period. (Source:

21. Four women presented themselves on the presidential ballot and approximately 200 out of the 9,000 legislative candidates were women. (Source: International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 13, 17.)

22. The Constitution requires the state to ensure the equality of gender representation at all levels, however, no legal measures were adopted to give effect to this. The three main parties agreed on quotas for female representation during the election (30%) but did not implement them. (Source: SITO: States in Transition Observatory. Election Watch/DRC, January –July 2011, "Measuring the Democratic Republic of the Congo's Electoral Environment According to the SADC Guidelines Governing Democratic Elections," [www.statesintransition.org](http://www.statesintransition.org).)

23. Despite various institutional attempts to give women a greater role in government, they are vastly under-represented. Women account for less than 10% of the National Assembly and judiciary and hold only 3 seats in the Senate. (Source: Ministry of Women's Affairs and the Family, National Report of the Democratic Republic of the Congo on the review and evaluation

of the Beijing Plan of Action +10, Kinshasa, Feb 2004, 12.)

24. Corruption and patronage in all levels of government pervade the political system in the DRC. In 1994, Transparency International rated the DRC as the world's 12<sup>th</sup> most corrupt state. The government is not accountable to anyone and information sharing both within and between administrations is limited and guarded. (Source: Edward B. Rackley, "Democratic Republic of the Congo: Undoing Government by Predation," Disasters 30:4 (2006), 421. 425.)

25. The PPRD is accused of physically intimidating members of government and withholding salaries in order to silence the opposition and maintain dominance in parliament. Reports of government repression are widespread and involve intimidation, illegal detention, and in some cases, murder. Ergo, the opposition plays a negligible role in politics. (Source: Stephanie A. Matti, "The Democratic Republic of the Congo? Corruption, Patronage, and Competitive Authoritarianism is the DRC," Africa Today 56:4 (Summer 2010), 47.)

26. Many argue that an over-representation of cabinet members loyal to Kabila demonstrates that patronage, not political ideology, dictates the allocation of key positions within the administration. Further, officials in both the judicial and legislative branches lack the resources and finances necessary to provide for their own needs, leaving them open to bribery and corruption. (Source: Mvemba Phezo Dizolele, "The Mirage of Democracy in the DRC," Journal of Democracy 21:3, (July 2010), 156.)

27. These practices undermine the transparent, democratic institutions established in the Constitution. (Source:

28. Article 220 outlines elements of the Constitution that are not subject to amendment. This article does not allow the revision of any clause related to democracy, including – the republican form of the state, the principle of universal suffrage, **the length and limits of presidential terms**, the independence of the judiciary, or any act that reduces the prerogatives of the provinces and decentralized entities. (Source: DRC Constitution, Article 220).

29. In 2011, President Kabila and his advisers proposed a revision to the 2005 Constitution that was fundamentally undemocratic. The revisions would extend term limits, replace two-round elections with a one-round election, allow the president to preside over the judicial High Council, and delay the decentralization process intended to economically empower the provinces. Despite a boycott by the main opposition parties, it was passed during a session by parliament less than two weeks later. (Source: Mvemba Phezo Dizolele, "The Mirage of Democracy in the DRC," Journal of Democracy 21:3, (July 2010), 148.)

30. The revisions favour the incumbent president before the scheduled 2011 elections. It reduces citizen's role in the electoral process by allowing Kabila to avoid decisive second round. Elections will be postponed until 2012 if a simple majority is not reached in the first round. (Source: Thierry Vircoulon, "Unfair and Dangerous Elections," Peace Review 23:2 (2011), 201-202.)

31. Kabila changed a fundamental part of the constitution without broad public consultation or shared consensus with the political elite in order to consolidate his power and extend his rule. The Constitution provides guidelines for provincial reconfiguration, decentralization, and an increase in the provincial share of national wealth. It would reduce the government's influence and power in the outlying areas and increase provincial autonomy. Kabila has not implemented these changes. (Source: Mvemba Phezo Dizolele, "The Mirage of Democracy in the DRC," Journal of Democracy 21:3, (July 2010), 154-155.)

32. Public media in the DRC is open to all political leanings. The law provides for equal distribution of airtime to all political parties and candidates. (Source: Democratic Republic of Congo Ministry of Human Rights. Implementation of the African Charter on Human and Peoples Rights (Period – From July 2003 to July 2007), Kinshasa, June 2007. )

33. The Law guarantees presidential candidates equitable access to the media equal access, time, and space to the public media by law during electoral campaigns. (Source: Electoral Law, Articles 33-36.)

### **2011 Constitutional Amendments:**

34. Presidential elections have only one round of voting. The winning presidential candidate only needs a simple majority and a minority of the votes cast. (Source: Congo Planet, November 28, 2011)

35. The president has the power to dissolve elected provincial parliaments. (Source: Congo Planet, November 28, 2011)

36. The president has the power to call referendums. (Source: Congo Planet, November 28, 2011)

37. The Office of the Prosecutor General operates under the authority of the Ministry of Justice. (Source: Congo Planet, November 28, 2011)

38. The split of the country into 26 provinces is delayed. (Source: Congo Planet, November 28, 2011)

### **Research Excerpts:**

#### DRC Constitution:

#### **Article 6**

Political pluralism is recognized in the Democratic Republic of the Congo.

Every Congolese who enjoys his/her civil and political rights has the right to create a political party or to become a member of a political party of his/her choice.

The political parties participate in the expression of the popular will, the strengthening of the

national conscience and civic education. They form and exercise their activities freely while respecting the law, public order and morality.

The political parties are obliged to respect the principles of pluralist democracy, national unity and sovereignty.

The political parties may receive public funds from the state for the financing of their electoral campaigns and other activities under the conditions defined by the law.

