

# The Formation of the State in the Democratic Republic of the Congo: Institutional and Constitutional History of a Quest for the Submission of the State to the Rule of Law

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## Abstract

The formation of the State in the Democratic Republic of the Congo cannot be reduced to the colonial sequence or to the legal arrangements that emerged from the Berlin Conference of 1885. Rather, it must be understood within a much longer historical trajectory in which precolonial political structures, diplomatic relations, colonial transformations, and post-independence constitutional developments progressively shaped the Congolese State. This article examines the institutional and constitutional history of the Congo from the ancient political formations of the Congo Basin to the contemporary constitutional order established by the Constitution of 18 February 2006. By adopting a historical and constitutional approach, the study highlights the existence of organized political authorities and international diplomatic relations long before the colonial period, particularly through the Kingdom of Kongo and its interactions with European powers and the Holy See. It then analyzes the profound transformations introduced by colonial rule, the creation of the Congo Free State, the Belgian colonial administration, and the constitutional struggles that followed independence in 1960. Particular attention is devoted to the authoritarian experience of the Zairean regime under Mobutu and to the constitutional reconstruction of the Democratic Republic of the Congo after 1997. The article argues that the Congolese constitutional trajectory reflects a continuous and unfinished quest to subject state power to the rule of law. While the Constitution of 2006 formally establishes the Democratic Republic of the Congo as a state governed by the rule of law, significant challenges remain in translating constitutional principles into effective institutional practice. The Congolese experience therefore illustrates the broader difficulties encountered by postcolonial states in consolidating democratic governance, institutional

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stability, and legal accountability within complex historical and geopolitical contexts.

### Keywords

Democratic Republic of the Congo, State Formation, Rule of Law, Constitutional History, Kingdom of Kongo, African Political Institutions

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## 1. Introduction

The study of the birth of the State in the Democratic Republic of the Congo and the evolution of its institutional and constitutional system necessarily requires moving beyond reductive interpretations that portray the Congolese State as merely a creation of colonialism or as a construction exclusively resulting from the Berlin Conference. Such an approach, being too narrow, would overlook the historical, political, and symbolic depth of the collective formations that preceded the emergence of the modern State on Congolese territory. Long before the incursion of European powers into the Congo Basin, this space was already structured by peoples, authorities, kingdoms, networks of alliances, forms of political organization, and mechanisms of social regulation which, although not identical to the modern State in the Western sense, nonetheless constituted historical matrices of governance, authority, and sovereignty. From this perspective, Congolese institutional history does not begin in 1885, nor in 1908, nor even in 1960; rather, it is embedded in a much longer duration, where the memory of peoples, territorial consciousness, political traditions, resistance to external domination, and the gradual affirmation of a collective destiny intersect. The Democratic Republic of the Congo thus appears as the heir to a complex trajectory composed of continuities, ruptures, destructions, and successive refoundations.

In order to avoid any analytical anachronism and to ensure the coherence of the historical-constitutional approach, it is necessary to clarify, from the outset, the fundamental concepts mobilized in this study. The “State” is understood, in a classical sense derived from legal and political theory, as an entity characterized by the combination of three constitutive elements: a defined territory, a permanent population, and an organized sovereign political authority. “Sovereignty” refers, in this framework, to the capacity of a political authority to exercise supreme power, independent of any superior authority, both internally (authority over population and territory) and externally (recognition in international relations). As for the “rule of law”, it refers to an institutional system in which the exercise of power is legally constrained, subordinated to higher norms, and subject to the control of independent courts, thereby ensuring the effective protection of fundamental rights.

From this perspective, the analysis of precolonial political formations, particularly the Kingdom of Kongo, does not rely on an anachronistic assimilation to the

modern State, but rather on the identification of functional criteria that allow it to be considered a proto-state formation. These criteria notably include the existence of a centralized and hierarchical authority, the exercise of identifiable territorial control, the capacity to engage in formal diplomatic relations with foreign powers, as well as the existence of mechanisms of political, legal, and social regulation. It is in light of these elements that the Kingdom of Kongo may be understood as a historical precursor of the Congolese State, without being equated with contemporary forms of the constitutional State.

The analysis of this trajectory therefore imposes a dual requirement. On the one hand, it is necessary to reconstruct the distant origins of the Congolese collective subject through the examination of peoples, spaces, traditional authorities, and kingdoms that, prior to the modern State, shaped a political consciousness rooted in the Congo Basin. On the other hand, it is important to follow the institutional and constitutional transformations that progressively transformed this ancient heritage into a modern State, then into an independent Republic, and ultimately led to the establishment of the contemporary constitutional framework. Between the Kingdom of Kongo, a political power recognized in the international relations of the early modern period, the Congo Free State, the Belgian Congo, the Republic of the Congo at independence, Zaire, and finally the restored Democratic Republic of the Congo, emerges a troubled history in which power, institutions, and fundamental texts have been continuously reshaped under the influence of internal conflicts, external influences, imperial ambitions, liberation struggles, and popular aspirations for sovereignty.

This reflection is of particular interest in constitutional law, as it makes it possible to understand that the current Congolese institutional system cannot be meaningfully grasped without reference to its historical depth. The constitutions that have succeeded one another in the Democratic Republic of the Congo are not merely circumstantial texts; each reflects a balance of power, a conception of the State, a vision of national unity, and a particular understanding of political legitimacy. They bear the marks of crises of sovereignty, tensions between centralization and autonomy, attempts to legally frame authority, as well as persistent difficulties in effectively subjecting the State to the law. In this sense, Congolese constitutional history appears as the mirror of an unfinished quest: that of building a stable, sovereign, democratic State genuinely founded upon the supremacy of law.

The present development therefore aims to highlight, from a historical, institutional, and constitutional perspective, the main stages of this process of state formation. It will first seek to demonstrate that the birth of the State in the Democratic Republic of the Congo cannot be dissociated from the existence of ancient political organizations, early diplomatic relations, and a collective consciousness forged through history. It will then examine how colonization, independence, postcolonial crises, authoritarian experiences, and political transitions have successively redefined the structure of the State and the architecture of its institutions. Finally, it will seek to identify, through the evolution of fundamental legal texts,

the deeper movement by which the Congo has transitioned from a space of plural powers to a modern state entity, and subsequently to a constitutional order in constant transformation. Understood in this way, the birth of the Congolese State cannot be reduced to a single event, but must instead be seen as a long, turbulent, and decisive historical process, at the end of which, despite trials, the enduring expression of a collective political will emerges: that of a people attached to its territory, its sovereignty, and the construction of its own institutional order.

This research is grounded in a historical-constitutional approach combining qualitative source analysis with a diachronic perspective on institutional transformations. It is based on a plural corpus structured around four categories of materials. First, archival sources (diplomatic correspondence, colonial archives, ecclesiastical documents) were selected according to criteria of reliability, contemporaneity, and contextual relevance, and were subjected to both internal and external critical analysis in order to assess their normative and descriptive value. Second, legal sources (constitutional texts, fundamental laws, normative acts, and international instruments) were analyzed through a doctrinal and systemic approach, based on the hierarchy of norms and the identification of mechanisms limiting power, in order to evaluate the dynamics of the juridification of the State. Third, historiographical works were mobilized within a comparative and critical framework, combining Africanist, legal, and politico-institutional approaches to limit interpretative bias and restore the plurality of readings of the Congolese state phenomenon. Fourth, religious sources were incorporated as objects of discursive analysis, shedding light on symbolic constructions, forms of legitimacy, and representations of power over the long term. The exploitation of these materials is based on a thematic and processual method, articulating historical sequences with normative developments, in order to highlight continuities, ruptures, and recompositions in the process of state formation, as well as the conditions for the emergence and the limits of the subjection of state power to law in the Democratic Republic of the Congo.

