



# Critical Analysis of the Legal Provisions Relating to the Election of the Governors of Provinces in RD Congo under the Third Republic

Pierre-Parfait Bofete Bononga

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## ABSTRACT

The present dissection shows that there are some positive points contained in the legal texts on the election of governors and vice-governors of province in the Democratic Republic of the Congo (DR Congo) in force since 2006. This is the case, including the strict limitation of the duration and the number of mandates of the elected governors. It is mentioned thereafter, and unfortunately, in the Congolese regulation on the election of this category of authorities, a series of the resulting problems formula to remove or improve. In the number of these, one can insert those with the size of the election colleges, the adopted electoral system, the application criteria, the obligations and bans around the electoral campaign which binding less candidates and convincing less the national community on the concern to reach free elements, fair and transparent. It is also clearly demonstrated that the provincial provisions leave a wide open aims to the trade of the voices and, on the occurrence of the voting results in inadequate with the expectations of the populations. Legitimacy, political stability and the vision for development from our Provinces thus found destroyed from the start of the third republic instituted in 2006 after a long period of political crises and wars in the country. So, some proposals for the revision of those provisions contained in both the Constitution (Articles 197 paragraph 4 and 198) as in other relevant laws (Election Act: Articles 159, 161, 162 and Law on Free Administration of provinces: Article 23).

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## 1. Introduction

The Free and transparent elections, organized at regular intervals that are sincere and correspond to the real choices of the population brought about proclaimed leaders are part of the indicators of the proper sound of democracy in a country. The modes and modalities of their passage are generally designed and lying in laws containing standards that may or do not contribute to the promotion or consolidation of democracy. As it can be seen, electoral standards are undoubtedly the sole of the success of the electoral processes, provided what are well designed and reassuring for all the parts concerned.

According to Mamadou Séne, "Basic institution in a representative democracy remains free and fair elections." Also, he thinks, «the free organization, righteous and transparent<sup>1</sup> releases requires a minimum of consensus on the rules of the electoral play, daring that the absence of this consensus usually leads to the challenge that sometimes leads to violence, arrests of political leaders. And in institutional, political and social crises.<sup>2</sup>

After several decades of wars and dictatorship that followed the proclamation of its independence, the DR Congo has adopted constitutional regionalism and decentralization as

a mode of organization and territorial management of the state. Three levels of political power have been instituted: the national or central level, the provincial level and the local level. To do this, we thought to grant to the province, regionalized entity, not just the autonomy- what was done for the decentralized territorial entities<sup>3</sup> - but it is also done in a "political component", with skills reserved alone and other skills which can exert with competition, the latter being well...In the text of the constitution.<sup>4</sup>

The constituent provinces, are also equipped with the management of all their resources: human, material and financial, in accordance with the provisions of Articles 3 of the Constitution and 2 of Law No. 08/012 of 31 July 2008, bringing its basic principles to the free provincial administration (so called the Free Welfare Administration Act), as amended and completed to date. As a result, the same constitution has provided for which two institutions are provincial-based (compounded by provincial members of the parliament-MPs) in the deliberative organ and the provincial government (executive body).The latter is composed of the governor, seconded by a vice-governor, with whom he must be elected on the same electoral list, and the provincial ministers, appointed by him.<sup>5</sup>

<sup>1</sup>Mamadou SENE, *La juridictionnalisation des élections en Afrique noire : les exemples du Bénin, de la Côte d'Ivoire et du Sénégal. Analyse politico-juridique*, Doctoral thesis in law, University of Toulouse I Capitole, Toulouse, 2017, p. 7.

<sup>2</sup>Idem, p. 9.

<sup>3</sup>Article 2, paragraphs 1 to 4 of the Law on the free administration of the provinces.

<sup>4</sup>Articles 203 and 204 of the constitution.

<sup>5</sup>Article 198 of the constitution.

This clearly shows that the concern of the component was to make much more management capabilities in the provinces, in order to promote the development. So much sought after from the base. In fact, he emerges, at least in appearance, that it is in a major concern of settlement and consolidation of democracy, considered as "a process of institutionalizing the rules that allows the repetition of elections<sup>6</sup> that this body of the rules has been produced. That is why, in Article 220 of Title VII of this Constitution adopted and promulgated on 18 February 2006, are there mentioned provisions, in which the formal ban of any constitutional reform of the constitutional reform of the revealed the provinces and the decentralized territorial entities.

The provincial MPs, the governor and vice-governor who are the two main provincial executive animators are the representatives of the population, which such as, need to be diverse and reassuring legitimacy basis. For this purpose, it is provided that provincial members are elected by direct vote, at the proportional of list, with the application of the rule of the strongest remains, in the circumscriptions more than two seats and election to the main majority ballot at a single seat, in the circumscriptions that nun that only one seats.

Congolese laws have provided, by the provisions of Articles 1986 of the Constitution, paragraph 2 of the Law on Free Administration of Provinces and 167 to 170 of Law No. 06/006 of March 09, 2006 Organizing the Presidential, Legislative, provincial, Urban, Municipal and Local Law (commonly known as the electoral law) –As modified today that the elections of governors and province-vice-governors of province are held by indirect and two-rounds (SMAT2), inside or outside of the provincial assembly, in front of the provincial college composed of provincial MPs of the province concerned.

Therefore, since the first step of their organization under in the first cycle in the DR Congo in 2007, the elections of governors and vice-governors of provinces have negatively marked the spirits of several people. They have emerged from disorders and violence and here across the national territory, because of the inconsistencies which proved to the public square and whose criminalities did not fail to focus on more constitutional and legal provision. By the way, they produced the mistrust in the head of the population.

Gauthier De Villers reports on the development of the essential laws of the democratization of the DRC which had set together the Congolese and international experts in 2005 and 2006 that "some external players the most involved in the support in the Congo elections did not have the same satisfaction. At the end of the process of developing the electoral law.<sup>7</sup>

In one of their deliveries, Elie Ngoma-Binda and his companions indicated that the electoral laws of our country "further reflect the compromises that the old belligerents had to contention. The calculations and the game of compromises have directly inspired a good part of the rules on electoral systems, the conditions of the voter and the illegibility, the

case of unintelligibility, the designation method and the mandates of future authorities.<sup>8</sup>

Based on the practices and results of the 2006/2007 elections, Christmas Obotela and J. Omasombo wrote that "generally, wide, corruption, purchase of the conscience and intimidation once again and in a scandal way, allowed the election of many senators and governors.<sup>9</sup>

For Bob Kabamba, Geoffrey Matagne and Pierre Verjans, "The secret nature of the ballot for the appointment of governors and vice-governors has allowed certain elected officials to support different candidates for those announced in their face. This provision of the electoral law makes it possible to explain the feeling of betray that some voters have recently expressed.<sup>10</sup>