#### **Article 7**

No one may establish, in any form whatsoever, a single party on all or part of the national territory.

The establishment of a single party constitutes a crime of high treason punishable by law and not subject to the statute of limitations.

#### **Article 8**

Political opposition is recognized in the Democratic Republic of the Congo. The rights linked to its existence, its activities and its fight for the democratic conquest of power are sacred. They may not be subject to limits other than those which are imposed by this Constitution and the law on all parties and political activities.

An organic law determines the status of political opposition.

#### **Article 14**

The public authorities see to the elimination of all forms of discrimination against women and ensure the protection and promotion of their rights.

They take in all areas, and most notably in the civil, political, economic, social and cultural areas, all appropriate measure in order to ensure the full realization of the potential of woman and their full participation in the development of the nation.

They take measures in order to fight all forms of violence against women in their public and private life.

Women are entitled to equitable representation in national, provincial and local institutions.

### **TITLE VIII**

#### **THE REVISION OF THE CONSTITUTION**

#### **Article 218**

The right to initiate a revision of the Constitution belongs concurrently to:

- a) the President of the Republic;
- b) the Government after deliberation by the Council of Ministers;
- c) to either the Chambers of Parliament upon initiative by half of its members;

d) to a fraction of the Congolese people, in the present case to 100.000 persons expressing themselves by way of petition addressed to either of the two Chambers.

Each of these initiatives is submitted to the National Assembly and the Senate which decide by absolute majority of each chamber on the substance of the project, proposal or petition for revision.

The revision is only final if the project, proposal or petition is approved by referendum.

However, the project, proposal or petition is not submitted to referendum if the National Assembly and the Senate meeting jointly as Congress approve it by a three-fifths majority of their members.

#### **Article 219**

No revision may occur in times of war, the state of emergency or the state of siege, or during the interim in the Presidency of the Republic or if the National Assembly and the Senate are prevented from moving freely.

#### **Article 220**

The republican form of the state, the principle of universal suffrage, the representative form of government, **the number and length of the terms of office of the President of the Republic**, the independence of the Judicial Power, the pluralism of political parties and trade unions **may not form the object of a Constitutional amendment.**

Any constitutional amendment having as its objective or consequence the reduction of individuals rights and liberties or of the prerogatives of the provinces and decentralized territorial entities is formally prohibited.

### **TITLE III**

### **THE ORGANIZATION AND THE EXERCISE OF POWER**

#### **Chapter 1**

#### **The Institutions of the Republic**

#### **Article 69**

The President of the Republic is the Head of the State.

He ensures the respect of the Constitution.

#### **Article 70**

The President of the Republic is elected by direct universal suffrage for a term of five years which is renewable only once.

#### **Article 71**

The President of the Republic is elected by an absolute majority of the votes cast. If such a majority is not obtained on the first ballot, a second ballot takes place within a period of fifteen

days.

Only the two candidates who received the highest number of votes cast in the first ballot may present themselves in the second ballot.

The candidate who obtains the highest number of votes is declared elected on the second ballot.

#### **Article 72**

A person may not stand as a candidate in the presidential elections, if they do not meet the following requirements:

- possess the Congolese nationality of origin;
- be at least thirty years of age;
- enjoy all civil and political rights;
- not be subject to one of the exclusions provided for by the electoral law.

#### **Article 73**

The ballot for the election of the President of the Republic is scheduled by the National Elections Commission ninety days before the end of term of the incumbent President.

#### **Article 74**

Before he begins his functions, the President of the Republic takes the following oath before the Constitutional Court:

“I, \_\_\_\_\_, elected President of the Democratic Republic of the Congo, solemnly swear before the Congolese nation:

- to observe and defend the Constitution and the laws of the Republic;
- to maintain the independence and integrity of the territories;
- to safeguard national unity'
- to be guided only by the common interest and the respect of the rights of the individual;
- to devote all my strength to the promotion of the general good and of peace;
- to loyally fulfill, as a faithful servant of the people, the high duties that have been entrusted to me.”

#### **Article 78**

The President of the Republic appoints the Prime Minister from the ranks of the parliamentary majority after consultation of the latter. He terminates the functions of the Prime Minister upon presentation by the latter of the resignation of the Government.

#### **Article 82**

The President of the Republic appoints, suspends and, if necessary, dismisses, by ordinance, the judges and public prosecutors upon proposal of the High Council of the Judiciary.

#### **Article 83**

The President of the Republic is the Commander-in-Chief of the Armed Forces.

## **TITLE IV THE PROVINCES**

### **The Provincial Institutions**

#### **Article 2**

The Democratic Republic of the Congo consists of the city of Kinshasa and 25 provinces which possess legal personality.

#### **Article 175**

The percentage of national revenues allocated to the provinces is fixed at 40%. It is retained at the source.

#### **Article 197**

The Provincial Assembly is the deliberative body of the province. It deliberates in the areas of competences reserved to the province and controls the Provincial Government as well as the provincial and local services.

They are elected by universal, direct and secret suffrage or co-opted for a renewable term of five years.

Without prejudice to the other provisions of this Constitution, the provisions of Articles 100, 101, 102, 103, 108, and 109 are applicable *mutatis mutandis* to the Provincial Assemblies.

#### **Article 198**

The composition of the Provincial Government takes into account the provincial representation.

The number of Provincial Ministers may not exceed ten.

#### **Article 226**

The provisions of the first paragraph of Article 2 of this Constitution will come into force within thirty days following the effective establishment of the political institutions provided for by this Constitution.