However, it is important to underline certain limitations inherent in this study. The developments relating to the precolonial and early modern periods are partly based on heterogeneous sources drawn from historiographical traditions, missionary accounts, European archives, and religious references, the interpretation of which remains sometimes debated. These materials, although valuable for reconstructing ancient political structures, present varying degrees of reliability and precision, particularly with regard to territorial delimitation, institutional organization, and power dynamics. Consequently, some of the analyses proposed should be understood as critical reconstructions based on the current state of knowledge, rather than definitive descriptions. This methodological reservation does not undermine the coherence of the argument but calls for a cautious reading of the earliest phases of the process of state formation.

In this perspective, the present article is structured around two main axes. The first part is devoted to the analysis of the distant origins of the State in the Demo-

cratic Republic of the Congo and the evolution of institutional structures prior to the modern State, highlighting precolonial political formations, diplomatic relations, and dynamics of power organization in the Congo Basin. The second part examines the constitutional and institutional transformations from the colonial period to the contemporary constitutional order, emphasizing ruptures, recompositions, and successive attempts to subject the exercise of power to the supremacy of law. The whole thus aims to identify, over the long term, the lines of continuity and tension that characterize the process of formation of the Congolese State and the unfinished quest for its subjection to the rule of law.

## **2. Remote Origins and Institutional Evolution**

### **2.1. The Emergence of the Congolese Collective Subject: People, Territory, and Power before the Modern State**

The Democratic Republic of the Congo draws part of its historical origins from the ancient region referred to as Lower Ethiopia, or Western Ethiopia, which was once bordered by the Atlantic Ocean, then described as the “Ocean of Ethiopia” (d’Anville, 1749). This historical entity, occasionally mentioned in religious traditions, should not be confused with present-day Ethiopia, formerly known as Abyssinia.

According to certain traditions, following the decline of the northern sacred kingdoms, segments of their populations migrated southward, carrying with them cultural and religious practices, including circumcision, often interpreted as a symbol of a divine covenant. This rite, which has been practiced for centuries in the Congo Basin, reflects a form of continuity between ancestral traditions and social identity (Lafargue, 1887; Goffin et al., 1951).

According to an ancient tradition, fleeing persecution and taking refuge at the ends of the earth, in dark and remote forests, these peoples, now at the heart of the Democratic Republic of the Congo, thus preserved their cultural and spiritual heritage despite hardship, maintaining a collective memory inseparable from their identity.

Millennia ago, certain peoples, confronted with existential threats, were compelled to leave their ancestral lands, at times concealing their identity and even renouncing elements of their inherited traditions in order to survive. This narrative forms part of the broader cultural memory of Bantu societies, or *Muntu*, understood as “man” in a spiritual and symbolic sense.

Within sacred traditions, some nations once perceived as external to the divine covenant are later reintegrated into a broader spiritual community. As expressed in the biblical tradition, “Egypt and Babylon are counted among those who know the Lord; Philistia, Tyre, and Ethiopia as well: all are said to have been born in Zion”. Through this passage, the idea of a universal spiritual belonging emerges, transcending geographical and historical boundaries.

In this same perspective, another promise appears, that of a final gathering of dispersed peoples. It is written that “the Lord shall stretch out His hand a second

time to redeem the remnant of His people... from Assyria, Egypt, Pathros, Ethiopia, Elam, Shinar, Hamath, and the islands of the sea”. This vision reflects a form of symbolic reintegration, emphasizing continuity between dispersion and collective restoration.

Furthermore, the prophetic imagery evokes a powerful and ancient people emerging from “beyond the rivers of Ethiopia”, a land marked by both richness and suffering, whose inhabitants have been scattered across history. Yet, despite displacement and fragmentation, the people retain a connection to its origins. It is written that they shall one day return, bringing offerings “to the place of the name of the Lord of Hosts, Mount Zion”.

Through these scriptural references, a broader symbolic framework emerges, in which dispersion, memory, and return are interconnected, reflecting enduring narratives of identity, resilience, and spiritual continuity<sup>1</sup>.

As early as the second century A. D., in his *Geography*, Ptolemy described Southern Ethiopia as a vast and structured space located below Libya, bounded to the north by the “Great Bay of the Outer Sea” and the promontory of Rhaptum, to the east by the “Bay of the Barbarians”, and to the west and south by territories that remained largely unknown at the time (Ptolemy, 2000, Book IV, Chapter 8). Within this cartographic representation, he identified various peoples, including the Anthropophagi, Ichthyophagi, and Rhapsi, as well as the Western Ethiopians (*Aethiopes Occidentales*), situated along the southern margins of the Ethiopian Ocean, near the so-called Mountains of the Moon.

These mountains, traditionally located around the twelfth southern parallel and often associated with the Rwenzori Mountains or the highlands of the African Great Lakes region, were considered by ancient geographers to be the source of the Nile. However, beyond this classical interpretation, they also correspond to a broader hydrological system that contributes to the formation of the Congo Basin, thus reinforcing their central role in the geographical structuring of Central Africa.

Thus is echoed the prophetic vision of a “land divided by rivers”, a description that finds a striking resonance in Central Africa, where the dense network of waterways profoundly structures the life and organization of societies. In referring to the Western Ethiopians, Ptolemy was not designating historical Abyssinia, but rather populations extending beyond the Nile toward the southern Atlantic, in a geographical space that broadly corresponds to the interior and equatorial regions of the Congo Basin (Ptolemy, 2000, Book IV, Chapter 8).

From this perspective, establishing a connection between ancient Ethiopia and the historical trajectory of the peoples of the Congo Basin does not constitute an anachronistic projection. Rather, it reflects a form of historical and intellectual continuity, through which Africa was perceived, described, and integrated into the *oikouménè*, that is, the inhabited world recognized by Greco-Roman geographical and proto-legal thought.

<sup>1</sup>The Bible, Psalm 87: 4; Isaiah 11: 11; Isaiah 18: 1-7.

It was during the fifteenth century, in the context of renewed contacts and explorations at the end of the Middle Ages, that this geopolitical reality became more clearly perceived by the outside world. Ethiopia came to be understood as comprising both an eastern and a western sphere. While the Abyssinian Empire consolidated its political and cultural influence in the eastern region, the western part saw the emergence of structured political entities such as the Kingdom of Kongo, Matamba, and Angola. These polities extended from the so-called Ocean of Ethiopia—now the Atlantic Ocean—to the southern highlands, and were organized around the Congo River, historically known as the Zaire River.

This river, fed by numerous tributaries and connected to vast lacustrine systems, constitutes one of the largest hydrological networks in Africa. Around it developed complex systems of alliances, trade routes, and cultural exchanges, forming a dynamic and interconnected political space (Thornton, 1998; Randles, 2002).

The Kingdom of Kongo, often regarded as one of the historical antecedents of the present-day Democratic Republic of the Congo, possessed a capital that, although not fortified, was densely populated and organized according to a distinctive spatial logic. To the north extended the Kingdom of Benin, while to the southeast the Rwenzori Mountains—historically associated with the “Mountains of the Moon”—marked a symbolic frontier with the regions identified in earlier geographical traditions as Upper Ethiopia.

This territory, situated along the Congo River (historically referred to as the Zaire River), was characterized by fertile lands and abundant livestock resources, which contributed significantly to its economic prosperity and social stability (Randles, 2002).

Diplomatic relations between the Kingdom of Kongo—often regarded as a precursor to the present-day Democratic Republic of the Congo—and external political and religious entities such as the Kingdom of Portugal, the Papal States, and later the Kingdom of the Netherlands, attest to the remarkable capacity of this polity to integrate into early international networks as early as the fifteenth century (Thornton, 1998; Cuvelier & Jadin, 1954).

