

# RESOLUTION OF ARMED AND ETHNIC CONFLICTS IN D.R. CONGO IN THE FRAMEWORK OF THE CONSTITUTION

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## INTRODUCTION

The Democratic Republic of Congo (DRC)<sup>1</sup> is the largest state in Black Africa in terms of its land mass (2,335,000 square kilometers) and has a population estimated at about 72 millions. It is a giant state in Central Africa surrounded by nine neighboring states. In spite of its abundant natural resources and agricultural potential, it's among the poorest countries in Africa and the world. Since independence in June 30<sup>th</sup> 1960, the history of the country is full of tragedies and lost opportunities. It has gone through three different republics, each characterized by a constitution. The current constitution of the country is not federal but a decentralized united state. This paper highlights for each republic the political environment at the time of writing the constitution and the major armed and ethnic conflicts that prevailed.

## THE FIRST REPUBLIC, FROM 1960 TO 1965

### Constitution

The Fundamental Law (constitution at independence) of Mai 19<sup>th</sup> 1960 provides in article 7 that the DRC comprises six provinces, each having a separate civil personality. The law recognized the existence of central, provincial and local institutions which were autonomous and had different duties and responsibilities. The provincial power

made of the provincial government and its provincial assembly could legislate on a large number of different matters to those of the Central government. The constitution was a compromise between those who favored a federal state and those who believed in a strong centralized state. It was also agreed that the Fundamental Law, written under colonial rule, was temporary and one of the missions of the first government was to write a definitive constitution for the country.<sup>2</sup>

In spite of troubles, misfortunes, conflicts, government instability and the risk of balkanization, the first Republic was able to write and adopt a new constitution which defined state structure and maintained a large degree of autonomy of provinces and other decentralized territorial entities on August 1<sup>st</sup> 1964 (Luluabourg Constitution). The spirit and many points in this constitution were similar to the Fundamental Law. The autonomy of the provinces related mainly to administration, political issues and the management of certain internal matters. The country was divided into 21 provinces plus Kinshasa, the capital. Elections under the new constitution were organized in 1965. Provincial governors were elected by provincial deputies as stated by the constitution and members of the two legislative chambers of the central government (senators and deputies) were also elected. However, the process of presidential election which should have taken place at the second degree by the members of the two chambers of Parliament was not completed because Mobutu staged a coup d'état.

Contrary to federal States such as the USA and Germany, the 1964 Constitution did not provide provinces with any judiciary power which was concentrated in the hands of the central government.

The constitution was also a compromise between those who wanted a federal state (Kasavubu and Tshombe) and those who favored a centralized state (Lumumbistes). The result was a unitary state strongly decentralized. The constitution was written at a time when some parts of the country were still under rebel's rule and the

trauma of the two secessions in Katanga and South Kasai was in everybody's mind. It was then unlikely that a complete federal constitution could be accepted by the majority of the population.

It would be hazardous to pass a judgment on the success of the Luluabourg Constitution because the implementation process was stopped by a coup d'état.

### **Major crises and armed conflicts**

The first major crisis erupted in Congo just five days after independence on July 5<sup>th</sup> 1960, when national army soldiers mutinied for a pay rise against the white officers. The revolt which started in Kongo Central (Mbanza Ngungu) spread all over the country in a few days and resulted in the massive departure of Europeans from the country and led to a serious crisis.<sup>3</sup>

The soldier's mutiny was resolved when Congolese officers were appointed and salaries were increased. But the political consequence was dramatic, Lumumba, the elected prime minister with a large majority in the two chambers, was removed from power and killed soon after in Katanga.

At almost the same time as the army mutiny, two rich mining provinces, Katanga under leadership of Moise Tshombe and Sud Kasai under Albert Kalondji, declared secession from the rest of the country. These secessions were mainly instigated and back by foreign powers, notably Belgium, and mining companies.

The Sud Kasai secession was rapidly ended by the national army whereas it took several international and national rounds of negotiations and finally the soldiers from the United Nations Mission to Congo to regain Katanga. It is worth mentioning here that the secession of Katanga was not totally backed internally by all the population of the province. In fact, in North Katanga, the majority Luba ethnic group resisted and rebelled against the power of Tshombe, the leader of the secession, and a southern Katangese. Tshombe went to exile in Spain whereas most of his soldiers found refuge in Angola.