#### Electoral Law:

The following are ineligible presidential candidates:

- persons deprived of their civil and political rights;
- persons sentenced for crimes of war, crimes of genocide and crimes against humanity by an international criminal jurisdiction;
- persons sentenced for bankruptcy;
- persons suffering from total mental incapacity certified medically during the 5 years preceding the elections;
- civil servants and agents of the public administration who cannot demonstrate, on the deadline for the deposit of candidatures, that they have requested to be released from their duties;

- active representatives of public or mixed enterprises who have not provided proof, on the deadline for the deposit of candidatures, of having deposited their letter of resignation;
- members of the Armed Forces and of the Congolese National Police, who have not provided, on the deadline for the deposit of candidatures, proof of their accepted resignation or their retirement;
- members of the CEI at all levels, including the staff.

### Electoral Law

Article 115: Each electoral district has the right to a number of members of the National Assembly equal to the result of the following operations:

1. An electoral quotient is reached by dividing the number of registered voters of the DRC by the total number of seats to be filled in the National Assembly;
2. The number of seats to fill in each district is obtained by the division of the total number of voters registered in that district by the electoral quotient;
3. If the number of seats thus allocated is inferior to the total number of seats to be filled, an additional seat is allocated to each district which has the highest decimal with regard to the number of seats obtained, until the limit of 500 seats is reached;
4. The number of seats to fill in each district is reached by dividing the total number of voters registered in the district by the same electoral quotient;
5. One seat is allocated to all electoral districts with a number of voters inferior to the electoral quotient;
6. If the total number of seats thus allocated to the districts of the province, an additional seat is allocated to each district having reached the highest decimal with regard to the number of seats obtained, up to the allocations of the total number of seats of the province.

Law No. 04/002, 2004: Concerning the Organization and Operation of Political Parties: Article 11.

The founder of any political party must satisfy the following conditions:

1. must be of Congolese nationality;
2. must be 25 years or less;
3. should enjoy his civil and political rights;
4. must be in good physical and mental health and leading a decent life and morals;
5. must provide justification of training up to technical diploma level or at least the equivalent, or with the proven professional or political experience;
6. must have a residence or a dwelling in the DRC;
7. must never have been convicted criminally for a deliberate offence, having acquired the authority of the res judicata, except in case of amnesty and of judicial rehabilitation.

Law No. 04/002: Article 12

In order to register a party, an application is made by the founding members to the Minister of Home Affairs. The application must:

1. be signed by at least three founding members

- 2.include the party constitution signed by at least one founding member of the party;
- 3.outline the party's platform and vision;
- 4.include a declaration related to the assets and revenue sources the party plans to use to realize its objectives;
- 5.include a non-refundable administrative fee determined by the Cabinet;
- 6.include the personal files of each founding member, containing information verifying nationality, good health, behaviour (including a criminal record), lifestyle, and morals.

### DRC Constitution:

#### **Article 190**

No one may, under sentence of high treason, organize military groups, paramilitary or private militias, or entertain a youth army.

#### **Article 100**

The Legislative power is exercised by a Parliament consisting of two chambers: the National Assembly and the Senate.

Without prejudice to other provisions of this constitution, Parliament votes the laws. It controls the Government, the public companies as well as the public establishments and services.

Each Chamber enjoys administrative and financial autonomy.

### 3. Laws and regulations on electoral finance

#### Main Research Findings:

1. In 2010, the DRC had a GDP per capita of \$300 USD. In 2006, 71% of the population fell below the poverty line. The highest 10% of the population had an estimated 34.7% of national wealth while the lowest 10% held 2.3%. (Source: CIA: Factbook)

2. Before their accession to office, the President and members of Government must submit to the Constitutional Court a declaration of their family income and assets. The statement must include movable and immovable assets, company shares and interests, financial obligations, bank accounts, developed and undeveloped lands, and all other financial resources. It must include the property and assets of their spouse and the children for which they are responsible. The Court will transmit this declaration to the fiscal administration of the state. (Source: DRC Constitution, Article 99.)

3. The state considers him/her to have resigned from office if the declaration is not received within 30 days. (Source: DRC Constitution, Article 99.)

**4. Public funding of political parties and independent candidates is not available in the DRC.** The law regulates party funding and finances. Neither public resources nor the state is obliged to fund political parties. Political parties are entitled to receive public funds from the state for the financing of their electoral campaigns; however, the law does not mandate public funding for political parties. (Source: Law No. 04/002, 2004).

5. The law prohibits the use of state resources or personnel for the benefit of any political party. It maintains that state funding is possible, and that eventual legislative subvention (financial assistance) from the state is a legitimate source of party revenue. However, no such legislation has materialized. (Law No. 04/002, Article 22, Article 25; Denis Kadima and Dieudonné Tshiyoyo 2009, "Chapter 4: Democratic Republic of Congo" IN Denis Kadima and Susan Booyesen (eds) Compendium of Elections in Southern Africa 1989-2009: 20 Years of Multiparty Democracy, EISA, Johannesburg, 118-119.)

6. The transitional government did not allocate public funding to political parties or independent candidates, nor did it regulate party funding and election campaign finance. (Denis Kadima and Dieudonné Tshiyoyo 2009, "Chapter 4: Democratic Republic of Congo" IN Denis Kadima and Susan Booyesen (eds) Compendium of Elections in Southern Africa 1989-2009: 20 Years of Multiparty Democracy, EISA, Johannesburg, 118-119.)

7. Funding from foreign states not allowed. (Source: Law No. 04/002, Section 24.)

8. Parties must disclose property ownership to the Minister of Home Affairs, as well as any donations or bequests. (Source: Law No. 04/002, Article 23.)