These interactions began with the arrival of the Portuguese along the Atlantic coast of Central Africa. Initially welcomed by local authorities, these encounters facilitated exchanges not only of a commercial nature but also of religious and cultural significance. Over time, although Portugal exercised a dominant influence in these early contacts, the Kingdom of Kongo progressively expanded its diplomatic relations, particularly with the Holy See, thereby strengthening its position within emerging international frameworks and enriching its institutional and cultural heritage (Thornton, 1998; Randles, 2002).

### **2.1.1. Relations between the State of the Kingdom of Kongo and the Kingdom of Portugal**

Relations between Portugal and the Kingdom of Kongo, initiated at the end of the fifteenth century, constitute a significant example of early diplomacy shaped by

cultural, religious, and commercial exchanges. In 1483, the arrival of Portuguese explorers on the Congolese coast paved the way for a strategic alliance. The King of Kongo, Nzinga a Nkuwu, envisaged a partnership with Portugal, which was formalized through his conversion to Christianity under the name João I. This act symbolized not only religious transformation but also a form of mutual recognition between the two political entities (Goffin et al., 1951; Thornton, 1998).

Diplomatic relations between Portugal and Kongo were further consolidated through the exchange of ambassadors, the establishment of trade agreements, and the introduction of European cultural and religious institutions. Portuguese missionaries founded churches and schools, thereby facilitating processes of evangelization and literacy within the kingdom. Members of the Congolese elite were often educated according to European models, sometimes in Portugal itself. In return, the Kingdom of Kongo granted Portugal access to certain local resources, while Portugal, in principle, provided military support against external threats, reinforcing a politico-religious alliance with long-term implications (Cuvelier & Jadin, 1954; Thornton, 1998).

In 1568, during the early modern period, King Álvaro I of Kongo was temporarily driven from power by groups identified in the sources as the Jagas or Yaka. Seeking assistance, he appealed to Portugal, which intervened militarily under the command of Captain Francisco de Gouveia, ultimately restoring him to the throne after prolonged conflict. This narrative, reported by Filippo Pigafetta in the late sixteenth century, was long accepted in historiography. However, later interpretations have questioned its accuracy. Joseph Miller, for instance, suggested that the figure of the Jagas may have been constructed to justify Portuguese intervention in what was essentially an internal political crisis, while John Thornton has argued that these groups did indeed originate from the Kwango region, thereby maintaining the historical debate (Bontinck, 1980; Thornton, 1998; Amade, 2016).

During the seventeenth century, relations between the Kingdom of Kongo and Portugal became increasingly strained, particularly due to the expansion of the transatlantic slave trade and growing Portuguese ambitions in the region. Although the Kingdom of Kongo attempted to regulate or limit this exploitation, Portugal intensified its demands for captives, contributing to internal instability and the gradual weakening of central authority. Despite maintaining formal recognition of the kingdom's sovereignty, Portuguese political, military, and economic influence increasingly penetrated Congolese institutions. This evolving relationship, marked by both cooperation and interference, created a fragile equilibrium in which the assertion of Kongo's autonomy was constantly challenged by the pressures of an expanding external power (Goffin et al., 1951; Thornton, 1998).

One must also recall the figure of Dona Beatriz Kimpa Vita, a young visionary who, in a manner often compared—though cautiously—to that of Joan of Arc, sought to restore a strong and unified monarchy in the Kingdom of Kongo while promoting an African reinterpretation of the Catholic religion introduced by the

Portuguese in the fifteenth century.

Although relations between Kongo and Portugal had initially been cooperative, they gradually deteriorated due to conflicting political and economic interests, particularly regarding the control of the slave trade, which King Afonso I attempted to regulate. Within this context, Beatriz developed a syncretic religious discourse, blending Christian theology with pre-existing spiritual traditions.

Claiming to be inspired by visions of Saint Anthony, she advanced the idea that Christ was Black and advocated for an indigenized and reformed clergy, including the recognition of African religious authority. This movement, known as Antonianism, emerged between 1684 and 1706 and can be interpreted as both a religious revival and a form of political resistance (Sághy, 2000).

Considered heretical by both colonial and ecclesiastical authorities, Beatriz Kimpa Vita was ultimately condemned and executed at the age of twenty-two, illustrating the tensions between local religious reinterpretation and imposed orthodoxy.

### **2.1.2. Relations between the State of the Kingdom of Kongo and the Papal States, the Holy See**

Diplomatic relations between the Papal States and the Kingdom of Kongo, beginning in the sixteenth century, illustrate the strategic importance of this public entity within the political and religious context of the time. In 1506, the conversion of Afonso I, King of Kongo, to Christianity encouraged these ties; he sent emissaries to Rome to obtain papal support and to promote the Christian faith while preserving the cultural identity of his kingdom. The Jesuit missionaries sent by the Vatican in 1548 played a key role in the evangelization and education of the Congolese, establishing schools and strengthening royal authority. However, European interests in economic exploitation, particularly those of the Portuguese, at times created tensions with the kingdom's political aspirations. Despite this, these relations remained significant, reinforcing the image of Kongo as a key actor in intercultural dialogue and in the spread of Christianity in Africa, leaving a lasting legacy in the region.

#### **1) The Bishopric of the State of the Kingdom of Kongo in 1596**

By the papal bull of 20 May 1596, issued under the pontificate of Pope Clement VIII, the bishopric of Congo and Angola was established following the request of the King of Kongo, known under his Christian name Dom Álvaro, with the decisive support of the Kingdom of Portugal. Prior to this, the region had been placed under the jurisdiction of the Diocese of São Tomé, itself created by a papal bull dated 3 November 1534.

The act establishing the new bishopric explicitly provided that its jurisdiction would extend over the kingdoms of Kongo and Angola, territories whose geographical and political contours were sufficiently recognized by the Holy See at the time. This ecclesiastical reorganization responded to both spiritual and administrative necessities, particularly in light of the vastness of the region, the limited number of clergy, and the need to strengthen Christian structures in a rapidly

evolving geopolitical context (Portugal, 1883).

In this respect, the creation of the bishopric can be interpreted not only as a religious decision but also as part of a broader process of institutional consolidation, linking missionary expansion with political recognition and territorial organization.

### **2) The 1596 Bull Concerning the Bishopric of the State of the Kingdom of Kongo**

The pontifical bull of 20 May 1596, of major importance for the kingdoms of Kongo and Angola, explicitly highlights the necessity of ecclesiastical reorganization in the region. It states that no cathedral had yet been established within this vast territory, despite its considerable size and population, and emphasizes the pastoral difficulties resulting from its attachment to the distant Diocese of São Tomé. The text underlines that the kingdom, composed of numerous settlements and marked by significant administrative and spiritual needs, could no longer be adequately governed by a single bishop (Portugal, 1883).

This document reflects not only the urgency of ecclesiastical intervention but also an implicit recognition of the political organization and social structures of the kingdoms concerned, situating them within the broader framework of Christian institutional expansion.

The bull further specifies that the city of São Salvador (Mbanza Kongo), already endowed with a parish church, possessed the necessary attributes to be elevated to the status of a cathedral seat. It therefore formally detached the kingdoms of Kongo and Angola from the Diocese of São Tomé, along with their associated territories, institutions, clergy, and ecclesiastical structures, thereby establishing a new and autonomous ecclesiastical jurisdiction adapted to local realities (Portugal, 1883).

### **3) The Journey of Antoine Emmanuel Nsaku Ne Vunda, Ambassador of the State of the Kingdom of Kongo under King Álvaro II (1587-1614), Sent in 1605 on an Itinerant Mission to the Holy See and Eliminated by Supporters of the Slave Trade**

António Manuel Ne Vunda, a priest in his early thirties appointed under the reign of King Álvaro II of Kongo, was entrusted with an unprecedented diplomatic and religious mission: to appeal to the Holy See for intervention with European monarchs in favor of the abolition of slavery. Acting on behalf of the Kongoese sovereign, he undertook a long and arduous journey from Central Africa to Europe.

