

# Building a state for the Congolese people

*Beyond peace and elections, fundamental reforms are essential in the DRC*

By **Ernest Harsch**

Kinshasa

A pickup truck marked "Delta Protection" zooms around a corner on a main avenue in the heart of the Congolese capital, with two uniformed men in the cab and another standing on the back, swinging a mounted heavy machine gun back and forth. They wear sunglasses, though it is night. On another street, a minivan labeled "African Defence System" bounces along with more than a half-dozen armed personnel.

Such private security outfits are common in the main cities of the Democratic Republic of the Congo (DRC), hired mostly by foreign and local businesses to protect their property and keep crime at bay. They can be brutal. In front of one of Kinshasa's main banks, a uniformed guard clubs a woman trying to sell bread on the sidewalk.

The government is working to strengthen its regular police forces. But they are not yet able to guarantee public safety. All too often, undisciplined police and soldiers themselves commit abuses.

Across the country and in various activities, the Congolese state and its institutions are only minimally present or effective. Peace agreements ended much of the fighting that devastated the eastern half of this country for nearly a decade — but a number of armed groups continue to operate there, perpetuating insecurity, causing major population displacements and threatening to reignite a wider war (see box, page 14). National elections have put in office a government with some political legitimacy.

Yet reforms of key state organs — police, army, courts, civil administration, state enterprises, local government councils, tax agencies — have only just begun. So have efforts to get the government to open up to dialogue with ordinary citizens.

## 'A problem of the state'

For the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), overcoming such



Riot police guard Supreme Court in Kinshasa: The DRC's court system is in need of serious reform.

weaknesses in state authority is essential for preserving the country's hard-won peace. In addition to their peacekeeping duties, many of MONUC's 18,000 military and police personnel and 2,000 civilian staff are now engaged in helping Congolese build institutions that can manage the country's affairs over the long term, without reverting to crisis and chaos.

"The problem in the Congo is not only the problem of armed groups," observes UN Assistant Secretary-General for Political Affairs Haile Menkerios. "It is a problem of the state. It is a problem of nation-building.... Institutions do exist on paper right now, [but] in practical terms, they really need quite some time to strengthen." (When he spoke with *Africa Renewal* in Kinshasa, before his current appointment, Mr. Menkerios was the UN Secretary-General's deputy special representative in the DRC.)

Many Congolese share that opinion. "In most areas I visited, the existence of the state is doubtful," Senator Vincent de Paul Lunda Bululu told a Congolese journalist after touring his home region of

Haut-Katanga in September. "Certainly, the state exists legally, but in reality it needs to be reborn."

According to Albert Yuma Mulimbi, national president of the *Fédération des entreprises du Congo*, businesspeople need a "climate of trust" before they will invest and create jobs. Unfortunately, the state is "still fragile." To ensure economic recovery from the ravages of war, says Mr. Yuma, it is important to "reconstruct a strong, impartial, effective state."

Ordinary Congolese often agree. In late June, civil society organizations and professional associations staged a march through the town of Beni, in the highly insecure province of North Kivu, to protest banditry, killings by rebels, rape and extortion. They submitted a memorandum to the interim mayor insisting that the authorities do more to reestablish order.

## 'Governance contract'

In their public speeches and declarations, the country's political leaders assign a high priority to building up the state's capacities and its public acceptance. Guiding

all official actions, Minister of Planning Olivier Kamitatu told *Africa Renewal*, is a "governance contract that ties the government to the Congolese people."

The government, Mr. Kamitatu says, has pledged action on a variety of fronts. In addition to improving people's living conditions, these include reforming the army, police and courts, cleaning up the government's management of public funds, overhauling the civil service and state administration and carrying out "genuine decentralization" so that political and administrative authority is not concentrated excessively in Kinshasa. "We will be judged" on the basis of such actions, Mr. Kamitatu believes.