9. Parties must submit annual financial accounts to the Minister of Home Affairs (Source: Law No. 04/002, Article 21.)

10. Political parties can raise funds from membership fees, donations and bequests, revenues generated through events and publications, and fixed and movable property transactions. (Source: Law No. 04/002 2004, Article 22.)
11. The DRC does not permit any funding from foreign states and parties who breach this provision are liable to dissolution (Source: Law No. 04/002, Section 24.)
12. Political parties must disclose property ownership to the Minister of Home Affairs, as well as any donations or bequests. They must specify the origin, nature, value and source of said donations, which must not be criminal or foreign in origin. (Source: Law No. 04/002 2004, Article 20 and Article 23.)
13. Each political party must submit financial accounts and an annual declaration to the Department of Home Affairs of the names, professions and residency of its central administrators to demonstrate conformity to the provisions on revenue sources. If it fails to submit this declaration, the Minister will suspend the party. (Source: Law No. 04/002, Article 21.)
14. National Deputies and Senators are entitled to equitable compensation throughout their term in order to ensure their independence and dignity. The Constitution does not specify the amount and details of its implementation. (Source: DRC Constitution, Article 109.)
15. Political parties create administrative disruptions in order to solicit bribes from the government as a means of party financing. (Source: SITO: States in Transition Observatory. Election Watch/DRC, January –July 2011, “Measuring the Democratic Republic of the Congo’s Electoral Environment According to the SADC Guidelines Governing Democratic Elections,” [www.statesintransition.org](http://www.statesintransition.org).)
16. Small parties do not have adequate funding to finance election campaigns or party activities. Major parties utilized political dispensation to accrue finances for the functioning of their offices. President Kabila nominated government representatives for profitable positions in institutions, businesses and industries associated with the government and under its indirect control to gain financial resources for the PPRD. These officials contributed between 10 and 20% of their wages to party funds, giving the PPRD an advantage over smaller, less influential parties. (Denis Kadima and Dieudonné Tshiyoyo 2009, “Chapter 4: Democratic Republic of Congo” IN Denis Kadima and Susan Booysen (eds) *Compendium of Elections in Southern Africa 1989-2009: 20 Years of Multiparty Democracy*, EISA, Johannesburg, 118-119.)
17. The international diplomatic and business community hoped for an election that would provide the DRC with a government that had an element of popular legitimacy. The DRC did not have the funds or infrastructure to support such a campaign and required foreign assistance for its success. The international community provided training, materials, education, security, rural incorporation programs and transportation for the 2006 elections. (Source: Mvemba Phezo Dizolele, “The Mirage of Democracy in the DRC,” *Journal of Democracy* 21:3, (July 2010), 150-151.)
18. The international community, in particular the UN and the EU, have provided an immense amount of financial, political, economic, and security support to post-conflict DRC

(approximately \$10 billion USD from 2002-2006). Democratic reform, including multi-party elections, was a requisite for mobilizing this assistance. (Source: Stephanie A. Matti, "The Democratic Republic of the Congo? Corruption, Patronage, and Competitive Authoritarianism is the DRC," Africa Today 56:4 (Summer 2010), 52.)

## **Research Excerpts:**

### DRC Constitution:

#### **Article 99**

Before their accession to office and on the expiration thereof, the President of the Republic and the members of Government are obliged to submit to the Constitutional Court a written declaration of their family fortune, listing their movable assets, including company shares and interests, obligations, other assets, bank accounts, their immovable assets, including undeveloped lands, woods, plantations and agricultural lands, mines and other immovable property, by indicating the relevant title.

The family fortune includes the property of the spouse in accordance with the relevant rules on matrimonial property, of the children who have not yet reached maturity and of the children, even those who have already attained maturity, for which the couple is responsible.

The Constitutional Court transmits this declaration to the fiscal administration.

Lacking such declaration, within a delay of thirty days, the relevant person is deemed to have resigned from office.

In case of lack of declaration, of a fraudulent declaration or of unjustified enrichment, the matter is referred within thirty days from the expiry of the functions to the Constitutional Court or the Court of Cassation.

#### **Article 171**

The finances of the central authority and the provinces are separate.

#### **Article 174**

Taxes can only be established by law.

The contribution to the public offices is a duty of every individual living in the Democratic Republic of the Congo.

#### **Article 175**

The percentage of national revenues allocated to the provinces is fixed at 40%. It is retained at the source.

#### **Article 109**

The National Deputies and Senators have the right to move without restriction or obstacles within the national territory and to leave it.

They are entitled to an equitable indemnity which ensures their independence and their dignity. It is provided for in the Budget Law.

They are entitled to final indemnity which equals six months of allowances.

The details of the implementation of the preceding paragraph as well as the other rights of the members of Parliament are regulated by the internal regulations of each Chamber.

Law No. 04/002 March 2004: Concerning the Organization and Operation of Political Parties.