After several months of travel, marked by significant hardships, including a reported pirate attack, he eventually reached Lisbon and later Madrid. It was only after approximately three years of travel that he arrived in Rome in 1608, during the pontificate of Pope Paul V, successor to Pope Clement VIII.

However, the physical toll of the journey had severely weakened him. Upon his arrival in Rome, he was received by the Pope, who ensured that he was provided with care. Despite these efforts, his condition reflected the extreme difficulties as-

sociated with such a mission, illustrating both the determination of the Kingdom of Kongo to engage diplomatically with European powers and the human cost of these transcontinental exchanges (Simar, 1922).

On January 6, 1608, two days after his arrival in Rome, António Manuel Ne Vunda passed away in the presence of Pope Paul V. The exact circumstances of his death remain uncertain and are not the subject of historiographical consensus. While some interpretations have associated his death with the broader economic and political tensions linked to the slave trade, no conclusive evidence supports the hypothesis of a deliberate act. It is therefore necessary to approach this issue with caution, distinguishing clearly between established facts and interpretative hypotheses (Simar, 1922).

In recognition of his mission as an emissary of the Kingdom of Kongo, the Pope ordered the creation of a commemorative bust in black marble, executed by the sculptor Stefano Maderno, in collaboration with Francesco Caporale. This work, which bears witness to the presence of an African diplomatic figure within the Vatican, is today preserved in the Basilica of Saint Mary Major, symbolizing both the spiritual and political significance of his mission.

More broadly, the continued relevance of this site within the Catholic world is illustrated by the fact that Pope Francis expressed the wish, in his testament, to be buried in this same basilica, highlighting its enduring symbolic importance.

Beyond the commemorative sculpture, this tribute reflects a broader recognition by the Catholic Church of the sacrifice of António Manuel Ne Vunda, who undertook a perilous mission to defend principles that may be interpreted, in a broader sense, as relating to justice and human dignity. His presence in Rome is further attested by artistic and institutional representations. A portrait of Ne Vunda is displayed in the Sala dei Corazzieri of the Quirinal Palace, alongside that of Hasekura Tsunenaga, painted in 1615. Additionally, a fresco attributed to Giovanni Battista Ricci, produced around 1610 and preserved in the Paolina Chapel, depicts the Pope attending to Ne Vunda during his final moments.

The Vatican archives also preserve official documents relating to this diplomatic mission. Among them is the text of the instructions given by King Álvaro II to his ambassador at the time of his departure from São Salvador on 17 August 1604 (Arm. XV, no. 101, fols. 47-50), which provides valuable insight into the political objectives of the Kingdom of Kongo (Simar, 1922).

Furthermore, a diplomatic letter dated 1617, attributed to a Kongolesé envoy to the Holy See, refers to a proposed strategic alliance between Rome and Abyssinia, envisaging the establishment of a route linking these regions through Kongo. This project aimed to facilitate rapid military coordination in the event of an Ottoman expansion, reflecting broader geopolitical concerns within early modern Christendom. Contemporary geographical representations even suggested the possible existence of fluvial connections between Central Africa and Abyssinia, reinforcing the idea of a transcontinental Christian alliance (N'Sondé, 2018; Simar, 1922).

These elements illustrate the extent to which the Kingdom of Kongo was inte-

grated into complex diplomatic, religious, and geopolitical networks, extending beyond the African continent and engaging directly with global dynamics of the time.

### **2.1.3. Relations between the State of the Kingdom of Kongo and the Kingdom of the Netherlands**

During the seventeenth century, in the early modern period, diplomatic relations between the Kingdom of Kongo and the Dutch Republic (United Provinces) intensified, largely in response to growing tensions with Portugal, which sought to expand its influence over the region. In 1645, King Garcia II of Kongo dispatched an embassy to the United Provinces with the aim of establishing commercial ties and diversifying external partnerships in the face of Portuguese pressure (Thornton, 1998; Randles, 2002).

These interactions were formalized through agreements concluded in the mid-seventeenth century, reflecting Kongo's strategic effort to engage with alternative European powers. However, the conflict between Kongo and Portugal, particularly following the escalation of hostilities in 1665, significantly complicated these relations. While the Dutch initially provided support to Kongo, their shifting colonial priorities and evolving geopolitical interests contributed to a gradual decline in sustained cooperation (Thornton, 1998).

This episode illustrates the Kingdom of Kongo's capacity to participate actively in early international trade and diplomatic networks, while simultaneously seeking to preserve its political autonomy in the face of expanding European influence.

#### **1) Military Alliance between the State of the Kingdom of Kongo and the State of the Kingdom of the Netherlands**

Garcia II of Kongo succeeded his brother Álvaro VI of Kongo (1631-1636) and assumed the throne in a context marked by increasing regional and international tensions. His reign was notably characterized by a strategic alliance with the Dutch Republic (United Provinces), particularly during the period in which Dutch forces occupied Luanda.

This alliance, concluded with the Dutch West India Company, enabled the Kingdom of Kongo to counterbalance Portuguese expansion. A joint military operation in 1641 led to the temporary expulsion of Portuguese forces from Luanda, forcing them to retreat toward Massangano (Thornton, 1998).

Despite this cooperation, tensions persisted, and in 1649 Garcia II entered into a peace agreement with Portugal, which included the renunciation of claims over Luanda Island and limitations on direct relations with the Dutch. Although relatively short-lived, this alliance has often been interpreted as a significant moment of political assertion, reflecting Kongo's efforts to preserve its autonomy in the face of competing colonial powers (Thornton, 1998).

At the same time, the request made by Garcia II for the dispatch of Capuchin missionaries highlights the importance attributed to religious structures as a source of political legitimacy and social cohesion within the kingdom, particularly in a context of external pressure and internal reorganization.

## 2) Dom Miguel de Castro, Ambassador of the State of the Kingdom of Kongo to the Netherlands in the 1640s

Dom Miguel de Castro was a prominent diplomatic envoy of the Kingdom of Kongo to the Dutch Republic during the 1640s, a period marked by complex geopolitical rivalries in Central Africa. Acting under the authority of Garcia II of Kongo, he was sent to the court of the United Provinces with the objective of strengthening political and commercial relations between Kongo and the Dutch Republic.

This diplomatic mission took place within a broader strategic context in which the Kingdom of Kongo sought to counterbalance Portuguese expansion in Angola, perceived as a major threat to its sovereignty. During his stay, Dom Miguel de Castro participated in diplomatic exchanges that included the presentation of gifts and artistic objects, thereby contributing to the development of early inter-continental relations between Central Africa and Europe.

Dutch archival collections preserve several portraits of Dom Miguel de Castro and his entourage, produced by seventeenth-century Dutch artists. These works are today considered rare visual testimonies of African diplomatic elites in early modern Europe and illustrate both the ceremonial dimension of his mission and the recognition accorded to representatives of the Kingdom of Kongo (LaGamma, 2015).

Through this embassy, Dom Miguel de Castro can be seen as embodying the diplomatic agency of the Kingdom of Kongo, reflecting its capacity to engage with international actors and to assert its political autonomy in the face of competing colonial influences.

### 2.1.4. Weakening and Depopulation

At the end of the sixteenth century, the Portuguese Duarte Lopes reported to Pope Sixtus V that the Kingdom of Kongo counted more than two million baptized Christians, reflecting the extent of Christianization and demographic vitality at that time (Cuvelier & Jadin, 1954).

Throughout the seventeenth century, various testimonies suggest that demographic changes in the region cannot be attributed solely to the slave trade. In 1645, Bonaventura d'Alessano described Kongo as a densely populated territory, while by 1648 Jean-François de Rome emphasized significant depopulation caused by recurrent civil wars, which contributed to the fragmentation of the kingdom and the emergence of new political entities, sometimes originating from former vassal structures (Jadin, 1963; Randles, 2002).