Two years after the end of the secession, Tshombe was nominated Prime Minister by President Joseph Kasavubu. The main mission of his government was to fight the last remaining pockets of rebels and to organize elections under the new constitution. He relied mostly on his soldiers ("ex gendarme katangais") and white mercenaries to pursue the fight against rebels. He organized elections in 1965 in the parts of the country under central government control. His party, CONACO ("Convention Nationale Congolaise"), won a large number of elected seats in both houses of the National Parliament and in many provincial assemblies. The November 1965 coup d'état stopped his ambition to become president.

The third major crisis resulted in the revocation of Patrice Lumumba as prime minister in September 1960. His close associates moved then to Stanleyville (Kisangani) and proclaimed the Free Republic of Congo on December 13<sup>th</sup>. They were supposed to represent legality and were backed up by many communist and non-aligned countries. The Free Republic of Congo lasted until January 1962 when, following negotiations and international pressure, its main leaders accepted political posts in the central government in Kinshasa.

However, some members of the government of the Free Republic of Congo refused to join the government in Kinshasa and started a rebellion in 1963. In the West of the country rebellion was led by Pierre Mulele, former Minister of Education and Fine Arts in Lumumba's government and in the East by Christophe Gbenye, Soumialot and Laurent Kabila. The Eastern front was very successful and in short time arrived to control more than a quarter of the country with Kisangani again the capital of now the Peoples Republic of Congo, proclaimed on August 5<sup>th</sup> 1964. The rebellion in the West was contained by the national army but in the East the central government had to call on Belgian and American soldiers in order to retake Kisangani on November 24<sup>th</sup> 1964. The rebels then split into several factions in the East of the country and continued fighting in small groups until in 1966 when they were totally defeated.

Major crises in DR Congo during this period (1960 to 1965) were to a large extent inspired and backed by foreign powers. The two secessions and the removal of Lumumba and his assassination are well known to have been organized and implemented by Belgian and American secret agents.<sup>4</sup> Many communist and non-aligned countries at the time were backing Lumumba and his followers. The lesson of that tragic period is that Congolese politicians were not aware, in the middle of the Cold War, of the consequences of their acts and naively believed in international justice which is dominated by selfish national interests. Lumumba naïve trust in international justice led to his death and the tragedy that followed has, to some extent, implications for the current situation in the country.<sup>5</sup>

## **THE SECOND REPUBLIC, FROM 1965 TO 1997**

### **Constitution**

When he seized power on November 24<sup>th</sup> 1965, Mobutu told people that he assumed the function of the President but all the democratic institutions provided in the 1964 Constitution were to remain in place. The two chambers of Parliament were to remain active and the provincial governments could continue their activities. A year later, in a series of law he enacted, he took control of executive, legislative and military powers.<sup>6</sup> The two chambers merely rubber-stamped his decisions, the provincial governors ordinary simple civil servants, and the number of province was reduced to nine. In 1967, he wrote a constitution which gave him more power and removed the autonomy of provinces as stated in the Fundamental Law and recognized in the 1964 Constitution. All matters related to the decentralization in the 1964 Constitution were removed and replaced by a very centralized state under Mobutu's control.

In 1967, he created his own party, "Mouvement Populaire de la Revolution" (MPR), which became a year later the only party in the country under one man, Mobutu. In the due process of acquiring

power, he changed the country name to Zaire and those of several towns in 1970. Opposition to his regime was not tolerated as each Zairian was supposed to belong to the party and could not disagree with the Chief.<sup>7</sup>

However in 1977 and 1978 the southern Province of Katanga (Shaba) was invaded by a political-military party, "Front de Liberation du Congo" (FLNC), led by Nathaniel Mbumba. These wars and internal pressure forced Mobutu to initiate a process of decentralization under a single party, the MPR. Laws governing the process of decentralization were adopted by the central committee of the ruling party, but were not implemented and remained simple intention. The last step in his will to decentralize the country was the division in 1988 of the Province of Kivu in three parts: North Kivu, South Kivu and Maniema. The number of provinces was thus increased to eleven.<sup>8</sup>

