

# **“The syndrome of the third presidential term in the Democratic Republic of Congo: From the street to the Constitutional Court, do the Congolese people have a say?”**

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## **Introduction**

Several African States have limited in their Constitutions the number and term of office of the President of the Republic. This is particularly the case in the Democratic Republic of Congo. Indeed, by limiting to two<sup>1</sup> the mandate of the President of the Republic, the Constitution of February 18, 2006 endeavoured to avoid that the country relives the drama of the second Republic dictatorship.

The Constitution has however faced serious difficulties in its implementation. Unfortunately, still today, two mandates do not seem to be enough for heads of state in the DRC.

The main signs of this desire include: attempts - some successful, others missed, to revise the constitution in matters revolving around the status of the head of state, delaying tactics and excuses in the organisation of elections, and attempts to circumvent the intangible provisions through negotiations.

So, this syndrome of the third presidential term generates a crucial question at this stage of its manifestation: from the street to the Constitutional Court, do the Congolese people have a say? Before analysing the role of the actors, we will try to study this famous syndrome of the third presidential term.

### **1. The syndrome of the third presidential term in the DRC, Quid?**

The syndrome of the third presidential term is understood by us as the set of signs or symptoms that testify the intention of the leaders and specifically the head of state to seek a third term in violation of the Constitution. Attempts to affect intangible constitutional provisions are more noticeable. Admittedly, intangibility is relative. There must always be a twofold condition: on the one hand, to respect the revision procedure and, on the other hand that the grounds for revision are not equivocal and carry the support of the majority of the people. This did not seem to be the case for article 220<sup>2</sup> of the Congolese Constitution in force.

In addition, certain manoeuvres accompanied by excuses are also this symptom. Indeed, while the President of the DRC has stated through his spokesman that the DRC could finance the next elections on its own, the Government is now justifying the delay in organising presidential elections on a lack of available funds.

Moreover, the 2016 electoral law had conditioned the holding of the elections by a preliminary census. However, according to the experts, this census would have taken so long that the elections would not have been organized in time.

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<sup>1</sup> This limitation is found in the first paragraph of Article 70 of the Constitution of 18 February 2006 which provides that the President of the Republic is elected by direct universal suffrage for a term of 5 years renewable once only

<sup>2</sup> This article provides : « The republican form of the state, the principle of universal suffrage, the representative form of the Government, the number and duration of the mandates of the President of the Republic, the independence of the judiciary, political and trade union pluralism can not be subject of any constitutional revision.»

The war in the East of the country and the security situation in Kasai were also excuses -in our view unfounded- for evading the obligation to organise the elections.

Finally, the rulers seem to have found a trick of legitimising the illegitimate through agreements and negotiations, which corrupt even those who are supposed to oppose their machination.

## **2. The role of actors in the syndrome of the third presidential term: The Constitutional Court and the People**

The positions taken by the Constitutional Court seemed to offer a legal basis for this intention. In fact when the Constitutional Court was seized to interpret the second paragraph of Article 70<sup>3</sup>, the Constitutional Court rendered a judgment that favoured the status quo. The judgment of the Constitutional Court has been brandished by the President and his political allies as a legal basis justifying that in case of non-organization of elections- especially presidential elections - the President-in-Office will remain so until the elections are held.

The risk here is that, innocent as it may be, this judgment may facilitate the ruse or malignity by the rulers. The latter may knowingly refuse to organise the elections and therefore remain in power. In summary, the Constitutional Court seems to have played a lesser role than it should play in principle.

The will of the people not to allow the perpetration of these constitutional violations is beyond doubt. During the past two years, the streets have been the scene of many popular demonstrations, marches and claims that have most often and unfortunately soaked the city in bloodbaths and have cost the lives of many citizens. Unfortunately, these efforts have barely been successful.

Indeed, because of a lack of supervision and especially serious organisation, the popular demonstrations have not really reached a tangible result. Often initiated by a fragile political opposition, many of these movements have been failures.

### **Conclusion**

To conclude, we say that the question of limiting the presidential mandate in the DRC is still a problem. The mentality is such that the leaders are not willing to give way to possible replacement, and this is very often done in violation of the Constitution.

The Constitutional Court, which is entrusted by the Constitution with the task of safeguarding it, has disappointed many legal experts in the field. That is why the eyes are now turned towards the people.

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<sup>3</sup> This article provides in the second paragraph: "At the end of his mandate, the President of the Republic remains in office until the effective installation of the newly elected President."