Between 1655 and 1656, a major epidemic—likely smallpox—reportedly reduced the population by more than half, a crisis compounded by the continued effects of the slave trade. A further epidemic struck the region in 1659. Despite these setbacks, estimates by Giuseppe Maria da Busseto in 1675 suggest a population of approximately 2.5 million inhabitants, while Cherubino da Savona, writing around 1775, proposed a figure of up to five million inhabitants based on data relating to multiple provinces. These figures, however, remain subject to histori-

ographical caution due to the methodological limitations of early demographic estimates (Jadin, 1963; Randles, 2002).

The nineteenth century appears to mark a turning point, characterized by a sustained demographic decline. In 1864, a resurgence of smallpox—reportedly introduced through maritime contact at Ambrizette—spread rapidly, causing widespread mortality. The epidemic reappeared in 1873, severely affecting São Salvador and further reducing its population. Earlier accounts, such as that of Degrandpré (1786-1787), had already highlighted the ongoing depopulating effects of the slave trade, despite social practices such as polygamy and relatively high birth rates (Degrandpré, 1801).

Although the gradual abolition of the slave trade around the mid-nineteenth century and the subsequent processes of colonial pacification contributed to ending these practices, their long-term demographic consequences persisted. Later estimates suggest that the population of the former Kingdom of Kongo declined significantly, in some regions to between 300,000 and 400,000 inhabitants, illustrating the profound demographic transformations experienced over several centuries (Morgado, 1959; Tucker, 1969).

### **2.1.5. The Borders of the State of the Kingdom of Kongo According to a Portuguese Description**

It is appropriate, as a preliminary matter, to clarify the basis and scope of the elements used in reconstructing the borders of the Kingdom of Kongo. The territorial descriptions mobilized in this analysis rely primarily on European sources—particularly diplomatic, cartographic, and ecclesiastical materials—whose interpretation requires a careful distinction between different dimensions of political space.

On the one hand, ecclesiastical jurisdiction, as reflected in papal bulls and diocesan organization, corresponds to a spiritual and administrative framework that cannot be directly equated with effective political control. On the other hand, diplomatic recognition, evidenced through royal correspondence, sovereign titles, and relations with European powers, reflects an external acknowledgment of the Kingdom of Kongo as a political entity, without necessarily implying uniform or continuous authority over all claimed territories. Finally, effective territorial control—understood as the capacity to exercise administrative, military, and fiscal authority—varied according to regions, historical periods, and internal political dynamics.

From this perspective, the boundaries of the Kingdom of Kongo should not be interpreted as fixed borders in the modern sense, but rather as expressions of a sphere of influence and graduated authority characteristic of precolonial state formations. Such an approach helps to avoid anachronistic interpretations and allows for a more rigorous reconstruction of the historical territorial reality of the kingdom.

Within this framework, the titles adopted by Afonso I of Kongo (1506-1543) illustrate the expansive conception of sovereignty held by the Mani-Kongo. In his

correspondence with the King of Portugal, Afonso I employed a formula asserting authority over multiple territories, including Kongo, Loango, Kakongo, Ngoyo, and regions beyond the Congo River. This titulature reflects not only a claim to territorial sovereignty but also a symbolic assertion of political preeminence and imperial ambition within the region (Manso, 1877).

Thus, these titles should be understood not merely as ceremonial expressions, but as instruments of political representation, contributing to the construction of the Kingdom of Kongo's authority in both regional and international contexts.

According to information held by the Portuguese and other sources extracted from various official documents and papal bulls, the borders of this kingdom were as follows:

- **Southern border:** It begins in the Bay of Vacche, at 13 degrees south latitude, and follows the coast to four and a half degrees south near the equator, covering approximately 630 miles northward.
- **Northern border:** Marked by Cape Caterina, situated one and a half degrees from the equator, about 150 Italian miles south thereof. This frontier then runs eastward, reaching the confluence of the Vumba River with the Zaire over a distance of more than 600 miles.
- **Eastern border:** The eastern frontier stretches from the confluence of the Vumba and the Zaire to Lake Achelunda and the region of Malemba, over a distance of 600 miles, then continues toward the Nile through inhabited lands for approximately 150 miles. The Malemba region corresponds to a locality within the former Katanga province.
- **Western border:** On the western side, the frontier is described as beginning at the Silver Mountains and extending southward toward the Gulf of Vacche, marking a zone of separation from the Kingdom of Angola over an estimated distance of 400 miles. Further north, this boundary is said to include Cape Negro and a line passing through the Crystal Mountains and Lake Dumbea Zocche, before reconnecting with the Silver Mountains near Malomba, where the Coari River is identified as a natural dividing line between territories.
- These geographical descriptions, derived from Portuguese colonial memoranda, reflect a cartographic and administrative interpretation of space that must be approached with caution, as they do not necessarily correspond to uniform or effective political control on the ground (Portugal, Ministry of the Navy and Colonies, 1883).

The Kingdom of Kongo extended over a vast territory, from the Atlantic Ocean—particularly the Gulf of Vaches—in the west to the eastern regions of Central Africa, beyond the Kwango and Kasai areas, including the region of Matamba and the so-called Mountains of the Moon, commonly associated with the Rwenzori Mountains, and extending toward the Lualaba basin and, in some representations, toward the Nile.

From Cape Saint Catherine in the north to the frontiers of present-day Angola in the south, passing through the Silver and Crystal Mountains, these descriptions

reflect the representation of a structured political entity endowed with both administrative and ecclesiastical organization. However, these boundaries should be understood as indicative of a sphere of influence rather than fixed borders in the modern sense, as they are largely derived from Portuguese administrative and cartographic sources, which combined diplomatic recognition with interpretative territorial projections (Portugal, Ministry of the Navy and Colonies, 1883). Such representations nonetheless attest to the recognition of the Kingdom of Kongo within early international and ecclesiastical frameworks, particularly in its relations with Portugal and the Holy See.

According to studies contextualizing this description, the borders of the Kingdom of Kongo appear as follows:

- **Southern border:** The “Bay of Vacche” corresponds to present-day Lobito Bay on the coast of Angola, around 13° south latitude. From there, the frontier followed the Atlantic littoral northward to the vicinity of the mouth of the Congo River, slightly south of the equator (around 4°30' south latitude). This represented an extension of approximately 1000 km of coastline (nearly 630 miles), covering today the northern Angolan seaboard up to Cabinda and Lower Congo (present-day Kongo Central province in the DRC).
- **Northern border:** “Cape Caterina”, located approximately 1°30' south of the equator, corresponds to the area of present-day northern Cabinda (Angola), near the frontier with Congo-Brazzaville and Gabon. From there, the frontier followed a line eastward to the confluence of the Vumba River with the Zaire (Congo). The Vumba is assimilated to a tributary of the Congo River in the Bandundu region (DRC). This northern portion covered more than 900 km eastward, encompassing territories of present-day Republic of the Congo and southwestern DRC.
- **Eastern border:** From the confluence of the Vumba and the Congo River, the frontier extended inland to Lake Achelunda, identified with a lacustrine area of former Katanga (probably in present-day Haut-Lomami or Tanganyika). The “Malemba region” evokes Malemba-Nkulu, a locality still existing in North Katanga (DRC). The eastern frontier extended toward territories near the Nile, suggesting a symbolic penetration into present day western Uganda or South Sudan through densely populated and strategic areas.
- **Western border:** On the Atlantic side, the “Silver Mountains” probably refer to the Mayombe Mountains, a chain running through present-day Cabinda (Angola), Congo Brazzaville, and southern Gabon. From there, the frontier descended southward to the “Bay of Vacche” (Lobito), marking separation from the kingdom of present-day central Angola. Further north, the mention of Cape Negro corresponds to Cap Nègre (Pointe-Noire, Republic of the Congo). The frontier line then passed through the Crystal Mountains (a massif covering northern Gabon and southern Cameroon) and reached “Lake Dumbea Zocche”, probably a marshy area of Bas-Ogooué (Gabon), before returning to the Silver Mountains near Malomba.