The hurdles of state reconstruction in the Congo are not unique. Many other African countries confront similar problems, and they are watching to see how the Congo manages to resolve them. But the challenges in the DRC are particularly daunting. In terms of land area, the Congo is the third largest country in Africa. With some 66 million people, it is the fourth most populous.

Yet the greatest obstacle is not size. Beyond the immediate problems of continued insecurity in the east, the biggest hurdle will be overcoming an historical legacy of dictatorship, decay and plunder. Because governance was so poor for so long, the goal is not simply "post-war reconstruction" — that is, restoring the situation that prevailed before the outbreak of war in 1996. It is to start building, often for the first time ever, institutions that will genuinely serve the interests of the country's citizens.

### History of pillage

After a prolonged period of Belgian rule, in which very few Congolese attained positions in the colonial administration, the Congo abruptly won independence in 1960. The first decade was turbulent. Cold War interventions, ethnic tensions and secessionist rebellions undermined the popularly elected president, Patrice Lumumba, who was deposed and assassinated.

In 1965, General Joseph-Désiré Mobutu (later Mobutu Sese Seko), seized power, with the backing of Western intelligence agencies.

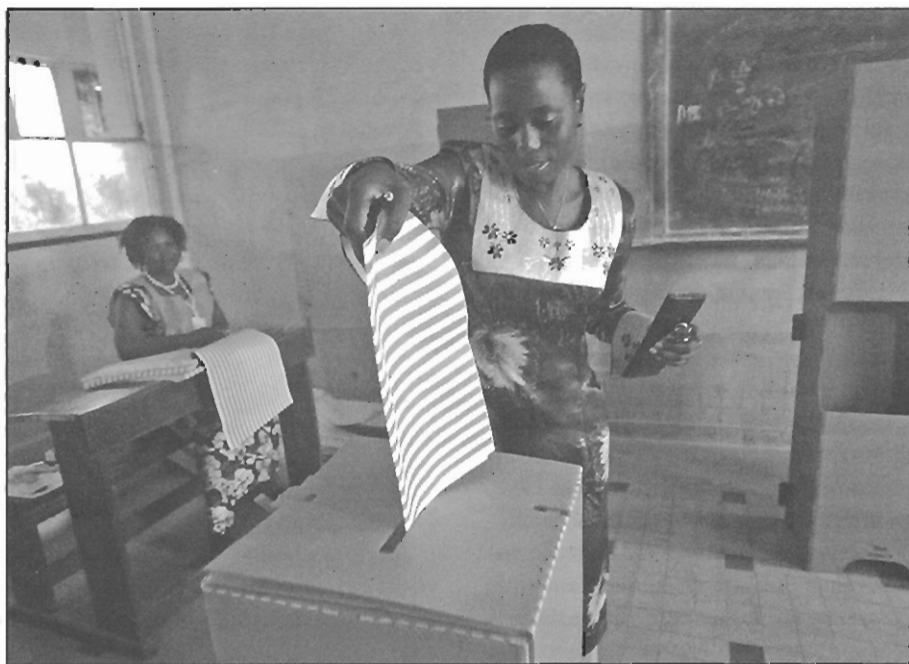
Mobutu's Zaire (as he renamed the country in 1971) became known as one of the world's foremost examples of an autocratic, corrupt state. Estimates of the amounts lost or squandered ran into the tens of billions of dollars.

Although the state appeared to be tightly controlled from the top, in reality its effective authority did not reach very far. Government employees routinely neglected their duties, diverted funds and used their positions to make money. Some regional governors ran their territories like semi-autonomous fiefdoms. Army officers embezzled the salaries of their subordi-

glaring in the aftermath of the genocide in neighbouring Rwanda in 1994. Mobutu provided a haven in eastern Zaire for the genocide's perpetrators after they were overthrown by Rwandan rebels. These "genocidaires," as they were known, then repeatedly attacked Rwanda, ultimately prompting the new Rwandan government to retaliate by backing a coalition of dissidents known as the Alliance des forces démocratiques pour la libération du Congo (AFDL), led by Laurent Kabila.