#### **4. Laws and regulations on voter say**

##### **Main Research Findings:**

1. National sovereignty belongs to the people. All power emanates from the people as exercised directly by way of referendum or elections or indirectly through their representatives. Suffrage is universal, equal and secret. Every Congolese man or woman over the age of 18 who enjoys civil and political rights is entitled to vote and to stand at elections. (Source: DRC Constitution, Article 5).
2. The Constitution guarantees the right to freedom of expression, freedom to express opinions and convictions, and freedom of demonstration subject to respect for the law, public order and morality. The law ensures freedom of the press and the right to information. (Source: DRC Constitution, Articles 23-26.)
3. Organizers of public events must register with local authorities in advance. Authorities can deny the request, in writing, within 5 days of notification. Unregistered protests or meetings can expect intervention by the National Police. (Source: SITO: States in Transition Observatory. Election Watch/DRC, January –July 2011, “Measuring the Democratic Republic of the Congo’s Electoral Environment According to the SADC Guidelines Governing Democratic Elections,” [www.statesintransition.org](http://www.statesintransition.org).)
4. In 2004, the law established the Independent Electoral Commission (CEI) and the Constitution gave it legal personality in 2005. The CEI is a democracy-supporting institution created to oversee the organization, regularity, and functioning of the 2006 election. It is responsible for the organization of the electoral process, including voter registration, maintenance of voter rolls, voting operations, vote counting, the announcement of provisional results, and the conduct of referendums. Its mission is to guarantee neutrality, impartiality, and transparency in all aspects of the election process. A member of civil society and Commissioners nominated by political parties chair the CEI. (Source: DRC Constitution, Article 211; Law No. 04/009, 2004.)
5. The CEI drafted a Code of Conduct that governed the campaign process and required members of the CEI to endorse morality, responsibility, transparency, objectivity, and to respect human dignity and democratic values. Political parties signed the Code of Conduct in August 2005. (Source: International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 27.)
6. In July 2010, Kabila presented the Independent National Electoral Commission (CENI) as a replacement for the CEI. It has the same duties and responsibilities as the CEI; however, the law enacting the CENI eliminates the stipulation for civil society participation. (Source: SITO: States in Transition Observatory. Election Watch/DRC, January –July 2011, “Measuring the Democratic Republic of the Congo’s Electoral Environment According to the SADC Guidelines Governing Democratic Elections,” [www.statesintransition.org](http://www.statesintransition.org).)
7. Some in parliament argued that the absence of civil society representatives was a play by

Kabila and the PPRD to silence the critics and compromise neutrality during the election process. (Source: Theodore Trefon, “Administrative Obstacles to Reform in the Democratic Republic of Congo,” International Review of Administrative Sciences 7:702 (2010), 709-710.)

8. Voter identification and registration takes place concurrently at registration centres in the presence of national and international observers and party agents approved by the CEI. Registration is a civic duty and compulsory for all nationals over 18 years old. (Source: Law No. 04/028, Articles 5, 6, 21-23.)

9. The CEI makes special arrangements to accommodate prisoners who have not lost their civil rights, displaced people, the sick, pregnant women, people living with disability and the elderly who want to register. (Source: Law No. 04/028, Articles 5, 6, 21-23.)

10. The Presidential ballot lists all 33 candidates in alphabetical order. The National Assembly ballot lists all candidates running in one constituency in alphabetical order. The ballot paper must indicate it is a ballot, reserve space for the initials of the President of the polling station, provide on the front the photos of the candidates, and if necessary, the colours, logos, and emblems allowing the voter to choose. (Source: International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 33.)

11. Voters must register at the center where their main residence is. To register you must be a Congolese citizen, at least 18 years old, able to register in person, enjoy civil and political rights, possess some form of identification. (Source: Law No. 04/028, Articles 7, 8, 9.)

12. To vote you must be of Congolese nationality, be at least 18 years old, be in the DRC on the day of the elections, and not present one of the cases of exclusion. (Source: Electoral Law, Article 5.)

13. Nationality is established by origin and by acquisition. (Source: Law No. 04/24, 2004.)

14. Voting excludes the following persons: those suffering from medically certified total mental incapacity; those permanently deprived of their civil and political rights, members of the Armed Forces and the National Police, those not registered and those who are not in the DRC. (Source: Electoral Law, Article 7.)

15. The electoral roll is published and posted at the head office of registration centers for people to review and verify if they are on the electoral roll and if their information is recorded accurately. (Source: Law No. 04/028, Article 8.)

16. The electoral roll is updated when a citizen reaches the age of majority, a citizen recovers their civil and political rights, a citizen moves, becomes ill or dies. (Source: Law No. 04/028, Articles 38-39.)

17. Registration centers are established at schools or other private or public places, but cannot be established in places of worship, political party offices, trade union offices, non-

governmental offices, bars, police stations, military camps, military academies and schools. (Source: Law No. 04/028, Articles 5, 6, 21-23.)

18. CEI officials take fingerprints and photographs and issue a voter's card, which also functions as an identity document. (Source: EISA Election Update 2006: Democratic Republic of the Congo, 1, 10.)

19. Anyone who considers that the identification and registration process has deprived them may appeal, within seven days, in writing or by registered declaration to the President of the registration centre. (Source: Law No. 04/028, Article 40-44.)

20. Under the identification and registration act, the following acts may result in a fine and/or prison: providing a false name, fraudulent registration, not disclosing a reason they do not qualify for registration, entering a registration center with a firearm, drugs or alcohol, giving false testimony about a third party, unlawfully replacing a voter card, bribery, making false statements or using threats, violence or intimidation. (Source: Law No. 04/028, Chapter 4.)

21. Despite a very costly registration process and logistical difficulties, the CEI registered 25 million people – roughly 90% of eligible voters – for the 2006 election with relatively few problems. (Source: Mvemba Phezo Dizolele, "The Mirage of Democracy in the DRC," Journal of Democracy 21:3, (July 2010), 151.)

22. Opposition parties alleged that the CEI with issued voter cards in the names of deceased and fictional persons, children and foreigners. (Source: SITO: States in Transition Observatory. Election Watch/DRC, January –July 2011, "Measuring the Democratic Republic of the Congo's Electoral Environment According to the SADC Guidelines Governing Democratic Elections," [www.statesintransition.org](http://www.statesintransition.org).)

23. National and international observers, religious organizations, electoral education and human rights NGOs, trade unions, women's associations, youth, and academic associations combined efforts with the CEI to deliver election materials to polling stations, collect and count ballots, and supervise voting procedures at over 50,000 polling centers. (Source: Herbert F. Weiss, "Voting for Change in the DRC," Journal of Democracy 18:2 (April 2007), 140.)