### **Major crises and armed conflicts**

Mobutu was able to control the country and to stop any dissenting voice against his regime through his very infamous and brutal secret service and the army. Major crises during the first 25 years rule were the two invasions by FLNC rebels in 1977 and 1978. The rebels, former Katanga's military, came from Angola and occupied several towns in the South of Katanga. Foreign soldiers (French, Moroccans and Belgian) and national army intervened rapidly and brought the situation under control and saved the regime.<sup>9</sup>

In spite of his autocratic power, Mobutu in the first 25 years of his rule, was able to preserve the unity of the country and to create a somehow a Congolese national identity which to some extent prevailed over other identities. This is his major contribution which most Congolese still remembered. The strong sentiment of being Congolese has helped a lot so far to keep the country united to present day in spite of external wish to balkanize the country.<sup>10</sup>

Nevertheless, it is well known that while he lectured against tribalism, Mobutu favored people from his own Equateur province

for key political and administrative posts. This choice of rulers and managers based not on efficiency and qualifications could explain the bad governance all along his regime.

### **THE TRANSITION FROM 1990 TO 2006**

The long period of transition to the Third Republic took place under three presidents, Mobutu (1990 to 1997), Laurent Kabila (from 1997 to 2001) and Joseph Kabila (2001 to 2006).

Following internal and international pressure and the collapse of the Berlin wall, Mobutu announced on April 24<sup>th</sup> 1990 the end of one party state which implied also the need for a new constitution. A national sovereign conference was convened in 1991 with a mandate to look at all questions of national interest, to determine all the fundamental options of political organization of the Third Republic including a new constitution. The conference proposed a constitution similar to the one of 1964. This time the term federal was written clearly at the beginning: "The Federal Republic of Congo is a sovereign, united, democratic, social, and secular state." At the time, political environment in the country was favorable for a federal state after 25 years of dictatorship and people were ready to try a new state organization. The conference elected a transition government under the most virulent opponent to Mobutu, Etienne Tshisekedi and drafted a constitution for the transition period. The conference resolutions did not please Mobutu who then used all tactics and methods to recover partially his power while prolonging the transition initially set for two years.<sup>11</sup>

In the midst of confusion and disorder at that time, Laurent-Désiré Kabila led a rebellion backed by neighboring countries, Rwanda, Burundi, Uganda and Angola, and took power in Kinshasa on May 17<sup>th</sup> 1997. He assumed the function of the President of the transition and suspended the constitution of transition and all the institutions of that time. Later on he set up a transition parliament with a main mission to write the constitution of the Third Republic.

Laurent-Désiré Kabila ruled in such a confusion and incoherence which made it hard to know the direction he was going. The war his former backers, Rwanda and Uganda, waged against him starting in August 1998, could be the reason for this confusion. During the four years of his rule the country was confronted with a war of aggression. The necessity to restore the unity of the country while rebel groups occupied a large portion of the country made it difficult to end the transition period.

Following the death of Laurent-Désiré Kabila in January 2001, his son took the presidential seat in the midst of a war which had divided the country into three independent entities. Following the cease fire accord in Lusaka in 1999, a global accord was signed in South Africa in 2002; a constitution for the transition was adopted providing a two years transition period before presidential and parliament elections under the Constitution of the Third Republic. During the transition, a new constitution was enacted and adopted by a referendum.

## **THE THIRD REPUBLIC, FROM 2006 TO DATE**

### **Constitution**

The constitution of the Third Republic was promulgated on February 18<sup>th</sup> 2006, after it was accepted by a referendum on December 19<sup>th</sup> 2005. The constitution established an united nation but very decentralized with 26 provinces. This constitution had many similarities to that of 1964. The constitution was written by belligerents from the war that had divided the country into three parts. It was believed that good governance was needed and that could easily be delivered by a very decentralized government.

Face with the failures of managing efficiently a large country from the center, it was obvious that a decentralized state could bring the public administration closer to the people and the public opinion was favorable to the option. It is also a fact, that international institutions such as World Bank, IMF and Western powers were in



favor of a federal state or a very decentralized state which all thought could improve the management of the large country.<sup>12</sup>

As in the 1964 Constitution, provinces are in charge of provincial political and administrative institutions and also of the management of purely provincial matters. The central government is in charge of fundamental states matters such as security, defense, foreign affairs, finance, economy, education, justice, customs ... Local governments and decentralized territorial's entities (ETD) are entrusted with the management of local problems.