Although Mobutu's forces were adept at terrorizing villagers, they proved incapable of military defence. The small AFDL, bolstered by professional Rwandan troops, rapidly captured territory as the Zairean army retreated. In town after town, local residents celebrated the army's departure. In May 1997, the insurgents occupied Kinshasa, shortly after Mobutu fled into exile (where he died of cancer a few months later). Mr. Kabila became president

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*Presidential and legislative vote in 2006 brought in the Congo's first elected government in more than 40 years.*

nates and trafficked in arms, gold and diamonds. Unpaid police and troops survived through pillage and extortion.

### War and transition

Mobutu's state had decayed considerably by the early 1990s. Its fragility became

and renamed the country the Democratic Republic of the Congo.

According to Georges Nzogola-Ntalaja, a well-known Congolese academic currently working with the Africa Governance Institute of the UN Development Programme (UNDP), the



*Congolese soldier in North Kivu, where thousands of dissident or foreign fighters still oppose the central government and have displaced a half million people.*

ability of the ragtag AFDL and relatively small countries such as Rwanda and Uganda to exert such influence over the much larger Congo "would have been unthinkable if the Congolese state institutions were functioning in a normal way as agencies of governance and national security, rather than as Mafia-type organizations serving the selfish interests of Mobutu and his entourage."

Hopes were initially high that the new government would build a different kind of state. But authoritarianism soon followed. And after President Kabila broke with his former Rwandan and Ugandan allies, those countries backed new insurgent groups in the east. In August 1998, the country was plunged back into war.

This second war was far more devastating than the first. It involved multiple Congolese groups and drew in the armies of more than a half-dozen neighbouring countries. With most factions responsible for serious atrocities, hundreds of thousands of civilians were killed. Massive displacement, the disruption of agriculture and the collapse of the health care system pushed the total estimated death toll to 3–4 million.

The war's major contenders signed an initial ceasefire in 1999, but it was only poorly observed. After President Kabila was assassinated by members of his per-

sonal guard in 2001, his son and successor, Major-General Joseph Kabila, pushed more energetically for peace. That shift, combined with greater international pressure on neighbouring countries to withdraw, led to the signing of a comprehensive peace agreement in Sun City, South Africa, in 2002.

The protagonists established a transitional government, with Joseph Kabila as

president and the central leaders of four main groups as vice-presidents. A transitional parliament also had representation from the different groups. This arrangement succeeded in ending most of the fighting.

But the compromises of the transition did not favour serious reform. Most official appointments were made on the basis of political connections, not merit. The proliferation of institutions facilitated corruption. In 2003, about two-thirds of the budget was spent outside normal procedures.

### **Political legitimacy**

By bringing into office the first truly elected government in four decades, the presidential, legislative and provincial assembly elections of 2006 opened the door for the possibility of deeper reform. Although the elections were marked by some violence and the losers contested the final results, international observers generally deemed the contest to have been free and fair. The high turnout — 70 per cent in the first round of the presidential poll in July and 65 per cent in the second round in October — gave the winner, President Kabila, the political legitimacy he had lacked in the transition period.

Many different parties won seats in the National Assembly. Mr. Kabila's own party has only 111 of the 500 seats, although an

## **Armed groups in eastern Congo**

**Although a general peace accord was signed in 2002 and the major parties in the Congolese civil war disarmed or merged into the new national army, several factions continue to operate, mainly in the east. All have carried out massacres and other abuses:**

**General Laurent Nkunda**, a former commander of the *Rassemblement congolais pour la démocratie* (RCD) during the civil war. His group later integrated into the new army but then split in 2004, ostensibly to "protect" the Tutsi community against attacks by other groups. He is believed to have some 4,000 troops and has engaged in major battles with the Congolese army in the southeastern districts of North Kivu.

**Ituri militias**, comprising mainly local ethnic militias in the Ituri forests of Orientale Province. Three of the remaining militia groups, claiming a combined strength of 4,500, signed an agreement with the government to disarm and demobilize, but as of early November only about 1,500 had handed in their arms.