24. Supervision was concentrated in the urban centers and easily accessible villages. (Source:

25. Access to polling stations is limited to CEI staff, the Election Operations Bureau, the voters assigned to the polling station, accredited party witnesses, accredited observers, accredited journalists and persons formally authorised by the President of the polling station. The National Police and armed forces cannot be present in or around a polling station or intervene in the voting process without the authorization of the President of the polling station. (Source: International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 39.)

26. Counting takes place at the polling stations immediately after closing. Party agents, candidates' representatives, journalists, observers and witnesses chosen among voters may be

present. (Source: Law No. 06/006, Article 62-63.)

27. The presiding officer posts results outside the polling station and relays them to the compilation centre where they are checked and aggregated. The CEI ratifies the results and posts them outside the compilation centre. (Source: Law No. 06/006, Article 70.)

28. The CEI hears conflicts and disputes about the electoral process and results within 3 days of the announcement of the results. Complaints are heard by at least three judges in the three various courts. (Source: Law No. 06/006, Articles 71, 73-76.)

29. Domestic and foreign monitors and observers are accredited. Monitors and observers must submit applications at least 15 days prior to an election. (Source: Law No. 06/006, Articles 42-45.)

30. Few sources report rebel attacks around registration areas. (Source: SITO: States in Transition Observatory. Election Watch/DRC, January –July 2011, “Measuring the Democratic Republic of the Congo’s Electoral Environment According to the SADC Guidelines Governing Democratic Elections,” [www.statesintransition.org](http://www.statesintransition.org).)

31. The National Police is responsible for public security, maintaining public order, and protecting the national territories and its borders. They are apolitical and not to be used by anyone for their own purposes. The Constitution does not permit anyone to organize military groups, private militias, or youth armies. (Source: DRC Constitution, Articles 182, 187, 188, 190.)

32. The state does not have the resources or incentive to control its vast territory, which has left some areas ungoverned and susceptible to rebel army and militia control. The President ignores this behaviour almost as a mode of governance in areas where he is less influential. (Source: Edward B. Rackley, “Democratic Republic of the Congo: Undoing Government by Predation,” *Disasters* 30:4 (2006), 420.)

33. The voting process was organized, orderly, controlled and well attended. In the first round, Kabila did not reach the required majority, forcing a runoff vote. Turnout was impressive at 70 percent during the first round and 65 percent during the runoff vote. The vast majority chose to vote in the second round where Kabila won with 58% of the vote. (Source: Herbert F. Weiss, “Voting for Change in the DRC,” *Journal of Democracy* 18:2 (April 2007), 139, 144.)

34. Voters chose from nearly 10,000 candidates to fill the National Assembly. Of the 500 seats in the National Assembly, 111 went to Kabila’s PPRD, 64 to the Movement for the Liberation of Congo, and 34 to the Unified Lumumbist Party. 67 smaller parties made up the remainder. National and international observers declared the elections competitive, free and fair. (Source: Stephanie A. Matti, “The Democratic Republic of the Congo? Corruption, Patronage, and Competitive Authoritarianism is the DRC,” *Africa Today* 56:4 (Summer 2010), 46.)

35. Nearly 14,000 candidates competed for the 690 available seats in the eleven Provincial Assemblies. (Source: Herbert F. Weiss, “Voting for Change in the DRC,” *Journal of Democracy*

18:2 (April 2007), 139-140.)

36. Regional groups, not ethnic groups, voted similarly, using their ballots to make a political statement against the faction that ruled them during civil war in the 1990s. (Source: Herbert F. Weiss, "Voting for Change in the DRC," Journal of Democracy 18:2 (April 2007), 139, 143.)

37. The DRC holds concurrent Presidential and Parliamentary elections every five years. The campaigning period begins at most 60 days before election day and ends 24 hours before opening the poll. The electoral campaign opens 24 hours after the CEI publishes the final list of candidates. (Source: Electoral Law, Article 28.)

38. The CEI schedules the presidential ballot 90 before the end of term of the incumbent President. (Source: DRC Constitution, Article 73.)

39. When the campaign is over, candidates and their representatives cannot distribute manifestos, circulars or propaganda documents. They must take down all posters and propaganda displayed within 100 meters of the polling centre. They cannot wear images, colours or logos of political parties or political groups at the polling station. (Source: International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 27.)

40. Geographical constituencies for both the National and Provincial Assembly elections are called territories. The DRC has 189 such territories. The share of National Assembly seats allocated to each territory depends on the number of voters registered there. In many rural areas, low population concentrations and low registration percentages resulted in nearly a third of the territories to have only one seat. (Source: Herbert F. Weiss, "Voting for Change in the DRC," Journal of Democracy 18:2 (April 2007), 142.)

41. Voters can select only one candidate. In territories with more than one seat, "any individual on a party list who received more votes than were required for election would automatically have his or her "surplus" votes redistributed to the next most successful candidate on his or her list. Independents could not form lists and hence could not benefit from this rule. As a result, some party candidates beat independents despite having gained fewer votes than their non-party rivals." (Source: Herbert F. Weiss, "Voting for Change in the DRC," Journal of Democracy 18:2 (April 2007), 142.)

42. In 2005, the DRC held a referendum on the new constitution and over 15 million voters – 67% voter turnout – participated. The majority knew little about its content; however, almost 85% approved the Constitution. President Kabila signed it into law in February 2006. (Source: Mvemba Phezo Dizolele, "The Mirage of Democracy in the DRC," Journal of Democracy 21:3, (July 2010), 149.)