## 2.2. Institutional Evolution: Toward the Birth of the First Modern State in the Congo Basin

### 2.2.1. Before the Berlin Conference

The birth of African states according to Western philosophy, though profoundly marked by global political upheavals, also finds its roots in the sociological realities specific to the peoples concerned. In the Congo Basin, the idea of the modern state is often perceived as a product of foreign interference. However, the common history of the peoples living there, deeply marked by the raids of deportation, the scourges of slavery, and colonial violence, generated a national union forged in resistance to oppression. Since the independence of the Democratic Republic of the Congo, this unity has imposed itself as an essential condition for the defense of sovereignty and territorial integrity, despite internal threats and external ambitions. The link between shared suffering—deportation, slavery, and colonization—and the need for a strong state testifies to the resilience of the Congolese in their quest for self-determination, placing the struggle for freedom and national unity at the heart of their political project.

The gradual weakening of the State of the Kingdom of Kongo and its vassals under the assaults of Western powers, notably through wars for the capture of slaves, facilitated the implantation of brutal colonization. Under the pretext of ending the slave trade and guaranteeing freedom of commerce, European states exploited African resources and populations. This dynamic reached its peak at the Brussels Conference of 1876, convened by Leopold II, King of the Belgians, under the guise of a civilizing mission. In reality, this conference aimed at establishing control over the wealth of the Congo through the creation of the International African Association, supposedly dedicated to scientific exploration but in fact an instrument serving Leopold II's colonial ambitions. Behind this philanthropic façade, the conquest of the Congo shaped the future of the region, leaving a lasting legacy of domination and exploitation.

### 2.2.2. The Congo Free State

The declaration adopted by the United States Senate on April 22, 1884, reiterated the formula proposed by Leopold II in his initial correspondence addressed to U.S. President Chester A. Arthur on October 25, 1883, and formally recognized “the flag of the International African Association as that of a friendly government” (Brunschwig, 1968). Shortly thereafter, on November 8, 1884, the German Empire extended its recognition to the sovereignty of the International Association of the Congo, thereby preparing the juridical and political transformation of this entity into a state under the authority of Leopold II (Stengers, 1969).

Under the leadership of Otto von Bismarck, this emerging international legitimacy was further consolidated when, in February 1885, France granted Leopold II a territorial extension exceeding that previously acknowledged by Germany, thus reinforcing the geopolitical foundations of his enterprise (Stengers, 2005). Colonial ambition materialized definitively on August 1, 1885, with the creation of the Congo Free State, a political entity that aggregated various pre-existing

kingdoms around the Congo River basin.

Although presented as a project of modernization and civilizational advancement, this state rapidly revealed itself as an instrument of systematic economic exploitation, subordinated to the extractive imperatives and colonial ambitions of its founder (Brunschiwig, 1968; Stengers, 2005).

### **1) Outline of Constitutional History**

The constitutional history of the Democratic Republic of the Congo takes decisive shape with the General Act of the Berlin Conference, signed on 26 February 1885, which laid the legal foundations of the Congo Free State. By virtue of Article 62 of the Belgian Constitution of 1831, the Belgian legislative chambers authorized King Leopold II to assume the headship of this new State. Relying on this legal basis, he promulgated several constitutional decrees intended to organize the administration of the territory (Goffin et al., 1951).

However, Leopold II's rule over the Congo rapidly proved devastating for local populations. Under the guise of a civilizing mission, the regime was marked by systemic abuses, including forced labor, violence, and practices akin to enslavement, widely denounced at the time, notably by Protestant missionaries (Alexis, 1890).

Faced with mounting international pressure, Leopold II was compelled to transfer sovereignty over the Congo Free State to Belgium in 1908, thereby bringing an end to his personal rule. This transfer was formalized by the law of 19 October 1908, after which the Congo became a Belgian colony governed under the Colonial Charter of 18 October 1908. Although not a constitution in the strict sense, this charter nonetheless provided the legal framework for the administration of the Belgian Congo (Buelens, 2012).

Within this legal and institutional framework, the Congo emerged as one of the earliest structured political entities in Central Africa under modern administrative forms, alongside the rare sovereign African states such as Abyssinia, Morocco, and Liberia (Goffin et al., 1951).

### **2) Resistance and Self-Determination**

It should be emphasized that the Congolese people never resigned themselves to foreign domination, but rather demonstrated persistent and often organized resistance against external authorities imposed upon their territory. Throughout the colonial period, numerous insurrections were led by figures emerging from within the population itself—individuals capable of mobilizing collective action in the name of freedom and political autonomy. In 1897, Kandolo, a former demobilized sergeant of the Force Publique, embodied this spirit of resistance by initiating a military revolt of significant political scope. Unlike other mutinies of the period, his uprising was explicitly directed toward the expulsion of European authorities and the liberation of the Congo Free State from colonial rule. The insurgents sought to occupy, in particular, the former Arab zone, which covered nearly half of the territory of the state, thereby attempting to reassert indigenous sovereignty over a substantial portion of the national space (UNESCO, 1987).

### 2.2.3. Belgian Congo

The Belgian Congo, constituted as a colony by the law of 18 October 1908, marks a new phase in the history of this vast region of Central Africa. Governed directly by the Belgian state, the territory was administered through a centralized hierarchy headed by a Governor-General appointed by the King of the Belgians, supported by a bureaucratic apparatus composed of Belgian officials. The colony was divided into provinces, themselves subdivided into districts under local administrators. The legal framework governing this administration, notably the *Colonial Charter*, did not amount to a constitution in the formal sense, but rather constituted a corpus of normative provisions organizing and regulating the exploitation and governance of the territory. This institutional structure enabled Belgium to exercise direct control over Congolese resources and labor while consolidating its military and economic influence in the region (Brassinne de La Buissière & Dumont, 2010).

Following the transformation of the Congo into a Belgian colony in 1908, significant territorial adjustments were undertaken. As early as 1910, Belgium renegotiated the eastern borders of the Congo with the German Empire in a strategic effort to redefine regional influence. This renegotiation led to the cession of certain Congolese territories, allowing German East Africa—encompassing what would later become Rwanda-Urundi and Tanzania—to gain access to Lake Kivu. Consequently, areas such as Gisenyi and parts of Rubavu, previously under Congolese sovereignty, were transferred to German control, thus reshaping the geopolitical configuration of the region (Jentgen, 1957).

On the military level, the *Force Publique* of the Belgian Congo constituted a central institution in the colonial apparatus, playing a decisive role in maintaining order as well as in the conquest and defense of the territory. Established in 1885, this colonial army distinguished itself particularly during both World Wars. During the First World War, Belgian Congolese forces, under the command of General Tombeur, achieved a strategic victory in 1916 against German troops in German East Africa, resulting in the occupation of Ruanda-Urundi, now Rwanda and Burundi (Balériaux, 1986).

The colony also played a pivotal role during the Second World War, mobilizing troops to support Allied operations in various theaters, including Ethiopia, North Africa, and Asia. Beyond its military contribution, the Belgian Congo significantly supported the Allied war effort through the exploitation of its natural resources. Notably, uranium extracted from the Shinkolobwe mine in Katanga proved essential to the Manhattan Project, as it was used in the atomic bombs dropped on Hiroshima and Nagasaki, thereby contributing decisively to the end of the global conflict (Anderson & Hewlett, 1990).