**Mai Mai**, remnants of the local "self-defence" militias that fought the Congolese factions backed by Rwanda and Uganda during the civil war. Many have since demobilized or joined the army, but Mai Mai groups, some claiming several thousand members, remain active in North Kivu, South Kivu and Katanga.

**Forces démocratiques de libération du Rwanda**, opposed to the government of neighbouring Rwanda and commanded in part by former leaders of the 1994 genocide in that country. Estimated to number 6–7,000, the FDLR is active in North and South Kivu and often clashes with General Nkunda's forces.

alliance of parties that backed his presidential bid holds a comfortable majority with 338 seats. The alliance also has more than half the seats in the Senate. His government, named in February 2007, has members from different parties and is headed by Prime Minister Antoine Gizenga, who was a close colleague of Patrice Lumumba at independence in 1960.

While the new government is less inclusive than the transitional arrangement, its electoral legitimacy means that it "will be in a much better position to adopt policies that are uniform," observes Mr. Menkerios. "It would have more cohesion and would be better equipped to implement coherent strategies than during the transition." Besides, the governing coalition "is wide enough by any country's standards."

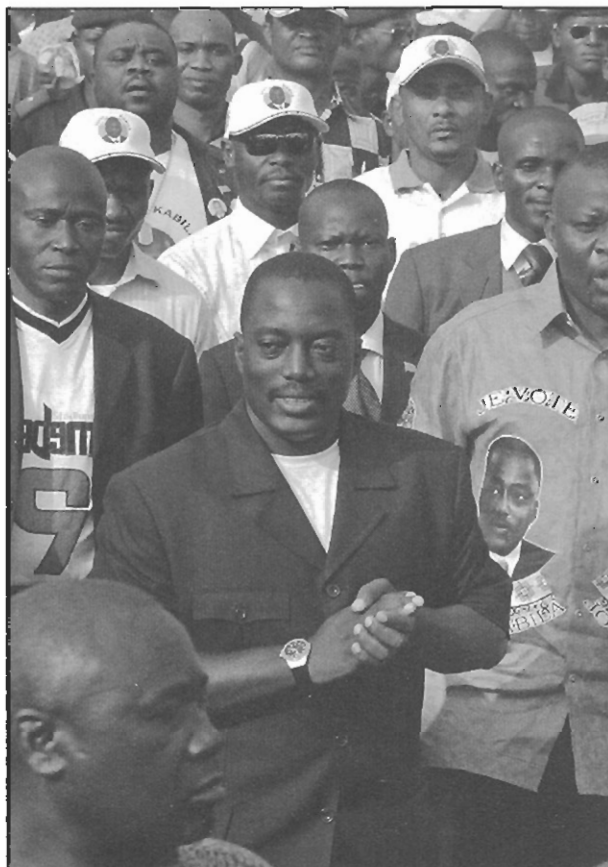
However, Mr. Menkerios adds, political tensions remain a problem, in part because the current parties grew out of "politico-military organizations" and continue to operate in a combative mode. One example was the outbreak of armed clashes in Kinshasa in March 2007 between the president's Republican Guard and a security force loyal to Jean-Pierre Bemba, who lost to Mr. Kabila in the presidential election. Some 200 people, mostly civilians, were killed in the fighting.

MONUC and the rest of the international community are encouraging the government to accommodate the opposition, Mr. Menkerios explains. The constitution provides a formal status for the opposition, and opposition deputies are often included in decision-making roles in the legislature's various commissions. Mr. Kengo wa Dondo, a former prime minister under Mobutu and currently an opposition figure, was elected to head the Senate, even though Mr. Kabila's alliance holds a majority of Senate seats.

In his inauguration address in December 2006, President Kabila acknowledged that the Congolese administration "exists in name only" and that there is an urgent need for a "refoundation of the state." The main pillars of his government, as of any modern state, he said, will be the "trilogy

of good governance, democracy, respect for human rights."