43. Many argue that the 2011 elections will be less democratic than the last. The Constitutional revision reduces the citizens' role in the electoral process. Financial difficulties have affected the voter registration process in several outlying areas, reducing the number of voting centers and forcing many to postpone or suppress registration. Stations will be concentrated in large

cities and those within the immediate vicinity, limiting the voice of the rural population who will have to travel to vote. In addition, the state has not planned a civic education campaign or a specific security-training program for this election as it had in 2006. (Source: Thierry Vircoulon, "Unfair and Dangerous Elections," Peace Review 23:2 (2011), 202-203.)

44. Four women presented themselves on the presidential ballot and approximately 200 out of the 9,000 legislative candidates were women. (Source: International Observer Handbook: Presidential and Legislative Elections DR Congo. July 2006, UNOPS: United Nations Office for Project Services, Kinshasa Office, 13, 17.)

45. The Constitution requires the state to ensure the equality of gender representation at all levels, however, no legal measures were adopted to give effect to this. The three main parties agreed on quotas for female representation during the election (30%) but did not implement them. (Source: SITO: States in Transition Observatory. Election Watch/DRC, January –July 2011, "Measuring the Democratic Republic of the Congo's Electoral Environment According to the SADC Guidelines Governing Democratic Elections," [www.statesintransition.org](http://www.statesintransition.org).)

46. Despite various institutional attempts to give women a greater role in government, they are vastly under-represented. Women account for less than 10% of the National Assembly and judiciary and hold only 3 seats in the Senate. (Source: Ministry of Women's Affairs and the Family, National Report of the Democratic Republic of the Congo on the review and evaluation of the Beijing Plan of Action +10, Kinshasa, Feb 2004, 12.)

## **Research Excerpts:**

### DRC Constitution:

#### **Article 5**

National sovereignty belongs to the people. All power emanates from the people as exercised directly by way of referendum or elections or indirectly through their representatives.

The law determines the conditions for the organization of elections and of the referendum.

Suffrage is universal, equal and secret. It is direct or indirect.

Without prejudice to the provisions of Articles 72, 102 and 106 of this Constitution, all Congolese of both sexes who are over the age of eighteen and enjoy their civil and political rights are entitled, under the conditions prescribed by law, to vote and to stand at elections.

#### **Article 10**

Congolese nationality is one and exclusive. It may not be held together with another nationality.

The Congolese nationality is obtained either by origin or by individual acquisition.

Of Congolese origin are all persons who belong to ethnic groups whose members and territory

formed what has become the Congo (presently the Democratic Republic of the Congo) upon its independence.

An organic law determines the conditions for the recognition, acquisition, loss and recovery of Congolese nationality.

**TITLE II  
HUMAN RIGHTS, FUNDAMENTAL LIBERTIES AND THE DUTIES OF THE CITIZEN AND THE STATE**

**Chapter 1  
Civil and Political Rights**

**Article 11**

All human beings are born free and equal in dignity and rights. However, the enjoyment of political rights is granted to Congolese [nationals] only, save for exceptions provided by the law.

**Article 12**

All Congolese are equal before the law and have the right to equal protection by the law.

**Article 13**

No Congolese person may, in matters of education or access to public functions or any other matter, be subject to any discriminatory measure, whether it results from a statute or from a measure of the executive, on the ground of his/her religion, family origin, social condition, residence, views or political convictions, or membership of a certain race, ethnicity, tribe, cultural or linguistic minority.

**Article 14**

The public authorities see to the elimination of all forms of discrimination against women and ensure the protection and promotion of their rights.

They take in all areas, and most notably in the civil, political, economic, social and cultural areas, all appropriate measure in order to endure the full realization of the potential of woman and their full participation in the development of the nation.

They take measures in order to fight all forms of violence against women in their public and private life.

Women are entitled to equitable representation in national, provincial and local institutions.

**Article 15**

The public authorities are responsible for the elimination of sexual violence used as an instrument in the destabilization and displacement of families.

## **Article 16**

The individual is sacred. The State has an obligation to respect and protect him/her.

All persons have the right to life, physical integrity and to the free development of their personality, while respecting the law, public order, the rights of others and public morality.

No one may be held in slavery or in a similar condition.

No one may be subject to cruel, inhumane or degrading treatment.

No one may be submitted to forced or compulsory labor.

## **Article 17**

Individual liberty is guaranteed. It is the rule, detention the exception.

No one may be prosecuted, arrested, detained or sentenced except by virtue of a law and in the manner which the latter prescribes.

Any person accused of a violation of the law is presumed innocent until his/her guilt has been proven by a final judgement.

## **Article 22**

All persons have the right to freedom of thought, conscience and religion.

All persons have the right to express their religion or their convictions, alone or together with others, both in public and in private, by worship, teaching, practices, carrying out of rites and a religious way of living, subject to respect for the law, public order, morality and the rights of others.

All demonstrations on public roads or in open air oblige the organizers to inform **Article 13**  
No Congolese person may, in matters of education or access to public functions or any other matter, be subject to any discriminatory measure, whether it results from a statute or from a measure of the executive, on the ground of his/her religion, family origin, social condition, residence, views or political convictions, or membership of a certain race, ethnicity, tribe, cultural or linguistic minority.

## **Article 23**

All persons have the right to freedom of expression.

This right implies the freedom to express their opinions and convictions, in particular by speech, in print and through pictures, subject to respect for the law, public order, and morality.

## **Article 24**

All persons have the right to information.

The freedom of the press, the freedom of information and broadcasting by radio and television,

written press or any other means of communication are guaranteed, subject to respect for the law, public order and the rights of others.

The law determines the conditions for the exercise of these liberties.

### **Article 25**

The freedom of peaceful meetings without weapons is guaranteed subject to respect for the law, public order and morality.

