

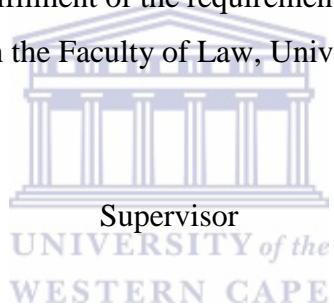
**Representation of ethnic groups in subnational political institutions: The case of the
Democratic Republic of Congo.**

By

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A mini-thesis submitted in fulfilment of the requirements for the degree of Masters in
Constitutional Litigation in the Faculty of Law, University of the Western Cape.



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28 June 2017

Declaration

I, Matemane Iraguha Samuel, do hereby declare that '**Representation of ethnic groups in subnational political institutions: The case of the Democratic Republic of Congo**' is my work and that it has not previously been submitted to any other university. All the sources and materials used are duly acknowledged and are properly referenced.

.....

Matemane Iraguha Samuel

Date:

This research paper has been submitted for examination with my approval as University supervisor.

Yonatan Tesfaye Fessha

Date:



Dedication

I dedicate this research to all my deceased Congolese brothers and sisters who were victims
of the manipulation of ethnic groups for personal political ambitions.



Epigraph

We must learn to live together as brothers or perish together as fools.

Martin Luther King, Jr.



Acknowledgements

Foremost, I am grateful to God, my Lord and Saviour for protecting me, providing for all my needs and helping overcome plenty of obstacles I faced all along this project.

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Key words

Appointment

Co-option

Decentralisation

DRC

Election

Ethnic groups

North Kivu

Power-sharing

Provincial Assembly

Provincial Executive



List of acronyms and abbreviations

AMP : Alliance de la Majorité Présidentielle.

DCN-N : Démocratie Chrétienne Fédéraliste – Nyamwisi.

DCF-COFEDEC : Démocratie chrétienne fédéraliste - Convention des fédéralistes pour la démocratie chrétienne.

CNP : Caisse National de Péréquation.

DRC: Democratic Republic of Congo.

FR : Forces du Renouveau.

MLC : Mouvement de Libération du Congo.

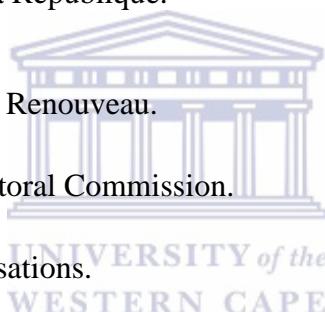
MPR: Mouvement Populaire de la République.

MSF: Médecins Sans Frontières.

MSR : Mouvement Social pour le Renouveau.

NIEC: National Independent Electoral Commission.

NGOs: Non-governmental organisations.



NK : North Kivu.

OG : Office of the Governor of the province.

PDC : Parti Démocrate-Chrétien.

PA : Provincial Assembly.

PANADI : Parti National pour le Développement Intégral.

PE : Provincial Executive.

PPRD : Parti du Peuple pour la Reconstruction et la Démocratie.

RCD : Rassemblement Congolais pour la Démocratie.

RCD-KML : Rassemblement Congolais pour la Démocratie – Kisangani Mouvement de Libération.

SNC: Sovereign National Council.

SADC: Southern Africa Development Community.

ULPGL : Université Libre des Pays des Grands Lacs.

UDPS : Union des Démocrates pour le Progress Social.

UPRDI : Union du Peuple pour la République et le Développement Intégral.

UWC: University of the Western Cape.



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CHAPTER ONE

INTRODUCTION

1.1. Problem statement

With approximately 450 tribes and 250 ethnic groups in a territory of 2 345 095 km²,¹ the Democratic Republic of Congo (DRC) is one of the world's largest, populous, and multi-ethnolinguistic countries. Since the departure of the Belgian coloniser in 1960, this Member State of the Southern Africa Development Community (SADC) is facing a myriad of institutional crises, bloody conflicts and wars, mainly caused by the design of political institutions and the side-lining of some ethnic groups from political institutions. For many decades, Congolese provinces have seen numerous violent ethnic-driven conflicts, which led to institutional instability, political crisis, secessions, massacres and wars. The bloodiest of them all were the first and second Congolese wars. From 1996 to 2002, these so-called "African first world war" cost the DRC the lives of millions of people, divided it into many small "republics" and destroyed the few political and economic infrastructures that survived four decades of institutional instability and dictatorship.

UNIVERSITY of the

With the aim to solve the problems brought about by these ethnic-driven tensions and conflicts, representatives of the then Government, armed movements and members of civil society, supported and pressured by the United Nations and the African Union, met in Sun City, South Africa, from 25 February 2002 to 19 April 2002, to hold an inter-Congolese dialogue.² On 17 December 2002, the participants in the dialogue officially agreed to put the DRC on the track of peace, and democracy.³ A new Constitution was written by the Transitional Parliament and voted on by the Congolese people in a referendum held on 18 and 19 December 2005. To avoid the recurrence of events caused by ethnic tensions of the 1960s and 1990s, the Constitution of 2006 introduced important accommodationist measures: the increase of the number of provinces from 11 to 26; the granting of political autonomy to

¹ Ministère du Plan *Monographie de la province du Nord Kivu* (2014) 25.

² Inclusive and Global Agreement on the Transition in DRC Signed in Pretoria (South Africa) on 17 December 2002, adopted in Sun City on 1 April 2003 available at <http://democratie.francophonie.org/IMG/pdf/VII.1.pdf> (accessed 16 November 2016).

³ Inclusive and Global Agreement on the Transition in DRC (2002) Title II.

provinces,⁴ and the obligation on both national and Provincial Executives to take into account national and provincial diversity when constituting the national and provincial political institutions.

The autonomy granted to provinces by the 2006 Constitution allows them to have their own legislative organs,⁵ executive organs,⁶ competences,⁷ and representatives in the Upper Chamber of the National Parliament.⁸ Provincial Assemblies consist of members who are generally elected by direct universal suffrage using proportional representation⁹ for a period of five years. The Provincial Assemblies pass legislation in the competences reserved to provinces and exercise oversight over their respective Provincial Executives.¹⁰ The Provincial Executives consist, of Governors, Vice-Governors of provinces and Provincial Ministers.¹¹ The Governors and Vice-Governors of provinces are elected from within or outside of Provincial Assemblies by Provincial Deputies for a five-year term, with a possible renewable of one term. They are invested by ordinances of the President of the Republic.¹² Provincial Executives also consist of Provincial Ministers. They are appointed by Provincial Governors.¹³ Provincial Executives cannot have more than ten Provincial Ministers.¹⁴

The autonomy which is granted to Congolese provinces goes a long way in accommodating groups in a multi-ethnic country like the DRC. It allows groups that are losers at the national level to be winners at the sub-national level and helps people to have governments that are closer to them and have control over decisions which impact on their daily lives.¹⁵ The form of Provincial Executives and the electoral system used for the election of Provincial Deputies, i.e. the parliamentary executive and proportional representation, perhaps provide in some countries the best mechanism for accommodating ethnic groups because they allow people

⁴ Autonomy is political, administrative and fiscal. This study will stay in the frame of political autonomy.

⁵ Constitution of the Democratic Republic of Congo of 2006 article 195.

⁶ Constitution of DRC of 2006 art 195.

⁷ Constitution of DRC of 2006 art 204.

⁸ Constitution of DRC of 2006 art 104 (2).

⁹ Electoral Act of DRC of 2006 art 118 (2).

¹⁰ Free Administration of Provinces Act of 2008 art 7 (1).

¹¹ Constitution of DRC of 2006 art 198 (1).

¹² Constitution of DRC of 2006 art 198 (2).

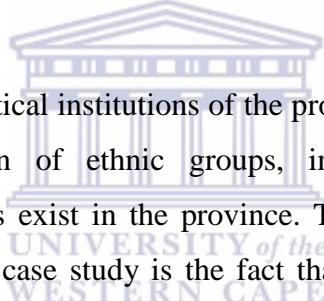
¹³ Constitution of DRC of 2006 art 198 (3).

¹⁴ Constitution of DRC of 2006 art 198 (5).

¹⁵ Haysom, N. ‘Constitution making and nation building’ in Blindenbacher, R. and Koller, A. (eds.) *Federalism in a changing world* (2003) 227.

from small political parties and minority ethnic groups to have representation in legislative bodies and positions in executives.¹⁶

Despite the granting by the Constitution of 2006 of autonomy to provinces and the principle of representativeness in Provincial Executives of the different ethnic groups, the tensions still exist and many groups feel politically marginalized. After the provincial elections of 2006 in the province of North Kivu, it was seen that some ethnic groups obtained almost all the seats in the Provincial Assembly whereas a huge number of ethnic groups obtained no seat.¹⁷ In the executive branch of the government of the province of North Kivu, members belonging to political minority ethnic groups have received non-influential ministerial positions. In the DRC's provinces, the establishment of proportional representation has been the source of political side-lining of a huge number of ethnic groups, instability of provincial institutions and worsening of the relations between members of ethnic groups and the people and their representatives.



A look at the composition of political institutions of the province of North Kivu shows that it has experienced marginalization of ethnic groups, institutional instability and non-accountability of political leaders exist in the province. The second reason that makes the province of North Kivu a better case study is the fact that it is inhabited by all the major ethnic groups that inhabit DRC, i.e. Bantu, Nilotic and pygmy. Secondly, it is the province with the longest and bloodiest history of ethnic conflict. Ethnic conflicts have made the province of North Kivu a very politically divided society. Since the first granting of autonomy to provinces by the Constitution of 1960, the province of North Kivu has been the epicentre of ethnic tensions and conflicts. The origin of the First Congolese War of 1996 can be traced back to ethnic conflicts in this province. Further, it is also in this province of Eastern Congo that the Second Congolese War was declared in 1998 and numerous rebellions, insurrections, mutinies and armed movements were generated at the start of the 21st century. Finally, the province of North Kivu, with the exception of the Province and Capital City of Kinshasa, has the biggest Provincial Assembly and a powerful Provincial

¹⁶ See Fessha, Y. 'Ethnic identity and institutional design: Choosing electoral system for divided societies' (2009) 49 (4) *CILSA* (323-338).

¹⁷ See Balingene, K. (2011) 'La protection des minorités ethniques en République démocratique du Congo. Entre rupture et continuité des ordres constitutionnels antérieurs' available at http://www.hamann-legal.de/upload/La_protection_des_minorites_ethniques_en_Republique_democratique_du_Congo_-Entre_rupture_et_continuite_des_o.pdf accessed on 28 August 2016.

Executive with multiple sources of income, including mining operation, agriculture, and tourism.

The choice of an electoral system and a form of government are paramount for the political and economic stability of any political entity. For that reason, Brij points that electoral systems play a critical role in shaping not only the nature and direction of the political process of a country (or province) but also the foundations of its political culture. The electoral systems reward certain kinds of policies and strategies, and punish others. They also influence the composition of political parties and determine the nature of the relationship between them. Moreover, the electoral systems structure the relations between the voters and their representatives in parliament.¹⁸

Historical, social, political and geographical realities of States/substates should be taken into account before choosing an electoral system and a form of government. A successful electoral system in one multi-ethnic State/substate can bring about undesired results in another although both are multi-ethnic. In the DRC, many realities were not seriously taken into account during the constitutional design of provincial institutions. These realities are, among others: the concentration of ethnic groups in small and geographically well-determined territories; the organisation of political parties; and the level of political maturity of Congolese voters and politicians. The purpose of this study is to analyse the framework within which DRC's provinces, and the province of North Kivu in particular, operate, and to determine if the Constitution of 2006, and laws based on it, provide mechanisms for the efficient representation of ethnic groups in provincial political institutions.

1.2. Research questions

In this study we will try to respond to the following questions:

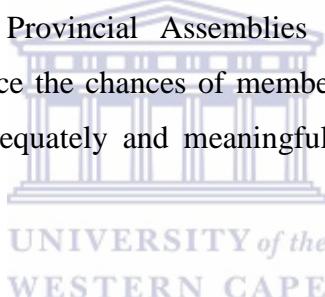
- (i) What is the scope of the political autonomy granted to the province of North Kivu?
- (ii) Have adequate constitutional and institutional mechanisms been put in place to accommodate its diversity and ensure harmonious interethnic relations?

¹⁸ Brij, V. & Larmour, P. *Electoral systems in divided societies: the Fiji constitution* (2012) 40.

1.3. Significance of the study

The fear of side-lining of ethnic groups has been used for personal interests by some North Kivutian politicians who wish to acquire power or stay in power. This has cost millions of lives, destabilised and destroyed its political, social and economic infrastructures. The importance of this study is to recognise the diversity in the province of North Kivu; and in all DRC's newly decentralised subunits in general, to provide insight into its political institutions, and to see how they can be restructured to ensure peaceful cohabitation and representation of its different ethnic groups and thus decrease ethnic tensions and avoid ethnic conflicts.

This study will identify constitutional and legal failures related to the representation of ethnic groups in provincial institutions. Moreover, this study will make recommendations on the kind of electoral system and form of government that will help provinces to have more representative and accountable Provincial Assemblies and Provincial Executives. The findings of this study will enhance the chances of members belonging to largest as well as minority ethnic groups to be adequately and meaningfully represented within strong and stable provincial institutions.



One of the consequences of the taboo surrounding the relation between ethnic groups and politics in DRC is the lack of literature on issues developed by this study; therefore this study will constitute a significant contribution to the concepts of recognition of diversity, management of ethnic conflicts, and representation of ethnic groups in political institutions of Congolese provinces.

1.4. Literature review

During the last ten years many Congolese scholars and researchers have written on decentralisation and provincial institutions but few have focused on ethnic groups and their representation in provincial institutions.

Matsanza notes that the side-lining of some ethnic groups is a factor leading to their resistance to the State and to the using of the ethnic phenomena as a means of accessing, exercising and keeping power by politicians. This political use of ethnicity is the reason for many tensions and conflicts that punctuate the history of Africa and particularly those of DRC. He asserts that the best way to use ethnicity is to formalise it, and by so doing it will be an obstacle but a support asset for the consolidation of DRC. He argues further that the absence of representatives of ethnic groups in State institutions is a source of manipulations whereas their presence will increase the representativeness and legitimacy of public institutions, and will prevent political leaders from pretending to fight in the name of ethnic groups.¹⁹

In his study on the protection of ethnic minorities in DRC, Balingene contradicts the position of many Congolese scholars²⁰ and political leaders that there are no ethnic minorities in DRC. He argues that the Congolese State gives the impression of being afraid of ethnic groups because they will constitute a threat to its territorial integrity and to the unity of the nation, and that ethnic identity seems to be considered more than national or common identity.²¹ Balingene argues further that, as with democracy, access to political power is ruled by the criteria of number and majority. Thus, the problem of minorities becomes paramount for DRC because in the political challenge, ethnicity gives a decisive advantage to groups with many members. There is a risk that a democratic majority cannot be a political majority, but rather an ethnic majority. In the absence of mechanisms for ensuring the representation of minority groups in provincial institutions, the peaceful co-existence of the ethnic groups of DRC will be compromised.²²

Mughendi and Namegabe, in a publication of the Pole Institute, have observed that in the province of North Kivu, demographically there are majority ethnic groups and that other ethnic groups can somehow be considered as minorities. Therefore the political calculations to choose members of provincial institutions, with the aim of trying to involve all the ethnic

¹⁹ Matsanza, G. ‘La nouvelle édification de l’État à l’épreuve de l’ethnicité : esquisse de solutions pour la République Démocratique du Congo’ (2005) 5 *Fédéralisme Régionalisme*.

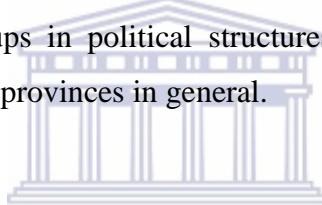
²⁰ Segihobe, J. (2010) ‘Le droit des minorités dans la vacuité de sa positivité’. Available at <http://www.dhdi.free.fr/recherches/etudesdiverses/articles/segihibeminorites.pdf> (accessed 16 November 2016).

²¹ Balingene, K. (2011) 5.

²² *Idem*.

groups, have to go beyond political parties and take into account the ethnic factor.²³ For them, the logic of ethnic representativeness applied in multi-ethnic provinces, such as North Kivu, has a constitutional and legal base which is somehow veiled.²⁴ Regarding the effect of ethnic groups on political institutions, Kabungulu asserts that the ethnic factor fundamentally, but not exclusively, determines political choice in DRC. But that does not mean that all Congolese politics is based on ethnicity.²⁵

The available literature related to the representation of ethnic groups in political institutions shows that the place of ethnic groups in the politics of DRC, and its provinces in particular, is hardly recognised. This can lead to sidelining, manipulation, tensions, conflicts and instability. Few works have been written to examine the elections of Provincial Deputies and the composition of a Provincial Executive with the aim to facilitate the representation of ethnic groups in the provincial decision-making process while having strong, stable and accountable political institutions. This study will contribute enormously to diminish the lack of literature on representation of ethnic groups in political structures of the province of North Kivu Congolese, and all the Congolese provinces in general.



1.5. Scope of the study

Although the province of North Kivu is the centre of this study, the institutions of the National government and other provinces will also be discussed or referred to. A more complete study of provincial political institutions would look at local governments in provinces. According to the Constitution of 2006 there have to be elected political institutions at the local level. However, ten years after the promulgation of the Constitution no local election had been held –meaning that local governments are yet to be established. Thus local government falls out of the realm of this study.

1.6. Research methodology

This is a desktop based study that reviews the relevant literature on the representation of ethnic groups. The study will also analyse the Constitution of DRC of 2006, the Free

²³ Pole Institute *Gouvernance provinciale au Nord-Kivu et au Sud-Kivu entre 2007 et 2014* (2005) 16.

²⁴ Pole institute (2015) 18.

²⁵ Kabungulu, H. ‘The political role of the ethnic factor around elections in the Republic Democratic of Congo’ (2007) 2 AJCR 236.

Administration of Provinces Act 08/012 of 2008as modified and completed by Act 13/008 of 2013. Standing Orders of the Provincial Assembly, Provincial Decrees, books, textbooks, journals, articles, government policies, websites and other relevant literature will also be used.

1.7. Structure

This study is organised into a further three chapters. Chapter Two presents the province of North Kivu and the historical background of ethnic conflicts within it. Chapter Three examines the election of Provincial Deputies, the co-option of Traditional Leaders and the election of the four representatives of the province of North Kivu in the Upper Chamber of the National Parliament. Chapter Four analyses the sharing of positions in the Provincial Executive among members of ethnic groups of the province of North Kivu. Chapter Five contains the general conclusions, findings and recommendations.



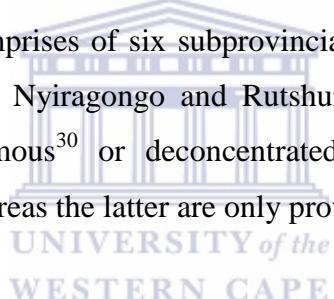
CHAPTER TWO

THE PROVINCE OF NORTH KIVU AND ETHNIC CONFLICTS: HISTORICAL OVERVIEW

2.1. North Kivu at a glance

North Kivu is located in the eastern part of the Democratic Republic of Congo (DRC); it is one of the 26 provinces of DRC. North Kivu is surrounded by four provinces and two States, the Republic of Uganda and the Republic of Rwanda.²⁶ The province of North Kivu occupies a territory of 59.631 square km²⁷ and has a population of 4 270 000 inhabitants.²⁸ Gomatown is its capital. Before 2006, the province of North Kivu was a subregion of the Great Kivu region and became a province in 1982 during the first experimentation with the process of territorial division.

The province of North Kivu comprises of six subprovincial units called territories, namely: Beni, Lubero, Walikale, Masisi, Nyiragongo and Rutshuru.²⁹ The administrative units of North Kivu are either autonomous³⁰ or deconcentrated,³¹ the former have their own administration and resources whereas the latter are only provincial extensions of bodies of the central executive.³²



The six territories of North Kivu are inhabited by nine ethnic groups: Hundes, Hutus, Kanos, Kumus, Mbutis or pygmies, Nandes, Nyangas, Tembos and Tutsis.³³ The ethnic groups of the province of North Kivu are geographically concentrated. It is possible to identify the ethnic group of somebody just by knowing the territory he/she originally came from. Mbutis and Nandes are located in the territories of Beni and Lubero. Hundes, Hutus, Kumus and Tutsis are located in the territories of Masisi, Nyiragongo and Rutshuru. Kanos, Nyangas and

²⁶ The proximity to Rwanda is very relevant to this study as we shall see later.

²⁷ Ministère du Plan (2014) 11.

²⁸ Ministère du Plan (2014) 29.

²⁹ Ministère du Plan (2014) 22.

Nyiragongo is the smallest territory with 163 Km² and Walikale is the biggest with 23.475 km² which constitutes 39,46 per cent of the provincial territory.

³⁰ Towns, communes, sectors and chiefdoms.

³¹ Territories, collectives and groupings.

³² Free Administration of Provinces Act of 2008 art 5.

³³ Ministère du Plan (2014) 36. The province of North Kivu has no majority ethnic group; however Nandes and Hutus are the two largest ethnic minority groups. The pygmoids, Bantus and Nilotics are the three groups of DRC and all are in the province of North Kivu. Mbutis are pygmoids and Tutsis are Nilotics while the rest of the ethnic groups are Bantus. The Bantus are the biggest supra-ethnic group of the province of North Kivu.

Tembos are located in the territory of Walikale.³⁴ Looking at the way the ethnic groups are geographically located, they can be grouped on three axes: North axis (Beni and Lubero), West axis (Walikale and Masisi) and East axis (Rutshuru and Nyiragongo).³⁵

2.2. Ethnic conflicts in the province of North Kivu

2.2.1. Colonisation and ethnic groups (1885-1960)

At the Berlin conference, in 1885, Leopold the Second, King of the Belgians, succeeded to obtain DRC as his private property. He was the unique legislator and decision-maker. During his ownership human right violations were committed against the Congolese people.³⁶ On 18 October 1908, due to financial problems, Leopold the Second ceded his *state-property* to Belgium, and the Congolese Independent State became Belgian Congo. In 1910, the Belgians and Germans drew the border between their colonies. During that border drawing, the land and people of some provinces of German Rwanda were incorporated into Congo. Nowadays, those provinces and the people who lived in them totally belong to the province of North Kivu and are specifically located in the territories of Rutshuru, Nyiragongo and Masisi.³⁷

To solve the question of the overpopulation of Rwanda and Burundi and the under-population and lack of working force of Congo, Belgium signed, on 13 November 1939, the ‘Deed of cession of indigenous rights’ (*Acte de cession des droits indigènes*). At that agreement the colonial administration was represented by the Assistant of the Administrator of the territory of Masisi, Van Cleemput Amédée, and the traditional authority was represented by Declerk³⁸ and the great traditional leader of Hundes in North Kivu, Mwami³⁹ Kalinda André.⁴⁰ Once the agreement signed, the then Congolese administrative power launched the immigration of

³⁴ Ministère du Plan Monographie de la province du Nord Kivu 37.

³⁵ The Insecurity and the quest for opportunities and better living standards led numerous people to move from one territory to another.

³⁶ See Hochschild, A. *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa* (1998) Boston: Houghton Mifflin.

³⁷ Pabanel, J. ‘La question de la nationalité au Kivu’ (1991) 41 *Politique Africaine* 33. At the dawn of the 20th century, Belgium found another opportunity to enlarge the territory of its colony. In 1916, with the defeat of Germany during the First World War, Belgium acquired the German colonies of Rwanda and Burundi. After the German defeat Congo, Rwanda and Burundi had many things in common, such as, the same Head of State and currency. The movement of people between Congo, Rwanda and Burundi was not problematic.

³⁸ Substitute Royal Prosecutor to the Tribunal of first instance of Bukavu.

³⁹ ‘Mwami’ is ‘king’ in Swahili.

⁴⁰ Ngondavi, T. ‘La question de la nationalité’ (2002) *Vincit amor omnia* available at <https://repositories.lib.utexas.edu/bitstream/handle/2152/5287/2584.pdf?sequence=1> accessed on 30 March 2017.