Paul-Claudel Lubaya, a political operator, party leader, has not failed to declare to the Africa magazine that "in its current form, the electoral law (of the D.R. Congo: SIC!) Devotes the stealing and the fraud".<sup>11</sup> This declaration follows that of the group of 13 personalities, among whom he who were the initiative to the reform of the electoral law after being passed through consultations with the people in 2020 and 2021. These personalities have marked in the report of their consultations that the election of governors such as in the law in force justifies for many the disappointments of which our populations are victims. As a solution, these high intellectual and political men have proposed "organizing the elections of governors and vice-governors to the second degree within provincial assembly, following the sponsorship system by provincial MPs, indicating at the time of filing their list, the ticket of governor and vice-governor for whom they give voices.<sup>12</sup>

As you can see, the writing of law, as its content and the consequences of its application, have become so concerned that the theme of the legislative evaluation succeeds, and as so remind Benoît Jadot and François Ost in one of their publications.<sup>13</sup>

The work mentioned in the DRC since 2006, but they were limited to scrutinizing the content of the laws in relation to all elections, in general. Others has been able to limit its attention only on the formulations (wording of the texts) that only relate to the election of governors and vice-governors, in

<sup>8</sup>Elie NGOMA-BINDA, Leslie MOSWA and Jean OTEMIKONGORépublique Démocratique du Congo. *Démocratie et participation à la vie politique : une évaluation de premiers pas dans la IIIème République*, AfriMap and OSISA, 2010, p. 67.

<sup>9</sup>Noël OBOTELA, and Jean OMASOMBO, "« Premiers scrutins de la Troisième République en République Démocratique du Congo. Analyse des résultats », *Fédéralisme*,, 2006|07, p. 156. Available at: [www.na.ac.be/objs/00151015/pdf](http://www.na.ac.be/objs/00151015/pdf).

<sup>10</sup>Bob KABAMBA, Geoffrey MATAGNE and Pierre VERJANS, "Premiers scrutins de la Troisième République en République Démocratique du Congo. Analyse des résultats », *Fédéralisme*, n° 1, Vol. 7: 2007, p. 14.

<sup>11</sup>Jeune AFRIQUE du 18 mai 2022, consulté 29 juillet 2022 sur <https://www.jeuneafrique.com/1347109...>

<sup>12</sup>G13, « *Consensus sur les réformes électorales. Rapport final des consultations du Groupe de 13 personnalités* », Kinshasa, 2022, p. 16.

<sup>13</sup>Benoît JADOT and François OST, *Drafting the law today: mission impossible?*, Publications of the University Faculties, Saint-Louis, Brussels, 1999, p. 27.

<sup>6</sup>Mamadou SENE, *op. cit.*, p. 29.

<sup>7</sup>Gauthier DE VILLERS, *„République Démocratique du Congo. De la guerre aux élections : l'ascension de Joseph Kabila et la naissance de la Troisième République (janvier 2001 — août 2008)*, ed. LHarmattan, Paris, 2009, p. 379.

order to identify the strengths and, above all, to identify weaknesses. The final objective is to produce and suggest reformulations and a voting model that guarantee the lack of the population of the population and that of great voters of main leaders of the executive institutions of the DRC, in the event of solving the question of the legitimacy. To this level of political power in this country.

The first observation is that a good number of governors and vice-governors held in DR Congo under the legislation in place since the start of the third Republic set up in 2006 have revealed practical practices and results that the people who are represented by the provincial MPs of the governors in among whom "great voters". In many cases, they do not obey the expectations or wishes of the majority of their electors they perform the representation. They also elected, in some cases, people with low profiles, without a management of public thing, without warranty of the knowledge on entities and their problems and they justified it with the lows.

Edited to combat the legitimacy crisis, moralize national political life, consolidate democracy and promote development from the basis, the legal texts registering the elections of governors and Vice-Governors in DRC, bring together certain standards that rather, the contracts of the purpose of the constituent and legislators. This observation was made by more the one observers, as emphasized by this excerpt from the report on the question: "The Congolese Constitution and other electoral standards in force are a solid foundation for the conduct of real democratic elections. However, the effective implementation of this legal framework is insufficient. Several legal provisions remain vague, making them their interpretation and their application. Some provisions are. "Contradictory or inconsistent and therefore cannot be applied simultaneously.<sup>14</sup>

This Dissection is proposed to proceed to a quick examination of the content of the legal provisions relating to the election of governors and vice-governors of provinces to detect some pitfalls that would be wounding brakes the coming of the leaders of the provincial executive conforming to political principals of universal democracy accepted and following a correct processes.

It answers these questions:

- what are the legal provisions concerning the election of governors and vice-governors under the legislation in force since 2016, that carry obstacle to the eclosion of the democracy and the development of provinces of D.R. Congo?
- What are strengths, challenges, weakness, dangers or risks of these legal texts?
- What are causes and factors in origin and what solutions to provide for these issues in order to ameliorate them?

As hypothesis, we think that these provisions would be included in both the constitution and in other specific laws. The factors and causes in the origin of these deplorable provisions would be: the historic-political context of the period of their adoption marked by the post-conflict situation which required the research of political balance by all possible means, in order to devote the return to the belligerence; the concern to minimize the cost of electoral operations; the concern to guarantee victories to the political partners during the period of adoption the texts under

analysis, and so on. Without being comprehensive at this stage, the problems posed by these inconsistencies contained in the legal texts would, in particular, open the termination of the provincial governor function in incompetence and in lack of experience, the given possibility to be reelected in this position, the consecration of the low legitimacy of provincial government. And its main facilitators (governor and vice governor), the open door to the purchase of the voices and the corruption of voters, and so on.

About the interest of the present study, it is indemonstrable. It can be summarized by paraphrasing Gatsi that says that the interest of the study of the laws, such as that of the electoral contentious, "seems almost evident and is the result of the dual function attached to this matter which is the legitimization of elected officials and the protection of the Social Cohesion".<sup>15</sup>

## 2. Methods and Technique Used

Like any other scientific work, the development of this work has been made by a specific method and technique, dictated by the nature of the subject.

### 2.1. Methods

The legal method was used. Indeed, the analysis, well even though conducted by a political scientist, focused on the texts of laws, the field of predilection of the use of the legal method which, as shows Otemikongo, is more reserved for the only discipline of law; The political sciences that can also do so.<sup>16</sup>

In reasoning about, we considered the development and content of the electoral law as belonging to the category of public law, more precisely of constitutional law, with certain aspects of the administrative law.

The rest of this factual categorization operation, our analysis serves further absent from literal and exegetic interpretations. Indeed, as it is predicted by the recension, we have sought to identify, first of all the concerned texts (constitution, laws, regulations, circular ...); then, their parts (articles, paragraph, paragraph, and page) ... which pose a problem. Also we have stained to determine the nature of each problem identified and its consequences (real and possible), after having already seek to understand the context and the idea in which the text has been made.

We had been conceived none was not facing the look of how this body of the laws were law enforced by the actors and the way in which the environment has influenced and suffered the effects of their application. As much as it is also used as the development of the systemic as a helping method.

### 2.2. Technique

Concerning the data collection, the documentary technique was used. To do this, the documents containing the reports and the legal texts were carefully examined. From different texts, the extracts were drawn; the words and the context and the goals of the legislatures analyzed. It was therefore question of the exegesis, and at a limited but appreciable level, of the legislative evaluation.