This would mark a sharp reversal. During four decades of dictatorship and war, the *violation* of human rights appeared to be a pillar of state policy. Changing things around will require overhauling and reforming another trilogy — the army, police and courts.



President Joseph Kabila (centre) has pledged to work towards good governance, democracy and respect for human rights.

### Military reform

According to a report in February 2007 by the Office of the UN High Commissioner for Human Rights and MONUC's Human Rights Division, fully 88 per cent of all politically motivated or organized murders, rapes, beatings and other human rights violations recorded in the DRC in the second half of 2006 were committed by the government's own repressive bodies.

The report found some modest improvement on the part of the army, which saw its share of recorded abuses decline from 53 per cent in the first half of 2006 to 40 per cent in the second.

But the army still is experiencing great difficulties, in large part as a legacy of the transition period. The Sun City peace agreement provided for building a new army, basically as an amalgamation of officers and troops from the various armed factions. "It was a really good idea," notes Lieutenant-General Babacar Gaye, MONUC's force commander, since the arrangement helped end most of the fighting. "But unfortunately, it didn't produce a good military," he adds, emphasizing the difficulties of getting troops of different allegiances and unequal levels of training to work together effectively.

For example, in North Kivu, General Gaye told *Africa Renewal*, one of the new "integrated brigades" disintegrated in 2006 as a result of political and ethnic tensions. Therefore, MONUC's goal "is to avoid this disintegration, first of all, and then to help the Congolese design their future military. But it is a huge task. It's a long-term process."

The Congolese army, which has sent thousands of troops against the forces of dissident General Laurent Nkunda in North Kivu, has had difficulty capturing and holding terrain.

In addition to providing tactical support on the ground, MONUC — along with the European Union and some donor agencies — is helping the army professionalize and become a better-integrated and more coherent organization. A military census conducted with South African assistance helped weed out nonexistent "ghost" soldiers whose names were on the payroll. Their removal enabled the government to increase the basic pay of ordinary soldiers.

Improving soldiers' economic and social conditions is essential, to keep them from extorting food and money from civilians. Ross Mountain, deputy special representative of the UN Secretary-General, told *Africa Renewal*. All those working on humanitarian issues in the DRC now agree that security sector reform "has to be top of the hit parade." While visiting North Kivu, to help coordinate humanitarian assistance to victims of the conflict, he realized that

people's foremost concern was security. "If there was one measure that could be taken at the time, it would be to pay the army," he recalls. "I come from a humanitarian background, and to come to the realization that one measure is to pay the army sounded completely insane. But everyone said: 'Yeah'."

Army abuses, while still widespread, appear to be declining, in part because of better training, stronger command, improved living conditions and the prosecution of officers and troops who carry out atrocities.

### Police training

However, abuses by the national police rose dramatically between the first and second halves of 2006, from 24 to 39 per cent of total abuses. Serious violations by the police continued well into 2007, according to a report to the UN General Assembly in August by an independent expert, Titinga Frédéric Pacéré, an eminent jurist from Burkina Faso. Mr. Pacéré cited a long list of crimes by national police officers, including brutalization of prisoners, rapes of women and young girls and killings of villagers.

Historically, the police have been severely underfunded, ill-trained and inefficient. Today there are just over 100,000 police in the country. About half have received training by MONUC in various tasks, including ensuring order during elections. The European Union is financing police reforms, while UNDP manages a fund to help equip the police.

Congo's national prosecutor has vowed to crack down on police who impose arbitrary fines or otherwise extort money. In September, Interior Minister Denis Kalume warned police officers: "All actions of the Congolese police, as guardians of the law, must be guided by the law, national interest and legality."

### Reviving a 'degenerate' justice system

In theory, the DRC's courts are also supposed to uphold the law. But like other aspects of the state, the judicial system

has suffered from years of decay. There is only one judge for every 30,000 people, most are poorly paid and the physical conditions of the courts are decrepit. Trial proceedings are extremely slow and judgments often seem arbitrary. Those with

others burned alive.