Rwandese and Burundians in Congo. Thereafter, it created, on the purchased lands of Gishari in the territory of Masisi, a chiefdom belonging to and ruled by the displaced people.⁴¹ The last element showing the recognition of the immigrants as Congolese citizens was the fact that they were obliged to leave at the border post documents proving their Rwandese or Burundian citizenship in exchange for Congolese identity cards.⁴²

2.2.2. Ethnic conflicts during the First Republic (1960 – 1965)

Shortly before the independence, the colonial administration organised experimental local elections in 1959 to initiate the Congolese to the culture of democracy. The elections of 1959 did not bring much division and conflict between the ethnic groups of the great Kivu region. On 30 June 1960, after a series of talks between Belgian and Congolese leaders and the adoption of the Constitution of the Republic of Congo by the Belgian parliament, independence was granted to Congo. The First Republic is famous for its permanent and grave political and institutional instabilities. The instabilities of the First Republic were caused by the ambiguity of the Constitution of Congo of 1960, the influence of ethnic associations on politics, and the amateurism of members of the first Congolese political elite. These instabilities opened doors to assassinations, mass killings, coups d'états, and because of them the DRC was on the very edge of losing half of its national territory (Katangan secession and Kasaian secession). The region of Kivu was not spared. In their race to take control of provincial institutions; some Kivutian politicians from the newly created province of North Kivu made ethnic groups of their Hutu and Tutsi opponents their targets. To prevent their opponents from competing with them for any political office, the membership of the Congolese nation was denied to their entire ethnic groups.⁴³

The manipulation of the question of the citizenship of Congolese with Rwandan and Burundian origins for political gain was very harmful to DRC and the provinces of North and South Kivu in particular. Two years after the independence of Congo, the previously peaceful region of Kivu plunged into hatred and confrontations between members of its ethnic groups. The triggering event was the establishment of 22 autonomous provinces in the early 1960s and the request for the creation of the province of North Kivu. Kivutians politicians from the then subregion of North Kivu were divided into those who wanted to keep the province of

⁴¹ Ngondavi (2002).

⁴² *Idem.*

⁴³ *Idem.*

Kivu united and those who wanted to split it into two provinces, Central⁴⁴ and North Kivu. The first group consisted mainly of Hutus and Tutsi leaders, whereas the rest of North Kivu's ethnic groups constituted the second group. When the subregion of North Kivu was recognised as a province, Hutu and Tutsi politicians brought the territories of Rutshuru and Nyiragongo into the province of Central Kivu, and received from the National Government, a promise for the organisation in the future of a referendum for the territory of Masisi. The attachment of the provincial capital, Gomatown, forced authorities of the newly created province of North Kivu to establish the provincial capital at Kirotshe, a small village in the territory of Masisi.⁴⁵

The choice of Hutu and Tutsi politicians created hostility and hatred from politicians of other ethnic groups. In reply to this choice, politicians of the other ethnic groups of North Kivu launched in 1965 a purge of Hutus and Tutsis from the whole provincial administration.⁴⁶ These bloody and politically motivated ethnic conflicts are known as the *massacres of Kanyarwanda* or the *revolt of Kinyarwanda speaking people*.⁴⁷ Two groups were fighting against each other during these ethnic conflicts. People of one group considered themselves to be genuine Congolese, and entitled to run for political office. This group consisted mainly of Nandes, Hundes and Nyangas. In the other group, there were those who were considered to be second-class Congolese and even foreigners because of the language they spoke and the fact that their territories were the last to be annexed or their ancestors the last to arrive in Congo. At the peak of the ethnic conflicts of the 1960s, members of the latter group, Hutus and Tutsis, were given a choice between the grave, deportations, or to stay in DRC without running for any political position.

Ethnic conflicts in the province of North Kivu, which were rooted in the desire of North Kivutian political entrepreneurs⁴⁸ of the 1960s to take and keep power by playing ethnic groups off against each other, created deep wounds in the hearts of North Kivutians. These wounds stayed throughout the Second Republic and led in the 1990s to the bloodiest ethnic conflicts DRC has ever witnessed.

⁴⁴ Central Kivu is the equivalent of the current province of South Kivu.

⁴⁵ Willame, J. 'Les provinces du Congo, Structures et fonctionnement' (1964) 3.

Collection d'études Politiques 36. Cited in Ngondavi, T. (2002) 6.

⁴⁶ Willame, J. *L'ONU au Rwanda* (1996) 130. Cited in Ngondavi, T. (2002) 6.

⁴⁷ Ngondavi, T (2002) 6.

⁴⁸ Ethnic entrepreneur is a term used to describe politicians who manipulated members of ethnic groups not for the common good but for their personal interests.

2.2.3. Ethnic conflicts in the Second Republic (1965 – 1997)

In 1965, President Mobutu Joseph Desire took advantage of the institutional and political instabilities of the First Republic and staged a coup d'état. President Mobutu stayed in power for 32 years. During his reign he was suppressing opponents and civil rights activists, highly centralising all the powers of the State, and most of all by corrupting Congolese elites and making ethnic groups fight against each other. He created and used tensions between ethnic groups to protect his own powers and interests. The regions of Katanga and Kivu are the best examples to show the use of ethnic tensions and conflicts for the survival of the regime of President Mobutu.

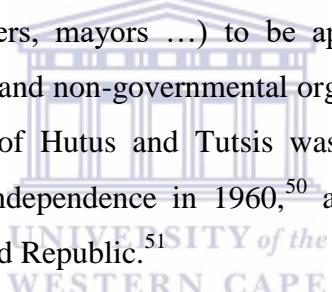
At the beginning of the 1990s, the Sovereign National Council (SNC) chose Tshisekedi Wa Mulumba Etienne, the leader of the Union des Démocrates pour le Progress Social (UDPS) as Premier Minister of Zaire (former DRC). In 1991, to politically destroy the influence of his main opponent, Tshisekedi Etienne, President Mobutu used a tribalist politician, Kyungu Wa Kumwanza Gabriel. Backed by the President of the Republic, Kyungu Gabriel mobilised natives of the province of Katanga against members belonging to the ethnic group of Tshisekedi Etienne who lived in the province of Katanga.⁴⁹ The attacks against members of the ethnic group of Tshisekedi Etienne, Lubas, ended when President Mobutu was sure that his opponent was politically weakened. By the end of the same year, Kyungu Gabriel was promoted to the position of Governor of the province of Katanga. These ethnic conflicts in the province of Katanga caused much damage to this province and the entire country. Many people in the province of Katanga were displaced or massacred and these conflicts sowed hatred against Congolese non-natives which still exists today. The strong economic infrastructure of the rich mining province of Katanga was also brought to its knees. Before the ethnic conflict of 1991 the contribution of Katanga to the national budget was nearly 70 per cent.

The manipulation of ethnic tensions and conflicts for political gain was more evident and bloody in the province of North Kivu than in the province of Katanga. In contrast to Katangan ethnic conflicts, North Kivutian ethnic conflicts were not native-against-non-native

⁴⁹ Haut-commissariat des Nations Unies pour les Réfugiés *La République Démocratique du Congo: De l'indépendance à la première guerre mondiale africaine* (2001) 11.

conflicts but native-against-native conflicts. The determination of members belonging to ethnic groups of the province of North Kivu to destroy each other at every provincial and national political event gave President Mobutu an opportunity to use them all depending on circumstances.

The best weapon of the regime of President Mobutu in the manipulation of North Kivu's ethnic groups was the grant and withdrawal of citizenship to Congolese Hutus and Tutsis. The lives and political representation of Hutus and Tutsis in the Second Republic were highly unstable because their citizenship was regularly granted and withdrawn. In DRC, participation in decision making organs of the country is reserved only for Congolese nationals. Their participation in provincial and national political and administrative institutions depended on the whims and personal interests of President Mobutu and his advisers. During the dictatorship period it was common for Hutu and Tutsi office holders (members of parliament, ministers, mayors ...) to be appointed in the morning and be removed at night. Many scholars and non-governmental organisations (NGOs) recognise that the question of the citizenship of Hutus and Tutsis was the most painful and complex question DRC faced since its independence in 1960,⁵⁰ and that this question was badly handled by the elites of the Second Republic.⁵¹



The manipulation of ethnic tensions and conflicts for the advancement of political and personal interests passed a point of no return at the beginning of the 1990s. In that period, President Mobutu decided, after consultations and pressure, to put DRC, then Zaire, on the road to multipartism and democracy. A new Parliament was formed to debate the future of the country and draft the Constitution of the Third Republic. Members of the new Parliament came from all the components of Congolese society. The composition of the delegation of North Kivu was a source of ethnic tensions and conflicts. Again, elites of North Kivu ethnic groups started fighting against each other in Kinshasa so that Hutus and Tutsis were excluded from the Transitional Parliament⁵² because of their so called 'doubtful citizenship'.⁵³ After a fierce battle only a handful of Hutus and Tutsis were admitted to the Sovereign National

⁵⁰ Ngondavi, T. (2002) 1.

⁵¹ Haut-commissariat des Nations Unies pour les Réfugiés (2001) 10.

⁵² Rift Valley Institute *North Kivu: The background to conflict in North Kivu province of eastern Congo* (2012) 25.

⁵³ Ngondavi, T. (2002) 7.

Council. The Parliament of Transition passed after these exclusions a series of discriminatory resolutions against Hutus and Tutsis.

In the province of North Kivu, Members of the Provincial Government used the implementation of the decisions of the National Parliament to incite Nandes, Hundes and Nyangas to turn against Hutus and Tutsis in the territories of Walikale, Masisi and Nyiragongo.⁵⁴ On 20 March 1993, just two days after a public speech by the Vice-Governor of the province of North Kivu, Miha Bamwisho, in the locality of Ntoto in the territory of Walikale, militias of Hundes and Nyangas killed dozens of Hutus. The violence soon spread across the other territories of the province, with each community arming itself and carrying out reprisals.⁵⁵ According to Médecins Sans Frontières (MSF)⁵⁶ between 6,000 and 15,000 people were killed and 250,000 displaced in the province of North Kivu.⁵⁷

Taking advantage of the instability and fragility of national political institutions and of ethnic conflicts in the Kivu region, the Rwandan army, supported by a huge international coalition, invaded DRC in 1996. The entry of this coalition was the beginning of Congolese wars which, according to the International Rescue Committee, cost the Congolese nation nearly 5.4 million lives.⁵⁸ The first and second wars of Congo and the Transition came to an end in 2001 with the Agreement of Sun City, in the Republic of South Africa. Between 2001 and 2006, DRC had a government based on consensus; better known as the 1+4 government.⁵⁹ All the legislative, executive and administrative positions, from the Presidency of the Republic to the offices of mayors, were shared between members of armed groups, political movements and civil society. The office holders were only chosen, removed and replaced by the groups they belonged to.

During the period of the Second Transition, there were many institutional deadlocks. Important as well as non-important matters could create institutional instability because of a

⁵⁴ Vlassenroot, K. & Huggins, C. ‘Land, Migration and Conflict’ in Huggins, C. & Clover, J. (eds.) ‘From the Ground Up: Land-Rights, Conflict and Peace in Sub-Saharan Africa’ (2005) *Institute for Security Studies* 146.

⁵⁵ Rift Valley Institute (2012) 28.

⁵⁶ Doctors Without Borders (DWB).

⁵⁷ Medécins Sans Frontières *Populations in danger* (1995), quoted in Office of the United Nations High Commissioner for Human Rights *Report of the Mapping Exercise* 55.

⁵⁸ Trefon, T. ‘Uncertainty and powerlessness in Congo’ (2013) 40 135 *Review of African Political Economy* 143.

⁵⁹ The Kabila-Transitional Government was headed by one President and four Vice-Presidents. President Kabila Kabange Joseph and one Vice President were from the Congolese official government and the other three Vice Presidents were from the armed movements of RCD (Ruberwa Manwa Azarias) and MLC (Bemba Gombo Jean Pierre) and Civil society (Zahidi Ngoma Arthur).

lack of compromise and goodwill among the Congolese elite. It was because of the pressure of the people and the international community that the Transition under Kabila Kabange Joseph avoided the fate of the Transition under President Mobutu. It came to an end in 2006 with the promulgation of the new Constitution by President Kabila Kabange Joseph and the organisation of presidential, legislative and provincial elections.

2.3. Ethnic groups and provinces in the Constitution of 2006

2.3.1. The Constitution of the Third Republic

After the parliamentary process, a draft of the Constitution was presented to the Congolese people during the referendum that took place on 18 and 19 December 2005. The people accepted the constitutional draft to be the supreme law of the land by 84 per cent.⁶⁰ On 18 February 2006, 16 days after the Supreme Court of Justice proclaimed the definitive results of the referendum; President Kabila promulgated the Constitution of the Third Republic.

The preamble of the Constitution of 2006 states that DRC is a country ruled according to a document written by the Parliament, accepted by the people and promulgated by the Head of State.⁶¹ The task to write the Constitution of 2006 was given to the Upper Chamber of the National Parliament.⁶² This document of 229 articles brought more clarity and answers to questions which had caused political instability, secessions, wars, ethnic tensions, and other kinds of crisis experienced since independence. The most important were the determination of the powers of the Head of State and those of the Head of Government, the recognition of ethnic diversity, the grant of autonomy to provinces, and the resolve to definitively solve the thorny question of the citizenship of Congolese Hutus and Tutsis. The article 10 (3) of the Constitution of 2006 stipulates that '[a]ny person belonging to an ethnic group of which the members and the territory are parts to that which became the Congo (presently the Democratic Republic of the Congo) at independence, is Congolese of origin.'⁶³ This constitutional feature put an end once and for all to the question of citizenship. The

⁶⁰ Verjans, P. & Kabamba, B. ‘République démocratique du Congo. Le système politique de la troisième République. Genèse d’une démocratisation attendue’ (2006) 4 *Fédéralisme Régionalisme* 577.

⁶¹ See preamble of the Constitution of DRC of 2006.

⁶² Constitution of DRC of 2003 art 104.

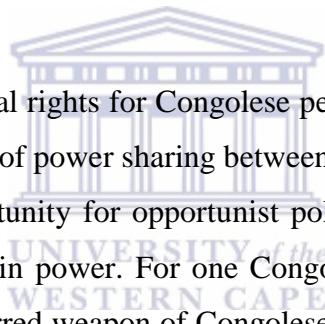
⁶³ Constitution of DRC of 2006 art10 (3).

Translated from French to English by Constitute project available at [https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011.pdf?lan](https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011.pdf?lang=en) [g=en](#) accessed on 23 June 2017.

Constitution of 2006 recognised the right to possess Congolese citizenship to people who belong to the ethnic groups Hutus and Tutsis who were living on the territories annexed at the German-Belgian drawing of the border as well as those who immigrated to DRC after 1939.

2.3.2. Recognition of ethnic diversity under the Constitution of 2006 of DRC

During the Second Republic, ethnicity was ‘officially’ relegated to a secondary position, and partly because it was blamed for bringing down the First Republic. As Balingene concludes, however, the attempts of the dictatorship to reduce ethnic identities and form a homogeneous nation were in vain.⁶⁴ It was the authorisation of cultural associations and the prohibition of political groups by the Belgian coloniser that allowed ethnic associations to take the place of political parties. At the dawn of independence, many ethnic groups had their ethno-political associations. Members of the first political elite came from, and derived their mandates from, these associations.⁶⁵



The lack of recognition of political rights for Congolese people, recognition of ethnicity, and the non-existence of mechanisms of power sharing between members belonging to Congolese ethnic groups provided an opportunity for opportunist politicians to use ethnic groups as a means to have, exercise and retain power. For one Congolese scholar, the manipulation of ethnic groups was the most preferred weapon of Congolese political leaders wishing to attain political power.⁶⁶

The writers of the Constitution of 2006 decentralised the country in order to stabilise it.⁶⁷ They also recognised the existence in DRC of ethnic diversity and demanded that every Congolese citizen respect the diversity character of the country.⁶⁸ The Government received the tasks to protect the languages of all the regions and ethnic groups without any kind of

⁶⁴ Balingene, K. (2011).

⁶⁵ President Kasavubu Joseph a Kongo of Bas-Congo, for instance, was an active member of ABAKO (Association des Bakongo).⁶⁵ Officially ABAKO was a cultural and non-political charitable association of the ethnic group of Bakongo. Premier Minister Tchombe Moise was also an active member of BALUBAKAT (Association des Balubas du Katanga).

⁶⁶ Matsanza, G. (2005) 5.

⁶⁷ Melmoth, S. ‘République Démocratique du Congo : Décentralisation et sortie de conflit’ (2007) *Afrique contemporaine* 80.

⁶⁸ Preamble of the Constitution of 2006 of DRC.

marginalization,⁶⁹ to ensure and promote peaceful cohabitation among ethnic groups,⁷⁰ to protect ethnic minorities⁷¹ and take into account diversity when fulfilling its duties.⁷² It is in accordance with these constitutional tasks that the composition of national⁷³ and provincial⁷⁴ governments have to take into account the diversity of the country or province. In addition to the rights entrenched in the Bill of Rights, the Constitution of 2006 added the decentralisation of powers to provinces.

2.3.3. From 11 provinces to 26 autonomous provinces

The existence in the Second Republic of one political party, the Movement Populaire de la République (MPR), and one centre of power worsened the race to power between members of Congolese ethnolinguistic groups. Before 2006, a small group of national leaders ruled the country from Kinshasa, without sharing the important powers of the State. The 250 ethnic groups of DRC had only 500 seats in Parliament and 50 positions in the executive to share. Arithmetically, only 20 per cent of ethnic groups were able to be represented in the two national political institutions of the Second Republic, and only if the largest ethnic groups of Congo accepted to be in charge of not more than two positions. One more position for an ethnic group could have meant one less seat or positions to another ethnic group as one less position could have been one more seat or positions to another ethnic group. During that period, ethnic groups used every strategy to avoid being out of the only Parliament and Executive of the country.

The Constitution of 2006, with the goal of avoiding the mistakes of the transition and the First and Second Republics, divided the then 11-province DRC into 26 provinces. It reduced the centralisation of powers in the Capital City by giving each province a portion of the national sovereignty. The borders of the province of North Kivu were not modified by the territorial segmentation of 2006. The Congolese devolution of powers also aimed to deepen local democracy, to develop provinces and to fight poverty.⁷⁵ Because of the creation of 26 autonomous provinces, members from the 250 ethnic groups no longer only had 550 seats

⁶⁹ Constitution of DRC of 2006 art 1 (8),(9).

⁷⁰ Constitution of DRC of 2006 art 51 (1).

⁷¹ Constitution of DRC of 2006 art 51 (2).

⁷² Constitution of DRC of 2006 art 46 (3).

⁷³ Constitution of DRC of 2006 art 90 (3).

⁷⁴ Constitution of DRC of 2006 art 198 (4).

⁷⁵ Ministère de l'Intérieur, Sécurité, Décentralisation et Affaires Coutumières *La décentralisation au service de la paix, de la démocratie, du développement et de l'unité nationale* (2013) 11.

and ministerial positions to share but 1655 (500 National Assembly, 108 senates, 685 Provincial Assemblies, 50 central executive and 312 12-member provincial governments).

The 26 provinces received political, financial and administrative autonomy.⁷⁶ Administratively, provinces received the power to create public services that are under the authority of provincial authorities.⁷⁷ As for financial autonomy, provinces are entitled to 40 per cent⁷⁸ of national revenues collected in provinces and the power to raise their own revenues that are separated from those of the National Government.⁷⁹ To reinforce unity and help provinces that are financially weak, the Constitution of 2006 established an equalisation fund (Caisse National de Péréquation, CNP).⁸⁰ In so far as political autonomy is concerned, every province has two political institutions: a Provincial Assembly and a Provincial Executive. In contrast to the old practices, which consisted of people to be placed in the province of North Kivu from Kinshasa, the new provincial office holders are directly or indirectly elected by inhabitants of the province.

2.4. Conclusion

This chapter introduced the province of North Kivu and gave the background of ethnic tensions and conflicts within it. The evidence indicated that during the period of colonisation there were not serious tensions between ethnic groups in the province of North Kivu. Tensions between ethnic groups have reached another level of violence with the transfer of powers from Belgian to Congolese authorities and the granting of autonomy to newly-created provinces. To take control of national and provincial political institutions or to stay longer in power, post-independence Congolese politicians have often turned members of ethnic groups against each other. The first victims of the manipulation of ethnicity have been the ethnic groups composed of Congolese with Rwandese and Burundian origins. The citizenship, and consequently the rights to hold administrative and political positions, were regularly granted and withdrew to members belonging to the ethnic groups of Hutus and Tutsis by Ordinances of the President Mobutu, Acts of the National Parliament and decisions of provincial institutions. The manipulation of ethnic groups by using the Congolese citizenship led to

⁷⁶ Constitution of 2006 of DRC art 2 (1).

⁷⁷ Free Administration of Provinces Act art 28 (4).

⁷⁸ Constitution of DRC of 2006 art 175 (2).

⁷⁹ Constitution of DRC of 2006 art 171.

⁸⁰ Constitution of DRC of 2006 art 181 (1)(2).

bloody ethnic conflicts, rebellions and wars in the 1960s and 1990s. The Constitution of 2006 came to put an end to these crises by recognising diversity, solving once for all the citizenship issue and creating numerous autonomous provinces.

This chapter has shown that the granting of autonomy to provinces diminished tensions between national ethnolinguistic groups and chased away the demons of secessions but it also increased, in the case of the province of North Kivu, tensions between ethnic groups at the provincial level. Ethnic diversity is the greatest treasure of the province of North Kivu and decentralisation is a very good mechanism for its development. However, the stability and prosperity that come with ethnic diversity and autonomy can only be enjoyed if extremists and ethnic entrepreneurs are stopped and power is efficiently shared among all the nine ethnic groups of the province of North Kivu. The following chapters respectively analyses the sharing of positions in the Provincial Assembly and Provincial Executive of North Kivu.



CHAPTER THREE

REPRESENTATION OF ETHNIC GROUPS IN THE PROVINCIAL ASSEMBLY OF NORTH KIVU

As in many multi-ethnic countries, democratic governance in DRC poses particular challenges.⁸¹ The inclusion of ethnic groups in political institutions is a difficult issue and

⁸¹ Wolff, S. ‘Consociationalism, Power Sharing, and Politics at the Center’ (2010) *The International Studies Encyclopedia*. Available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.463.9031&rep=rep1&type=pdf> accessed on 30 March 2017.

becomes a puzzle when there is a huge number of minority groups to include in political institutions. The inclusion of all the ethnic groups of a society is a difficult but doable exercise. The representation of ethnic groups, especially minority groups, in organs like Congolese Provincial Assemblies is a longer-term mechanism to manage ethnic conflicts.⁸² It can be an end in itself in managing ethnic tensions and conflicts.⁸³ Worldwide, there is no single example of a peaceful and democratic society that has avoided conflicts by excluding some ethnic groups from the legislative representation.⁸⁴

As the chapter two has discussed, to solve political and institutional crisis the Constitution of 2006 has recognised diversity and granted political autonomy to provinces. It created in every Congolese substate a Provincial Assembly and a Provincial Executive, the latter will be analysed in chapter four. The objective of this chapter is to analyse the sharing of parliamentary seats and positions in the structures of the Provincial Assembly among members of ethnic groups of North Kivu.

This chapter has three sections; its first section focuses on the structures of the Provincial Assembly of North Kivu. The following section examines the composition of the Provincial Assembly. This section focuses on the elections of Members of the Provincial Assembly, the co-option of Traditional Leaders and the elections of the Representatives of the province in the Upper Chamber. The third section analyses the functions of the Provincial Assembly of North Kivu. The last section concludes this chapter.

3.1. Brief introduction to the structures of the Provincial Assembly of North Kivu

The Constitution of 2006 and the Free Administration of Provinces Act of 2008 gave a special place to Congolese Provincial Assemblies. Provincial Assemblies are deliberative organs of provinces.⁸⁵ They have the powers to legislate, to co-opt Traditional Leaders, to elect Governors, Vice-Governors and senators, and to oversee Provincial Executives and local services. Provincial Assemblies are creators of Provincial Executives. Thus, they have the right and the power to bring the executive to explain itself on Provincial Executives' the

⁸² Dessalegn B ‘The right of minorities to political participation under the Ethiopian electoral system’ (2013) 7 in *Mizan law Review* 79.

⁸³ Reynolds, A. ‘The case for proportionality’ (1995) 6 in *Journal of Democracy* 86.

⁸⁴ Minority Rights Group International *Electoral Systems and the Protection and Participation of Minorities* (2006) 3.

⁸⁵ Constitution of 2006 of DRC art 197 (1).

choices,⁸⁶ to scrutinise governmental activities and to withdraw confidence in Provincial Executives in case they do not act properly, violate laws or do not follow policies validated by Provincial Assemblies.