<sup>14</sup>Centre CARTER, *Les élections présidentielle, parlementaire et provinciale harmonisées de 2018 République Démocratique du Congo. Mission d'Experts Electoraux*, p. 25.

<sup>15</sup>Eric-Adol T. GATSI, « Heurs et malheurs du contentieux électoral en Afrique : étude comparée du droit électoral processuel africain », *Les Cahiers de droit*, 60(4), 2019, p. 943.

<sup>16</sup>Jean OTEMIKONGO, *Guerres des méthodes en sciences sociales. Du choix du paradigme épistémologique à l'évaluation des résultats*, éd. LHarmattan, Paris, 2018, p. 140.

### **3. Short Historical legislature of the Function and the Elections of Governors of Provinces in the DR Congo**

Notice that since its accession to international sovereignty, the D.R. Congo has changed several times from this function. Indeed, we started from the governor of province (1960 - 1967), to move to Regional Commissar (1967 - 1977), then governor of region (1977 - 1996), to return to a governor of province by decree-law signed by the President Laurent-desired Kabila after the coming in power as a result of the rebellion. In the end, the same expression was devoted by the Constitution in 2006 since it should be awarded the name of the function of the executive organ of the create entity as main political component in the state territory.

During the period between 1960 and 1964, the governors of provinces, should be elected, as the case today, by provincial MPs within or outside the provincial assemblies<sup>17</sup>. In that time, the country had six provinces. All of them had been provided with their governors by this process. The constitution called Luluabourg, which had succeeded in the Basic Law had selected the same the method of Designation of the Leaders of the Provincial Executives.

When General Mobutu came in power by coup d'état, this post became accessible by appointment of the head of the state. This designation method remained applied until the arrival of Kabila at the head of the country. It is important to point out that the democratic alliance forces for the release of Congo / Zaire (A.F.D.L.), rebel movement that led this political leader, organized a species of the governors to the conquest of each province. He was worsened to organize in the same-propaganda and without propaganda, who had been taking part in the hands of the people meeting in popular meeting, without the scale of the selection of the nominations, nor secret of vote.

At the death of Kabila Laurent, his son Joseph who took his place returned to the appointments. This form of designation was also accepted by the political class under the democratic transition from 2003 to 2006, with a small difference that the names of the candidates for these appointments were proposed by the leaders of different political and old groupings of Rebels.

By the end, the participants in the Sun-City negotiations, convened to discard the basics of the new political order had agreed at these sites that the RD Congo had, now, be organized in the form of the regionalized state and to erode the provinces in the main political components and territorial subdivisions of the country. It was adopted and promulgated by the Constitution that the provinces will be, first, 11, then 26 (the capital Kinshasa bearing a statement statue) in the thirty-six months, to date the promulgation of the supreme law<sup>18</sup>.

The first elections of the Governors and Vice-Governors of province under the third Republic held at the 24<sup>th</sup> of 2007. The election Act of the period had set the number of provincial members of 690 for the whole of the national territory, of which 621 to elect and 69 to cooperate among the representatives of the trading personnel of traditional power. The Distribution of Seats Act had provided the seats of

following the 11 existing provinces in the one of Articles and, in another, a distribution for each of the provinces provided for in the art of 2 of mentioned Constitution. The total number of provincial MPs were reviewed at 780, of which 702 to elect and 78 to count from 2011 in the electoral law which his followed all four successive revisions (in 2011, 2015, 2017 and 2019).

Following the first elections of the governors of provinces in 2007, many other votes of the same kind were held, mainly those of March 2016, 2017, 2019 and 2021. The reasons were in particular to put the territorial division provided in the Constitution, fill the ejections of certain holders of posts by motions adopted by the provincial assemblies and here and ensure the continuous operation of provincial institutions to the country's new constituted legislature in 2019.

From all above, note that all of these amendments were not concerned for the election of the governors of provinces and their assistants. Indeed, under Articles 158, paragraph 1, 159 and 170 of the Electoral Law as revised today, the governor and vice-governor of Provinces are elected on the same list for a term of 5 years renewable once, by provincial MPs, by indirect suffrage in the election of majority in two rounds.

### **4. Legal Provisions on the Election of Governors In Force And Major Problems Faced**

From different political options raised in the past, the political and scientific characters to whom are given the mission of elaboration of the constitution and major laws on the organization of the political power, the proposition of the provisions under analysis below.

#### **4.1. Parts of the legislation containing the relevant provisions**

The election of the provincial governors, such as any other election, is a right focused on both national and international texts of human rights, the participation of citizen in the political life, particularly in term of elections and eligibility. Firstly, it is constitutional then contained in the Organic Law No. 8/012 of 31<sup>st</sup> July 2008, bringing fundamental principles for the free administration of the provinces, as amended today, in Article 23; As and in Law No. 06/006 of 09 March 2006 to organize the presidential, legislative, provincial, urban, municipal and local elections, which had, since then, four successive revisions in 2011, 2015, 2017 and 2022.

Let's know that all these changes reported in the electoral law will not be brought on the provisions on the elections of the provincial governors. It is said that all that has been arrested on this subject in the 2006 version remained intact, while the presidential and legislative elections experienced frequently the amendments.

Effect, according to the article 5 of the Congolese Constitution of 18<sup>th</sup> February 2006, "National Sovereignty belongs to the people. Any power comes from the people that they express it directly by referendum or the election and indirectly by their representatives. No fraction of the people, nor any individual cannot attribute the execution. The law sets the conditions of the organization of the election and referendum. The suffrage is universal, equal and secret. It is direct or indirect. The same article of the Constitution continues: "Without prejudice to the provisions of Articles 72, 102 and 106, are voters and eligible, under the conditions determined by law, all the consequences of two sexes,

<sup>17</sup>Article 163 of the Fundamental Law of May 19, 1960 relating to the structures of the Congo.

<sup>18</sup>Article 226 paragraph 1 of the constitution of February 18, 2006 before the revision in 2011.



eighteen years of age and having right to their civilian and political life.

This constitutional provision indicates two modes to participate to political life: a direct mode of participation including the referendum and election of the part, and an indirect mode of participation being achieved by means of representation. Let recall that all techniques of democracy, election is the most known and most commonly used, at least in societies that have some sort of "tradition". It is a much technical involvement technique in politics that the very foundation of representative democracy. That is the reason why the article 5 of the constitution says: "The suffrage is universal, equal and secret. It is direct or indirect".

Let's discuss about the question of the right of suffrage. The right of suffrage is the faculty given to citizens to give their opinion or choice somebody (election) or by a text (referendum). That is called right to electorate. Two forms of democratic suffrage is generally distinguished: direct and indirect suffrages. The Congolese constitutional law devotes both concepts, different, but explicit.

A suffrage is said direct, when the voters are called to carry directly, to be, without intermediary, their choice on a man or on a text. The mandate is transmitted directly to the elected person. The Democratic Republic of the Congo organizes this kind of suffrage in principle for any form of referendum. With regard to men, only the following elections are concerned: those of the President of the Republic, national MPs, provincial MPs, communal counselors, sector counselors or for the chiefdom counselors.