### **Article 26**

The freedom of demonstration is guaranteed.

## **TITLE VI**

### **DEMOCRACY SUPPORTING INSTITUTIONS**

#### **Chapter 1**

#### **The Independent National Electoral Commission**

### **Article 211**

An Independent National Electoral Commission with legal personality is established.

The Independent National Electoral Commission is charged with the organization of the electoral process, in particular the registration of voters, the maintenance of the electoral roll, voting operations, the counting of votes and any referendum.

It ensures the regularity of the electoral and referendum process.

An organic law establishes the organization and the operation of the Independent National Electoral Commission.

### **Article 73**

The ballot for the election of the President of the Republic is scheduled by the National Elections Commission ninety days before the end of term of the incumbent President.

Law No. 04/009, 2004: Organization, Attribution and Operation of the Independent Electoral Commission, June 5, 2004.

Articles 1-4: Anticipates the independence of the CEI.

Article 7: Lists its competences:

- Develop and implement its rules of procedures
- Organize and manage pre-electoral and electoral activities, namely;
  - o Identification of Congolese nationals,
  - o Registration of voters,
  - o Release of voters lists,
  - o Polling operations,
  - o Counting operations,

- Announcement of preliminary results,
- Contracting procedures for electoral operations.
- Help develop the legal framework of the election
- Set up the electoral timeframe
- Popularize in French and other national languages the Electoral law
- Carry out a voters' education programme and coordinate the civic education campaign
- Train the electoral staff
- Develop a Code of Ethics
- Monitor the correct implementation of the Electoral Law
- Monitor the legality of electoral campaigning activity
- Announce preliminary election results and refer to the Supreme Court for the announcement of final results.

Law No. 04/028, 2004: Identification and Enrolment of Voters in the Democratic Republic of the Congo.

Articles 5 and 6, 21-23: Registration Centers:

The Office of the Registration Centre has the power to vouch for the identity and nationality of the people that apply to be registered at their stations. The CEI determines the number of registration centers depending on the estimated voter population and the geographic area.

Registration centers are established at schools or other private or public places, which are at the disposal of the CEI for the duration of the electoral process. Registration centers cannot be established in places of worship, political party offices, trade union offices, non-governmental offices, bars, police stations, military camps, military academies and schools.

Special arrangements can be made by the CEI for the following categories of people who want to register; prisoners who have not lost their civil rights, displaced people, the sick, pregnant women, people living with disability and the elderly.

Articles 7, 8, and 10 – Requirements for registration: Voters must register at the registration center where their main residence is. If a person living outside the district where their main residency is they can elect to register at the registration center where they temporarily reside.

To register you must be:

- A Congolese citizen
- 18 years or older on the date of closure of identification and registration
- Able to register in person
- Able to enjoy the civil and political rights of the DRC
- In possession of one of the following:
  - A certificate of nationality or a document attesting that you have applied for a certificate of nationality
  - An identity document
  - A national passport
  - A national driving licence
  - A national pension book

- A pupil or student card
- A service card

Article 9 – Disqualifications for identification and registration: The following categories of people cannot register:

- Those with “full mental disability”
- People legally deprived of their civil and political rights
- The military and police on duty

Article 5: The conditions for vote eligibility:

- To be of Congolese nationality
- To be over 18 years of age on the date of closure of the identification and registration operations
- To be within the territory of the DRC on the day of the elections
- Not to present one of the cases of exclusion foreseen in article 7.

Article 7: Persons presenting on the day of the elections one of the cases of exclusion may not participate in the vote:

- Persons suffering from medically certified total mental incapacity;
- Persons permanently deprived of their civil and political rights by a final legal decision;
- The members of the Congolese Armed Forces and the National Police;
- Persons no registered in the electoral rolls;
- Persons who are in a foreign country.

Article 28: Checking the electoral roll: Each segment of the electoral roll is published and posted at the head office of the registration centers for people to check if they are on the electoral roll and if their details have been accurately captured.

Article 38-39: Updating and maintenance of the electoral roll: The electoral rolls are updated when:

- A citizen reaches the voting age of 18 years
- A citizen recovers their electoral rights
- A registered citizen moves, works in another district, is ill or dies

Law No. 04/028, Chapter 4: Unlawful conduct

The Act provides for a number of actions that may result in a fine and prison sentence. The following are unlawful acts:

- Identification under a false name of quality
- Hiding a reason why they do not qualify for registration
- Fraudulent registration
- Intending to register more than once
- Entering a registration center with a firearm (except the armed forces or the police)
- Bringing drugs or alcohol into a registration center
- Giving false testimony or submitting a false document to verify the information about a third party
- Damaging or unlawfully replacing a voter card

- Divulging private and confidential information
- Refusing to provide the information required for identification and enrolment
- Offering, receiving or promising money, values, good, favours or other advantages to falsify information (bribery)
- Making false declarations or using threats or violence or intimidation

Law No. 06/006: Governs the conduct of elections.

DRC Constitution:

**Article 182**

The National Police is charged with public security, the security of persons and goods, the maintenance and restoration of public order as well as the special protection of the high authorities.

**Article 187**

The Armed Forces consist of the land forces, air forces, naval forces and their assistance services.

They have the mission to defend the integrity of the national territory and the borders. Under the conditions prescribed by law, they take part, in times of peace, in the economic, social and cultural development as well as the protection of persons and their goods.

**Article 188**

The Armed Forces are republican. They are at the service of the entire Nation.

No one may, under sentence of high treason, abuse them for their own purposes.

They are apolitical and subject to civil authority.

**Article 190**

No one may, under sentence of high treason, organize military groups, paramilitary or private militias, or entertain a youth army.

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