According to the Constitution of 2006, Provincial Assemblies enact edicts⁸⁷ (acts of Provincial Assemblies) in areas of exclusive competences of provinces⁸⁸ and in concurrent competences.⁸⁹ When legislating in the area of concurrent competences, Provincial Assemblies have to avoid enacting edicts that are incompatible with Acts of the National Parliament for the national legislation prevails over provincial legislation.⁹⁰

Members of Provincial Assemblies, Provincial Deputies, meet in ordinary and extraordinary sittings.⁹¹ Extraordinary sittings are exceptions to the former. In normal times provincial assemblies have two parliamentary sittings in a year, the first parliamentary sitting starts every 15 January and ends every 15 April, and the second parliamentary sitting starts every 15 July and ends every 15 October.⁹² In exceptional times, the Speaker of the Provincial Assembly of North Kivu convenes Provincial Deputies for an extraordinary sitting. Extraordinary sittings are convened at the request of the Bureau of the Provincial Assembly, half of Provincial Deputies, the Governor of province, the provincial government or the central government.⁹³ Fifteen days after the announcement of the results of the provincial legislative elections, an extraordinary sitting has to be convened to install the Temporary Bureau, validate the powers of elected Provincial Deputies, co-opt selected Traditional

⁸⁶ Delcamp, A. La perception du contrôle parlementaire. Comment le rendre plus attractif ? (2010) *Pouvoir* 134. Quoted in Yenga-Yenga, D. (2014).

⁸⁷ The number of edicts passed by the Provincial Assembly of the province of North Kivu is very low: First, because Provincial Deputies were more focussed on the oversight of the Provincial Executive than making edicts; second, the intentional delay to pass national Acts of Parliament on the transfer of all the powers of provinces; and thirdly, the numerous interferences and sabotages by the Central power. For instance, after receiving complaints from the union of Congolese businessmen (Fédération des Entreprises du Congo, FEC), the then Head of Government, Muzito Adolphe, struck down in October 2010 provincial edicts that established some provincial taxes (Englebert 2011). To these reasons for the very low number of edicts passed by the Provincial Assembly of the province of North Kivu, there can be added the lack of skill of Provincial Deputies in the drafting of laws.

⁸⁸ Constitution of DRC of 2006 art 204.

⁸⁹ Constitution of DRC of 2006 art 203.

⁹⁰ Constitution of DRC of 2006 art 205 (5).

⁹¹ Free Administration of Provinces Act of 2008 art 16,17.

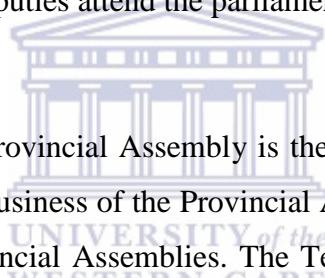
⁹² Free Administration of Provinces Act of 2008 art 16.

⁹³ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 54.

Leaders , write and adopt Standing Orders of Provincial Assemblies, and, finally, to install the Permanent Bureau.⁹⁴

Structures

The Provincial Assembly of North Kivu has five political organs, the Plenary Assembly, the Bureau, the Conference of Presidents, Committees and finally Caucuses. The Plenary Assembly is the highest organ of the Provincial Assembly of North Kivu.⁹⁵ The Plenary Assembly consist of all the 42 members of the Provincial Assembly of North Kivu. It has the power to debate and take decision on any matter that the Constitution and legislation have assigned to provinces.⁹⁶ It acts by means of *edicts* in legislative matters⁹⁷ and by means of resolutions, recommendations, opinions, and motions or votes of censure or of no confidence and votes of approbation in non-legislative matters.⁹⁸ The Plenary Assembly takes decisions when two-thirds of Provincial Deputies attend the parliamentary sitting.⁹⁹



The Bureau of the North Kivu Provincial Assembly is the organ that deals with the day-to-day political and administrative business of the Provincial Assembly.¹⁰⁰ There are Temporary and Permanent Bureaux of Provincial Assemblies. The Temporary Bureau is established at the first sitting following provincial legislative elections, it consists of a Speaker and two Secretaries. The Speaker has to be the oldest elected Provincial Deputy and the two Secretaries have to be the two youngest elected Provincial Deputies.¹⁰¹ The mission of the Temporary Bureau of the Provincial Assembly of North Kivu is to organise the verification and validation of the powers and mandates of elected Provincial Deputies, the co-option of Traditional Leaders. It is then that it organises the drafting and their transmission of Standing Orders to the Constitutional Court. The last function of the Temporary Bureau is to organise

⁹⁴ Constitution of DRC of 2006 art 114.

⁹⁵ Standing Orders of the Provincial Assembly of North Kivu art 9 (1).

⁹⁶ Standing Orders of the Provincial Assembly of North Kivu art 9 (2).

⁹⁷ Constitution of DRC of 2006 art 197 (2).

⁹⁸ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 10 (1).

⁹⁹ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 62.

¹⁰⁰ Free Administration of Provinces Act of 2008 art 18.

¹⁰¹ Standing Orders of the Provincial Assembly of North Kivu art 12.

the election and installation of the Permanent Bureau of the Provincial Assembly of North Kivu.¹⁰²

The Permanent Bureau of the Provincial Assembly of North Kivu, as its name indicates, is the organ which manages the Provincial Assembly¹⁰³ until the end of Provincial Deputies' terms except when the Plenary Assembly withdraws its confidence in it.¹⁰⁴ Members of the Permanent Bureau meet, under the leadership of the Speaker of the Provincial Assembly, at least once a week with a quorum of three out of five members. An absolute majority is required when the Permanent Bureau is making decisions on matters related to the organisation of parliamentary activities or the administrative businesses of the Provincial Assembly.¹⁰⁵

The Conference of Presidents is an organ that gathers together members of the Bureau of the Provincial Assembly and heads of principal political organs of the Provincial Assembly. The above mentioned political organs are permanent committees, the Committee of Wise Men, and Caucuses. The mission of the Conference of President is to discuss a draft of the calendar of the ordinary sittings of the Provincial Assembly. The Speaker of the Provincial Assembly is the President of the Conference of Presidents.¹⁰⁶

Committees are organs of the Provincial Assembly that deal, at the request of the Permanent Bureau or plenary Assembly, with technical questions.¹⁰⁷ Provincial Deputies are assigned to committees by their Caucuses; Provincial Deputies without Caucuses choose their own a committee.¹⁰⁸ Every committee has a Bureau composed of four people: President, Deputy President, Rapporteur and Deputy Rapporteur.¹⁰⁹ Committees are permanent, temporary or special. There are five permanent committees in the Provincial Assembly of North Kivu: Committee of political, security, administrative and judicial affairs; Committee of economic and financial affairs; Committee of socio-cultural, environment and natural resources affairs;

¹⁰² Standing orders of the Provincial Assembly of North Kivu of 2010 art 14.

¹⁰³ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 28.

¹⁰⁴ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 22 (3),(4).

¹⁰⁵ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 28.

¹⁰⁶ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 50.

¹⁰⁷ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 35 (1).

¹⁰⁸ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 38 (3).

¹⁰⁹ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 42.

Committee of territorial planning and infrastructures affairs; and Committee of interparliamentary consultation.¹¹⁰ In the Provincial Assembly of North Kivu, every committee or sub-committee consists of at least five members¹¹¹ and corresponds to one or two provincial ministries.¹¹²

Caucuses are political organs comprising at least five Provincial Deputies sharing the same political opinions. Provincial Deputies elected on the list of a political party belong to the Caucuses that their political party belongs to.¹¹³ Caucuses have an advisory role and cannot be constituted for the purpose of defending personal, local, clan-based, tribal, ethnic, professional interests, or be contrary to the public order.¹¹⁴ The organisation and functioning of Caucuses are governed by the Standing Orders of Caucuses.

3.2. Composition of the Provincial Assembly of North Kivu

The legislative branch of the provincial Government of North Kivu is composed of 38 elected Provincial Deputies and four Traditional Leaders co-opted to the Provincial Assembly. The former are elected by the inhabitants of the province for a term of five years, renewable.¹¹⁵ They are elected in the nine constituencies of the province of North Kivu, namely the territories of Beni, Lubero, Masisi, Nyiragongo, Rutshuru and Walikale and the towns of Beni, Butembo and Goma. Together the nine constituencies form an electorate of 2,462,012 people. The province of North Kivu has an electoral quotient of 64,789.8 people.¹¹⁶ Except for the constituency of Nyiragongo, which uses the first-past-the-post system, because of its small population, the rest of the constituencies use proportional representation.

The first provincial elections of the Third Republic were held on 29 October 2006. In the province of North Kivu, during the one month of campaigning independent candidates and candidates from political parties and groupings wishing to enter the Provincial Assembly appeared before the electors seeking as many votes as possible to reach the electoral quotient, 64,789.8 votes, and trying to even get more vote to increase the chances of their parties to

¹¹⁰ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 36 (1).

¹¹¹ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 37 (1).

¹¹² Standing Orders of the Provincial Assembly of North Kivu of 2010 art 36 (1).

¹¹³ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 45.

¹¹⁴ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 47.

¹¹⁵ Constitution of DRC of 2006 art 197 (4).

¹¹⁶ Electoral Act of 2006 annexure II.

win additional seats. Two elements were used by candidates and parties to win seats: their membership of the same ethnic groups of the voters, and the name and picture of President Kabila Kabange Joseph. It was impossible to listen to speeches during the provincial electoral campaign without hearing words such *muto wenu*, *umwana yetu*, *mwana watchu*, ... or any equivalent of ‘your son/daughter’, and *niko ndugu/mutoto yenu munitchaguwe* (‘I am your brother/son vote for me’, in Swahili). The purpose of the use of these sentences by candidates was to show voters that they came from the same ethnic groups, and that was enough to trust them to be good representatives in the Provincial Assembly. It was later shown that this was not true.

A survey of a Gomatown based Non-Governmental Organisation (NGO), Heal Africa, proved how North Kivutians were disappointed by members of their ethnic groups they voted for in 2006. Some extracts of the study of Heal Africa follow:

‘During the electoral campaign, the different candidates showed how much the relationship with their electorate was very deep. ... They called themselves « your son », or « your child », to show how much the link that united them and their electorate was strong. But once elected many of them moved their families [in the Capital of the province, Gomatown] and did not come back in the villages of their fathers. ... During the electoral campaign, a candidate came to visit me to explain with details I had no idea about how our family lines were linked. I believed in him and my family and I contributed a lot to his victory. After the elections he went without saying a goodbye and up today no one has seen him again here ... The people we elected disappointed us, even where they are, they did not act in our interests... We do not know what it the meaning of parliamentary recesses because our representatives had never came back here’.¹¹⁷

Moderate candidates with good policies for the province of North Kivu barely succeeded in entering the Provincial Assembly whereas many extremist candidates easily won seats just by creating fear among members of their own ethnic groups and hatred of people of other ethnic

¹¹⁷ Heal Africa *Les attentes des populations du Nord Kivu aux élections de 2011* (2011) 9.
Translated by the author.

groups. For Tegera Aloys, in the province of Nord Kivu, during the legislative elections of 2006 ‘it was manipulators of ethnic fears and extremists who had the favour of the electorate’.¹¹⁸

The provincial elections of 2006, as well as the national legislative elections of 2006 and 2011, left many ethnic groups of the province of North Kivu with no seat in legislative institutions, despite the use of proportional representation, which is highly recommended by international experts¹¹⁹ as the ‘optimal way’ for divided societies like DRC and North Kivu to have a broadly representative legislature.¹²⁰ In contrast to the argument that proportional representation is the best electoral system to include minorities and women in parliaments, in the province of North Kivu half of the ethnic groups received no seats in the Provincial Assembly and out of the 38 elected Provincial Deputies only one was a woman, which gave to women 2.6 per cent of the seats.¹²¹ The under-representation of women in the Provincial Assembly of North Kivu is an alarming issue. In 2006, women were composed 52.2 per cent of the Congolese electorate.¹²² The non-representation of many ethnic groups of the province of North Kivu, as will be discuss later, continued with the co-option of the four Traditional Leaders and the four elected senators. The following parts of this section take this discussion further and analyses the representation of ethnic groups in each of the structures of the Provincial Assembly of North Kivu.

3.2.1. Ethnic groups in the Plenary Assembly

The Plenary Assembly, as mentioned early, is the supreme organ of the Provincial Assembly of North Kivu: it consists of all the elected and co-opted Provincial Deputies. The 42 members of the Plenary Assembly came from five out of the nine ethnic groups of the

¹¹⁸ Tegera, A. ‘Quelle lecture faire du processus électoral en RDC? Le cas de la Province du Nord Kivu’ (2008) *Journal of African Conflicts and Peace Studies* 85.

¹¹⁹ See International Institute for Democracy and Electoral Assistance *Electoral System Design: the New International IDEA Handbook* (2005).

¹²⁰ Lijphart, A. *Thinking about Democracy* (2008) 8.

¹²¹ In the National Assembly, where the same electoral system were used, there were 42 female national deputies out of 500 deputies which is 8,4 per cent whereas there were 1.320 female candidates. Verjans, P. & Kabamba, B. ‘République démocratique du Congo. Le système politique de la troisième République. Genèse d’une démocratisation attendue’ (2006) 4 *Fédéralisme Régionalisme* 586.

¹²² Fonds pour les Femmes Congolaises *Femmes congolaises au cœur de la démocratie : leadership et mouvement des femmes*. Rapport of the Bungwe Conference of 2012 available at http://www.ffcrdc.org/wp-content/uploads/2015/09/Conference_democratie.pdf accessed on 24 accessed on 24 March 2017.

province of North Kivu. The five ethnic groups with members in the Provincial Assembly were Nandes with 25 members, Hutus with nine members, Hundes with three members, Nyangas with three members, and Kumus with one member. There was also in the Provincial Assembly one non-native Provincial Deputy.¹²³ Four ethnic groups of the province of North Kivu had no member in the Plenary Assembly, namely, the Kanos, Mbutis, Tembos and Tutsis. With only one member in the Plenary Assembly, the ethnic group of Kumus had a status closer to that of non-represented ethnic groups. The part below on the Permanent Bureau of the Provincial Assembly of North Kivu gives details of the difficulties encountered to represent the ethnic group of Kumus and the territory of Nyiragongo in the Bureau of Provincial. The provincial elections of 2006 had left nearly half of ethnic groups of the province of North Kivu with no position in the Plenary Assembly.

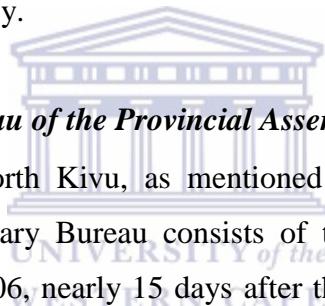
With regard to territories and axes, Provincial Deputies from the two territories of the North axis, Beni and Lubero, constituted 49.9 per cent of the Plenary Assembly with 23.1 and 26.1 per cent, respectively. The territories of Walikale and Masisi of the West axis had 23.7 per cent of the seats in the Plenary Assembly. Members of the Plenary Assembly from the territories of the East axis, Nyiragongo and Rutshuru, had 26.1 per cent. As these numbers show, people belonging to the ethnic group of Nandes of the North axis had considerable decision making power in the Plenary Assembly. They were able to impose without many efforts their agendas on members of the Plenary Assembly from other axes. The support of the West and East axes to approve important decisions was not so important. The support of Provincial Deputies from the territories of Masisi, Nyiragongo, Rutshuru and Walikale only mattered when members of the North axis were divided on a question.

The small number of places in the Plenary Assembly reduced the chances of minority ethnic groups to be represented. An increase in the number of Provincial Deputies will increase the chances of minority ethnic groups to be represented by one or more persons and allow the Plenary Assembly to produce more information and more insight.¹²⁴ The availability of finance can be advanced to stop increasing the number of members of the Plenary Assembly. Substates with successful Plenary Assemblies and with many particularities like those of the

¹²³ See Annexure, Table 1: Members of the Provincial Assembly of North Kivu of (2006 to 2017).

¹²⁴ Kymlicka, W. & Norman, W. *Citizenship in diverse societies, the President, Parliament and the States* (2000) 104.

province of North Kivu (territory, population,) have acceptable numbers.¹²⁵ The province of North Kivu has industrious inhabitants and numerous unexploited resources. With a good economic policy, specially the collecting of provincial revenues, the province of North Kivu will have enough money to effect institutional reforms like increasing the number of members of the Plenary Assembly. Conflict management and constitutional democracy are built by the sacrifices of all, the rulers and the governed; the province of North Kivu is able to afford a Plenary Assembly of 84 and even 126 members if Provincial Deputies accept to reduce their salaries by half or by two-thirds rather than increase them every year. In the budget of 2006, the incomes of members of the Plenary Assembly ranged from 8 077 973 to 11 809 328 Congolese francs (7 507.40 to 10 944.69 US dollars)¹²⁶ which are 160.2 to 233.6 times the lowest monthly income of citizens. The monthly minimum wage in DRC is 50,400 francs (46.84 US dollars).¹²⁷ Increasing the number of Provincial Deputies in the province of North Kivu may enhance inclusivity of the provincial legislature of North Kivu and efficiency of the Plenary Assembly.



3.2.2. Ethnic groups in the Bureau of the Provincial Assembly of North Kivu

The Provincial Assembly of North Kivu, as mentioned earlier, has a Temporary and a Permanent Bureau. The Temporary Bureau consists of three people: a Speaker and two Secretaries. On 18 December 2006, nearly 15 days after the announcement of the results of the provincial elections, the first sitting of the Provincial Assembly of North Kivu was convened under the auspices of the Director of Administration of the province of North Kivu, Kahanya Kimuha Tasi Athanase. At the beginning of this short sitting, the oldest and two youngest elected Provincial Deputies were announced as Speaker, and First and Second Secretaries of the Provincial Assembly of North Kivu. The Speaker of the Temporary Bureau, Simisi Nzala Zabulon, was elected in the constituency of Rutshuru and belonged to the ethnic group of Nandes. The First Secretary, Muhindo Nzangi Butondo, was a Nande from the territory of Lubero, and his colleague, Muteule Moromoro Mutuel, was a Kumu from the territory of Nyiragongo. Their election was very swift and made without any debate.

¹²⁵ For instance, Scotland Parliament has 129 members, Alberta Legislature has 87 members, Eastern Cape has 63 members.

¹²⁶ On 1 January 2017, 1 US dollars was worth 1076 CD Francs.

<http://www.xe.com/currencycharts/?from=USD&to=CDF&view=1Y>

¹²⁷ According to art 2 of Ordinance 040 of 30 April 2008 setting the guaranteed minimum wage, minimum family allowances and housing offset the minimum daily wage of a Congolese citizen is 1.680 Congolese francs.

Taking age as the only criterion to grant political positions did not facilitate the sharing of power between the territories and ethnic groups of the province of North Kivu. This system of choosing members of the Bureau of the Provincial Assembly cannot prevent old or young men and women with moderate intellects and political skills from accessing these highest provincial political positions.

The Permanent Bureau of the Provincial Assembly consists of a Speaker, a Deputy Speaker, a Rapporteur, a Deputy Rapporteur and a Quaetor.¹²⁸ By using a word that incorporates both territorial and ethnic representation (geopolitical representation), the Standing Orders of the Provincial Assembly require the inclusion of men and women, with capabilities, from different territories and ethnic groups as members of the Permanent Bureau.

Article 25 of the Standing Orders of the Provincial Assembly stipulates:¹²⁹

*'After the validation of mandates [of elected Provincial Deputies], the Provincial Assembly proceeds to the composition of the Permanent Bureau by taking into account the geopolitical representation and gender. For the election of Members of the Bureau of the Assembly, formation, experience credibility and honorability are taken into account.'*¹³⁰

The principle of power sharing between men and women belonging to ethnic groups of the province of North Kivu was experimented with the election of Members of the Bureau of the Provincial of 14 January 2007. The following Table summarises the outcome of the elections of Members of the Permanent Bureau in 2007:

Table 1: Bureau of the North Kivu Assembly Bariyanga I (2007)

N°	Names	Position	Political party	Territory	Ethnic group
01	Bariyanga Rutuye Léon	Speaker	DCF/COFEDEC	Rutshuru	Hutu
02	Mukinti Baumbilia Jean	Deputy Speaker	MSR	Beni	Nande

¹²⁸ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 22 (2).

¹²⁹ Translated by the author.

¹³⁰ Standing Orders of the Provincial Assembly of North Kivu of 2010 art 25 (1) (2).

03	Kalinda Kahombo Gilbert	Rapporteur	PPRD	Walikale	Nyanga
04	Muteule Moromoro Mutuel	Deputy Rapporteur	PPRD	Nyiragongo	Kumu
05	Kavira Kananga Felly	Quaestor	DCF/N	Beni	Nande

Source: Data collected from Yenga-Yenga, D. *Efficacité du contrôle parlementaire en province du Nord-Kivu* (2014).

As the above table reveals, the idea of power sharing between ethnic groups was an element in the mind of Provincial Deputies during the elections of Members of the Permanent Bureau of the Provincial Assembly of North Kivu. Provincial Deputies successfully tried to make the Permanent Bureau of the Provincial Assembly of North Kivu Assembly as inclusive of all ethnic groups, axes, territories and sexes as possible. The only Provincial Deputy who belonged to the ethnic group of Kumus and from the territory of Nyiragongo, Muteule Mutuel, and the only female Provincial Deputy, Kavira Felly, were, respectively, elected as Deputy Rapporteur and Quaestor of the Provincial Assembly. The Speaker and the Deputy Rapporteur came from the East axis, the Deputy Speaker and the Quaestor came from the North axis and the Rapporteur came from the West axis. Regarding ethnic groups, two Members of the Bureau belonged to the ethnic group of Nandes, one was a member of the ethnic group of Hutus and one was a Nyanga. It is to be noted that the territory of Beni and the ethnic group of Nandes, respectively have two members in the Bureau while the ethnic group of Hundes and the territories of Lubero and Masisi do not have a single member in the Bureau of the Provincial Assembly.

The competitors for the position of Speaker of the Provincial Assembly were a Hutu from the territory of Rutshuru and a Nande from the territory of Lubero, respectively, Bariyanga Rutuye Léon and Kayisavira Mbake W'ighong. As both were from parties that are in the ruling coalition, the other criteria that could then be taken into account were the territory/axis and ethnic group of each candidate. Based on these criteria Kayisavira W'ighong was in a better position than Bariyanga Léon to be the next Speaker of the Provincial Assembly. Kayisavira W'ighong's axis had 21 votes and 25 members of the Provincial Assembly of North Kivu that belonged to his ethnic group, while Bariyanga Léon's axis and ethnic group, respectively, had 11 votes and nine Provincial Deputies. The other big advantage of the

candidacy of Kayisavira W'ighong was the political and financial support of the entire provincial executive of the outgoing Governor Eugene Serufuli, to whom Kayisavira W'ighong was his Deputy Governor during the transitional period. On the basis of the elements cited above, how could Kayisavira W'ighong lose the election with 11 votes against Bariyanga Léon's 30 votes? The answer is given by a Congolese researcher. According to Tegera, the two largest ethnic groups of the province of North Kivu, Nandes and Hutus, both had one strategy, namely, helping a candidate for the position of Speaker of the Provincial Assembly who is a member of the other ethnic group to win.¹³¹ The election of a member of a largest ethnic group as Speaker of the provincial prevented another member of the same largest ethnic group from standing for the position of Governor of the province.¹³²

For North Kivutian political leaders, the Speaker of the Provincial Assembly and the Governor of the province could not be from the same largest ethnic group. The election of Bariyanga Léon as Speaker set a precedent that if the Speaker is a Hutu, the Governor has to be a Nande; if the Speaker is a Nande, the Governor has to be a Hutu. In the province of North Kivu, it was conventionally recognised that the two highest provincial positions have to be shared between the two largest ethnic groups of the province, the Nandes and Hutus. Irrespective of their majority in the Provincial Assembly no members of the largest ethnic groups could hold the positions of Speaker of the Provincial Assembly and Governor of the province. This newly created convention continued with Bureaus that came after the first Permanent Bureau of the Provincial Assembly of North Kivu. The Bureau of the Provincial Assembly North Kivu presided over by Bariyanga Léon underwent a partial reshuffle in the second semester of 2007, and then had the following configuration:

Table 2: Bureau of the North Kivu Assembly - Bariyanga II (2007)

N°	Names	Position	Political party	Territory	Ethnic group
01	Bariyanga Rutuye Léon	Speaker	DCF/COFEDEC	Rutshuru	Hutu
02	Mukinti Baumbilia Jean	Deputy Speaker	MSR	Benitown	Nande
03	Kalinda Kahombo Gilbert	Rapporteur	PPRD	Walikale	Nyanga

¹³¹ Tegera, A. (2008) 81.

¹³² The position of Governor is the most desired and influential political position in a Congolese province.