There is an indirect suffrage, when, on the contrary, the voters do not directly carry their choice on a man or on a text, to say when they are forced to go through intermediaries to operate this choice: they elect a group of electors (called secondary or great voters) who, in turn, are responsible for appointing elected officials. This kind of suffrage concerns, in the DRC, the following authorities: Senators, governors and vice-governors of province, mayors, burgomasters and leaders of sectors.

When reading the paragraph 4 of the Article 5 of the Constitution, it appears that the suffrage in DRC is coated at least three characters: it is universal, equal and secret. Suffrage is universal, when, in principle, all citizens fulfilling the requirements and determined by law are called upon to take part in an electoral process. It is equal suffrage when the electoral weight of each citizen equals the one of the other citizens: one elector, one voice. This paragraph 4 of Article 40 is formally prohibited the multiple and multi-way vote.

To preserve the freedom of vote and social peace, it is essential for other citizens to be not aware of the choice formulated by their compatriots. This can lead to intimidations or to achieve account regulations. It is why, the Constituent and, on its future, the legislator, hold the secret nature of the vote. This does not mean that the citizen is not free to express his choice or opinion. He still only a space where his freedom and privacy can find a full fulfillment.

After a silent and sustained reading, we identified a number of legal provisions regulating the elections of governors and vice-governors of province, which also pose problems that resolve and prevent them. We will present them under the point below, starting with strengths and concluding with weaknesses.

## 4.2. Strengths

An effort was done in order to identify the strengths of the electoral legislation of the DR Congo since the introduction of the third republic. Without being exhaustive, some of the most significant of points are emphasized below.

### 4.2.1. Reopening of the province's governor function at the electoral competition

The reading of the 1988 of the Constitution of 18<sup>th</sup> February 2006, as amended today by the same. The 11<sup>th</sup> January 2011, revealing certain articles of the constitution of the Democratic Republic of the Congo, combined with that of Article 23 of the Law on Free Administration Act of the Provinces and Article 159 of the Electoral Law, we find text: "The provincial government is composed of the Governor, the Vice Governor and Provincial Ministers. The governor and the vice-governor are elected for a five-year term renewable once by provincial MPs inside or outside of provincial assembly. They are invested by order of the President of the Republic".

The text above can bring Congolese citizens to the vote for the designation of those who want to direct their provinces, main territorial subdivisions and political and administrative components of the state, under Articles 2 subparagraph 1 of the Constitution and 3 of the Law of Free Administration of the Provinces. To remind, the function had become appointed under the second republic, marked by dictatorial power exercised by Marshal Mobutu. Indeed, from 1965 until the beginning of the 1990s, the Leader of the period who had taken the power by a coup, did not want to have the leaders of the provinces, the leaders whose power came directly from the people, and also, from the vast extends of territories inside the country. The fear was likely to have leaders of these entities that would benefit because they would have been the products of the wills of their administered members and would use this state of things to behave like "single masters on board" and to switch their entities in secession, as was the cases in the Katanga of Tchombe and South Kasai under the control of Dalbert Kalonji Ditunga a few months after the independence.

The means of transitions (1990 - 1997 and 1997 - 2006), the provincial governors and their vice were always appointed by the President of the Republic, but after being appointed designated respectively.

Nobody would say there were elections in areas, occupied by the various rebel groups ago, under the above-mentioned period. In this way, it is necessary to remind that what was made in these places at that time cannot be qualified as delegation, especially not in the credible election, which is taking into account a number of the prerequisites such as the free and secret nature of the vote, the inclusivity of candidates and voters, as well as and transparency. The almost all of these criteria were filled, both these and the plebiscites were almost imparting, by giving less time to people who wish to prepare and submit their applications and, most importantly, exposed the voters who suspicious to the hands and public audiences. Likely. In fact, it remains not understandable, in that time and, in the so vast entities, with significant sizes of populations, that could use a type of ballot of direct democracy that rhyme rather with the small states with very limited numbers of people, such as Rome and Greece of Antiquity.

#### 4.2.2. Mode and a modality of vote less complex

Always in the same statement of law, it is established the majority mode and the two-way grounds for the election of governors and vice-government governors who must appear both of them on the same party or group of political group. Unlike the "proportional list" listing that can proclaim elected a candidate who has lost less voices, to the detriment of the one who had more a lot more, provided that the sum of the vote's first vote is that the list of most voted, the "multicultural ballot", as a result, is simple and easy to understand even by illiterate.

In fact, generally speaking, everybody knows that elections candidates are lending and leading campaign to obtain the most out of the possible voices to classify in a useful order and win the victory by this fact. Thus, after the vote, before someone who is known to be elected by the majority and the results confirm it, but which leaves the chair to the one who they did not vote appear paradoxical, especially for a population with a general high level of instruction.

#### 4.2.3. Limiting the duration and mandates of governors and vice-governors elected

The same provisions of Articles 198 of the Constitution, 23 of the Provincial Administration Act and 159 of the Electoral Law, the merit of expressing fixing the duration and the total of governor and vice-governor mandates. The best party to draw the will of the legislator in this prescripts is the warranty of the alternation that it offers, when it is obliged for a binomial gubernatorial elected, not to go beyond two mandates. It follows that almost every ten years, each province will see new faces at the head of its executive institution to provide, possibly, a new vision and, perhaps, a new type of governance. In fact, it is an opening to innovations in search of development.

#### 4.3. The obstacles and problems posed

By reading the texts of law about the elections of governors and Vice-governors in the RD Congo allowed us to understand that they are in origin of the purchase of voices or corruption of great voters, the banalization of the governor's function and the maintenance, or even the exaggeration of the legitimacy crisis on the provincial institutions and their facilitators.

These problems in are weaknesses are analyzed below.

##### 4.3.1. The consecration of the provincial governance legitimacy crisis and their animators

One of the obstacles contained in the provisions of the legal texts of the D.R. Congowhich relate to the election of governors and vice-governors of province is constituted by this consecration of illegitimacy or legitimacy on a low basis. To agree with Morlino, there is legitimacy, whencitizens know that a democratic institution is superior, notwithstanding its limits and its failures, to all those who could replace it<sup>19</sup>. However, the provincial governors and vice-governors elections by the provincial MPs of their current numbers did not success in convincing people about this opinion.

It is true that the extracts of the Constitution, the Elections Act and the Act respecting freely closed until recalled mention that the Governor and the Vice Governor of Province are elected on the same list "by indirect suffrage of majority in

two rounds by the MPs inside or outside of the provincial assembly.

To start, it is important to note that the principles of the distribution of seats with electoral riding for the elections of the provincial MPs of the 2006 in D.R. Congo are found in the article 146 of the electoral law as revised today says: "Each electoral circumscription has right to a number of provincial MPs equal to the results of the following operations: 1. An electoral quotient by province is obtained by dividing the number of enrolled voters in the province by the number of seats to be filled the assembly of the province; 2. The number of seats to be filled in each circumscription is obtained by the division of the total number of total enrolled voters in this circumscription by the electoral quotient of the province; 3. A seat is assigned to all electoral circumscription that would have a number less than the electoral quotient; 4. If the total number of seats thus attributed is below the number of seats in the province, an additional seat is attributed to each riding that has the highest according to the number of seats obtained, until the total number of seats in the province. The provisions of this article are applied, Mutatis Mutandis, in the elections of the municipal councilors, Sector or chiefdoms.