It was agreed that 40 % of revenues collected by national tax authorities be ceded by to provinces to cover their operating expenses. This measure has not been applied so far.

Although the constitution was promulgated in 2006, the 26 provinces were only set up in 2015, with nominated state commissioners acting as governors. Since local and communal elections have not yet been organized, the decentralized territorial entities are managed by appointed personnel.

The Constitution of the Third Republic which set up a decentralized state has not yet been fully implemented. It is hope that the elections which should start this year will be fully completed so that provincial, communal and local authorities could also be elected for the first time. The slow implementation of the constitution could not only be attributed to the lack of adequate financing but also to the unwillingness of those in power in the center to give up some of their power to the provinces as stated in the constitution.

### **Major crises and armed conflicts**

The Third Republic was born through a rebellion. The state of war which gave its birth is not totally ended and seems to be without end. The major phases of the conflict are as follows.

#### **"The Liberation War", from 1996 to 1997**

The so called war of liberation brought Laurent-Désiré Kabila to power. The onset of the war was the downing of the Rwandan

President's plane in April 1994 which ignited a wave of unprecedented killings of Tutsis and moderate Hutus by Interahamwe, an extremists Hutu group close to the government of Rwanda. More than 880,000 people are supposed to have been killed mostly with axes and machetes. This genocide was followed by an exodus of more than 2 million Rwandan to refugee camps, mainly in Kivu. This uncontrolled mass exodus has until today enormous political, economical, environmental and social implications in D.R. Congo and in the region.

As time passed, the refugees organized themselves and started attacking the government of Rwanda which is dominated by Tutsis. Taking advantage of the chaotic political and security situation in the DRC, Rwanda decided to pursue refugees deep inside D.R. Congo. Finding no resistance from the demoralized Congolese security forces, Rwanda, Uganda, Eritrea, Burundi and later on Angola decided to remove Mobutu from power. To make the whole process look like a rebellion not an aggression, Laurent Kabila, a veteran opponent to Mobutu regime was appointed leader of AFDL ("Alliance des Forces Démocratique pour la Libération du Congo"), the opposition group with heavy dominance of Rwandan Tutsis and Banyamulenge (Congolese Tutsis of Rwandan origin).

The success of the rebellion attracted financing from adventurers and multinationals mining companies which expected in return to get easy access to natural resources after the war. Kabila signed several contracts with mining companies with obscure content during his march from the eastern fringes of the DRC to Kinshasa. Some Western interest groups even thought of splitting the country, in order to better control the mineral resources essentially in the Eastern part of the country. Although Rwanda, Uganda and Angola claimed to have invaded the Congo for security reasons, Prof. J. Maton of the University of Ghent was the first in 1999 to state that it was a minerals war.<sup>13</sup>

The Congolese population was at first hostile to the AFDL because of its Tutsi dominance but later became favorable to the rebel-

lion when Kabila claimed leadership of the rebellion. At that time, the Congolese were tired of the democratization process started in 1990 which was not making any progress toward the promised elections. AFDL soldiers entered Kinshasa in May 17<sup>th</sup> 1997, a day after sick and weakened Mobutu had gone into exile to Morocco where he died later that year.

Kabila brought with him a motley bunch of people: Rwandans, Ugandans, and Congolese from the diaspora, many having no work experience. The Rwandans in majority, Tutsis who occupied several high posts in government, administration and army behaved like conquerors. Furthermore the basic political and philosophical contradictions inside AFDL made the running of the state rather chaotic. AFDL's erratic policies led to the suspension of political freedom and stopped the democratization process. Kabila's course of action frustrated also his outside backers and those inside the country who had been waiting for democratic elections for a long time.

Unable to control and manipulate the man they put in power, Rwanda and Uganda plotted a coup d'état in August 1998. In a spectacular move, a plane was hijacked in the East of the country and landed hours later in the military base of Kitona in the West, thus allowing the new rebel group to open a front close to Kinshasa.