04	Hakizumwami Habimana Jules	Deputy Rapporteur	RCD	Rutshuru	Hutu
05	Kayisavira Mbake W'ighong	Quaestor	FR	Lubero	Nande

Source: Data collected from Yenga-Yenga, D. *Efficacité du contrôle parlementaire en province du Nord-Kivu* (2014).

The Permanent Bureau of the Provincial Assembly of North Kivu lost its inclusive character after an internal audit, which cost Muteule Mutuel and Kavira Felly their positions. They were replaced by two male Provincial Deputies from the two largest ethnic groups of the province of North Kivu: Hakizumwami Habimana Jules, a Hutu from the territory of Rutshuru, became the new Deputy Rapporteur and Kayisavira W'ighong, a Nande from Lubero, became the new Quaestor.

In terms of axes, the Bariyanga II Bureau also had two members from the North axis, two from the East axis and one from the West axis. No territory had more than one position in the Bureau of the Provincial Assembly. The only territory that had no member in this Bureau was the territory of Masisi. With five positions to share between six territories it is obvious that at least one territory will always be out of the Permanent Bureau of the Provincial Assembly.

In terms of ethnicity, this Bureau did not change the shares of the two largest ethnic groups. Nandes and Hutus stayed with two positions each whereas Provincial Deputies from Hunde and Kumu ethnic groups had no position in the Bureau of the Provincial Assembly. It is also worthy of mention that the two members of the Permanent Bureau from the ethnic group of Hutus were all from the territory of Rutshuru while in the Provincial Assembly there were Hutus from other territories. The imbalance witnessed in the 2007 Bureau of the Provincial Assembly of North Kivu was rectified by the next Permanent Bureau of the Provincial Assembly. The Bureau of 2012 was constituted as follows:

Table 3: Bureau of the North Kivu Assembly - Hakizumwami I (2012)

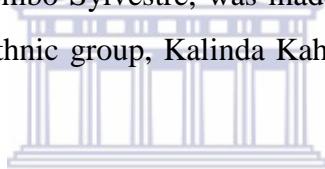
N°	Names	Position	Political party	Territory	Ethnic group
01	Hakizumwami Habimana Jules	Speaker	RCD	Rutshuru	Hutu
02	Mathe Sindi Kiminya Jeconie	Deputy Speaker	DCF	Beni	Nande
03	Nkuba Kahombo Sylvestre	Rapporteur	PPRD	Masisi	Hunde

04	Sebishimbo Rubuga Jean Bosco	Deputy Rapporteur	PANADI	Masisi	Hutu
05	Butsapu Ndungo Haggai	Quaestor	UPRDI	Lubero	Nande

Source: Data collected from Yenga-Yenga, D. (2014).

The Hakizumwami I Bureau came as a result of the initiative of the former member of the Bureau, Muteule Mutuel, asking the Plenary Assembly to withdraw its confidence in the second Bureau of Bariyanga Léon. Despite fierce resistance from the former Speaker, Bariyanga Léon, the Plenary Assembly withdrew its confidence in his Bureau and elected a new Bureau on 28 June 2012.¹³³

The new Permanent Bureau of the Provincial Assembly was headed by Hakizumwami Jules. The numbers of the two majority ethnic groups remained unchanged again and the share of members of the minority ethnic groups did not increase at all. The inclusion in the Permanent Bureau of a Hunde, Nkuba Kahombo Sylvestre, was made possible after the departure of a member from another minority ethnic group, Kalinda Kahombo Gilbert, a Nyanga from the territory of Walikale.



The 2012 Bureau is also characterised by the power sharing equilibrium in so far as the three axes are concerned. The East axis stayed with the positions of Speaker and Deputy Rapporteur, the North axis the positions of Deputy Speaker and Quaestor, and the West axis the position of Rapporteur. This equilibrium conceived and maintained by the two largest ethnic groups proven to be unshaken after the death, on 8 August 2016, of the Deputy Speaker. During the election of the new Deputy Speaker, all the three candidates, as had been the deceased Deputy Speaker, were Nandes from the North axis.¹³⁴ The Provincial Deputies from other ethnic groups did not stand for the second most important political position of the Provincial Assembly of North Kivu.

3.2.3. Ethnic groups in the Caucuses and committees of the Provincial Assembly of North Kivu

The Provincial Assembly of North Kivu had six Caucuses, Parti du Peuple pour la Reconstruction et la Démocratie (PPRD), Rassemblement Congolais pour la

¹³³ Yenga-Yenga, D. *Efficacité du contrôle parlementaire en province du Nord-Kivu* (2014) 30.

¹³⁴ Yenga-Yenga, D. (2014) 31.

Démocratie (RCD), Forces du Renouveau (FR), Mouvement Social pour le Renouveau (MSR), and Démocratie Chrétienne Fédéraliste (DCF), plus the group of Provincial Deputies elected as Independents. The six Caucuses consist of 10 political parties, namely, PPRD with nine Provincial Deputies, RCD with seven Provincial Deputies, Rassemblement Congolais pour la Democracie – Kisangani Mouvement de Liberation (RCD-KML) with six Provincial Deputies, MSR with six Provincial Deputies, the group of independent candidates with five Provincial Deputies, Démocratie chrétienne fédéraliste - Convention des fédéralistes pour la démocratie chrétienne (DCF-COFEDEC) with three Provincial Deputies, Démocratie Chrétienne Fédéraliste - Nyamwisi (DCN-N) with two Provincial Deputies, and finally Mouvement de Libération du Congo (MLC), Parti National pour le Développement Intégral (PANADI), Parti Démocrate-Chrétien (PDC), Union du Peuple pour la République et le Développement Intégral (UPRDI) each with one Provincial Deputy.¹³⁵ Below is a Table that links parties, coalitions, and ethnic groups:

Table 4: Political parties represented in the Provincial Assembly of North Kivu (2006)

Nº	Political party	Status	Seats	Percentage	Region ¹³⁶	Dominant ethnic group ¹³⁷	ethnic
01	PPRD	Ruling	9	21.4	Beni	Nande	5/9
02	RCD	Opposition	7	16.6	Rutshuru	Hutu	6/7
03	FR	Ruling	6	14.2	Lubero	Nande	6/6
04	MSR	Ruling	6	14.2	Lubero	Nande	5/6
05	Independents	-	5	11.9	- ¹³⁸	Hunde	2/5
06	DCF/COFEDEC	Ruling	3	7	North Axis ¹³⁹	Nande	2/3
07	DCF/N	Ruling	2	5	Beni	Nande	2/2
08	MLC	Opposition	1	2.3	Masisi	Hutu	1/1
09	PANADI	Ruling	1	2.3	Masisi	Hutu	1/1
10	PDC	Ruling	1	2.3	Masisi	Hunde	1/1
11	UPRDI	Ruling	1	2.3	Lubero	Nande	1/1
TOTAL			42	100			

Source: Conceived by the Author from data collected in Pole Institute (2005) and Yenga-Yenga, D. (2014).

¹³⁵ Pole Institute (2005)12.

¹³⁶ Here the territory in which the party obtained most of its seats.

¹³⁷ Here the share of the ethnic group to which most of the party's Provincial Deputies belong.

¹³⁸ The five Provincial Deputies come from Masisi, Beni, Rutshuru, Walikale and Nyiragongo, and both the East and West axes have two seats each.

¹³⁹ The three Provincial Deputies come from Beni, Lubero and Rutshuru.

This Table shows, first, that there is little room within political parties for ethnic minorities and that the two largest ethnic groups have absolute control over the party system of the province of North Kivu. Among the political parties with seats in the Provincial Assembly of North Kivu none had more than a quarter of parliamentary seats and half of political parties had only one seat each. PPRD and RCD had the largest shares of seats in the Provincial Assembly with nine and seven seats, respectively. PPRD is from the ruling alliance, Alliance de la Majorité Présidentielle (AMP) and obtained the majority of its seats in the Northern territories dominated by members of the ethnic group of Nandes, particularly the territory of Beni. RCD was from the opposition and obtained most of its seats in the Southern territories dominated by members of the ethnic group of Hutus, particularly the territory of Rutshuru. The numerical superiority of PPRD over RCD in the Provincial Assembly was created by the fact that PPRD did not focus on only one axis or ethnic group, but on all the six territories and nine ethnic groups of the province of North Kivu.

Secondly, regarding the influence of territories and ethnic groups, the province of North Kivu had two main political groups or coalitions: the one of the ruling coalition and dominated by members belonging to the ethnic group of Nandes in the Northern part of the province and the one of the opposition and dominated by members belonging to the ethnic group of Hutus in the Southern part of the province. Thirdly, to be stable and influential, a political party has to be multi-ethnic. Among the four biggest political parties of the Provincial Assembly of North Kivu, PPRD is the most multi-ethnic and FR/RCD-KML is the most mono-ethnic political party. PPRD is more stable and its influence goes beyond one ethnic group and territory. Provincial Deputies of PPPD belong to the largest as well as minority ethnic groups and come from all the six territories of North Kivu. All the Provincial Deputies of FR/RCD-KML are from one ethnic group (Nandes) and one axis (North axis). Fourthly, the current system does not stimulate political parties to broaden their support beyond territories, axes and ethnic groups. Today no constitutional or legal mechanism exists to prevent extremist politicians winning parliamentary elections by focussing on one ethnic group and axis.

Finally, using proportional representation with the rule of the highest remainder in big constituencies, created the dictatorship of the largest ethnic groups inhabiting vast territories, and the political marginalization of minority ethnic groups located in small areas within these

vast territories.¹⁴⁰ Proportional representation has been used in DRC three times and every time it brought the same results: largest ethnic groups with plenty of seats and a huge number of ethnic groups without a member in legislative bodies. Members of minorities face the problems of the high electoral quotient, size of constituencies and the number of parties. The constituencies for provincial elections are too big and the electoral quotient is high for many minority ethnic groups. In many constituencies, the votes of minority ethnic groups located in specific areas were wasted like a spoon of sugar in the Kivu Lake.¹⁴¹ Given that candidates who receive more votes are men from majority ethnic groups of the constituencies, leaders of political parties have ignored members of minority ethnic groups, and women, when compiling party lists.

With more than 450 recognised political parties, the Congolese party system is called a ‘savage’ multiparty by Kongolo.¹⁴² It is facilitated by political elites and the lack of rigor of the ministry in charge of the creation of political parties. The huge number of political parties contributed to the side-lining of many ethnic groups. Considerable financial means, huge numbers of supporters as well as candidates able to bring many votes for the party, are required to win seats in the legislatures. The position of ethnic minorities does not allow them to have these elements. Regarding the creation of political parties and the selection of candidates on parties’ lists, a practice was observed before legislative elections. To gain more seats, big political parties in collaboration with the largest ethnic groups created rapidly new parties and packed them with members of the largest ethnic groups.

The parliamentary positions won by big as well as small parties were held by members belonging to largest ethnic groups. None of the four Provincial Deputy of the political parties with one seat each did not come from a minority ethnic group but from the largest ethnic groups, Nandes and Hutus. The constitutions of multi-ethno-linguistic looking to include all the components of the society in legislatures fix quotas and reserve seats to minority and

¹⁴⁰ In the provincial elections of 2006, leaders of political parties packed parties’ lists with candidates belonging to largest ethnic groups. Members belonging to minority ethnic groups were added to parties’ lists to keep up the multi-ethnic appearances. Votes of many unsuccessful candidates belonging to minority ethnic groups helped other candidates of their parties belonging to largest ethnic groups to win parliamentary seats.

¹⁴¹ The second round of the presidential elections of 2006, that we will examine in this study, had added value to the votes of people belonging to ethnic minorities.

¹⁴² See Kongolo, J. ‘Le multipartisme sauvage pollue l’atmosphère politique en Republique Democratique du Congo’ available at <https://desc-wondo.org/fr/le-multipartisme-sauvage-pollue-latmosphere-politique-en-r-d-congo-jb-kongolo/> accessed on 27 February 2017.

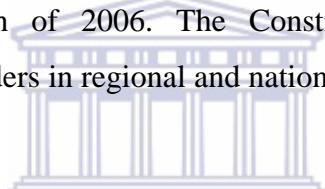
disadvantaged ethno-linguistic groups.¹⁴³ These mechanisms of allocating quotas to minority ethnic groups during elections and reserving parliamentary seats after the elections are easier to enforce with few political parties than a plethora of parties.

3.3. Sharing of co-opted and senatorial seats

Besides the power to legislate, the drafters of the Constitution of 2006 granted provinces the powers of co-opting Traditional Leaders to the Provincial Assembly (Paragraph 3.3.1) and electing representatives of provinces in the Upper Chamber of the National Parliament (Paragraph 3.3.2).

3.3.1. The co-option of Traditional Leaders

The representation of Traditional Leaders in national and provincial political institutions did not start with the Constitution of 2006. The Constitution of 1960 recognised the representation of Traditional Leaders in regional and national legislatures.



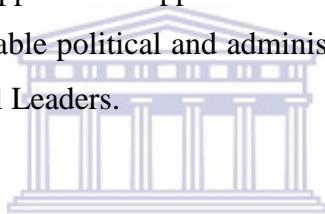
Traditional Leaders owed their parliamentary reserved seats to the role they played during the negotiations leading to the independence of Congo. These negotiations between Congolese leaders and the Belgian government were known as the Table Ronde of Brussels. The Congolese side consisted of political party leaders, ethnic associations' leaders and Traditional Leaders. Traditional Leaders owed their participation to their control over their subjects and their good relations with the coloniser. Traditional Leaders had the most delegates at the Table Ronde of Brussels. At that historic meeting, 39 of the 183 Congolese delegates were Traditional Leaders, which was 21,3 per cent of the Congolese delegation. The over-representation of tradition leaders was due to the fact that Traditional Leaders and rural political parties were not putting pressure on the Belgian coloniser to declare independence immediately, as were the leaders of nationalist parties and ethnic associations.¹⁴⁴ Because of their loyalty to Belgium and their active participation in the negotiations, they received seats in the national and provincial legislatures. According to the Constitutional text presented by the Belgian Cabinet, voted by the Belgian Parliament, and

¹⁴³ For instance, the Constitution of the Federal Democratic Republic of Ethiopia of 1995 at its Art 54 (3). reserves at least 20 seats to minority Nationalities and Peoples.

¹⁴⁴ Mambi, H. *Pouvoir traditionnel et pouvoir d'état en République Démocratique du Congo* (2010) 97.

promulgated by the Belgian King, three of the 14 representatives of each province in the Upper Chamber have to be Traditional Leaders¹⁴⁵ and Provincial Assemblies have to reserve up 10 to 15 per cent of the seats for Traditional Leaders.¹⁴⁶

After the threatening institutional political crisis of the early 1960s, Congolese leaders met again in Luluabourg to work on a draft of a new Constitution. Promulgated on 1 August 1964 by the Kasavubu Joseph, the new Constitution avoided touching the quota of Traditional Leaders, only the numbers were altered. Traditional Leaders received six seats in the Senate¹⁴⁷ and a fifth of the seats of provincial legislatures.¹⁴⁸ In the dictatorship period, the official representation of Traditional Leaders in political institutions was not recognised. Traditional Leaders have been given seats in legislatures not because of their capabilities to fulfil the functions of representatives of the people, but because of the fear of the authorities that Traditional Leaders might support their opponents. The fact that since independence the DRC has never had strong and stable political and administrative institutions left many areas of society open for the Traditional Leaders.



Traditional Leaders recovered their seats in legislative organs with the Constitution of the Third Republic. The Constitution of 2006 provided for the recognition of Traditional Leaders' authority¹⁴⁹ and gave them a tenth of the seats in Provincial Assemblies.¹⁵⁰ The first step of the current co-option of Traditional Leaders to Provincial Assemblies starts with the installation of a Provincial Assembly and its Temporary Bureau. The second step is the organisation of the validation of the mandates of the elected Members of a Provincial Assembly. After the validation of their mandates, the elected Provincial Deputies set the date for the co-option of Traditional Leaders and inform the Provincial Bureau of the National Independent Electoral Commission (NIEC).¹⁵¹ The Bureau of the NIEC gathers all the Traditional Leaders recognised by the Ministry in charge of customary affairs in the provincial capital or in any other places within a province. Each territory appoints one

¹⁴⁵ Constitution of DRC of 1959 art 87 (1).

¹⁴⁶ Constitution of DRC of 1959 art 108 (3).

¹⁴⁷ Constitution of DRC of 1964 art 75 (3).

¹⁴⁸ Constitution of DRC of 1964 art 111 (3).

¹⁴⁹ Constitution of DRC of 2006 art 207.

¹⁵⁰ Constitution of DRC of 2006 art 197 (5).

¹⁵¹ Electoral Act of DRC of 2006 art 153 (2).

candidate. After that, all the Traditional Leaders vote for the candidates to be co-opted from the Traditional Leaders selected per territory. According to the Constitution the number of candidates to be co-opted may not exceed a tenth of the number of elected members of a Provincial Assembly.¹⁵² For any claim or dispute, an aggrieved traditional leader may make an application to the Court of Appeal.¹⁵³

In the province of North Kivu, the co-opted Traditional Leaders were Mwami Massali Kapupa Liévin from the territory of Beni, Mwami Kahindo Nzanzu Bonane from the territory of Lubero, Mwami Bahati Kaembe Mapfumo from the territory of Masisi, and Mwami Kabutwa Djuma Isombya Sylvestre from the territory of Walikale.¹⁵⁴ All four co-opted Traditional Leaders came from the North and South axes. The four territories that comprise the North and the West parts of the province of North Kivu each had one co-opted traditional leader. The Traditional Leaders who were co-opted belonged to three ethnic groups: two Nandes, one Hunde and one Nyanga. The only member from a minority group was Mwami Kabutwa Sylvestre from the territory of Walikale, who was from the ethnic group of Nyanga. Traditional Leaders from all the territories of the East axis received no co-opted members. Despite the fact that the territories of Rutshuru and Nyiragongo had recognised Traditional Leaders since the colonial era, it was through political and legal manoeuvres, that Traditional Leaders from these territories, inhabited by Hutus, Tutsis and Kumus, were prevented for participating in the co-option process. For natives of the territories of Rutshuru and Nyiragongo, this action was seen as discrimination against all the North Kivutians of Rwandan origin. For them it was unfair and undemocratic to not obtain even one co-opted member, while they had legally recognised Traditional Leaders and accounted for more than a quarter of the population of the province of North Kivu.

In contrast to reactions of the past when a member of an ethnic group was side-lined in such circumstances, there were no big tensions. Traditional Leaders and political leaders of Rutshuru and Nyiragongo did not encourage people to act violently, but decided to take the matter to the courts. It has been reported that the Court of Appeal of North Kivu ruled in

¹⁵² Constitution of 2006 art 197 (5).

¹⁵³ Electoral Act of DRC of 2006 art 157 (1).

¹⁵⁴ Yenga-Yenga, D. (2014) 36.

favour of the Mwamis of Rusthuru and Nyiragongo and that the Supreme Court of Justice of DRC declared inadmissible the appeal of the NIEC. The Courts did not find any reason to prevent Traditional Leaders of Rusthuru and Nyiragongo from competing for the Provincial Assembly of North Kivu via the co-option process. Both Courts ordered to re-do the co-option of North Kivutian tradition leaders by including the two excluded Traditional Leaders from the territories of Rusthuru and Nyiragongo, however, more than 10 years later, nothing has been done by the NIEC.¹⁵⁵

The failure in the province of North Kivu of the co-option of Traditional Leaders was not an isolated case. Countrywide a myriad of irregularities in the process of co-option were observed. Media reports clearly showed that many legitimate Traditional Leaders were deliberately side-lined or omitted from the list of the national ministry in charge of traditional affairs whereas others appeared in many territories. The omission of Chief Ikonga Shamba of the Ikolombe Osalo tribe in the province of Kasai from the list pushed his subjects to take spears, arrows and machetes to disrupt the meeting for the appointment of candidates for co-option.¹⁵⁶ The most striking interference in the co-option process was the chairing of the selection meeting by the national minister of the Budget, Marco Banguli, when the Electoral Act clearly gives that power to the Provincial Bureau of the Electoral Commission. The four Traditional Leaders selected under his illegal guidance were co-opted as members of the Provincial Assembly of Kinshasa.¹⁵⁷ These are just two examples in a long list of irregularities registered after the co-option process.

These irregularities were mainly caused by the politicisation of Traditional Leaders, corruption, ethnic factors, and the design of the process itself. The process of co-option was doomed to be a failure before it even started. For instance, it was not understandable how, with the constitutional consecration of the principle of vertical and horizontal separation of powers, a member of the National Executive determined who would be a member of a

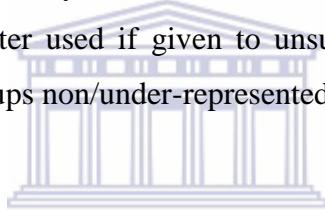
¹⁵⁵ Kapuya, S. ‘Congo-Kinshasa: La Cour Suprême de Justice déclare irrecevable la cooptation des chefs coutumiers à Goma’ *AllAfrica* 8 Mars 2007 available at <http://fr.allafrica.com/stories/200703070891.html> accessed on 21 June 2017.

¹⁵⁶ Radio Okapi Kasai Occidental and Nord Kivu: Difficult co-optation of Traditional Leaders 22 December 2006. Available <http://www.radiookapi.net/sans-categorie/2006/12/22/kasa-occidental-et-nord-kivu-difficile-cooptation-des-chefs-coutumiers> accessed on 2 September 2016.

¹⁵⁷ Mambi, H. (2010) 110.

legislative organ of an autonomous province? How could sacred, loved and neutral persons, like Traditional Leaders, take part in such a highly competitive race? How could a random draw, and not merit or any other objective criterion used in the choosing of people's representatives?

Many obstacles prevent Traditional Leaders being committed Provincial Deputies. The Constitution of 2006 gave Provincial Assemblies significant shared and exclusive competences and oversight powers over the provincial executives and provincial public services. The exercise of these powers needs political training and experience that can be received in chiefdoms. But to be a member of a Provincial Assembly also requires time and effort, and, to safeguard customs and manage daily affairs of a chiefdom is also demanding. Co-opted Traditional Leaders will have overloaded agendas and tend to sacrifice either their parliamentary duties or their customary ones. The seats reserved for Traditional Leaders by the Constitution of 2006 are better used if given to unsuccessful candidates in provincial elections coming from ethnic groups non/under-represented in the Provincial Assembly.



3.3.2. Election of senators to the Upper Chamber

The DRC is a State with horizontal separation of powers; the most important powers are shared between the National Government and the provinces. With a view to guaranteeing national unity and protecting the interests of provinces at the national level of government, the National Parliament was divided into two chambers: the Lower Chamber is called the National Assembly and the Upper Chamber is the Senate.¹⁵⁸ Provinces are represented at the national level via the Senate.¹⁵⁹ Members of the Senate are elected by Provincial Deputies by using the open list with one preferential vote on the basis of the greatest remainder rule.¹⁶⁰ Every province has four senators, except the Province of Kinshasa that has eight senators.¹⁶¹ Kinshasa is the most populous province and the seat of national institutions.

The Provincial Assembly of North Kivu elected the four representatives of the province in the Senate on 19 January 2007. The results were as follows:

¹⁵⁸ Constitution of DRC of 2006 art 100.

¹⁵⁹ Constitution of DRC of 2006 art 104 (2).

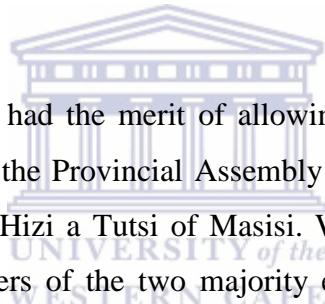
¹⁶⁰ Electoral Act of DRC of 2006 art 130 (1).

¹⁶¹ Electoral Act of DRC of 2006 art 129 (3).

Table 5: List of the elected senators of the province of North Kivu

N°	Names	Political party	Votes	Ethnic group
01	Balikwisha Martin	FR	8	Nande
02	Hamuli Kitsa Ernest	PPRD	6	Hunde
03	Mwangacucu Hizi	Independent	13	Tutsi
04	Tshipasa Vangi Sivavi Venant	DCF/COFEDEC	8	Nande
05	Other candidates (not elected)	-	7	-
TOTAL			42	

Source: Results of the senatorial elections collected from Kabamba, Matagne and Verjans (2007)¹⁶²



The senatorial elections of 2006 had the merit of allowing one candidate from a minority ethnic group with no member in the Provincial Assembly of North Kivu to obtain a seat in the Senate; it was Mwangacucu Hizi a Tutsi of Masisi. With an electoral quotient of 10.5 Provincial Deputies, only members of the two majority ethnic groups of North Kivu (the Nandes and Hutus) were able to win a seat in the Senate. Provincial Deputies who were questioned on this unexpected choice stated that they '*tak[er] an action that seeks to strengthen social cohesion and reconciliation*'.¹⁶³ The election of a candidate from a minority ethnic group as a Senator for the purpose of compensating for the lack of representation of his ethnic group in the provincial legislature is a laudable accommodationist action and something Provincial Deputies of North Kivu have to be proud of and keep repeating.