Therefore, already before the basis for the distribution and process to be applied to the successfulness, the legislator took care to fix the number of provincial MPs in the provincial meetings. Party of 690 Provincial Elected for the National territory In 2006, this number has increased to 780 for a breakdown of a minimum of 18 to up to 48 by provincial assembly following the number of the voters realized after identification operation and enrollment<sup>20</sup>.

It is true that correct for many electoral doctrinarians, in the situation of suffrage, as is the case with the elections of the governors and vice-governors of province in DR Congo under the legislation in force since 2006, do not see the votes expressed by the great voters, but also take into account the votes of all the voters of these great voters. This is the case of Benoît Jeanneau for whom in this type of suffrage, is always maintained a kind of chain of sovereign wills and never interrupted between the elected officials (from both, the second and the first degrees), which make them all proceed with universal direct suffrage.<sup>21</sup>

We oppose to this conception, without categorically refuting the indirect suffrage, we consider that it is possible that the link can be cut off the point of the two categories of the voters (primary voters and great voters), just after the election of direct suffrage, with as cause the small number of great voters to which the authority of the promotional power is made for the posts or the political matters of great importance. From this moment, the trending of the first degree voters by the seconds becomes possible. With such a break, the great voters remain play the appearances and use speeches from the beneficiaries of the majority support, so even though it exists any longer. On this point, we agree with Leon Kengo, when he wrote, "It is not enough for the majority to continue to govern; it is still necessary that this majority and the investigated

<sup>19</sup>MORLINO, quoted by Jean OTEMIKONGO, *Elections et changement politique en République Démocratique du Congo. Six décennies perdues pour le développement*, LHarmattan, Paris, 2021, p. 318.

<sup>20</sup>MORLINO, quoted by Jean OTEMIKONGO, *Elections et changement politique en République Démocratique du Congo. Six décennies perdues pour le développement*, LHarmattan, Paris, 2021, p. 318.

<sup>21</sup>Benoît JEANNEAU, quoted by Bruno DAUGERON, « La notion de suffrage universel indirect », *Revue française d'histoire des idées politiques*, 2013/2(n°38).

government be in communion with those who have given the representatives the power of representation.<sup>22</sup>

So, even if by representation of indirect suffrage we can have a reduced group of members in a deliberate organ, it appears not good to put a ten or some two or three tens of characters, having each thousands of voices of other people, to give such power as that of Chief Provincial Government, representative of the central government in the province, Chair of the Provincial Security Committee, coordinator of all public services (concentrated, deconcentrated and decentralized) working in the province. It is important to expand this electoral body of the provincial governors to see, without difficulty, that the winner candidate becomes the product of the expression of the desire already explicitly widely at the second degree, so that the one of the first degree does not suffer to make himself clear and understood.

To expand the vision the electoral body concerned, one could, for example, plan to insert all the elected officials of all decentralized territorial entities (members of the deliberate organs and chiefs of local executives), to whom would also be associated all the Chiefs of Chiefdoms with provincial MPs. The traditional authorities and elected representatives of decentralized territorial entities may vote to the heads of places in the territories, a part from urban advisers and the provincial MPs who would vote in their respective cities. The operations will be seduced in just three to four hours at (especially if they also use the voting machine) and the results can be published and known the same day.

Knowing that the actual state of territorial organization put away the existence of the Lumumbaville, such a recomposition of the Election College of governors and vice-governors and senators would lead to at least 9.378 great voters for the whole republic, for: 1.344 urban advisers (04 consultants per common) 194 Mayors and Assistant Mayors, 1.206 Administrative Burgomasters and vice-Burgomasters, 3.318 Sector Consultants, 474 Sector Heads, 1.813 Chiefdoms Advisers, 259 Chiefs of Chiefdoms<sup>23</sup> and 780 Provincial MPs. By dividing this total of great voters from the entire republic to the provincial governments to provide for leaders, we get an average of 330 major voters by province. This suggests that even taking into account the disparities therein between different provinces at the point of view of the number of voters of this category, no deals will be less than 250 voters of the voice living in all corners. Meanwhile, because the voters have been a little more numerous and from all corners of the province, it must be possible to hope to have much adhesion of wills to results and, in consequence, to the institution and to selected animators.

Another effect that may be applied for the proposal for the enlargement of the goal (and senators) electoral body will be, from now, complete electoral cycle, rather than remaining, as stressed and disputes Jean Otemikongo<sup>24</sup> in the Top-down and electoral backwards, This approach in which the national and provincial elections are privileged, against the local elections, giving rise to an turned up pyramid that put into place a

<sup>22</sup>Léon KENGO, *La passion de l'Etat*, éd. LHarmattan, Coll. Mémoires, Paris, 2019, p. 235

<sup>23</sup>Michel LUNTUMBUE, « RDC : les enjeux du redécoupage territorial —Décentralisation, équilibres des pouvoirs, calculs électoraux et risques sécuritaires », *Les rapports du GRIP*, 2016/10 [en ligne], sur [https://base.irenees.net/docs/note\\_analyse\\_grip\\_michel\\_luntumbua.pdf](https://base.irenees.net/docs/note_analyse_grip_michel_luntumbua.pdf).

<sup>24</sup>Jean OTEMIKONGO, *op. cit.*, p. 318.

legitimacy with double gear, where we find on one hand, institutions and facilitators (bad) elected and, on the other hand, institution and facilitators appointed and maintained in their functions under the texts fairly unsupported at the political situation of the country. The Republic will therefore be obliged to perform one of the intangible provisions of the Congolese Constitution, which proscribes to reduce the skills and other benefits recognized in decentralized territorial entities, such as, for example, the autonomy of their management that can only be exercised through bodies organized by elected people<sup>25</sup>.

#### 4.3.2. Reopening to the trade of voices and the corruption of great voters

The Reading the legislation on the elections of the governors and vice-governors of the D.R. Congo, relayed by the reality on the ground since 2007 refers to that these elections are as a personal case of political operators of the national and provincial levels, opportunities of illicit enrichment of each other, particularly in favor of the camp of the majority at national level. There is a sort of ambiguity that seems supposed by the texts to let the election of governors take place in corruption and in any impunity.

Indeed, the small numbers of the provincial assemblies to which the monopoly allowed to vote the binomials of the leaders of the provincial executives constitute in themselves a factor allowing, a bait of purchase of votes, so the position is important in terms of opportunities of gains and political positioning that it offers. Truly, it is easier for anyone to seek majority, and especially that sagged from the entire political family that segment in this fight, finding what is necessary to rotate an alignment of ten or fifteen people than if it were 250 people as proposed above.