### **The war of aggression from 1998 to 2003**

The second phase of the war started in August 1998 when the country was attacked early in from the East and West by unknown group. Three days later RCD ("Rassemblement Congolais pour la Democratie"), a new rebel group, claimed responsibility for the attacks allegedly aimed to free the country from Kabila's autocratic rule. Similarly to what had happened a year earlier, the leader of RCD was a Congolese from Maniema while soldiers were mostly from Rwanda. The RCD leadership comprised a strange mixture of politicians: former Mobutists, radical left wingers, regional barons,

NGO figures and well known representatives of Rwandese interests. All those politicians were frustrated for having been excluded from power by Laurent Kabila. The RCD was backed by Rwanda, Uganda and Burundi who admitted one year later to have intervened in Congo. The war that was supposed to be short because of the porous borders and disorganized Congolese security forces became a protracted conflict involving many countries.<sup>14</sup>

Later on, another rebellion group MLC ("Mouvement de Liberation du Congo"), led by JP Bemba and backed by Uganda, attacked the DRC from Ugandan borders and, very fast, occupied a large portion of the Orientale province and a part of Equateur province.

Within three weeks the rebels were on the outskirts of Kinshasa after having taken the Inga dam and cutting power to Kinshasa. Only Angola, Zimbabwe and Namibia among SADC (Southern Africa Development Community) members intervened on Kabila's side and later Chadians soldiers joined the fighting alongside Kabila. South Africa and other SADC member countries abstained and dissociated themselves from the decision. Through international pressure, a cease fire was obtained and later on negotiations in Lusaka led to a peace treaty in 1999 which allowed UN soldiers to be deployed in the country. As Laurent Kabila dragged on the implementation of the accord, he was killed in his office in January 2001.

Joseph Kabila, who succeeded his father, pursued the implementation of Lusaka's peace accord signed in Sun City, South Africa, by all warring groups, political parties and civil society. A government of national unity and two chambers of National Parliament were set up. The regime which was commonly known as 1+4 (a President seconded by four Vice-President), involving all the belligerents was assigned the main objective of organizing elections, was inaugurated in 2003.

During the war of aggression each side exploited mining resources to finance the war. In fact, the ceasefire obtained in Lusaka made Rwanda and Uganda de facto masters of parts of the DRC in which they exploited natural resources. Hence, they were not in a

hurry to end belligerence. The greed of the two countries led them to war in Kisangani in 2000, which resulted in enormous human casualties and material destruction in the city.

The exploitation and traffic of Congo minerals were organized at the level of state for Rwanda. However in Uganda it was mainly for personal enrichment of some members of the government. The RCD who controlled the Eastern part of DRC and their Rwandan backers were unable or rather unwilling during more than three years to destroy the militia (FDLR) opposed to the government of Rwanda, which showed that their main concern was the exploitation of Congolese natural resources and not fighting the militia.

Zimbabwe and Namibia to a lesser extent, obtained from Laurent-Désiré Kabila access to rich mining concessions. The war was self-financed. As P. Le Billon said, natural resources can contribute to the likelihood of armed conflicts as well as influence the duration, course and impact of the conflict upon population.<sup>15</sup>

### **War against Militias, from 2004 to date**

At Sun City in South Africa, rules governing the transition to an elected government were set up and the power was shared between all major political forces in the country as well as belligerents to the conflicts. It was agreed that the national army, FARDC ("Forces Armées de la République Démocratique du Congo"), will result from integration of all the armies of the belligerents. It was proposed also that some soldiers had to be demobilized. It is worth noting that the international community accompanied DRC in the implementation of the Sun City accords. Beside UN soldiers and civilian personnel, European Union Forces (EUFOR) were sent to the country to secure the election process. To further peace and stability, several European countries financed projects in the DRC and in the region under bilateral or multilateral arrangements. One such project is the International Conference of the Great Lakes Region, which has been pivotal in easing tension in the region.

However, during the transition period, in 2004, trouble erupted in Bukavu because some RCD officers (mostly Tutsis) refused to be integrated and decided to remain in the East under the pretense of fighting the FDLR ("Front Démocratique pour Libération du Rwanda"), a rebel group opposed to Kagame's regime). The FARDC and UN soldiers intervened to restore order and peace.