However, there were negative aspects of the senatorial elections. First, despite there being only four seats to share among the nine ethnic groups of the province of North Kivu, two senators came from the same ethnic group.¹⁶⁴ For the sake of representativeness and

¹⁶² Kabamba, B. et al 'Premiers scrutins de la Troisième République Démocratique du Congo. Analyse des résultats' (2007) 7 *Fédéralisme-Régionalisme*. Tableau 15.

¹⁶³ Tegera, A. (2008) 84.

¹⁶⁴ The elections of senators produced number of spoiled votes and violations. Of the 685 votes of members of Congolese Provincial Assemblies, 144 votes were spoilt, which was 21 per cent of the electorate of senatorial seats. In North Kivu where one Provincial Deputy represented 64,789.8 people, the seven spoilt votes was the will of nearly 453 529 North Kivutians that was not taken into account. Women, again, were under-represented

inclusiveness of territories, ethnic groups and women, the four elected people to represent the province of North Kivu in the Upper Chamber of the National Parliament had to be men and women from different territories and ethnic groups of the province of North Kivu. Equity is very important when it comes to the election of senators. After all, the main philosophy surrounding the creation of Upper Chambers is to constitute counter-majoritarian institutions to balance the majoritarianism in Upper chambers and thus protect minorities you cannot be heard in Upper Chambers.¹⁶⁵

3.4. Conclusion

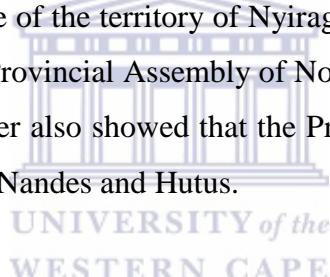
This chapter has examined the representation of ethnic groups in the Provincial Assembly of North Kivu. As the foregoing examination indicates, there were 42 legislative seats to share among the nine ethnic groups that inhabit the six territories of North Kivu. The Provincial Assembly had 38 Provincial Deputies directly elected by the inhabitants of the province of North Kivu; elected Provincial Deputies had to co-opt the four remaining members of the Provincial Assembly from among Traditional Leaders. Then the 42 Provincial Deputies

as of the 108 people elected as Senators only five were women, which is 4,6 per cent of the Senate. The other loophole of the system used for the election of members of the Senate is that it promoted subjectivity by organising a random draw when there were candidates with an equal number of votes. In the election of 2006 because of the use of ransom draw, 8,3 per cent of Senators owed their seats not to their policies, ideology, competences or experience, but to their good luck. With electorates of less than 50 members the organisation of second rounds the same day as the election would not be a technical or financial challenge. Many political parties lost a lot of seats; for instance, both PPRD and RCD lost two seats in the Senate because of the use of the random draw. (Kabamba, B et al 2007). The divisions that preceded the senatorial elections raised the question of what policies the politically mixed delegations of provinces were going to defend once in Kinshasa. Interests of substates are well defended when members of provincial institutions and representatives of provinces in the Upper Chamber have the same policies and ideology. A strong link between members of the institutions cited above is very important for the protection of the interests of provinces at the national level. As the first amendment of the Constitution and the Free Administration of Provinces Act was shown, since 2006 the Central government grabbed every opportunity to diminish the autonomy the Constitution of the Third Republic granted to provinces. Examples of a better representation of substates and strong links between provincial institutions and Upper chambers are found in the Constitution of the Federal republic of Germany of 1949 at art 51 and the South African Constitution of 1996 at s 61 and 62. Representatives of German länder in the Bundesrat¹⁶⁴ or South African provinces in the National Council of Provinces¹⁶⁴ act en bloc and are also members of provincial institutions. The indirect election of senators was the source of threats and corruption of members of provincial assemblies. It is argued that in Maniema some Provincial Deputies had to pay back the donations they received from unsuccessful candidates and that some vanished from their homes after the elections for fear of the vindictiveness of unsuccessful candidates and their supporters who were looking for them.

¹⁶⁵ Regassa, T. *State Constitutions in Federal Ethiopia: A Preliminary Observation* (2004) 2. Paper prepared for the Bellagio conference of 22 to 27 March 2004. Available at <https://pdfs.semanticscholar.org/1ba5/93cd9e44b8a4a78a66ff0d8aac8dae958fc8.pdf> accessed 6 June 2017.

elected the four representatives of the province of North Kivu in the Second Chamber of the national legislature. To make Congolese provincial as well as national legislatures more inclusive and efficient, proportional representation had been chosen as the electoral system for all the legislative elections. Small constituencies with voters numbering less than the electoral quotient had used the single member first past the post electoral system. This electoral system has made possible the representation of the ethnic group of Kumus and the territory of Nyiragongo in the Provincial Assembly of North Kivu.

The configuration of the Provincial Assembly of North Kivu showed that despite using proportional representation half of the minority ethnic groups of North Kivu had no members in the Provincial Assembly, while the largest ethnic groups had more than ten seats. The minority ethnic groups of Tutsis, Tembos, Mbutis and Kanos had no member in the Provincial Assembly and, except for the Tutsis, no member in the Upper Chamber of the National parliament. The example of the territory of Nyiragongo attested that minority ethnic groups could obtain seats in the Provincial Assembly of North Kivu if there were many small single constituencies. This Chapter also showed that the Provincial Assembly of North Kivu had two dominant ethnic groups: Nandes and Hutus.



In terms of axes, the Nandes had won the majority of the seats of the North axis whereas the Hutus had won the majority of the seats of the East axis. Provincial Deputies from minority ethnic groups came from the constituencies of the West axis. The North axis had 25 out 42 elected and co-opted seats, which constituted 59.5 per cent of the Provincial Assembly.

The choice of proportional representation and indirect suffrage had not taken into account the realities of the North Kivutian and Congolese geography, and politics. The majority of ethnic groups in the province of North Kivu inhabited specific small areas. The consequences of huge constituencies, a high electoral quotient, few parliamentary seats, and a plethora of parties were the non-representation of the majority of ethnic groups in the Provincial Assembly and its structures.

It has been observed that the Constitution of 2006, the Free Administration of Provinces Act of 2008 and the Electoral Act of 2006 did not contain measures to discourage ethnic-group and territory-based political parties or to prevent candidates engaging in hate speech from entering the Provincial Assembly. There were not sufficient constitutional incentives for party leaders to go beyond the axes or territories dominated by members of their own ethnic groups. The next chapter discusses the representation of ethnic groups in the Provincial Executive of the province of North Kivu.



CHAPTER FOUR

REPRESENTATION OF ETHNIC GROUPS IN THE PROVINCIAL EXECUTIVE OF NORTH KIVU

After analysing, in the third chapter of this study, the representation of ethnic groups in the legislative branch of government, this chapter analyses their representation in the executive branch of government of the province of North Kivu. The Constitution of 2006¹⁶⁶ and the Free Administration of Provinces Act¹⁶⁷ require chiefs of executive branches of government

¹⁶⁶ Constitution of DRC of 2006 art 198 (4).

¹⁶⁷ Free Administration of Provinces Act of 2008 art 23 (4).

to take into account diversity when composing Provincial Executives. This chapter answers one of the questions of this study by analysing the composition of the Provincial Executive and seeking to determine if the composition of the Provincial Executive of North Kivu from 2007 to 2017 has considered or ignored diversity.

This chapter has three parts including the introductory part. This part is followed by a part that examines the structures of the Provincial Executive of North Kivu and its form of government. This part also discusses the advantages of parliamentary as well as presidential systems for the province of North Kivu and multi-ethnic substates in general. This chapter then proceeds to examine the election of Governor and Vice-Governor of the province and the appointment of Provincial Ministers. The last part concludes this chapter.

4.1. Structures of the Provincial Executive of North Kivu

The Provincial Executive is an important and strong political and administrative institution of the province of North Kivu.¹⁶⁸ The constitutional and legal powers of the Provincial Executive are to promulgate and implement decisions of the Provincial Assembly as well as to manage the provincial administration and public services.¹⁶⁹

The Provincial Executive of North Kivu consists of the Governor, the Vice Governor and the Provincial Ministers,¹⁷⁰ who are, respectively, elected and appointed within or outside the Provincial Assembly.¹⁷¹ The Governor and Vice-Governor are elected by the Provincial Deputies for a renewable five-year term.¹⁷² They must be invested within a period of fifteen days by an ordinance of the President of the Republic.¹⁷³ The Provincial Cabinet consists of no more than ten Provincial Ministers.¹⁷⁴ They are appointed and dismissed by the Governor of the province.¹⁷⁵ They are invested when the absolute majority of Provincial Deputies accept

¹⁶⁸ Constitution of DRC of 2006 art 195.

¹⁶⁹ Free Administration of Provinces Act of 2008 art 28.

¹⁷⁰ Constitution of DRC of 2006 art 198 (1).

¹⁷¹ Constitution of DRC of 2006 art 198 (1),(3).

¹⁷² Constitution of DRC of 2006 art 198 (2)(a).

¹⁷³ Constitution of DRC of 2006 art 80, art 198 (2)(b).

¹⁷⁴ Constitution of DRC of 2006 art 198 (5).

¹⁷⁵ Constitution of DRC of 2006 art 198 (3).

the five-year plan of the Provincial Executive presented by the Governor of the province.¹⁷⁶ The composition of the Provincial Executive must take into account provincial and gender diversity.¹⁷⁷ Accordingly, Members of the Provincial Executive have to come from the different segments of the population of the province.

The Provincial Executive is collectively and individually accountable to the Provincial Assembly for their political and administrative actions.¹⁷⁸ Like the National Government, the Provincial Executive survives only when it has the support of the majority of Deputies.¹⁷⁹

The Provincial Executive can be overturned by means of three constitutional mechanisms, namely, motions or votes of censure, votes of confidence, and votes of no confidence.¹⁸⁰ A vote of confidence is initiated by the Governor of the province after discussion with all the Members of the Provincial Executive in the Council of Ministers.¹⁸¹ Votes of confidence consist of linking the survival of the Provincial Executive to the outcome of a policy, declaration of general policy or a vote on a Bill that is before Provincial Deputies. A rejection of the policy or a negative vote on the proposed Bill by the Provincial Assembly leads to the resignation of the entire Provincial Executive. Votes of censure and votes of no confidence are both initiatives of Provincial Deputies.¹⁸² The difference between these votes is the fact that votes of no confidence result in the resignation of one Member of the Provincial Executive while votes of censure overthrow the entire Provincial Executive.¹⁸³ As will be further discussed in the next part, among these constitutional mechanisms votes of no confidence were the most used in the province of North Kivu, followed by votes of censure. No vote of confidence has been recorded in the first ten years of the Third Republic. The political accountability of the Provincial Executive to the Provincial Assembly, especially the capability of Provincial Deputies to bring down the Provincial Executive makes parliamentary the form of government of the province of North Kivu.

¹⁷⁶ Constitution of DRC of 2006 art 198 (7).

¹⁷⁷ Constitution of DRC of 2006 art 198 (4).

¹⁷⁸ Free Administration of Provinces Act of 2008 art 23 (3).

¹⁷⁹ Constitution of DRC of 2006 art 198 (8).

¹⁸⁰ The National Executive has two institutions, the President of the Republic and the National Government. Only the National Government is accountable to the National Assembly.

¹⁸¹ Constitution of DRC of 2006 art 198 (8).

¹⁸² Free Administration of Provinces Act of 2008 art 41.

¹⁸³ Constitution of DRC of 2006 art 198 (8).

¹⁸⁴ Standing Orders of the Provincial Assembly of North Kivu art 10 (6)(7).

The drafters of the Congolese Constitution of 2006 were heavily influenced by French political and constitutional history; Pollet calls the Congolese Constitution of the Third Republic the younger sister of the French Constitution of the Fifth Republic.¹⁸⁴ In France, to avoid the bad effects created by votes of censure and votes of no confidence, the Constitution of the Fifth Republic created a parliamentary system that is more protective of the Executive, known as the rationalised parliamentary system.¹⁸⁵ At the provincial level, the French influence on the design of the Congolese Constitution of 2006 is palpable with the choice of a parliamentarism that is rationalised at the expense of the Westminster model. The rationalisation of the votes of censure and votes of no confidence is observed at their introduction, debates and votes in the Provincial Assembly. The introduction of votes of censure and votes of no confidence requires considerable parliamentary support. The signatures of a quarter of the Provincial Deputies are required to introduce votes of censure, and the signatures of a tenth of Provincial Deputies are needed for the introduction of votes of no confidence.¹⁸⁶ Regarding debates on votes of censure and votes of no confidence: they only take place 48 hours after the votes have been recorded by the Office of the Speaker of the Provincial Assembly.¹⁸⁷ To be successful, both votes of censure and votes of confidence have to be accepted by an absolute majority of Provincial Deputies.¹⁸⁸ The difference between votes on motions of censure and motions of no confidence and votes on other parliamentary matters is the fact that only the votes of Provincial Deputies who are present and vote for such motions are taken into account. Therefore, Provincial Deputies who are absent or vote blank tacitly support the Provincial Executive.¹⁸⁹ The Constitution forbids Provincial Deputies who signed an unsuccessful vote of censure and vote of no confidence to introduce another one during the same parliamentary sitting.¹⁹⁰ These measures, as will be discussed later, contributed in the accommodation of ethnic groups of the province of North Kivu.

¹⁸⁴ Pollet-Panoussis, D. ‘La Constitution congolaise de 2006 : petite sœur africaine de la Constitution française’ (2008) 75 *Revue française de droit constitutionnel* 451-498.

¹⁸⁵ Constitution of France of 1958 art 49.

¹⁸⁶ Constitution of DRC of 2006 art 146. Free Administration of Provinces Act of 2008 art 41 (2).

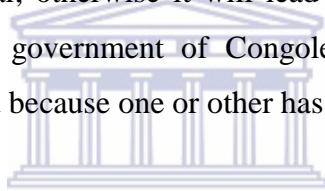
¹⁸⁷ Constitution of DRC of 2006 art 146 (3)(a).

¹⁸⁸ Constitution of DRC of 2006 art 146 (3)(b). Free Administration of Provinces Act of 2008 art 43 (3).

¹⁸⁹ At the vote of the motion of censure of 9 October 2009 more than half of the Provincial Deputies mysteriously did not attend the parliamentary sitting, although they were in Gomatown and had attended the previous sittings.

¹⁹⁰ Constitution of DRC of 2006 art 146 (3)(c).

In parliamentary systems, chiefs of executives are given the constitutional power to dissolve, or to request another institution to dissolve, legislatures. The Provincial Executive of North Kivu is not allowed, individually or collectively, by the Constitution of 2006 or the Free Administration of Provinces Act of 2008 to dissolve the Provincial Assembly or request the President of the Republic to do so.¹⁹¹ This situation puts the Governor of the province in a position of weakness in his relations with the Provincial Assembly. According to Malonga Telesphore, the Constitution of 2006 introduced an imbalance by granting to Provincial Deputies the power to overturn Provincial Executives by means of votes of censure and votes of no confidence, while denying Governors of the provinces the power to dissolve Provincial Assemblies.¹⁹² The provincial parliamentary system is better served when it is characterised by strong Provincial Assemblies and strong Provincial Executives, and not by strong Provincial Assemblies and weak Provincial Executives. The search of a remedy for this constitutional imbalance is capital; otherwise it will lead to the dictatorship of legislatures and to the fall of the form of government of Congolese provinces. Worldwide, many parliamentary systems have failed because one or other has claimed supremacy.¹⁹³



The accountability of the Provincial Executive to the Provincial Assembly, and especially the power of the latter to force the former or its members to resign; has made the Provincial Executive a parliamentary one. This means Congolese substates have a form of government that is different from the one that exists at the national level. Congolese provinces have parliamentary executives whereas the National Executive is semi-presidential or presidential-parliamentary. Why did the drafters of the Constitution of 2006 not establish a presidential or semi-presidential system at the provincial level? Is the presidential system more suitable than the parliamentary system to the multi-ethnic province of North Kivu? Briefly, presidential or semi-presidential systems are known to create very powerful chiefs of executives. Governors of provinces with presidential powers could be stronger and threaten the unity of the national territorial, as did Presidents of armed political movements of the transitional period and Presidents of the secessionist provinces of Katanga and Kasai. The fear of the balkanisation

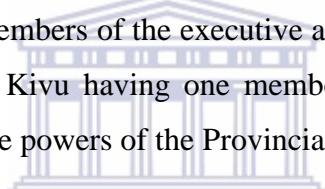
¹⁹¹ The Amendment Act of 20 January 2011 introduced the dissolution of provincial assemblies and granted this power not to Governors of Provinces but to the President of the Republic.

¹⁹² Malonga, M. *Droit constitutionnel et institutions politiques* (2010)

¹⁹³ See Verney, D. *The Analysis of Political Systems* (1979) Routledge & Kegan Paul: London.

of DRC created by the bloody wars of aggression of the 1990s and the Katangan and Kasaian attempts to secede from DRC in the 1960s were still fresh in the minds of Congolese politicians who were drafting the Constitution of 2006.

North Kivu is a multi-ethnic province with a history blackened by numerous ethnic tensions and conflicts for the control of political institutions, and especially the position of Governor of the province. The most suitable form of government for the province of North Kivu is the form that includes members of all the ethnic groups in the Provincial Executive and gives influential positions to authentic members of all the ethnic groups and territories of the province. The presidential system is a winner-take-all one and a less inclusive form of government.¹⁹⁴ It creates executives of one person, who is the sole executive, and who combines the functions of head of State, province in this case, and head of government.¹⁹⁵ The chief of a presidential executive holds all the levers of government, all actions are taken in his name, and the rest of the members of the executive are simply his advisers. This would mean for the province of North Kivu having one member belonging to one ethnic group concentrating into his hands all the powers of the Provincial Executive.



Nevertheless, presidential systems can allow more representation when the position of chief of the executive is held by many people belonging to different ethnic groups.¹⁹⁶ This mechanism is not a novelty in DRC and the province of North Kivu. In the Second Transition, DRC had one President and four Vice-Presidents. In the same period, the province of North Kivu had one Governor and two Vice-Governors of the province. One Vice-Governor of the province was in charge of political and administrative affairs, and the other was in charge of economic and social affairs. Governor Serufuli was a Hutu from Rutshuru in the east axis, while Vice-Governor Kayisavera Mbake was a Nande from the territory of Lubero in the North axis and Vice-Governor Shomwa Mongera Tanganyika was a Tembo from the territory of Walikale in the west axis. In this composition, members belonging to

¹⁹⁴ Lijphart, A. *Parliamentary versus Presidential government* (1992) 2.

¹⁹⁵ Verney, D. (1979).

¹⁹⁶ There are many examples around the world of the holding of the position of chief of an executive by many people. In Iraq, the Presidency Council consisted of a Kurd, Shia and Sunni. Burundi had one President and two Vice-Presidents. According to art 124 (1) of the Burundian Constitution of 2005 the Vice-Presidents have to belong to different ethnic groups. In South Africa, the first non-racial executive was headed by a Black President and a White Vice-President.

three ethnic groups and from all the three axes of the province of North Kivu held one of the three highest positions of the Provincial Executive. The existence of one position of Governor and one position of Vice-Governor made impossible the sharing of the three highest positions of the Provincial Executive among people from the three axes of the province of North Kivu. Unless the Constitution of 2006 is amended to create another position of Vice-Governor of a province, there will always be an axis without either a position of Governor or Vice-Governor of a province.

The advantage with the parliamentary form of government is that it is collective and collegial.¹⁹⁷ In a parliamentary executive, everything does not revolve around one person but a group of people from different groups. Members of a parliamentary executive are equal. They are not servants or simply advisers of the member holding the highest position in the executive but they are his equals. The chief of a parliamentary executive is simply a *primus inter pares*.¹⁹⁸ Yet, in the province of North Kivu, despite the parliamentary form of government, practice showed that everything did not revolve around the Provincial Executive but around the Governor of the province. The trend has been towards the presidentialisation of the provincial parliamentary system, with an almighty Governor of the province and a Governor's office with most of the decision making powers next to a ceremonial Vice-Governor and rubber-stamping Provincial Ministers. Looking at the relations between the Governor, Vice-Governor and Provincial Ministers, it could be said that the Executive of the province of North Kivu was parliamentary in accordance with the text of the Constitution and presidential in practice. The Governor of the province and members of his office had quasi-absolute control over all the members of the Provincial Executive, including the Vice-Governor.

Despite the fact that there was not a big difference between the source of the legitimacy of the Governor and that of the Vice-Governor of the province, the Constitution of 2006 and the Act on the Free Administration of Provinces did not give influential or reserved powers to the Vice-Governor. Constitutionally, the Vice-Governor's advice, consent or countersignatures are not required before the Governor of the province or Provincial Ministers take decisions.

¹⁹⁷ Lijphart, A. (1992) 3.

¹⁹⁸ First among his/her equals.

The only function of the Vice-Governor of the province seems to be to wait for the Governor of the province to be unable to fulfil his duties and then to assume the position interim Governor while the Electoral Commission is organising the election of a new Governor of the province. The Vice-Governor cannot be promoted to the position of Governor of the province in any circumstances, even when the Provincial Assembly trusts the entire Provincial Executive except the Governor of the Province and passes a vote of no confidence in him.

The election and investiture of the Vice-Governor of the province on the same ticket as the Governor of the province and their swearing-in by the ordinance of the President of the Republic, should have allowed him to play an important role in the Provincial Executive. He has the necessary legitimacy to replace the chief of the executive in the event the position of Governor of the province becomes vacant. The number of ethnic groups of the province of North Kivu and the concern of their members to hold influential positions in political institutions do not allow the province to have a Vice-Governor of the province with no proper and influential powers. Ethnic groups would be better represented in the top three positions of the Provincial Executive if the Constitution or legislation grants to the Vice-Governor of the province some reserved powers, and the rights to replace the Governor of the province and to give his consent before the Governor makes important decisions.

The second threat to the parliamentary system in the province of North Kivu, and especially the sharing of powers between ethnic groups, was the seizure of the decision making powers of Provincial Ministers by members of the Office of the Governor of the province. The Office of the Governor of the province was an executive within an executive. The concentration of powers of the Provincial Executive in the hands of the Governor of the province and members of his Office threatened the multiple power-sharing advantages brought about by the parliamentary system. This seizure was made possible by the weak political influence of people who were appointed Provincial Ministers and the lack of intensive and regular parliamentary oversight of the composition of the Office of the Governor of the province as well as administrative appointments made by the Governor of the province. The Chief of the North Kivutian Executive had unlimited power to appoint, displace and dismiss members of the Office of the Governor of the province. An external look at the appointments of people who hold the highest positions in the Office of the Governor of the province could have

enhanced the representativeness and legitimacy of this Office. Constitutional mechanisms, such as confirmation hearings, give legislatures the opportunity to verify respect for the principle of territorial and ethnic representativeness in the structures of executives, such as the Office of the Governor of the province. The skills and knowledge of the selected people could also be checked during this process.

Regarding Provincial Ministers: the fact of selecting people from territories and ethnic groups and giving them positions in the Provincial Executive is not enough. Provincial Ministers have to hold influential positions and be authentic representatives of their ethnic groups and territories. They have to be known and supported by the people of the ethnic groups to which they belong and the territories from which they come. Elected and experienced Provincial Ministers are difficult to manipulate by members of the Office of the Governor of the province. They make good public servants and representatives of their ethnic groups and territories in the Provincial Executive. It is worth noting that the names of the majority of the people appointed as Provincial Ministers were heard for the first time by the inhabitants of the province of North Kivu when the official radio broadcast announced the composition of the Provincial Executive. The next part analyses the composition of the Provincial Executive of North Kivu from 2007 to 2017 and especially the way positions were shared between members belonging to ethnic groups.

4.2. Ethnic groups, motions and composition of the Provincial Executive of North Kivu

The Executive of the province of North Kivu consists of one Governor, one Vice-Governor and no more than ten ministers.¹⁹⁹ The Governor of the province and his running mate are elected by the Provincial Assembly of North Kivu.²⁰⁰ Provincial Ministers are appointed, displaced and dismissed by the Governor of the province.²⁰¹ Besides the previously mentioned people, three people play key roles in the executive branch of the government of the province of North Kivu and deserve to be added to the list of members of the Executive of the province of North Kivu. Those people are the Director of the Province, the Executive Secretary of the Provincial Executive and the Director of the Office of the Governor of the

¹⁹⁹ Constitution of DRC of 2006 art 198 (1).