Also, surprising that it may seem, among the behaviors considered to be silently sanctioned by Articles 79 to 98 in the Electoral Law, as amended until the time of the writing of this reflection, nothing seems to be awarded the purchase of voices or consciousness to be produced by the applicants with the voters (the provincial MPs of the governors), on the proposal of the latter or following the solicitation of the first cited. Indeed, the 19 articles mentioned provide sanctions against: any person without quality that enters the places of operations (Article 79); The one who leads the election campaign outside the period included in the CENI product calendar (Article 80); the fact of having to another candidate or team of conduct or give their opinion (Article 81); The agent of the CENI who refused to do the tasks given to him without a legitimate reason (Article 82); the confiscation or destruction of the CENI equipment by a member of its staff under the pretext of claiming his rights (Article 83); CENI staff who delays without the right start of the voting (Article 84); The unlocking of the opinion or the candidate for which one wants to vote or vote, as well as the amendment by abuse of confidence or the indiscretion around the choice of the person that attended at voting (Article 85), etc.

As for corruption, the law mentions: "Any person who, directly or indirectly, gives, offers or promises wide, values, property or property benefits to members of the polling station, counting or compilation, is punished. The main criminal bonding of six months to five years and a fine of 200,000 to 1,000,000 Congolese Francs. It is, in addition, private of its civil and political rights for a period of six years. He exposes himself to the double of his punishment, any member of the polling station who solicited or accepts these

<sup>25</sup>Article 220 of the constitution.

benefits. <sup>26</sup>«As can be seen, the law makers have thought of sanctioning only corruption or attempt to corruption between the candidate or members of his team and the electoral administration officers, as if this kind of mistake can be done only by these two categories of people. Clearly, it is willingly that the Congolese legislature wanted to leave free to the voters to be perceived by large, material goods, donations, promises and other present on the part of candidates in exchange for voices.

It is, therefore, the spirit this provision that has just been confirmed at any time during the discussion on the proposal of that Act, with a view to its amendment and its complement. On this occasion, the decision taken by the group of 13 personalities of the Republic (G13) among them, teachers of universities and a few parliamentarians, a provision was intended to depend on large and material property during the meetings, escorts of reunion of the election campaigns. In their vast majority, national and senators MPs, both of the majority and the opposition, rejected this point of the initiative.

No one could advance that even though environmental and reception of large, property and promises between candidates (governors and vice-governors) and voters (provincial MPs) was not mentioned in the electoral law as a ban, this is already planned and sanctioned by the Congolese Criminal Code as revised today the law No. 005/006 of 29<sup>th</sup> March 2005 in Article 147a, to justify this deficiency. In this, it is good aim to replicate that the electoral law is a special law, which deserves sufficiently complete, clarified and specified, to avoid the equivocation, which can lead to the deviation in its application. What is confirmed by the Attorney General near the Court of Cassation, Mr. Flory Kabange Numbi, when he declared that he had in April 2019, "at the professional plan, the opportunity to live the experience of the facts of corruption denounced in the elections held at the level of the provincial assemblies"<sup>27</sup>. Already long before him, Christmas Obotela and Jean Omasombo said, "in general, wide, corruption, lack of consciences, the influence traffic had, once again and scandalously, allowed the election of many senators and governors in the 2006/2007 elections"<sup>28</sup>.

At the current state of this legislation, some may argue that, in accordance with the article above recalled of penal Code, the fact for governors and vice-governors to promise, give money and property to the provincial MPs, who are undoubtedly public officials and, for them, to accept them is considered corruption. Some might say that it is not inscribed in the electoral law, which is the special law which governs this election and, therefore, to mention the principle: "which is not forbidden is permitted". In the broadness of these, they can mention the fact that other offenses such as false and use of false, confidence of confidence, violence and factory, and so on. Although already planned in the Penal Code, are well taken up in the law of elections to show the special character of it. It is therefore incomprehensible only that for the corruption between candidates and voters, the ban may remain not mentioned. Especially after as much changes in 2006.

<sup>26</sup>Article 87 of the electoral law.

<sup>27</sup>Flory KABANGE, «Les faits de corruption en période électorale. Le cas de motivation des électeurs», communication faite à l'occasion de la mercuriale de la rentrée judiciaire 2019 de la RDC, Kinshasa, 15 octobre 2019, published on the news site Actualité.cd on: <https://actualite.cd/2019/10/15/rdc-plaidoyer-de-flory-kabange...>, consulted on 22/11/2019.

<sup>28</sup>Noël OBOTELA and Jean OMASOMBO, *op. cit.*

#### 4.3.3. Opening to the skid of the political system

Having opted for regionalism and decentralization, it is clear that the legislator wanted to offer the country, at least officially, other decisions below that the top level. However, if they optimize the legal provisions around the election of the governors, including those who have limited the college of their voters to the only provincial MPs of the meetings respectively concerned, we realize that it opens the way to the political leaders of the central level, particularly those of the majority camp, to maintain direct hierarchical links with the provincial governors, whereas this is contrary to the principle of the free administration of lower territorial entities. In this regard, Mariano Muderwa notes that "It is the appointment of governors by the Center, hidden by the electoral system, which continues to be applied in the Congolese provinces"<sup>29</sup>. It follows that provincial MPs are limited, if not all, but a lot them, to ratify in the province, the choice made from the capital of the country, by the authority or the moral authorities, on the proposal of their relatives and collaborators.

#### 4.3.4. The banalization of the provincial governor's function

The function of the provincial governor function seems to have been poorly thought, as it contains the provisions that set the applications. There is a question of an incomprehensible softening, if we take into account the content of the skills and the activities that result. Augustin Matata emphasized quite constantly and noted by regretting the fact that, in their choice, the privilege, they promoted the militarism, the laminate, the fraternity of which are the most subjective criteria. "The main objective of the project, however, the governors thus designated being a denominate, to guarantee the political sites of central power in Kinshasa, and on the other hand, to serve financially. It was seen some governed chased by the people of their provinces after having spending nearly ten years as a chief of executive! Moreover, governors originating in these same provinces!"<sup>30</sup>, he underlined.

In case of this this work, we have focused our attention on how the conditions, the good citizenship, nationality, intellectual skills and professional disputed professional have been legislated.

#### A. On the minimum age fixed by the law

By the criteria of eligibility or conditions of nominations allocated, refining the complacency, the Congolese legislature seemed not to have been necessary to have the exact measure of the heavy charge, of the governor of the province. In this regard, it is sufficient to take a look at the criteria, the good citizenship, nationality, residence, knowledge of the environment and its problems to understand that there has been a difficult negligence to justify for any nation who wants to go to the quality leaders at this level of governance of our territory.

With regard to the condition of the age, it is regulated in Article 181 of the Electoral Law, which stipulates: "The list of governor and vice-governor candidates is presented by a political party or political group. Independent people also can apply. The governor or vice-governor fulfills the following conditions: to be a Congolese, to be eighteen years old on the closing date of the application, enjoy the fullness of its civil and political rights and, finally, having the quality of the voter

<sup>29</sup>Fabrice MUDERWA, *op. cit.*, p. 143.