Joseph Kabila was elected President and took office in December 2006. Later on, Nkunda, an ex officer of the Rwanda army and commander of RCD in Kisangani during the war with Uganda, refused to be integrated in the FARDC. He instead set up a rebellion group, CNDP ("Congrès National pour la Défense du Peuple") and threatened several times, possibly with the blessing of Rwanda, to take over the town of Goma in December 2007 and in 2008. His principal argument was that the government was not fighting the FDLR. Several other armed groups, such as the various *Mayi Mayi* militias, are still fighting each other and the FARDC for political reasons and for the control of mining sites and the trade in minerals. In January 2008, under the government's auspices, all the armed groups in Kivu signed a peace treaty and decided to solve the difference by dialogue. However, this was short-lived since the CNDP restarted the war a month later and threatened again to take over Goma, prompting the African Union to negotiate a peace deal in Nairobi in late 2008. In January 2009, a joint military operation of the FARDC and the Rwandan army tracked down FDLR bases in Kivu and at the same time another joint operation of the FARDC and Ugandan army were attacking LRA bases in Ituri. The government tried to integrate members of CNDP in FARDC, but the process failed. Instead in 2012, an armed group called M23 was created by former CNDP rebels and restarted the conflict. In November 2012, Goma was occupied by M23 in spite of the presence of UN and FARDC soldiers. Later on, a joint force of UN and FARDC soldiers pushed them to Uganda.

Since 1994 to date, the state of war prevails in Eastern part of DRC notably in the provinces of Ituri, North Kivu and South Kivu.

Several militias operate in the area, some of foreign origin such as the LRA and ADF NALU (from Uganda) and the FDLR (from Rwanda) and several local militias regrouped under the common name of Mayi Mayi. The continuation of the state of war in DRC, back by foreign and local interests could be a strategy in the process of the balkanization of the country.<sup>16</sup>

The Rwandan genocide in 1994 triggered the crisis which then spilled over mostly the Eastern provinces of DRC (Ituri, North Kivu and South Kivu). The war in DRC cannot be understood as an isolated event, it is a result of bad governance and public mismanagement since independence which turned the country into a "black hole" creating insecurity, and attracting rebels opposed to neighboring states. The concern of improving the country governance is the key motive behind a decentralized state as expressed in the constitution.

It is very simplistic to consider that the cause of Rwanda genocide is only ethnic; the action should be examined globally and could be also understood in the framework of population pressure. In fact, Rwanda has one of the highest population densities per square mile (760), approaching that of Holland (990) and close to that of the United Kingdom (665). Agriculture being the main activity of the population, the land issue is a major problem that needs to be taken into account to avoid another crisis. Let us not forget that good political and economic governance and political freedom are important factors for the stability of a country dominated by two ethnic groups.<sup>17</sup> Besides demographic pressure and land ownership issues, the cause of continuation of the war in the East is the identity problem between natives and those who arrived later in the area, mostly Tutsis and Hutus and of course access to natural resources exploitation and trades.

About 365 different ethnic groups live in the DRC, none of which constitutes the majority in any provinces.<sup>18</sup> The so call ethnic conflicts have not much to do with ethnicity. They are often a strategy conceived by candidate to gain power in a very competitive environ-

ment. Elite competing for political or administrative posts which give access to financial and material gains use demagogic propaganda based on promotion and defense of their respective ethnic group.<sup>19</sup> But while in power, the manipulated populations are abandoned in a worse situation. Land ownership conflicts are present in almost all the provinces of the country and exceptionally acute in the Eastern part because it is densely populated. Land problems are a result of dual management of land ownership by customary law and statutory law. While educated elite used statutory laws, rural populations believe and rely only on customary law. These conflicts which are sometimes deadly are usually solved by local communities on their own. Even the Lendu-Hema conflict in Ituri in early 2000, originated in landownership, but was exacerbated by external interventions. It found solutions through negotiations between all Ituri communities' leaders.

## **CONCLUSION**

The Constitution of the Third Republic aims at establishing a very decentralized country with powers share between elected authorities in the central government and elected provincial and local authorities. The slow implementation of the constitution since 2006 has created a weak power at the local government level, which is still managed by appointed authorities often chosen not on qualification and efficiency bases. Efficient elected local governments will have the capacity to resolve local conflicts, which in DRC are usually linked to land ownership.

It is political will more than financial difficulties, which impede fully application of the constitution. This delay of more than ten years could lead to a major crisis, if it is not remedied immediately.

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## NOTES

- <sup>1</sup> Known as Belgium Congo before its independence in 1960, the country has changed name several times, Republic of Congo (1960-1964), Democratic Republic of Congo (1964-1971), Republic of Zaïre (1971-1997), Democratic Republic of Congo (1997 to date).
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