²⁰⁰ Constitution of DRC of 2006 art 198 (2)(a).

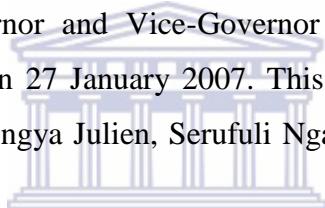
²⁰¹ Constitution of DRC of 2006 art 198 (3).

province. Holders of the last two position have the same rank as Provincial Ministers.²⁰² Their political and administrative influence equals, and even exceeds, that of the other Members of the Provincial Executive.

Since the promulgation of the Constitution of 2006 and up to 2017, the province of North Kivu has had one election for Governor and Vice-Governor and five Provincial Executives. The composition of the Provincial Executive of North Kivu as it was in 2007,²⁰³ February 2009,²⁰⁴ October 2009,²⁰⁵ 2011²⁰⁶ and 2017²⁰⁷ is summarised by Tables 3 and 4. These Tables indicate the Members of the five different Provincial Executives of North Kivu from 2007 to 2017, as well as their political parties, territories and ethnic groups.

4.2.1. Ethnic groups and the election of Governor and Vice-Governor of North Kivu

The first election of the Governor and Vice-Governor of the province under the new Constitution of 2006 was held on 27 January 2007. This election was dominated by three candidates; namely, Paluku Kahongya Julien, Serufuli Ngayabaseka Eugene and Vahamwiti Mukesyayira Jean Chrysostome.



Paluku Julien was a native of the territory of Lubero and belonged to the ethnic group of Nandes. He was an elected Provincial Deputy. Before entering the Provincial Assembly, he was, respectively, the Mayor of the town of Butembo and Administrator of the Territory of Lubero. He belonged to the Rassemblement Congolais pour la Démocratie - Kisangani Mouvement de Libération (RCD/KML), a political party that was in the Alliance de la Majorité Présidentielle (AMP, ruling coalition). The strongest supporters of Paluku Julien were businessmen of the North axis and members of the RCD-KML of Mbusa Antipas.

²⁰² Provincial Decree n°01/002/CAB/GP-NK/2015 of 9 January 2015 regarding the organisation and functioning of the Office of the Governor of the province of North Kivu.

²⁰³ Provincial Decree n°01/015/CAB/GP-NK/07 of 2 April 2007 regarding the appointment of provincial ministers.

²⁰⁴ Provincial Decree n°01/004/CAB/GP-NK/2009 of 15 February 2009 regarding the appointment of provincial ministers.

²⁰⁵ Provincial Decree n°01/004/CAB/GP-NK/2009 of 19 October 2009 regarding the appointment of provincial ministers.

²⁰⁶ Provincial Decree n°01/021/CAB/GP-NK/2011 of 8 April 2011 regarding the appointment of provincial ministers.

²⁰⁷ Provincial Decree n°01/284/CAB/GP-NK/2015 of 18 August 2015 regarding the reshuffle of the Provincial Executive.

RCD-KML was a former armed political movement that controlled the territories of North Kivu of Beni and Lubero.

Serufuli Eugene, the other candidate, was a Hutu from the territory of Rutshuru and an elected Provincial Deputy. He was the outgoing Governor of the province of North Kivu and Vice-President of Rassemblement Congolais pour la Démocratie (RCD, opposition). This political party was the armed political movement that was controlling territories of the East and West axes of the province of North Kivu before the Sun City agreement of 2002. Serufuli Eugene had at his disposal the administrative and financial means of the then Provincial Executive and the votes of all the ten Provincial Deputies belonging to RCD and the ethnic group of Hutus.

Finally, there was Vahamwiti Jean Chrysostome, who belonged to the ethnic group of Nandes and was from the territory of Lubero. He was an elected Provincial Deputy and was very active in the agricultural development of rural communities of the North axis. His political party, Mouvement Social pour le Renouveau (MSR), was also in the ruling coalition. He was strongly supported by national leaders of AMP and especially the recently elected President Kabila Kabange Joseph. He was the most hopeful of the three dominant candidates for the position of Governor of the province.

During the provincial elections of 2006, North Kivutians granted 29 out 38 seats of the elected seats to candidates from the AMP, which was 74.35 per cent. In parliamentary regimes, the Chief of the executive is the leader of the party or coalition of parties that won the majority of seats in the legislature.²⁰⁸ Based on this rule, in the case of the province of North Kivu, the candidate of AMP, Vahamwiti Jean Chrysostome, was the person to be invested as Governor of the province by the President of the Republic and called to form the Provincial Executive. Alas, the drafters of the Constitution of 2006 decided differently. According to the Constitution and the Electoral Act, the Governor and Vice-Governor are elected by Provincial Deputies. Provincial Deputies are not bound by the choice made by

²⁰⁸ Bäck, H. & Dumont, P. ‘Making the First Move: A Two-Stage Analysis of the Role of Formateurs in Parliamentary Government Formation’ 135 (2008) *Public Choice* 356.

their constituents, neither are they by the will of their political parties. The lack of control of voters and political parties over the decisions made by elected Provincial Deputies brings with it risks of corruption and intimidation. It also increases the influence of leaders of ethnic groups over Provincial Deputies at the expense of voters and political parties.

The three dominant candidates for the position of Governor of the province of North Kivu were strongly supported by their ethnic groups and territories. They were politically and administratively experienced. The election of 2007 of the Governor and Vice-Governor had both an inter-ethnic and intra-ethnic aspect. The position of Governor of the province was the goal sought by the two largest ethnic groups in the province of North Kivu, namely, the Nandes and Hutus. They employed numerous strategies to access the position of Governor of the province. The well-known and most used strategy was to support a candidate for the position of Speaker of the Provincial Assembly belonging to the other ethnic group and therefore prevent a person belonging to the same ethnic group to stand for the position of Governor of the province.²⁰⁹ Thus, Provincial Deputies belonging to the ethnic group of Hutus supported Kayisavera Mbake W'ighong, a Nande from the territory of Lubero, to be Speaker of the Provincial Assembly. Provincial Deputies belonging to the ethnic group of Nandes supported Bariyanga Léon, a Hutu from the territory of Rutshuru.

The election of BariyangaRutuye Léon as Speaker of the Provincial Assembly of North Kivu reduced the chances of Serufuli Eugene, another Hutu, to be elected Governor of the province.²¹⁰ Serufuli Eugene withdrew its candidacy before Provincial Deputies cast their votes to elect the new Governor of the province of North Kivu. He later said that the reason for his action was the fact that a person of his ethnic group already occupied the important position of Speaker of the Provincial Assembly.²¹¹ The control of the positions of head of the legislature and head of the executive by the same ethnic group does not contribute to the accommodation of ethnic groups in political institutions. After withdrawing his candidacy, Serufuli Eugene endorsed Vahamwiti Jean Chrysostome, of the ruling coalition, disadvantaging Paluku Julien who stood as an independent candidate.

²⁰⁹ Tegera, A. (2008) 81.

²¹⁰ Tegera (2008) 83.

²¹¹ *Idem.*

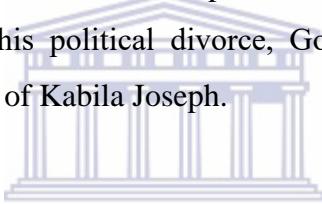
In terms of intra-ethnic aspects, the two remaining candidates, Vahamwiti Jean Chrysostome and Paluku Julien, were both Nandes from the territory of Lubero in the North axis. And to make things worse, they were both from the ruling coalition. However, Vahamwiti Jean Chrysostome was the sole and official candidate of the AMP. Vahamwiti Jean Chrysostome had support within and beyond his ethnic group. On paper; Vahamwiti Jean Chrysostome had the 29 votes of the Provincial Deputies from the ethnic group of Nandes and AMP plus the votes of the 10 Provincial Deputies belonging to the ethnic group of Hutus and RCD who supported Serufuli Eugene. Vahamwiti Jean Chrysostome accumulated 39 votes, which was 92.85 per cent of the votes. His candidacy was more inclusive and moderate than the candidacy of Paluku Julien.

However, Paluku Julien held one card that Vahamwiti Jean Chrysostome did not: the grip his mentor Mbusa Antipas had on people belonging to the ethnic group of Nandes and the North axis of North Kivu. The entire political machinery of the former politico-military movement of RCD-KML of Mbusa Antipas was mobilised to push Paluku Julien to the position of Governor of North Kivu by using all available legal and illegal means at their disposal. Paluku Julien had no incentives to look for support beyond his ethnic group and axis as it was possible for him to win the gubernatorial election by locking up the votes of Provincial Deputies belonging to his ethnic group and axis. Further, the support of national leaders of AMP and provincial leaders of an ethnic group that is in competition with the ethnic group of Nandes made the candidacy of Vahamwiti Jean Chrysostome one imposed by Kinshasa and less authentic than Paluku Julien's candidacy.

At the finishing line, the shield built by the RCD-KML of Mbusa Antipas around Provincial Deputies belonging to the ethnic group of Nandes triumphed over the moderate and inclusive candidacy of Vahamwiti Jean Chrysostome. Paluku Julien won with 25 votes and Vahamwiti Jean Chrysostome obtained 17 votes. The results of the election for Governor and Vice-Governor of the province of North Kivu of 27 January 2007 showed that the choices of approximately 22 Provincial Deputies were not based on the people's will, political parties' policies or candidates' experience, but on ethnic affiliation.

The election of Paluku Julien as Governor of the province gave people belonging to the ethnic group of Nandes both control of the Provincial Executive and the majority of the seats in the Provincial Assembly of the province of North Kivu. The first few days of the term of Governor Paluku saw a ‘nandenisation’ or ‘dehututisation’ of provincial institutions of North Kivu. Thousands of people arrived in the provincial capital, Gomatown, from the territories of the northern part of the province.²¹²

The balance of powers between ethnic groups changed with tensions between President Kabila Joseph and Governor Paluku Julien’s mentor, Mbusa Antipas. These tensions led to the displacement of Mbusa Antipas from the most influential Ministry of Foreign Affairs to a less influential Ministry and thereafter to his departure from the National Government. The conflicts between Kabila Joseph and Mbusa Antipas ended with the departure of the RCD-KML from the AMP. Despite this political divorce, Governor Paluku, Mbusa Antipas’s protégé, chose to stay in the AMP of Kabila Joseph.

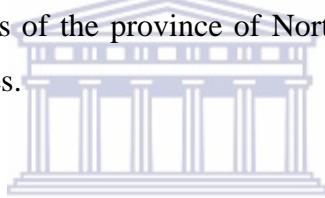


The strategic choice of Governor Paluku not to follow his mentor into opposition divided Provincial Deputies belonging to the ethnic group of Nandes between those remaining loyal to Mbusa Antipas and those supporting Governor Paluku. The leadership of the North axis and the ethnic group of Nandes was at stake. In this master-student fighting President Kabila strongly backed Governor Paluku Julien. This internal division gave added value to the political weight of people belonging to other ethnic groups. Provincial leaders belonging to the ethnic group of Nandes of both sides fiercely looked for the support of people belonging to other ethnic groups. Either of the two sides had more than 21 Provincial Deputies in the Provincial Assembly of North Kivu. The group of politicians belonging to the ethnic group of Nandes that will control the province will be the one that will be backed by the majority of political leaders belonging to other ethnic groups. To obtain the support of people belonging to other ethnic groups, Nande leaders of both sides were respectively sharing positions in the

²¹² Political and administrative institutions of the province of North Kivu are often packed with people belonging to the ethnic group of the incoming Governor of Province. Tutsis became most influential with the rise of Governor Kanyamuhanga Leonard. Thereafter, numerous members belonging to the ethnic group of Hutus were appointed to the Provincial Executive and provincial administration in the era of Governor Serufuli Ngayabaseka.

Provincial Executive and promising important positions in provincial political institutions to people of other ethnic groups in case they succeeded to topple Governor Paluku.

Provincial Deputies belonging to the ethnic group of Nandes opposing Governor Paluku with their allies of other ethnic groups introduced numerous votes against the Provincial Executive and Governor Paluku. The survival of Governor Paluku against the series of votes against him and the Provincial Executive was due not only to the multiple unconstitutional and illegal interferences of the National Executive in the internal business of the province of North Kivu,²¹³ but also to his capacity to rally leaders of all the ethnic groups of the province to his cause. The loss of the support of half of the Provincial Deputies belonging to the ethnic group of Nandes made Governor Paluku lose the parliamentary majority he was enjoying at the dawn of his term. To fill the void left by the departure of some Provincial Deputies belonging to the ethnic group of Nandes, Governor Paluku intensively charmed political leaders belonging to all the ethnic groups of the province of North Kivu. The most targeted ethnic groups were the Hutus and Hundes.



The Vice-Governor of the province, Lutaichirwa Mulawahale Feller, helped Governor Paluku reach people belonging to his ethnic group and from his axis, namely, the Hundes and the territory of Masisi. Governor Paluku obtained a stable parliamentary majority after creating an alliance with his former opponent, Serufuli Eugene. The support of Serufuli Eugene gave Governor Paluku the support of the ten Provincial Deputies belonging to the ethnic group of Hutus and RCD. In exchange for the political support he was receiving from political leaders belonging to other ethnic groups Governor Paluku was granting positions on the Provincial Executive.

4.2.2. Representation of ethnic groups in the Governorship of the Provincial Executive

The list of positions of the Provincial Executive of the province of North Kivu granted by Governor Paluku from 2007 to 2017 is summarised in Tables 3 and 4 (annexure). As these Tables show, the four most influential positions of the Provincial Executive, named

²¹³ More than once the Central Government prevented Provincial Deputies from debating and voting on votes of censure and no confidence by deploying the police to shut down the Provincial Assembly or by calling in the capital city for “*urgent consultations*” with members of the governing organ of the North Kivutian legislature.

Governorship in this study, were held by people belonging to the ethnic groups of Hundes, Hutus and Nandes. In the first Provincial Executives of North Kivu of 2007 and 2009, except for the position of Vice-Governor of the province, which was held by a Hunde from the territory of Masisi in the West axis, the positions of Governor of the province, Director of the province and Director of the Office of the Governor of the province were all held by people belonging to the ethnic group of Nandes and coming from the territory of Lubero in the North axis.

The ethnic group of Nandes lost one position in the Governorship after the position of Director of the province was abolished and the position of Executive Secretary of the Provincial Executive was created. The two people who held the position of Executive Secretary of the Provincial Executive of North Kivu since its creation were both individuals belonging to the ethnic groups of Hutus, namely, Ndibeshe Byemero Christophe and Mudahemuka Jean Marie. Ndibeshe Christophe was a Hutu from the territory of Masisi in the West axis; his appointment granted two positions in the Governorship to the territory of Masisi and the West axis. All the three axes of the province of North Kivu only had positions in the Governorship with the replacement of Ndibeshe Christophe by Mudahemuka Jean Marie, a Hutu from the territory of Rutshuru in the East axis. The Governorship of the Provincial Executive of North Kivu of 2011 and 2015 had two people from the North axis, one from the West axis and one from the East axis. In terms of ethnic groups, the fourth and fifth Provincial Executive of North Kivu had two people that belonged to the ethnic group of Nandes, one to the Hunde ethnic group and one to the Hutu ethnic group.

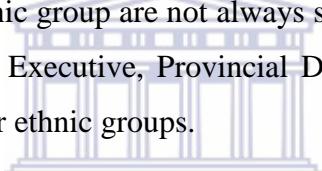
4.2.3. Motions of censure and no confidence and appointments of Provincial Ministers

Congolese Provincial Executives have no more than ten Provincial Ministers.²¹⁴ In 2007, they were nine on the Provincial Executive of North Kivu, and thereafter they were ten. The sharing of the ministerial positions among ethnic groups of the province of North Kivu was made complex by armed movements, conflicts between national leaders, and especially by attempts by the Provincial Assembly to topple Governor Paluku. Motions influenced the relations between ethnic groups in provincial institutions of North Kivu.

²¹⁴ Constitution of DRC of 2006 art 198 (5).

a) Motions against the Provincial Executive and the Governor of the province

As briefly discussed in the introductory section, influenced by French political and constitutional history, the drafters of the Constitution of 2006 chose the rationalised parliamentary system. This rationalisation of motions or votes of censure and votes of no confidence helped to accommodate ethnic groups of the province of North Kivu by pushing their members to look for supports beyond their ethnic groups. Thus, because of the rule of one motion per parliamentary sitting, their initiators sought to ensure that they had strong support within the Provincial Assembly before tabling them. Second, the fact that motions could only be debated 48 hours after they have been recorded permitted the Provincial Executive to negotiate with Provincial Deputies belonging to the ethnic group of the Governor of the province as well as those belonging to other ethnic groups, with a view to winning their votes. Thirdly, to overthrow the Provincial Executive, the signatures and votes of Provincial Deputies of one ethnic group are not always sufficient. To ensure success of the vote to overthrow the Provincial Executive, Provincial Deputies looked for the support of their colleagues belonging to other ethnic groups.



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The Office of the Speaker of the Provincial Assembly recorded, from 2007 to 2013, one vote of censure again the Provincial Executive of North Kivu²¹⁵ and three votes of no confidence against the Governor of the province.²¹⁶ Provincial Deputies of the province of North Kivu who showed their intentions to withdraw the confidence of the Provincial Assembly in the Provincial Executive or the Governor of the province did not come from one ethnic group or territory. The majority of motions were signed by Provincial Deputies from different ethnic groups and territories. The most threatening votes of censure and no confidence were those signed by Provincial Deputies belonging to a large number of ethnic groups. The multi-ethnic votes of censure of 9 October 2009 and the vote of no confidence of 6 February 2012 shook the Provincial Executive more than the votes of confidence of 28 November 2007 and 3 May 2013. The latter votes were supported mainly by Provincial Deputies belonging to the ethnic group of Nandes, 75 per cent and 100 per cent of the signatures, respectively. The fact that

²¹⁵ The vote of censure against the Provincial Executive of North Kivu of 9 October 2009.

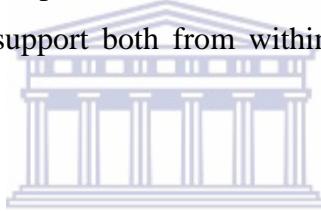
²¹⁶ The vote of no confidence against the Governor of the Province of North Kivu of 28 November 2007.

The vote of no confidence against the Governor of the Province of North Kivu of 6 February 2012.

The vote of no confidence against the Governor of the Province of North Kivu of 3 May 2013.

the majority of motions were multi-ethnic and spearheaded by Provincial Deputies belonging to the same ethnic group as the Governor of the province leads to an observation that political accountability is not widely ethicised in the province of North Kivu.

The second observation is that belonging to an ethnic group with the majority of seats in the Provincial Assembly is not enough to maintain a position in the Provincial Executive. The motions of 2007 to 2013 showed that for a Provincial Executive to remain in power until the next provincial elections, it had to foster the maximum possible support from Provincial Deputies belonging to all ethnic groups. The support of Provincial Deputies belonging to ethnic groups other than the ethnic group of the Governor of the province was very helpful to the Provincial Executive, especially when a huge number of Provincial Deputies belonging to the ethnic group of Nandes were pushing for a motion. Governor Paluku overcame multiple attempts on the part of Provincial Deputies to overthrow him and the Provincial Executive by skilfully keeping and obtaining support both from within and outside the ethnic group to which he belonged.



With regard to the motions, it was observed that Provincial Deputies of ethnic groups with the highest number of seats had nothing to fear for their political survival when destabilising the Provincial Executive and the Governor of the province by means of motions. There are few obstacles in the Constitution of 2006 to stop ethnic groups holding parliamentary majorities from destabilising Provincial Executives where members of the latter do not respond positively to their ethnic and personal interests. Governors of provinces are not well-equipped to stop abuses from members of Provincial Assemblies who belong to largest ethnic groups in provinces. The interests of majority, as well as minority, ethnic groups are better safeguarded by Chiefs of Provincial Executives with constitutional and legal powers to stop abuses coming from members belonging to ethnic groups with the majority of seats in Provincial Assemblies. In parliamentary systems, chiefs of executives have a weapon to call members of legislatures to order: the dissolution power. The lack of the dissolution power in the hands of Chiefs of Provincial Executives was one of the main reasons for the many motions in Congolese provinces. Without the power to dissolve Provincial Assemblies, Governors of provinces are disarmed and not well-equipped to stop abuses from Provincial Deputies belonging to the largest ethnic groups. The power to veto Bills plus the power to

dissolve Provincial Assemblies will make Provincial Deputies think twice before passing edicts and initiating motions that are ethnic-motivated.

From the lists of tools that the Constitution of DRC of 2006 and the Act on the Free Administration of Provinces of 2008 gave to Provincial Deputies, votes of censure and votes of no confidence are the most powerful and dangerous. They need to be used in very serious situations and as last resorts. Overuse of motions can be a source of political instability and ethnic tensions. For instance, motions largely signed by Provincial Deputies belonging to the ethnic group in competition with the ethnic group of the targeted member of the Provincial Executive can be misinterpreted and considered as an attack on an entire ethnic group of the member of the Provincial Executive. Tensions are worsened when the two ethnic groups are competing or fighting for the control of political institutions. In new democracies and divided societies like DRC, motions are two-edged swords: they can help prevent the rise of dictatorships and violations of human rights by members of executives; but at the same time they generate instability and anarchy. The crises of the First Republic and of the Transitional Period have shown that political and institutional instabilities open the gates to tensions between ethnic groups and offer a fertile soil for ethnic conflicts. The events that occurred in the 1960s and 1990s made DRC ungovernable and nurtured ethnic tensions and conflicts in the provinces of North Kivu, South Kivu and Katanga.

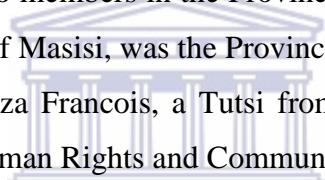
The motions seriously destabilised the Provincial Executive under the leadership of Governor Paluku. To satisfy North Kivutian politicians, the principle of the inclusiveness of ethnic groups, territories and axes in political institutions was not always taken into account in the composition of the Provincial Executive. In order to survive, the Governor was compelled to make concessions and reward those who supported him when facing attacks from the Provincial Assembly with positions in the Provincial Executive.²¹⁷ Consequently, Provincial Deputies or their people received ministerial positions. The majority of appointments of

²¹⁷ Thus, no matter the outcome of votes of censure or votes of no confidence, after them there were cabinet reshuffles or administrative appointments to introduce to structures of the Provincial Executive new people who supported the Governor of the province. The chances of people from minority ethnic groups staying in the Provincial Executive after cabinet reshuffles following attempts to topple the Governor of the province were very slim.

Provincial Ministers followed failed attempts by Provincial Deputies to overthrow the Provincial Executive and Governor Paluku.

b) Appointment of Provincial Ministers

There were ethnic groups who had a member in all the successive executives from 2007 to 2017. At the same time there were ethnic groups which were always out of the Provincial Executive of North Kivu. The ethnic groups of Hundes, Hutus, Nandes and Tutsis were permanent in the Provincial Executive whereas the ethnic groups of Mbutis and Tembos had never been in the Provincial Executive. The ethnic group of Kanos had a member in only one Provincial Executive: Kalume Félicité was briefly made Provincial minister in 2007. The ethnic group of Tutsis was the only minority ethnic group which succeeded to regularly have at least one person in the Provincial Executive, with influential portfolios. In February 2009, the ethnic group of Tutsis had two members in the Provincial Executive. Kabanda Kayobotsi Pierre, a Tutsi from the territory of Masisi, was the Provincial Minister of Finances, Economy and Trade. Tuyihimbaze Rucogoza Francois, a Tutsi from the territory of Masisi, was the Provincial Minister of Justice, Human Rights and Community reinsertion.²¹⁸



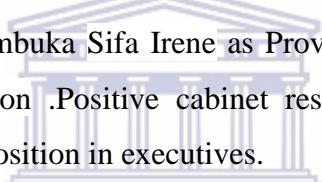
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In most of the cabinet reshuffles, people from minority ethnic groups were replaced by people from the largest ethnic groups while people from the largest ethnic groups were replaced by people from the same ethnic group. This swapping system favoured those belonging to the ethnic groups of Nandes and Hutus, the two largest ethnic groups of the province in North Kivu. Regularly, Provincial Ministers from the ethnic groups of Hutus and Nandes were replaced by people from their own ethnic groups. In 2011, for instance, five Provincial Ministries were changed but the shares of the Provincial Ministers belonging to the ethnic group of Nandes and Hutus in the Provincial Executive stayed the same as before the cabinet reshuffle.²¹⁹

²¹⁸ Tuyihimbaze Rucogoza Francois was a member of the Congrès National pour la Défense du Peuple CNPD, an active armed and political movement mainly composed by people belonging to the ethnic group of Tutsis.