<sup>30</sup>Augustin MATATA PONYO, «Ce que je pense : Le découpage des provinces, est-ce une réussite ?» [en ligne] on : <https://matataponyomapon.com/ce-que-je-pense-le-decoupage-des-provinces-est-ce-une-reussite/>, publié le 04/04/2021, consulted 05<sup>th</sup> April 2021.



or to be identified and enlist during the filing of his application."

This provision has been able to determine the deliberate conditions of the governor and vice-governor. Nevertheless, minimum lease of 18 years of age on the closing date of the application seems less rational, in view of the responsibilities of these authorities, as well as the required diploma, which is that of under Grade (for the traditional teaching system or the Grade under the L.M.D. system.). It would be better that this minimum age is 21 years old, equal to the normal liberal amount of the undergraduate of the highest education and the university's graduation for a student who has not experienced failure, which would put it in a situation to resume this cycle.

It is quite uncomfortable to entrust to an 18-year-old, who usually at this age, cannot have a higher and university education, even less to have professional experience that can help to deal with the issues of administration, major issues of public life, such as security, territorial, public finances ... with all the particularities of state management.

At the psychological point of view, we would not be wrong at all to affirm that leaving this opportunity to governors under 20 years old, the DRC runs the risk of seeing some of its provinces be led by rejected leaders or not respected by the public officials under his command. In all, in view of the quality and volume of prerogatives conferred on a province's governor by the texts, it is more logical to require a good level of scientific knowledge, a good dose of morality and an experience at a position of equal or lower, but close.

#### *B. Regarding the evidence of nationality and good citizenship*

In its texts, Article 162 of the Electoral Law indicates that candidates for the election of the Governor and Vice-Governor should apply to the local office of the Independent National Election Commission. And the elements of the application are: a letter of consent in accordance with the model set by the independent election commission and signed by the candidate; a given card sheet followed by the detailed resume, the whole ending by the formula "I swear on the honor that the above information is sincere and accurate"; four photos passport format; A symbol or logo by political party or political grouping. In addition to these high-calm elements must be attached to the statement of applications, the following parts: a photocopy of the dealer card; a birth certificate; A receipt of the deposit of the non-refundable deposit of 10,000,000 Congolese francs constant put in the public treasury account by each of the candidates of the list; an investiture letter of the candidate by his political party or his political group.

This article has the advantage to elucidate the modalities of the application declaration to the post of governor and vice-governor. However, it is regrettable that he was not taken into account with the third condition laid down in the art, 161 of the same text, namely, to "know the fullness of its civil and political rights" for candidates for other elective positions, such as that of the member for the national. It was necessary to require the candidate's governor and vice-governor to attach the lecture of the judicial record and the certificate of good life and manners, as the case may be the case for the candidate President of the Republic, to meet this legal requirement, even constitutional.

Moreover, the governor is the representative of the central government in the province, the President of the Provincial Security Committee, the coordinator of all public services of central power working in his entity, he exercises, mutatis mutandis, almost the same deductions. The Prime Minister, the only large difference related to territorial jurisdiction. In such a position, the evidence of his nationality should be to be

produced by the production of the certificate of nationality. A free photocopy of the voter card is not enough; it is still necessary to emphasize that the latter does not constitute a part of full-service, since it just represents the ID card, as mentioned therein.

#### *C. Regarding the level of the instruction and professional experience*

To start, it should be better to show the ambiguity created around the terminology "degree of higher studies" used by the article 162 Paragraph 3, paragraph 3 of the electoral law where the declaration for the application must be annexed to a "certified photocopy of the degree of higher education or university or certificate by holding or certification justifying a professional experience of at least five years in the political, administrative or socio-economic field.

Indeed, the term "graduate degree" is devoted into the Congolese legislation to qualify the one given by the end of the first stage of the third cycle of university studies, after the provisions of Article 194 of the Framework Law No. 14/004 of 11<sup>th</sup> February 2014 of national education. However, as the most of the emerged in the above electoral law cited, it is rather a degree, even undergraduate under the old system (or Grade, under L.M.D.), which is the first that they obtained at the end of the first cycle. Finally, the alternative conditions for the graduate from university or academic studies and the certificate of a professional experience of at least five years in the political, administrative or socio-economic field combined with that of the 18-year minimum of the age group may not be able to govern a province, having physical, legal and intellectual capabilities required to lead an orthodox and rational leadership of the province, in view of the strategic place that does not entrust this entity in the development of our country.

In our opinion, any governor and vice-governor candidate should have at least a degree of the first cycle of higher education or university, combined with a professional experience of at least five years in the political, administrative or socio-economic field. In other words, these two conditions should be cumulative and non-alternative. This would, on the limit, have a governor and victory officer-by-law, with an acceptable scientific level, coupled with proven professional experience.

#### **4.4. Main-facts and causes in origin of the problematic provisions**

##### *4.4.1. The political context of the period of elaboration of the texts of departure*

One of the factors predicted the Congolese legislation to contain several pitfalls revealed in this work is, in our opinion, the historical and political context in which the legal texts under analysis have been designed and adopted. Indeed, these texts were initially just out of the long period of the disorders and rebellions by political actors, coming from the Sun-City dialogue which have been part of most institutions of power 1 + 4. Such a power cannot produce standards, at least provisions that are also appreciated more much compromise, which the rigor which risk putting away a lot of so-called to the race of power and, therefore, to cause a return to the starting place. This is what has brought Otemikongo, Moswa and Ngoma-Binda to mention that the calculations and the game of political compromises have directly inspired a good part of the rules on electoral systems, the conditions of voters

the eligibility, and the ineligibility cases, the designation method and the mandate of future authorities.<sup>31</sup>

#### 4.4.2. The denaturation maneuvers of the political system by men in power

As many provisions on problems on elections cannot be unknown to the political operators of different camps, both of them, in principle, be interested in having, as and one another, the provincial management, or to implement their company projects, either to draw political and economic gains, especially the financial profits. The interpreting question is why are these clumsy prescriptions almost unchanged, although there has been amendments to the four-year successive election law (in 2011, 2015, 2017 and 2022)?

The answer seems found in this award of Thomas Ehrard, according to which "the main explanatory matrix of electoral reforms is the search for electoral earnings by political training that take the initiative"<sup>32</sup> and that "electoral systems are political mechanisms subject to manipulations; their choice as much as their modifications are not neutral".<sup>33</sup>

Indeed, after the compromises of the 1 + 4 regime that led to the 2006/2007 elections described as "founders"<sup>34</sup>, it revealed that the authorities that have passed in power at the central level, particularly those of majority political training, do not carry out constitutional regionalism in their mind. The free administration of the provinces, with the coronal of the elected authorities with such important powers and less dependence of the central level disturbs so much soon has to maintain governors and MPson dependency by mechanism both Formal and informal.

Formally, decision-makers of Kinshasa's power has prevented, by strategy, to implement the laws related to electorship in like that of the Public Financing Public Act, promoting its abuse. They also put the application of the 40% retaining of the national services revenue from the provinces and let operate well the National Cash Decree, to maintain the leaders of the entities, the remaining subdivisions of the country, in the position of weakness and total dependence. The latter went even very far, violating the constitution by refusing to implement the judgments of the Constitutional Court that rehabilitate some governors of province fallen illegally, as was the cases for Jean-Claude Kazembe from Haut-Katanga and Cyprien Lomboto from the Tshuapa.