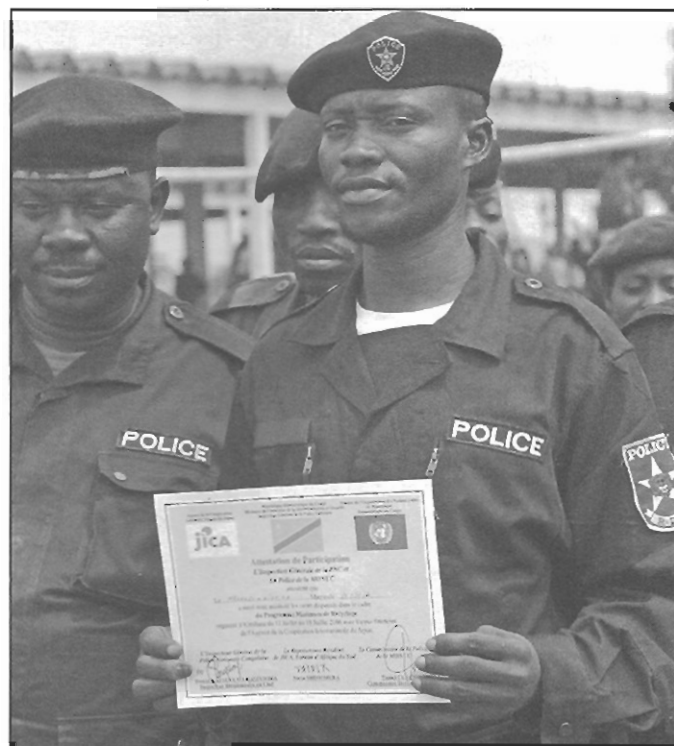
Moïse Cifende Kaciko, head of a human rights group in South Kivu, warns of the dangers of such lynchings, since they deny any rights to the accused — some of whom may be innocent — and can be employed to settle scores. Julienne Mushagalusa of the Congolese Association of Women Jurists argues that vigilantism should be countered by prosecuting those who practice it, while at the same time the country's judicial system is reformed. "We have to spread a culture of belief in justice," she told a Congolese newspaper.

Although public funding for the judicial system has been growing, it remains far behind other branches of government. The government budget for 2007 allocated 2.6 bn Congolese francs (about US\$5.2 mn) to the courts, compared with FC24 bn — nine times more — for the executive branch. To some extent, external donors are helping to fill the gap, with the UK, European Commission, UNDP and others financing various programmes to strengthen the courts, train judges and improve the abysmal conditions in the prisons.

Judicial reform "is a major challenge for this country," UNDP Country Director Babacar Cissé told *Africa Renewal*. UNDP has set up a technical unit in the Ministry of Justice to oversee implementation of the various donor-funded programmes. In the provinces, some courts are undergoing physical rehabilitation. Also, explains Mr. Cissé, UNDP and its partners are considering ways to link the regular judicial system with the traditional courts of the Congo's various ethnic groups. "It is important," says Mr. Cissé, "to root justice at the local and provincial levels."

### Local elections on the horizon

When the parties to the Congo's civil war were putting the final touches on the Sun City peace accords of 2002, they recognized that the new state could not be effective if it tried to operate primarily from



Congolese police officers graduate from a MONUC training programme: Greater professionalism should help reduce abuses against civilians.

wealth or political connections are very rarely brought to court.

In a country that has experienced so many war crimes over the past decade, only a handful of high-level perpetrators have so far been tried and sentenced by national courts (the International Criminal Court in the Hague is also prosecuting some suspected war criminals).

In the words of Bruno Mbiango, the first president of the Supreme Court, political pressures and monetary corruption have produced a "deregulated justice, a perverted, dirty, degenerate justice."

With insecurity still widespread and public confidence in the police and courts very limited, vigilante justice has been growing. Police and human rights activists in Bukavu, the provincial capital of South Kivu, report that killings of suspected thieves, rapists and other criminals occur almost weekly. Some are beaten to death,