²¹⁹ The Provincial Executives of 2009 and 2011 had both four and two Provincial Ministers belonging to the ethnic groups of Nandes and Hutus, respectively.

Considering the impact of cabinet reshuffles on the sharing of power between ethnic groups, one can say that there were positive and negative cabinet reshuffles. Positive cabinet reshuffles were those allowing non-represented ethnic groups and territories to receive ministerial positions that were controlled by members belonging to larger ethnic groups; negative cabinet reshuffles were those that allowed the largest ethnic groups increase their number of ministerial positions at the expense of minority ethnic groups. Examples of positive cabinet reshuffles are found in the Provincial Executives of 2009 and 2015. The ethnic group of Kumus was without any member in the Provincial Executive after the departure of Mwendo Claude. The ethnic group of Kumus came back into the Provincial Executive in February 2009 via the replacement at the Provincial Ministry of Education, Labour, Social Security and Provincial Public Service of a member belonging to the ethnic group of Nandes, Kasereka Kalwaghe Charles, by Bazizane Maheshe Adele, a Kumu. In 2011, the territory of Walikale was the only territory without a position in the Provincial Executive. Governor Paluku made a cabinet reshuffle in 2015 and brought back the territory of Walikale by appointing Masumbuka Sifa Irene as Provincial Minister of Justice, Human Rights and Community reinsertion .Positive cabinet reshuffles are good mechanisms of including ethnic groups with no position in executives.



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Regarding negative cabinet reshuffles, they were evident in the composition of numerous Provincial Executives. In the province of North Kivu, ministers belonging to minority ethnic groups were regularly replaced by people from the largest ethnic groups or ethnic groups which already had people in the Provincial Executive. The ethnic groups of Kumus and Nyangas had only one member in the Provincial Executives of 2007 and October 2009, respectively. Bapfakurera Aimable, a Hutu from the territory of Masisi, was appointed as Provincial Minister of Youth, Reinsertion, Culture, Arts, Sports and Recreation, replacing Mwendo Claude in 2007, a Kumu from the territory of Nyiragongo. The ethnic group of Kumus stayed with no member in the Provincial Executive while Hutus increased their share of ministerial positions. In October 2009, Batabiya Bushoki Josiah, a Nyanga from the territory of Walikale, was replaced by NzanzuKasivita Carly, a Nande from the territory of Beni. The departure of Batabiya Bushoki Josiah added one more ministerial position to the ethnic group of Hundes in the Provincial Executive of North Kivu.

A power of the Governor of the province to appoint and dismiss Provincial Ministers that has constitutional frameworks will contribute to the management of ethnic tensions and conflicts through the chief of the Provincial Executive. That power has to sufficiently constrain the Governor of province to include all components of society in the Provincial Executive. An uncontrolled and badly used power to reshuffle the Provincial Executive is harmful. The absence of Mbutis, Tembos and Kanos and sometimes Kumus and Nyangas was due to the fact that the election, survival and re-election of the Governor of the province were not dependent on them. The power of the Governor of the province was safe with the support of only Hundes, Hutus, Nandes, and Tutsis. To avoid a political death, a Governor of the province replaced Provincial Ministers belonging to minority ethnic groups and territories with few seats in the Provincial Assembly by members of larger ethnic groups and big territories.

Regarding the six territories and three axes, the territories of Beni and Lubero of the North axis were the territories with the highest number of positions in the Provincial Executive of North Kivu. From 2007 to 2017 the number of Provincial Ministers from the North axis had never been less than three and more than four, which was still below what the Gamson' Law could give to the North axis. According to Gamson's law, groups should obtain positions in executive branches of government proportionate to their shares in legislative branches of government.²²⁰ The Provincial Deputies of North Kivu from the North axis represented 49 per cent of the seats; mathematically the shares of the North axis could be four or five Provincial Ministers. The second axis with the highest number of seats was the West axis. The territories of Walikale and Masisi of the West axis had between them three and four positions in the analysed five Provincial Executives of the province of North Kivu. The territory of Masisi had more people than the territory of Walikale and many bigger territories, such as Beni and Rutshuru. The over-representation of the territory of Masisi was more visible in the Provincial Executive of 2011. In 2011, four ministerial positions were held by people from Masisi, while the territories of Beni and Rutshuru, respectively, had two and one Provincial Ministers. The only territory that was challenging the territory of Masisi in terms of the number of ministerial positions was the territory of Lubero.

²²⁰ See Gamson, W. 'A theory of coalition formation' 26 (1961) 3 *American Sociological Review* 373-382.

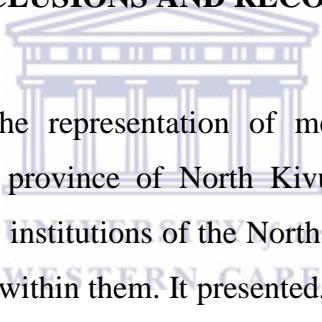
People from the native territory of the Governor of the province held the most influential portfolios and stayed longer in Provincial Executives than people from any other territories. For instance, Mbalutwirandi Kinywa Valerien, a native of the territory of Lubero, was Provincial Minister of North Kivu from 2007. Mbalutwirandi Valerien held the important portfolio of Health, Social Affairs, Human rights and Gender before October 2009; thereafter he was promoted to the most influential provincial Ministry of Territorial Administration, Public Order and Traditional Affairs. The second example is Muthethe Mundenga Kahindo, also a native of the territory of Lubero. Muthethe Kahindo was Provincial Minister from 2009. Muthethe Kahindo spent one year as Provincial Minister of Territorial Administration, Traditional Affairs and Security, and five years as Provincial Minister of Health, Social Affairs, Labour and Provincial Public Service.

4.3. Conclusion

This chapter has analysed the representation of ethnic groups in the Provincial Executive of the Province of North Kivu from 2007 to 2017. It established that the parliamentary system was the most suitable form of government to manage ethnic conflicts in the province of North Kivu. The parliamentary system does not give powers to one person from one ethnic group and territory but gives them to a group of equal people belonging to many ethnic groups and territories. This chapter has highlighted the fact that although art 198 (4) of the Constitution of 2006 had obliged the Governor of the province of North Kivu to respect the representativeness of all territorial and ethnic components of the province when composing the Provincial Executive, five out of the nine ethnic groups of the province of North Kivu had no authentic and influential people in the five analysed Provincial Executives. On the basis of these elements, there is need to amend the Constitution of 2006 and the Electoral Act of 2006. The following chapter deals with conclusions and recommendations aiming to ensure the representativeness of all the nine ethnic groups in the political institutions of the province of North Kivu.

CHAPTER FIVE

GENERAL CONCLUSIONS AND RECOMMENDATIONS

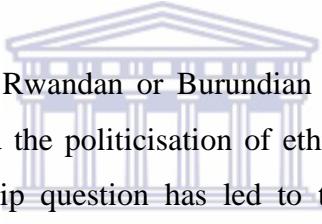


This mini-thesis has analysed the representation of members of ethnic groups in the Assembly and Executive of the province of North Kivu. It analysed the structures and composition of these two political institutions of the North Kivu and the sharing of positions among members of ethnic groups within them. It presented, first, an overview of the province of North Kivu and its ethnic tensions and conflicts from the colonial era to the drafting of the Constitution of the Third Republic. Thereafter, it analysed the election of Members of the Provincial Assembly, the co-option of Traditional Leaders to the Provincial Assembly, and the election of the four Representatives of the Province to the Upper Chamber of the National Parliament. Lastly, it analysed the election of the Governor and Vice-Governor of the province and the appointment of Members of the Provincial Executive of North Kivu.

The aims of this chapter are: first, to briefly present the discussions of the preceding chapters; secondly to present the major findings of this study; and thirdly to prescribe some constitutional and legal mechanisms to facilitate the representation of ethnic groups in the Assembly and Executive of the province of North Kivu and thereby reduce ethnic tensions and conflicts.

5.1. Summary

This research began by a brief presentation of the six territories and nine ethnic groups of the province of North Kivu. The six territories were grouped into three axes, namely, the North, the West, and the East axis. Each territory was inhabited by specific ethnic groups. None of the nine ethnic groups account for more than half of the provincial population; although, the ethnic groups of Nandes and Hutus are the two largest ethnic groups. As discussed in chapter one, there was no sign of serious conflicts between the ethnic groups of the province of North Kivu during the Belgian colonisation. Ethnic conflicts have been exacerbated by the transfer of power to the Congolese elite and the transfer of powers to the provinces. For decades, national and provincial leaders have often turned one ethnic group against another with the aim of acquiring or retaining power.



The citizenship of Congolese of Rwandan or Burundian origin was the most manipulated tool. As one great scholar argued the politicisation of ethnic identities often leads to inter-ethnic conflicts.²²¹ The citizenship question has led to the bloodiest ethnic conflicts the Democratic Republic of Congo has never seen and the invasion of DRC by an international coalition spearheaded by Rwanda. The Congolese Wars came to an end with the Sun City Agreement and the promulgation of the Constitution of 2006. The Constitution of the Republic once for all solved the citizenship question, recognised ethnic diversity and granted autonomy to the provinces. The decentralisation of powers to the provinces politically created, on the one hand, a group of dominant ethnic groups and, on the other hand, a group of marginalized ethnic groups.

The first provincial elections under the Constitution of the Third Republic were held in 2006. Proportional representation with the highest average was chosen as the electoral system. The constituencies for the election of Members of the Provincial Assembly of North Kivu were the six territories and the three towns.²²² Chapter three has shown that despite using proportional representation, half of the ethnic groups of North Kivu are not represented in the

²²¹ Horowitz, D. ‘The challenge of ethnic conflict: Democracy in divided societies’ (1993) 4 *Journal of Democracy* 23.

²²² Beni, Butembo and Goma.

Provincial Assembly, and that only one woman was elected to the Provincial Assembly. In the Provincial Assembly, all the structures were overwhelmingly occupied by members of the ethnic groups of Nandes and Hutus. Political parties were not spared. Of the ten political parties represented in the Provincial Assembly, seven were mainly composed of members of the ethnic groups of Nandes and Hutus. Except for the PPRD, all the political parties have focused their electoral campaigns on members of a single ethnic group or on a single territory.

Chapter four analysed the sharing of powers between ethnic groups in the Provincial Executive of North Kivu. This part analysed in depth the choice of the parliamentary system by the drafters of the Constitution of 2006 and its advantages over the presidential system for the sharing of powers between ethnic groups of the province of North Kivu. It was observed in chapter four that the composition of the Provincial Executive did not start with the election of the Governor and the Governor -Vice of the province, but with the election of the Speaker of the Provincial Assembly. In 2007, the provincial leaders of the two largest ethnic groups in the province were committed to win the position of Governor of the province, and to reach this goal, each of the largest ethnic groups supported the candidate Speaker who belonged to the adversarial largest ethnic group. The election of a member of the Hutu ethnic group as Speaker of the Provincial Assembly led another member of the same ethnic group to withdraw his candidacy for the position of Governor of the province.

The two candidates who remained in the race for the position of Governor of the province in 2007 belong to the same ethnic group of Nandes, the territory of Lubero and the ruling coalition. Vahamwiti Mukesayira Jean Chrysostome was designated as the official candidate of the ruling party (Alliance de la Majorité Présidentielle, AMP) and received support from beyond his ethnic groups and territory. Theoretically, Vahamwiti Mukesayira Jean Chrysostome had nearly 39 of the 42 votes. Paluku Kahongya Julien and his supporters had developed their strategies around Members of the Provincial Assembly of the ethnic groups of Nandes and from the territories of Beni and Lubero. At the end of the day, Paluku Kahongya Julien was elected Governor of North Kivu with 25 votes, Vahamwiti Mukesayira Jean Chrysostome had lost by 17 votes.

The election of Paluku Kahongya Julien has granted members of the ethnic groups of Nandes the majority in the Provincial Assembly and the control of the Provincial Executive of North Kivu. In the dawn of the first term of Governor Paluku Kahongya Julien, power was not shared as it should be among members of the ethnic groups of North Kivu. The balance of forces between ethnic groups changed with the split of political leaders of the ethnic groups of Nandes into two adversarial sides at the end of the 2010s.²²³ As none of the two sides has held the parliamentary majority, they have fiercely looked for the support of political leaders of the other ethnic groups. The one side unsuccessfully introduced numerous motions to oust Governor Paluku Kahongya Julien and the entire Provincial Executive. Governor Paluku Kahongya Julien escaped these motions by skilfully rallying leaders of other ethnic groups to his side. In return, Governor Paluku Kahongya Julien granted positions in the Provincial Executive. The cabinet reshuffles were generally disadvantageous to minority ethnic groups.



5.2. Major findings

After studying the sharing of power in the province of North Kivu, this mini-thesis established several findings. First, that the concentration of administrative, financial and political powers in the provincial capital has intensified the struggle for control of the Provincial Assembly and the Provincial Executive. Secondly, that proportional representation, large constituencies and the low number of seats have resulted in damaging consequences for the representation of ethnic groups and territories. The provincial election of 2006 did not create authentic and accountable representatives. The votes of members of minority ethnic groups located in small areas have been dispersed in constituencies like spoons of sugar in the Kivu Lake. From 2007 to 2017, the presence in the Provincial Assembly of ethnic groups with one member has made difficult the representativeness of ethnic groups in the structures of the Provincial Assembly. Thirdly, that the electoral system established by the Constitution of 2006 did not encourage moderate and policy based candidacies or prevent ethnic extremists and opportunists to obtain positions in provincial institutions. Indirect elections have also opened the doors to political marginalization,

²²³ The motion of censure of 2009 and the motion of no confidence of 2012 have been respectively signed by 18 and 22 Members of the Provincial Assembly of North Kivu; the majority of whom were belonging to the same ethnic group as the Governor of the province.

subversion of the electorate of the North Kivu's will, and corruption and intimidation of Members of the Provincial Assembly.

Finally, this mini-thesis established that parliamentarism was the most suitable form of government for the Province of North Kivu; however, it was threatened by the concentration of decision making powers in the hands of the Governor of the province and his Office and disproportionate use of motions against the Provincial Executive. The other threat to the parliamentary system and representation of ethnic groups is the appointment in the Provincial Executive of people who are not politically supported by members of the ethnic groups to which they belong and inhabitants of the territories from which they come from.

5.3. Recommendations

This study has answered its main question by demonstrating that the Constitution of 2006 and the Act on the Free Administration of Provinces did not provide for efficient mechanisms for the representation of ethnic groups in provincial political institutions. As chapters two, three and four have demonstrated, the principle obstacles to the efficient representation of ethnic groups in the province of North Kivu were: the concentration of all the powers of the province in the provincial capital city; the use of proportional representation in few big constituencies; the presidentialisation of the Provincial Executive and, and that many office holders were unilaterally chosen by politicians after provincial elections. Following on these and many other elements established in this study, I recommend the following:

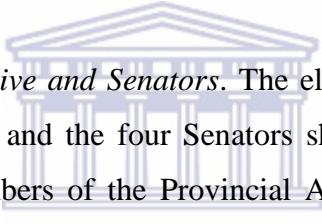
- 1) *For territories.* The division of the province of North Kivu into eight autonomous territories. As Horowitz has noted, the '*skilful division of authority between regions [territories] and a centre [the Province] has the potential to reduce conflict*'.²²⁴ To protect the interests of territories at the provincial level and especially to ensure peaceful cohabitation between the ethnic groups of the province, a second organ²²⁵ composed of traditional leaders and representatives of the provincial and territorial political institutions should be established. Organs, such as the proposed Council of

²²⁴ Horowitz, D. Ethnic Groups in Conflict (1985) Berkley: University of California 602.

²²⁵ Name Council of Territories in this study.

territories, will protect small territories and minority ethnic groups by balancing them against the majoritarianism in organs like the Provincial Assembly.²²⁶

- 2) *For the Provincial Assembly.* The Two-Round System should be used for provincial elections. The provincial election should be held in numerous and small constituencies. In North Kivu, the concentration of ethnic groups in specific territories and the low number of members of some ethnic groups do not create enough incentives and guarantees. Thus, political parties or coalitions that do not win at least five seats in five different territories should not gain a seat in the Provincial Assembly, and a considerable number of parliamentary seats should be reserved for each ethnic group of the province. The single list of reserved seats should have two people from each ethnic group of the province and take into account votes obtained by political parties or coalitions represented in the Provincial Assembly.

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- 3) *For the Provincial Executive and Senators.* The election of the Governor and Vice-Governor of the province and the four Senators should be undertaken concurrently with the election of Members of the Provincial Assembly, and on the same ballot paper.²²⁷ The leader of the political party or coalition with the absolute majority of elected seats in the Provincial Assembly should be invested as Governor of the province. The positions of Governor and Vice-Governor of the province should be equally shared among the North, West and East axes.²²⁸ In order to make them influential office-holders, the two Vice-Governors of the province should have the right to succeed the Governor of the province and have some reserved portfolios. For instance, the Vice-Governor in charge of Political Affairs can be granted the position of Speaker of the Council of Territories and the Vice Governor in charge of Economic Affairs can be the Head of the Provincial Office of the Provincial Budget. Regarding

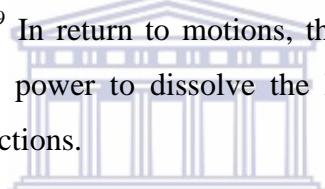
²²⁶ Regassa, T. (2004).

²²⁷ See Annexure, Table 6: Proposed form of the bullet paper for the provincial elections in North Kivu.

²²⁸ Suppose that a Provincial Executive is consisted of a Hutu Governor native of the territory of Lubero, a Tutsi First Vice-Governor native of the territory of Masisi and a Kumu Second Vice-Governor native of the territory of Nyiragongo. This Provincial Executive respects the criteria of axes and territorial and ethnic representation but it will be rejected and be a source of ethnic tensions. If the nine ethnic groups have to share three positions, they should be regrouped in three groups: A- Nandes and Mbutis, B- Hutus, Tutsis and Kumus, C- Hundes, Nyangas, Kanos and Tembos.

Provincial Ministers, they should be appointed from among Members of the Provincial Legislature. Further, together with one Vice-Governor, the Provincial Ministers should countersign important decisions made by the Governor of the province or members of his Office.

- 4) *For the Provincial Assembly and the Provincial Executive.* First, all the appointments made by members of the Bureau of the Provincial Assembly and members of the Provincial Executive should be debated and validated by the Plenary Assembly or parliamentary committees. The objectives of this mechanism will be to check the competencies of the persons appointed and the representativeness of the organs to which they will be assigned. Secondly, the constitutional and legal mechanisms for the individual and collective withdrawal of the confidence of the Provincial Assembly from members of the Bureau of the Provincial Assembly and the Provincial Executive should be tightened up.²²⁹ In return to motions, the Provincial Executive should be granted the constitutional power to dissolve the Provincial Assembly or, at least, request new provincial elections.



As this mini-thesis has established, the political marginalization of minority ethnic groups goes hand-in-hand with the political marginalization of women. Thus the implementation of these mechanisms should take gender into account. The Constitution should fix the number of positions men or women cannot exceed in provincial legislative and executive branches.²³⁰ This study shows that the drafting of a provincial constitution is needed to build political institutions that will suit the province of North Kivu. The 26 provinces of DRC do not have the same particularities to be internally organised by one text, especially one drafted by Members of the National Executive. No one knows better the history, the realities and hopes of the people of provinces than provincial leaders. The province of North Kivu is DRC's most sensitive province when it comes to ethnicity. The drafting of a Provincial Constitution by North Kivutian provincial leaders, along the lines of power sharing recommended by this

²²⁹ See Annexure, Table 8: Proposed measures for the withdrawal of the confidence of the Provincial Assembly.

²³⁰ Kenya has an inspiring example for Congolese Assemblies. According to art 177 (1)(c) of the Constitution of Kenya of 2010 no more than two-thirds of the membership of the Assemblies of devolved units are persons of the same gender.

study, will considerably reduce tensions and conflicts between ethnic groups of the province of North Kivu.

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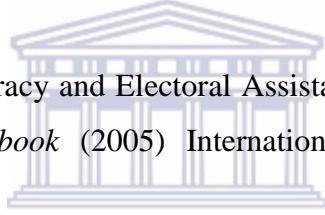
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Annexure

Table 1: Members of the Provincial Assembly of North Kivu of (2006 to 2017)

N°	Names	Political party	Territory	Ethnic group	Substitutes ²³¹
01	Bahati Kaembe Maphumo	Traditional Leader	Masisi	Hunde	Misati
02	Bariyanga Rutuye Léon	DCF-COFEDEC	Rutshuru	Hutu	-
03	Butsapu Ndungo Haggai	UPRDI	Lubero	Nande	-
04	Bwira Shemusimiwa Manassé	MSR	Walikale	Nyanga	-
05	Gachaba Imaniraguha Francois	RCD	Goma	Hutu	Ushindi Kyalondawa Jean
06	Habinchuti Seninga Robert	RCD	Masisi	Hutu	-
07	Hakizumwami Habimana Jules	RCD	Rutshuru	Hutu	-
08	Jaribu Muliwavyo Jean-Bosco	FR	Beni	Nande	-
09	Kabutwa Djuma Iombya	Traditional Leader	Walikale	Nyanga	Eliba Ombo Baudouin
10	Kahindo Nzanzu Bonane	Traditional Leader	Lubero	Nande	Murairi Ngulu Francois
11	Kahindo Tsékanabo Janvier	DCF-COFEDEC	Beni	Nande	-
12	Kakule Lukambo Maombi	MSR	Lubero	Nande	-
13	Kalinda Kahombo Gilbert	PPRD	Walikale	Nyanga	-
14	Kanzuli Kiezèle Benito	PPRD	Lubero	Nande	-
15	Kasereka Kalwaghe Charles	PPRD	Beni	Nande	Mayombo Omari Jean
16	Katembo Kabuyaya Domi	DCF-COFEDEC	Lubero	Nande	-
17	Kavira Kananga Felly	DCF	Beni	Nande	-
18	Kayisavera Mbake Wighong	FR	Lubero	Nande	-
19	Kule Kahandi Jérémie	RCD	Beni	Nande	-
20	Kunemutumba Mbakwa Samuel	PPRD	Rutshuru	Nande	-

²³¹ The constitutional mechanism of substitution of Provincial Deputies who resigned or deceased did not contribute to make the Provincial Assembly of North Kivu more representative and accountable. On the thirteen substitutions that have been made between 2007 and 2017, only two seats passed from members belonging largest ethnic groups to those belonging minority ethnic groups (Gachaba to Ushindi and Kasereka - Mayombo). The majority of Provincial Deputies unilaterally chose their substitutes among members belonging to their own ethnic groups. In 2017, the Provincial Assembly of North Kivu had 30 per cent of Provincial Deputies who were not elected by the people.