In addition to these few actions carried out that are seen as the visible part of the iceberg, the central authorities, especially those of the majorities (those under the chairmanship of Joseph Kabila and those currently behind President Félix Tshisekedi), put in place, as the Lisa Jene and Pierre Englebert, "parallel patronage relationships that eventually lead to neutralize provincial institutions"<sup>35</sup>. This mainly disorder cannot push these initiators and beneficiaries of the informal policy of such political patronage to modify

<sup>31</sup>Elie NGOMA-BINDA, Leslie MOSWA and Jean OTEMIKONGO, *op. cit.*, p. 67.

<sup>32</sup>Thomas EHRARD, « Le rôle des intérêts inter- et intrapartisans dans les processus de découpage électoral. Vers une déconstruction du rôle des partis politiques », *Revue internationale de politique comparée*, 2014/1 (Vol.21), p. 66.

<sup>33</sup>Idem

<sup>34</sup>Jean OTEMIKONGO, *op. cit.*, p. 241.

<sup>35</sup>Pierre ENGLEBERT and Lisa JENE, in Balthazar NGOY. and Pierre ENGLEBERT (Sous dir.), *Congo, l'Etat en morceaux. Politique et administration au prisme du découpage provincial*, éd. M.R.A.C. and LHarmattan, Cahiers africains n° 96, Paris, 2020, p. 143.

the weaknesses contained in the laws that allow them to keep the direct supervision of the vested-based on the political and economic affairs of the provinces.

On the contrary, the majorities who succeeded are stopped, by trial Ballon, to ask through the conferences and media of all kinds, the suppression of the provincial assemblies, so that there can be any longer the elections of the governors in future, but that becomes by appointment. The obstacle presented by the article 220 of the Constitution which is classified "intangible" by the component is the only thing that retains them in state, but not without seeking to pass through; One of the illustrations on this subject being the book of Professor Boshabwith the title as evocative as follows: "between the inanition and constitutional revision".

## 5. Conclusion

Since the instauration of the Third Republic in D.R. Congo, the choices of governors and vice-governors of province have proved to be overall. It was given to observe and find out practices of actors who are to be made in the row of violations of the relevant legal texts. There are also, and above all, legal provisions in relation to these elections that can lead to the choices of the candidates unsuccessfully by the population and let intact difficult problem of crisis of legitimacy which has both destroyed the democracy and prevented the start of the Congo towards development.

The look at the prescriptions of the legal texts around the size of the electoral college, the minimum finance of governors and vice-governors, the means of verification of their nationality and their good citizenship and the disjunction of the criterion of the necessary capital expected level of professional dispense are, likely to lead to failure rather than reach the objectives covered by the constituent of the Third Republic. The analysis made demonstrates that the above mentioned provisions are leaving much in the conflict with the law and individuals to the doubtful profile at the head of the executable institutions of the Congolese provinces, as well as the failure of free administration instituted enforcement by regional implementation through corruption between candidates and voters, whose the proscription and sanction are not clear, better, written in the texts.

Based on these uncomfortable formulation of standards that govern the elections in The Democratic Republic of the Congo, in general, and those of the governors, in particular, is the context of their production, which was the post-conflict period, which called to tolerate some inconsistencies, in order to maintain the balance that were still fragile by softening. There are also the maneuvers of the political majorities that succeeded in the National level, that seek to distort the political system set up by the 2006 component.

Solutions are, for instance, the enlargement of the electoral body of governors and vice-governors, involving in the electoral college of the latter, all elected representatives of decentralized territorial entities, require the certificate of nationality to any candidate as a question, reassure the minimum liberality of these candidates at age of 21 at least to match the one's greater and university's high-degree graduation to make by cumulative conditions and not disjunctive with professional experience of 5 years.

These are solutions that, in our opinion, once fully implemented, will be able to effectively bring the central power to push each electoral cycle until the end, starting with local institutions, to produce the great voters for senators and governors. And to build material decentralization. They will also serve to break the political paternalism, which is held in the informal, by preventing the free administration of the

provinces. Similarly, they can help to elect governors and vice-governors depending on their competence, experience and integrity and in line with the willingness of the people.

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### C. Other Documents

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- Centre CARTER, *Les élections présidentielle, parlementaires et provinciales harmonisées de 2018. République Démocratique du Congo. Mission d'Experts Electoraux*, en ligne sur : [https://www.cartercenter.org/ressources/pdfs/news/peace\\_publications/election\\_reports/drc-2018-election-report-final-fr.pdf](https://www.cartercenter.org/ressources/pdfs/news/peace_publications/election_reports/drc-2018-election-report-final-fr.pdf).
- Fabrice MUDERWA MARIANO, *Instabilité politique dans les institutions provinciales au Sud-Kivu. Origines, acteurs et conséquences*, Mémoire de D.E.S., inédit, Université de Kinshasa, 2015.
- Mamadou SENE, *La juridictionnalisation des élections en Afrique noire : les exemples du Bénin, de la Côte d'Ivoire et du Sénégal. Analyse politico-juridique*, Thèse de doctorat en droit, inédite, Université de Toulouse I Capitole, Toulouse, 2017.

### D. Textes juridiques de référence

- Loi n° 11/002 du 20 janvier 2011 portant révision de certains articles de la constitution de la RDC du 18 février 2006 (version des textes coordonnés)
- Loi n° 11/003 du 25 juin 2011 modifiant la Loi n° 06/006 du 09 mars 2006 portant organisation des élections présidentielle, législatives, provinciales, urbaines, municipales et locales
- Loi n° 15/001 du 12 février 2015 modifiant et complétant la Loi n° 06/006 du 09 mars 2006 portant organisation des élections présidentielle, législatives, provinciales, urbaines, municipales et locales telle que modifiée par la Loi n° 11/003 du 25 juin 2011
- Loi n° 17/013 du 24 décembre 2017 modifiant et complétant la Loi n° 06/006 du 09 mars 2006 portant organisation des élections présidentielle, législatives, provinciales, urbaines, municipales et locales telle que modifiée à ce jour
- Loi n° 22/029 du 29 juin 2022 modifiant et complétant la Loi n° 06/006 du 09 mars 2006 portant organisation des élections présidentielle, législatives, provinciales, urbaines, municipales et locales telle que modifiée par la - Loi n° 11/003 du 25 juin 2011, la Loi n° 15/001 du 12 février 2015, Loi n° 17/013 du 24 décembre 2017
- Loi n° 08/012 portant principes fondamentaux relatifs à la libre administration des provinces en RDC
- Loi n° 13/008 du 22 janvier modifiant et complétant la Loi n° 08/012 du 31 juillet 2008 portant principes fondamentaux relatifs à la libre administration des provinces
- Loi-cadre n° 14/004 du 11 février 2014 de l'enseignement national
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