### 2.2.4. The Democratic Republic of the Congo

#### 1) Precursors of Independence

- The Manifesto of African Conscience Published in 1955

The Manifesto of African Conscience, published in 1955 in the Belgian Congo, marks a decisive turning point in the struggle for independence, emerging in a context of growing tensions and political awakening. This emblematic text, signed by influential figures of Congolese nationalism such as Abbé Malula, a young clergyman and intellectual, André Petipeti, president of the Kwango Kwilu Federation (1954-1956), Edmond Nzeza Nlandu, and Joseph Kasa-Vubu, president of the Alliance des Bakongo, forcefully denounced the injustices suffered by the Congolese under Belgian colonial rule and called for the unity and emancipation of African peoples. Carried by vibrant eloquence, the manifesto fundamentally helped shape the nationalist ideas that would animate the movement for self-determination, giving new momentum to the quest for independence. By crystallizing the aspirations and hopes of a people in search of dignity and freedom, it precipitated the collective mobilization that would culminate in 1960 with the proclamation of Congo's independence.

- **The Accra Conference of 1957**

The Accra Conference of 1957 marked a significant moment in the Pan-African movement and the struggle for the independence of African countries. Congolese leaders, among them Patrice Émery Lumumba, actively participated in this gathering, which brought together intellectuals, politicians, and activists from across Africa to discuss the challenges of decolonization and African unity. Lumumba, then a rising figure in Congolese nationalism, used this platform to advocate for the rights of the Congolese and for the necessity of Pan-African solidarity in the face of colonial oppression. The conference also helped strengthen ties among African nationalist movements, facilitating exchanges of ideas and strategies for the struggle against colonialism. This meeting in Accra thus contributed to awakening political consciousness among African youth and to cementing the idea of a united and independent Africa.

- **The Dawn of Independence**

Before the official independence of the Democratic Republic of the Congo, proclaimed on 30 June 1960, two fundamental laws were adopted by the Belgian Parliament and ratified by the King of the Belgians in order to ensure a controlled and orderly transition toward the autonomy of the emerging state. The first, the Fundamental Law of 19 May 1960, established the political and institutional framework of the Congo, while the second, adopted on 17 June 1960, enshrined public liberties and fundamental rights. Together, these normative instruments constituted the legal foundation upon which the institutions of the independent Congo were built, providing the structural conditions necessary for the exercise of sovereignty.

On 9 May 1960, the formal transfer of power and sovereignty to the Congolese people was solemnly carried out by the King of the Belgians, acting through the Secretary-General of the Belgian Federal Parliament, in favor of the President of the provisional bureau of the Chamber of Representatives, André Petipeti. This act marked a decisive stage in the juridical and institutional emancipation of the

Congo, preceding the formal proclamation of independence.

Elected as a national deputy in February 1960, alongside the 133 parliamentarians of the first legislature—among whom were Patrice Emery Lumumba, Joseph Kasa-Vubu, and Charles Kisolokele—André Petipeti was designated by drawing lots as the first Congolese entrusted with presiding over a national public institution. In this capacity, he embodied the nascent authority of the state by chairing the inaugural session responsible for validating the credentials of deputies. The provisional bureau, established in accordance with royal authority, was entrusted with the essential mission of forming a parliamentary majority, designating a Prime Minister, and electing a President of the Republic.

Thus, even prior to the symbolic date of 30 June 1960, the Congo already possessed the fundamental attributes of a sovereign state, supported by functioning political institutions and an operative legal framework that anticipated and prepared its accession to full independence (Kamatanda & Tshitshi Ndouba, 2021; Gérard-Libois & Verhaegen, 1961).

## 2) Independence

### • The Constitutional System of the DRC from 1960 to 1965

In 1960, the Democratic Republic of the Congo—then known as the Republic of the Congo—was governed by two fundamental laws that structured its initial constitutional framework. The first consisted of the Fundamental Law of 19 May 1960, supplemented by the Fundamental Law on Public Liberties of 17 June 1960, which together formed a provisional constitutional order granted by Belgium on the eve of independence. Inspired by Western parliamentary traditions, this legal framework sought to establish the foundations of a democratic regime. However, its provisional nature and external origin significantly limited its capacity to ensure durable political stability and to foster genuine institutional legitimacy (Azami, 1970).

The second fundamental law, adopted on 1 August 1964 in Luluabourg, emerged from an effort at national reconciliation undertaken under the auspices of United Nations experts. Conceived as a compromise between competing political forces, this constitution introduced a hybrid institutional model. Yet, it remained structurally fragile, particularly due to persistent ambiguities in the distribution of powers between the central government and the provinces, thereby undermining its effective implementation in an already volatile political environment (Azami, 1970).

From the earliest months of independence, the Congolese state descended into a profound political crisis marked by a conflict of legitimacy between President Joseph Kasa-Vubu and Prime Minister Patrice Lumumba, leader of the parliamentary majority. This institutional confrontation reached its climax in September 1960, when Colonel Joseph-Désiré Mobutu, invoking the necessity of restoring public order, orchestrated a military coup. By decree of 29 September 1960, Mobutu suspended the constitutional order and established a transitional regime entrusted to a College of Commissioners-General, symbolizing a rupture with the

existing institutional framework<sup>2</sup>.

This provisional arrangement, however, failed to restore stability. Despite the subsequent reinstatement of the fundamental laws, the adoption of the Lulua-bourg Constitution on 1 August 1964 did not succeed in resolving the underlying political tensions. Ultimately, a second coup d'état led by Mobutu on 24 November 1965 brought the fragile democratic experiment to an abrupt end. Consolidating his power, Mobutu renamed the country "Zaire", inaugurating a prolonged era of authoritarian rule that profoundly transformed the political and constitutional trajectory of the state.

- **The Constitutional System under Mobutu's Rule in the Zaire Era**  
**The Republic of Zaire**

The constitutional history of the Republic of Zaire, spanning from 1965 to 1997, is characterized by the consolidation of an authoritarian regime under Joseph-Désiré Mobutu, who seized power through a coup d'état on 24 November 1965. Following this takeover, Mobutu suspended the 1964 Luluabourg Constitution and established a provisional military regime that remained in place until the promulgation of the Constitution of 1967, which formally marked the institutional birth of the Republic of Zaire<sup>3</sup>.

This new constitutional framework entrenched a highly centralized system of governance, concentrating power in the hands of the head of state. It established a hyper-presidential regime in which Mobutu—proclaimed President for life in 1970—combined the functions of head of state, head of government, and leader of the single party, the Popular Movement of the Revolution (MPR)<sup>4</sup>. The MPR thereby became the principal instrument of political domination, ensuring the subordination of all state institutions to presidential authority. Subsequent legal and constitutional reforms further reinforced this concentration of power: the 1974 legislation institutionalized "Mobutism" as the official doctrine of the state and consolidated the fusion between party and state, while the 1978 reforms introduced only limited and controlled adjustments without fundamentally altering the authoritarian nature of the regime<sup>5</sup>.

The Mobutu era was also marked by the policy of "Zairianization", a nationalist project aimed at asserting cultural and political autonomy by erasing colonial influences. This process extended to the renaming of the country, cities, and even individuals, reflecting an attempt to construct a distinct postcolonial identity. However, from the 1980s onward, the regime entered a period of profound decline, undermined by systemic corruption, economic mismanagement, and increasing international pressure for democratization.

Under mounting internal and external constraints, Mobutu formally ended the single-party system in 1990, initiating a transition toward multiparty politics. The

<sup>2</sup>Democratic Republic of the Congo. (1960). Constitutional Decree-Law of 29 November 1960. Official Gazette.

<sup>3</sup>Republic of Zaire. (1967). Constitution of 1967. Official Gazette (Moniteur Congolais).

<sup>4</sup>Republic of Zaire. (1970). Law No. 70/001 of 23 December 1970. Official Gazette.

<sup>5</sup>Republic of Zaire. (1974). Law No. 74/020 of 1974, Law No. 78-010 of 1978. Official Gazette.

adoption of legal reforms restoring political pluralism—initially limited, then expanded—marked a significant but ultimately fragile shift<sup>6</sup>. The transition process, however, was hindered by persistent political manipulation, institutional paralysis, and repeated delays in the organization of elections, thereby perpetuating instability. The adoption of the Harmonized Constitutional Act of 1993 sought to provide a framework for this transition but failed to produce lasting equilibrium<sup>7</sup>.