21	Lukumbuka Kyambi Désiré	DCF-N	Beni	Nande	-
22	Mashagiro Nzeyi Jérôme	MLC	Masisi	Hutu	Banda Murera Bernard
23	Massali kapupa Liévin	Traditional Leader	Beni	Nande	-
24	Mate Syndikiminya Jéconie	DCF	Beni	Nande	-
25	Muhanya Bwinika Michel	PPRD	Goma	Shi	-
26	Muhayirwa Kazungu Simon	FR	Lubero	Nande	-
27	Muhindo Nzangi Butondo	MSR	Lubero	Nande	Kakule Saa Sita
28	Mukinti Baumbilia Jean	MSR	Beni	Nande	-
29	Mukosasenge Fataki Pascal	FR	Lubero	Nande	-
30	Mulemeri Pilipili Abdoul	PDC	Masisi	Hunde	-
31	Muteule Muromoro Mutuel	PPRD	Nyiragongo	Kumu	-
32	Nkuba Kahombo Sylvestre	PPRD	Masisi	Hunde	-
33	Nyagashende Munyazikwiye Bercky	RCD	Rutshuru	Hutu	-
34	Nzanzu Kasivita Carly	PPRD	Beni	Nande	Kasereka Giza Jean de Dieu
35	Nzchanzhu Kendakenda Valérien	Independant	Goma	Nande	Kambale Kavunga Jacta
36	Paluku Kahongya Julien	FR	Lubero	Nande	Paluku Kataka Emery
37	Sebishimbo Rubuga Jean-Bosco	PANADI	Masisi	Hutu	-
38	Sebujangwe Kirivita Bertin	RCD	Masisi	Hutu	-
39	Simisi Nzala Zabulon	MSR	Rutshuru	Nande	-
40	Serufuli Ngayabaseka Eugene	RCD	Rutshuru	Hutu	Mizerero Seribande Déogratias
41	Vahamwiti Mukesyarira Jean Chrysostome	MSR	Lubero	Nande	Maghuta Kamwenge Ildephonse
42	Wanzavalere Kasereka	PPRD	Beni	Nande	Kahindo Kivakwa Déogratias

Table 2: Motions of censure and motions of no confidence in the province of North Kivu (2007-2013)

Type of Vote	Members of the Provincial Assembly supporting the vote (political party and ethnic group)
The vote of no confidence against the Governor of the province of North Kivu of 28 November 2007. Reasons: Incompetence, Mismanagement and maintenance of a militia group.	(8) Kalinda Kahombo Gilbert (PPRD, Hunde), Nzanzu Kasivita Carly (PPRD, Nande), Kasereka Wanzavalere (PPRD, Nande), Katembo Kabuyaya Domi (DCF/COFEDEC, Nande), Vahamwiti Mukesayira Jean Chrysostome (MSR, Nande), Mukinti Baumbilia Kisolomi Jean (MSR, Nande), Muhindo Nzangi Butondo (MSR, Nande), and Nkuba Kahombo Sylvestre (PPRD, Hunde).
The vote of censure against the Provincial Executive of North Kivu of 9 October 2009. Reasons: Embezzlement and financial improprieties.	(18) Nkuba Kahombo Sylvestre (PPRD, Hunde), Katembo Kabuyaya Domi (DCF-COFEDEC, Nande), Muhindo Nzangi Butondo (MSR, Nande), Nzanzu Kasivita Carly (PPRD, Nande), Kalinda Kahombo Gilbert (PPRD, Hunde), Habinchuti Seninga Robert (RCD, Hutu), Sebujangwe Kirivita Bertin (RCD, Hutu), Serufuli Ngayabaseka Eugeune's supleant (RCD, Hutu), Massali Kapupa Liévin (Traditional leader, Nande), Nyagashende Munyazikwiye Bercky (RCD, Hutu), Kule Kahandi Jérémie (RCD, Nande), Nzchanzhu Kendakenda Valérien (Independent, Nande), Gachaba Maniraguha Francois's supleant (RCD, Hutu), Vahamwiti Mukesayira Jean Chrysostome's supleant (MSR, Nande), Kasereka Kalwahe Charles's suppleant (PPRD, Nande), Kakule Lukambo Maombi (MSR Nande), Wanzavalere Kasereka (PPRD, Nande) and Kunemutumba Mbakwa Samuel (PPRD, Nande).
The vote of no confidence against the Governor of the	(22) Muhindo Nzangi Butondo (MSR, Nande), Muhayirwa Kazungu Simon (Forces du renouveau, Nande), Nkuba Kahombo Sylvestre (PPRD, Hunde), Kasereka Kalwahe Charles's

province of North Kivu of 6 February 2012. Reasons: Embezzlement and manoeuvres aiming to obstruct the work of the parliamentary commission of inquiry	suppleant (PPRD, Nande), Kakule Lukambo Maombi (MSR Nande),, Gachaba Maniraguha Francois (RCD, Hutu), Massali kapupa Liévin (Traditional leader), Serufuli Ngayabaseka Eugeune's suppleant (RCD, Hutu), Kayisavera Mbake Wighong (Forces du Renouveau, Nande), Nzchanzchu Kendakenda Valérien (Independent, Nande), Jaribu Muliwavyo Jean Bosco (Forces du Renouveau, Nande), Hakizumwami Habimana Jules (RCD, Hutu), Nyagashende Munyazikwiye Bercky (RCD, Hutu), Kunemutumba Mbakwa Samuel (PPRD, Nande), Butsapu Ndungo Haggai (UPRDI, Nande), Lukumbuka Kyambi Désiré (Forces du Renouveau, Nande), Mukinti Baumbilia Kisolomi Jean (MSR, Nande), Kalinda Kahombo Gilbert (PPRD, Hunde), Bahati Kaembe Maphumo Noé (Traditional leader, Hunde), Bwira Shemusimiwa Manassé (MSR, Nyanga), and Vahamwiti Mukesyayira Jean Chrysostome's supleant (MSR, Nande).
The vote of no confidence against the Governor of the province of North Kivu of 3 May 2013.	(5) Mukosasenge Fataki Pascal (FR, Nande), Muhayirwa Kazungu Simon (FR, Nande), Lukumbuka Kyambi Desire (FR, Nande), Muhindo Nzangi Butondo's supleant (Nande, MSR) and Jaribu Muliwavyo Jean Bosco (FR, Nande).

Table 3: Members of the Provincial Executive of North Kivu (2007-2017)

N°	Names	Portfolio	Political Party	Territory	Ethnic group
<i>Members of the Provincial Executive of North Kivu as in 2007</i>					
01	Paluku Julien	Governor of the province	RCD-KML/FR	Lubero	Nande
02	Lutaichirwa Mulwahale Feller	Vice-Governor of the province	PPRD	Masisi	Hunde
03	Kahanya Kimuha Tasi Athanase	Director of the province	DCF-COFEDEC	Lubero	Nande
04	Kisangani Endanda	Director of the Office of Governor	RCD-KML/FR	Lubero	Nande
05	Kasereka Kalwaghe Charles	Provincial Minister of the Territorial Administration, Traditional Affairs and Security.	PPRD	Beni	Nande
06	Rumashana Bajoje Jacques	Provincial Minister of Agriculture, Rural Development, Environment, Tourism and Medium and Small Businesses.	PPRD	Rutshuru	Hutu
07	Mahali Kitsa Norbert	Provincial Minister of Public Works, Infrastructures, Land, Transport and Communication.	DCF-COFEDEC	Masisi	Hunde
08	Batabiya Bushoki Josiah	Provincial Minister of Finances, Economy and Trade.	MSR	Walikale	Nyanga
09	Kabanda Kayobotsi Pierre	Provincial Minister of Planning and Budget.	RCD/CNDP	Nyiragongo	Tutsi
10	Mbalutwirandi Kinywa Valerien	Provincial Minister of Health, Social	RCD-KML/FR	Lubero	Nande

		Affairs, Human Rights and Gender.			
11	Kalume Felicite	Provincial Minister of Education, Labour, Social Security, Information and Medias.	Civil society	Walikale	Kano
12	Kyatsinde Gilbert	Provincial Minister of Mines, Hydrocarbons and Energy.	RCD-KML/FR	Beni	Nande
13	Mwendo Claude	Provincial Minister of Youth, Reinsertion, Culture, Arts, Sports and Recreation.	Independent	Nyiragongo	Kumu
	Bapfakurera Aimable		PANADI	Masisi	Hutu

Members of the Provincial Executive of North Kivu as at the start of 2009

01	Paluku Julien	Governor of the province	RCD-KML/FR	Lubero	Nande
02	Lutaichirwa Mul wahale Feller	Vice-Governor of the province	PPRD	Masisi	Hunde
03	Kimuha Tasi Athanase	Director of the province	DCF-COFEDEC	Lubero	Nande
04	Kisangani Endanda	Director of the Office of Governor	RCD-KML/FR	Lubero	Nande
05	Muthethe Mundenga Kahindo	Provincial Minister of the Territorial Administration, Traditional Affairs and Security.	MSR	Lubero	Nande
06	Mahali Kitsa Norbert	Provincial Minister of Public works, Infrastructures, Transport and Communication.	DCF-COFEDEC	Masisi	Hunde
07	Juma Balikwisha	Provincial Minister of Planning, Budget, Information and Medias.	DCF-COFEDEC	Beni	Nande
08	Batabiha Bushoki	Provincial Minister of Agriculture, Rural Development, Medium and Small Businesses.	MSR	Walikale	Nyanga
09	Kasereka Kalwaghe Charles	Provincial Minister of Education, Labour, Social security and Provincial Public Service.	PPRD	Beni	Nande
	Bazizane Maheshe Adele		PPRD	Nyiragongo	Kumu
10	Tuyihimbaze Rucogozza Francois	Provincial Minister of Justice, Human rights and Community reinsertion.	RCD-CNDP	Masisi	Tutsi
11	Kabanda Kayobotsi Pierre	Provincial Minister of Finances, Economy, Trade and portfolios.	RCD	Nyiragongo	Tutsi
	Ruyange Njongo Jean		PPRD	Rutshuru	Hutu
12	Mbalutwirandi Kinywa Valerien	Provincial Minister of Health, Social affairs social, gender and Women, and Children's Affairs.	RCD-KML/FR	Lubero	Nande
13	Ndabereye Senzige Juvenal	Provincial Minister of Mining, Hydrocarbons and Energy.	PPRD	Rutshuru	Hutu
	Masika Ndamengi		PPRD	Beni	Nande
14	Rugenega Kambibi Chantal	Provincial Minister of Environment, Tourism, Youth, Culture, Arts, Sports and Recreation.	PANADI	Masisi	Hutu

Members of the Provincial Executive of North Kivu as at the end of 2009

01	Paluku Julien	Governor of the province	RCD-KML/FR	Lubero	Nande
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02	Lutaichirwa Mulwahale Feller	Vice-Governor of the province	PPRD	Masisi	Hunde
03	Kimuha Tasi Athanase	Director of the province	DCF-COFEDEC	Lubero	Nande
04	Kisangani Endanda	Director of the Office of Governor	RCD-KML/FR	Lubero	Nande
05	Mbalutwirandi Kinywa Valerien	Provincial Minister of the Territorial Administration, Public Order and Traditional Affairs.	RCD-KML/FR	Lubero	Nande
06	Juma Balikwisha	Provincial Minister of Planning, Budget, Reconstruction, Information and Medias.	DCF-COFEDEC	Beni	Nande
07	Bazizane Maheshe Adele	Provincial Minister of Education, Youth, Gender and Children's Affairs.	PPRD	Nyiragongo	Kumu
08	Batabiya Bushoki Josiah	Provincial Minister of Agriculture, Livestock, Fisheries and Rural Development.	MSR	Walikale	Nyanga
	Nzanzu Kasivita Carly		PPRD	Beni	Nande
09	Ruyange Njongo Jean	Provincial Minister of Finances, Economy, trade and Public enterprises.	PPRD	Rutshuru	Hutu
10	Muthethe Mundenga Kahindo	Provincial Minister of Health, Social Affairs, Labour and Provincial Public Service.	MSR	Lubero	Nande
11	Rugenera Kambibi	Provincial Minister of Environment, Tourism, Culture, Arts, Sports and Recreation.	PANADI	Masisi	Hutu
12	Tuyihimbaze Rucogozza	Provincial Minister of Justice, Human Rights and Community Reinsertion.	RCD-CNDP	Masisi	Tutsi
13	Masika Ndamengi	Provincial Minister of Mining, Hydrocarbons, Energy and Small and Medium businesses.	PPRD	Beni	Nande
	Kubuya Ndoole Naason		DCF-COFEDEC	Masisi	Hunde
14	Mahali Kitsa Norbert	Provincial Minister of Public works, Infrastructures, Land, Housing, Urban Development, Transport and Communication.	DCF-COFEDEC	Masisi	Hunde
	Musubao Bulenda Guillaume		N/A	Masisi	Hunde

Members of the Provincial Executive of North Kivu as in 2011

01	Paluku Julien	Governor of the province	RCD-KML/FR	Lubero	Nande
02	Lutaichirwa Mulwahale Feller	Vice-Governor of the province	PPRD	Masisi	Hunde
03	Kahanya Kimuha Tasi Athanase	Executive Secretary of the Provincial Executive	DCF-COFEDEC	Lubero	Nande
	Ndibeshe Byemero Christophe		RCD	Masisi	Hutu
04	Katokolyo Jean Marie	Director of the Office of Governor	RCD-KML/FR	Lubero	Nande
05	Mbalutwirandi Kinywa Valerien	Provincial Minister of the Territorial Administration, Public Order and Traditional Affairs.	RCD-KML/FR	Lubero	Nande
06	Juma Balikwisha	Provincial Minister of Planning,	DCF-	Beni	Nande

		Budget, Reconstruction, Information and Medias.	COFEDEC		
	Shematsi Baeni Marie		AFDC ²³²	Masisi	Hunde
07	Bazizane Maheshe Adele	Provincial Minister of Education, Youth, Gender and Children's Affairs.	PPRD	Nyiragongo	Kumu
08	Nzanzu Kasivita Carly	Provincial Minister of Agriculture, Livestock, fisheries and Rural Development.	PPRD	Beni	Nande
09	Ruyange Njongo Jean	Provincial Minister of Finances, Economy, Trade and Public Entreprises.	PPRD	Rutshuru	Hutu
	Kabanda Kayobotsi Pierre		RCD	Nyigongo	Tutsi
10	Muthethe Mundenga Kahindo	Provincial Minister of Health, Social affairs, Labour and Provincial public Service.	MSR	Lubero	Nande
11	Rugenera Kambibi Chantal	Provincial Minister of Environment, Tourism, Culture, Arts, Sports and Recreation.	PANADI	Masisi	Hutu
	Kitakya Anselm			Beni	Nande
12	Tuyihimbaze Rucogoza	Provincial Minister of Justice, Human rights and community reinsertion.	RCD-CNDP	Masisi	Tutsi
	Ndibeshe Byemero Christophe		RCD	Masisi	Hutu
13	Kubuya Ndoole Naason	Provincial Minister of Mining, Hydrocarbons, Energy and Small and Medium Businesses.	DCF-COFEDEC	Masisi	Hunde
	Ruyange Njongo Jean		PPRD	Rutshuru	Hutu
14	Musubao Bulenda Guillaume	Provincial Minister of Land, Housing, Urban development, Transport and Communication.	DCF-COFEDEC	Masisi	Hunde

Members of the Provincial Executive of North Kivu as in 2017 CAPE

01	Paluku Julien	Governor of the province	RCD-KML/FR	Lubero	Nande
02	Lutaichirwa Mulwahale Feller	Vice-Governor of the province	PPRD	Masisi	Hunde
03	Mudahemuka Jean Marie	Executive Secretary of the Provincial Executive	RCD	Rutshuru	Hutu
04	Katokolyo Jean Marie	Director of the Office of Governor	RCD-KML/FR	Lubero	Nande
05	Mbalutwirandu Kinywa Valerien	Provincial Minister of the Territorial Administration, Public Order and Traditional Affairs.	RCD-KML/FR	Lubero	Nande
06	Shematsi Baeni Marie	Provincial Minister of Planning, Budget, Reconstruction, Information and Medias.	AFDC	Masisi	Hunde
07	Bazizane Maheshe Adele	Provincial Minister of Education, Youth, Gender and Children's Affairs.	PPRD	Nyiragongo	Kumu
08	Ndibeshe Byemero Christophe	Provincial Minister of Agriculture, Livestock, fisheries and Rural Development.	RCD-Goma	Masisi	Hutu

²³²Alliance des Forces Démocratiques du Congo.

09	Kabanda Kayobotsi Pierre	Provincial Minister of Finances, Structural Reforms, Economy, Trade and Public Enterprises.	RCD-Goma	Nyiragongo	Tutsi
10	Muthethe Mundenga Kahindo	Provincial Minister of Health, Social Affairs, Labour and Provincial Public Service.	MSR	Lubero	Nande
	Kambumbu Kayenga Martial				
11	Kanyamanza Musabe Balthazar	Provincial Minister of Environment, Tourism, Culture, Arts, Sports and Recreation.	PPRD	Rutshuru	Hutu
12	Masumbuka Sifa Irene	Provincial Minister of Justice, Human Rights and Community Reinsertion.	MSR	Walikale	Nyanga
13	Kitakya Anselm	Provincial Minister of Mining, Hydrocarbons, Energy and Small and Medium Businesses.	N/A	Beni	Nande
14	Nzanzu Kasivita Carly	Provincial Minister of Land, Housing, Urban development, Transport and Communication.	PPRD	Beni	Nande

Table 4: Shares of ethnic groups and territories in the Provincial Executive of North Kivu (2007-2017)

The Provincial Executive of North Kivu as in 2009														
Ethnic groups	Governorship		Ministry		Overall		Territory		Governorship		Ministry		Overall	
Hunde	1	1	1	1	2	2	Beni		-	-	2	2	2	2
Hutu	-	-	1	2	1	2	Lubero		3	3	1	1	4	4
Kano	-	-	1	1	1	1	Masisi		1	1	1	2	2	3
Kumu	-	-	1	0	1	0	Nyiragongo		-	-	2	1	2	1
Mbuti	-	-	-	-	-	-	Rutshuru		-	-	1	1	1	1
Nande	3	3	3	3	6	6	Walikale		-	-	2	2	2	2
Nyanga	-	-	1	1	1	1								
Tembo	-	-	-	-	-	-								
Tutsi	-	-	1	1	1	1								
Total	4		9		13		6		4		9		13	
The Provincial Executive of North Kivu as at the start of 2009														
Ethnic groups	Governorship		Ministry		Overall		Territory		Governorship		Ministry		Overall	
Hunde	1	1	1	1	2	2	Beni		-	-	2	2	2	2
Hutu	-	-	2	2	2	2	Lubero		3	3	2	2	5	5
Kano	-	-	-	-	-	-	Masisi		1	1	3	3	4	4
Kumu	-	-	0	1	0	1	Nyiragongo		-	-	1	1	1	1
Mbuti	-	-	-	-	-	-	Rutshuru		-	-	1	1	1	1
Nande	3	3	4	4	7	7	Walikale		-	-	1	1	1	1
Nyanga	-	-	1	0	1	0								
Tembo	-	-	-	-	-	-								
Tutsi	-	-	2	1	2	1								

<i>Total</i>	<i>4</i>		<i>10</i>		<i>14</i>		<i>6</i>		<i>4</i>		<i>10</i>		<i>14</i>	
The Provincial Executive of North Kivu as at the end of 2009														
<i>Ethnic groups</i>	<i>Governorship</i>		<i>Ministry</i>		<i>Overall</i>		<i>Territory</i>		<i>Governorship</i>		<i>Ministry</i>		<i>Overall</i>	
Hunde	1	1	1	2	2	3	Beni	-	-	-	2	2	2	2
Hutu	-	-	2	2	2	2	Lubero	3	3	2	2	5	5	
Kano	-	-	-	-	-	-	Masisi	1	1	3	4	4	4	
Kumu	-	-	1	1	1	1	Nyiragongo	-	-	1	1	1	1	
Mbuti	-	-	-	-	-	-	Rutshuru	-	-	1	1	1	1	
Nande	3	3	4	4	7	7	Walikale	-	-	1	1	1	1	
Nyanga	-	-	1	0	1	0								
Tembo	-	-	-	-	-	-								
Tutsi	-	-	1	1	1	1								
<i>Total</i>	<i>4</i>		<i>10</i>		<i>14</i>		<i>6</i>		<i>4</i>		<i>10</i>		<i>14</i>	
The Provincial Executive of North Kivu as in 2011														
<i>Ethnic groups</i>	<i>Governorship</i>		<i>Ministry</i>		<i>Overall</i>		<i>Territory</i>		<i>Governorship</i>		<i>Ministry</i>		<i>Overall</i>	
Hunde	1	1	2	2	3	3	Beni	-	-	2	2	2	2	2
Hutu	-	-	2	2	2	2	Lubero	3	3	2	2	5	5	
Kano	-	-	-	-	-	-	Masisi	1	1	4	3	5	4	
Kumu	-	-	1	1	1	1	Nyiragongo	-	-	1	2	1	2	
Mbuti	-	-	-	-	-	-	Rutshuru	-	-	1	1	1	1	
Nande	3	3	4	4	4	4	Walikale	-	-	-	-	-	-	
Nyanga	-	-	-	-	-	-								
Tembo	-	-	-	-	-	-								
Tutsi	-	-	0	1	0	1								
<i>Total</i>	<i>4</i>		<i>10</i>		<i>14</i>		<i>6</i>		<i>4</i>		<i>10</i>		<i>14</i>	
The Provincial Executive of North Kivu as in 2017														
<i>Ethnic groups</i>	<i>Governorship</i>		<i>Ministry</i>		<i>Overall</i>		<i>Territory</i>		<i>Governorship</i>		<i>Ministry</i>		<i>Overall</i>	
Hunde	1	1	1	1	2	2	Beni	-	-	2	2	2	2	2
Hutu	1	1	2	2	3	3	Lubero	2	2	2	2	4	4	
Kano	-	-	-	-	-	-	Masisi	1	2	2	2	3	3	
Kumu	-	-	1	1	1	1	Nyiragongo	-	-	2	2	2	2	
Mbuti	-	-	-	-	-	-	Rutshuru	1	0	1	1	2	2	
Nande	2	2	4	4	6	6	Walikale	-	-	1	1	1	1	
Nyanga	-	-	1	1	1	1								
Tembo	-	-	-	-	-	-								
Tutsi	-	-	1	1	1	1								
<i>Total</i>	<i>4</i>		<i>10</i>		<i>14</i>		<i>6</i>		<i>4</i>		<i>10</i>		<i>14</i>	

Table 5: Proposed positions of the Government of North Kivu

PROVINCIAL PARLIMANENT	PROVINCIAL EXECUTIVE
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PROVINCIAL ASSEMBLY		COUNCIL OF TERRITORIES					
Elected seats	57	Seats of :	The Provincial Assembly	4	Governor of the Province	1	
Reserved seats	18		The Provincial Executive	4	Vice Governors of the Province	2	
			Territories	8	Executive Secretary of the Provincial Executive	1	
			Traditional Leaders	9 ²³³	Director of the Office of the Governor	1	
					Provincial Ministers	9 ²³⁴	
Total	75		Total	25	Total	14	
<i>Overall total of Members of the Provincial Government of North Kivu</i>						114	

Table 6: Proposed form of the bullet paper for the provincial elections in North Kivu

Democratic Republic of Congo North Kivu Provincial elections (year) Constituency:						
<i>Vote by putting a cross in the box next to your choice</i>						
N°	Party or Coalition	Provincial Assembly	Provincial Executive	Senate	Vote	
1	Names and Symbols	1).....	1).....(Governor) 2).....(First Vice Governor) 3).....(Second Vice Governor)	1..... 2..... 3..... 4.....	-	X
2	-	-	-	-	-	

Table 7: Proposed form of the bullet paper for the election of members of the Bureau of the Provincial Assembly of North Kivu

²³³ To prevent conflicts among Traditional Leaders belonging to different ethnic groups, one co-opted seat should be given to Traditional Leaders belonging to each ethnic group of the province of North Kivu. To allow Traditional Leaders belonging to the same ethnic group to be Members of the Provincial Parliament, the duration of the term of the co-opted Traditional Leaders should be 2.5 years renewable.

²³⁴ Inspired by the Art 147 (3) of the Constitution of the Federal Republic of Nigeria, I suggest that members of each territory and ethnic group of the province of North Kivu hold at least one of the nine positions of Provincial Minister.

Democratic Republic of Congo

North Kivu

Provincial Assembly

Election of Members of the Bureau (year)

Vote by putting a cross in the box next to your choice

N°	Party or Coalition	Speaker	Deputy Speaker	Rapporteur	Deputy Rapporteur	Questor	Vote
1	Names and Symbol	1).....	1).....	1).....	1).....	1).....	X
2	-	-	-	-	-	-	

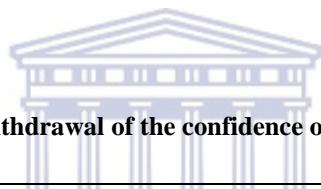


Table 8: Proposed measures for the withdrawal of the confidence of the Provincial Assembly

	Provincial Assembly	Provincial Executive	Introduction	Vote
01	Entire Bureau of the Provincial Assembly	Entire Provincial Executive	A third of the signatures of MPAs, which is 25.	The three-quarters of the votes of MPAs, which is 57.
02	-Speaker and Deputy Speaker of the Provincial Assembly	Governor and Vice Governors of the province	A quarter of the signatures of MPAs, which is 19.	Two-thirds of the votes of MPAs, which is 50.
03	Rapporteur, Deputy Rapporteur and Questor.	Executive Secretary of the PE, Director of the OG, and Provincial Ministers.	A tenth of the signatures of MPAs, which is 8.	A half of the votes of MPAs, which is 38.