The regime ultimately collapsed on 17 May 1997, when Laurent-Désiré Kabila, leading the Alliance of Democratic Forces for the Liberation of Congo (AFDL), seized power and brought an end to the Republic of Zaire. This transition was formalized through a constitutional decree-law organizing the exercise of power in the reestablished Democratic Republic of the Congo<sup>8</sup>. The fall of Mobutu thus closed a historical period marked by the extreme personalization of power, institutional erosion, and the weakening of the rule of law—legacies whose effects would persist long after the regime’s demise.

### **3. The Constitutional System of the Democratic Republic of the Congo Restored under the Name Democratic Republic of the Congo**

The distinction between the Republic of the Congo (Congo-Brazzaville) and the Democratic Republic of the Congo (Congo-Kinshasa) rests on profoundly distinct historical, colonial, and political trajectories. Congo-Brazzaville, formerly Middle Congo under French rule within French Equatorial Africa (1903-1958), gained a form of autonomy in 1958 before proclaiming independence on 15 August 1960, thereby giving birth to the Republic of the Congo. The country subsequently experienced a Marxist-Leninist regime under the name People’s Republic of the Congo (1969-1991), before returning to its current designation, Republic of the Congo, in 1991.

By contrast, Congo-Kinshasa, initially the Congo Free State under the personal sovereignty of Leopold II (1885-1908), then became the Belgian Congo until its independence on 30 June 1960, at which time it was designated the Republic of the Congo (Congo-Léopoldville). Between 1964 and 1971, it adopted the name Democratic Republic of the Congo, then, under the Mobutu era, that of the Republic of Zaire (1971-1997), before regaining its current name, Democratic Republic of the Congo (DRC), in 1997. This historical comparison reveals not only the singularity of the colonial trajectories—French for Brazzaville and Belgian for Kinshasa—but also the diversity of political experiments and institutional changes that shaped two neighboring states sharing the same Congo River while each affirming its own identity and sovereignty.

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<sup>6</sup>Republic of Zaire. (1990). Law No. 90-002 of 5 July 1990. Official Gazette; Law No. 90-008 of 1990. Official Gazette.

<sup>7</sup>Republic of Zaire. (1993). Law No. 93-001 of 2 April 1993. Official Gazette.

<sup>8</sup>Democratic Republic of the Congo. (1997). Constitutional Decree-Law No. 003 of 27 May 1997. Official Gazette.

The constitutional history of the Democratic Republic of the Congo, restored in 1997 under Laurent-Désiré Kabila, reflects sustained efforts to stabilize a state deeply affected by internal crises and external interference. Upon assuming power, Kabila reinstated the country's original name, thereby symbolically ending the Zairean era. However, internal divisions within the ruling coalition, coupled with the influence of Rwanda and Uganda, significantly constrained the implementation of his reform agenda. In 1998, his decision to expel Rwandan troops in order to safeguard national sovereignty precipitated the outbreak of the Second Congo War, one of the most devastating conflicts in contemporary African history.

Following his assassination in 2001, Joseph Kabila succeeded him and initiated a series of diplomatic efforts aimed at restoring peace and political order. These efforts culminated in the Sun City Agreement, which laid the foundations for national reconciliation and established a transitional constitutional framework pending the adoption of a permanent constitution<sup>9</sup>.

The Constitution of 18 February 2006, adopted following a referendum, represented a decisive milestone in the reconstruction of the Congolese state. It instituted a semi-presidential system and provided the legal basis for democratic elections, thereby offering a modern institutional framework intended to restore stability after years of armed conflict. At the time of its adoption, these conflicts had already resulted in the deaths of more than six million people, marked by extreme violence, including mass killings, widespread sexual violence, and grave atrocities committed against civilian populations. Beyond their immediate humanitarian consequences, these conflicts were also driven by geopolitical and economic interests, particularly the strategic exploitation of the country's vast natural resources (Pourtier, 2012).

The presidency of Joseph Kabila, which lasted for more than eighteen years (2001-2019), concluded with a transfer of power to the opposition. This transition materialized through the election of Félix-Antoine Tshisekedi Tshilombo, political heir to the historic opposition leader Étienne Tshisekedi wa Mulumba, who passed away in 2017.

This unprecedented political transition was marked by intense contestation during the 2018 electoral process, which deeply polarized the national political landscape. Three principal blocs emerged: on the one hand, the opposition platform LAMUKA, led by Martin Fayulu Madidi; on the other hand, the coalition CACH, led by Félix-Antoine Tshisekedi Tshilombo; and finally, the ruling camp represented by Emmanuel Ramazani Shadary, widely perceived as aligned with the outgoing president.

Thus, while the 2006 constitutional framework established the formal foundations of the rule of law in the Democratic Republic of the Congo, its practical implementation continues to be shaped by persistent political tensions, contested legitimacy, and the enduring legacy of conflict.

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<sup>9</sup>Republic of the Congo, Transitional Constitution of April 4, 2003, Official Gazette of the Democratic Republic of the Congo.

### 3.1. The Constitutional System of the Democratic Republic of the Congo under the Constitution of 18 February 2006

#### 3.1.1. Context of Justification

The constitutional system of the Democratic Republic of the Congo, as established by the Constitution adopted by referendum with 84.31% of the vote on 18 and 19 December 2005 and entering into force on 18 February 2006, represents a decisive turning point in the country's political and institutional history. Structured around a preamble, an explanatory statement, and eight titles comprising 229 articles, this Constitution forms part of a broader process of legal and institutional stabilization following decades of political crises marked by contested legitimacy. In this context, the Inter-Congolese Dialogue, which culminated in the Global and Inclusive Agreement of 2002, laid the foundations for a renewed political order grounded in democracy, peace, and national reconciliation. The constitutional revision adopted in January 2011 further consolidated this legal framework and reinforced the ambition of establishing stable governance respectful of fundamental rights<sup>10</sup>.

Following the assassination of Laurent-Désiré Kabila, who had come to power by overthrowing the regime of Joseph-Désiré Mobutu through the military victory of the Alliance of Democratic Forces for the Liberation of Congo (AFDL), the political trajectory of the state took a rapid and complex turn. Although initially supported by regional forces, including Rwanda and Uganda, Kabila soon faced opposition from these same actors. In this tense geopolitical context, his successor, Joseph Kabila, initiated negotiations that ultimately led to the constitutional process culminating in the promulgation of the 2006 Constitution.

Within this framework, debates surrounding the definition of Congolese nationality emerged as a central and contentious issue. Certain regional actors, particularly Paul Kagame, through political and diplomatic positions, supported interpretations seeking to redefine nationality based on the date of independence, namely 30 June 1960. Such positions were linked to broader questions concerning the status of populations established in eastern Congo through successive migratory waves throughout the twentieth and early twenty-first centuries. These debates raise complex legal questions relating to nationality, territorial sovereignty, and the distinction between *jus soli* and *jus sanguinis*, within a context marked by historical tensions and competing narratives of territorial legitimacy (Bart & Bart, 1993).

From the perspective of the legal analysis of state discourse, the official statements of Paul Kagame further reinforce the interpretation that the situation in Eastern Democratic Republic of the Congo is not framed solely as a security concern, but also as a historically constructed territorial issue linked to colonial partition. In an address delivered on 16 March 2025, he asserted that Belgium had “torn Rwanda apart”, emphasizing that certain Rwandan populations were lo-

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<sup>10</sup>Constitution of the Democratic Republic of the Congo, Official Gazette, special issue of 18 February 2006.

cated beyond current borders, notably in Masisi and Rutshuru, and suggesting that any return would necessarily involve the land on which they had historically lived. In a subsequent address on 7 April 2025, he reiterated these concerns while rejecting the possibility of simple relocation<sup>11</sup>.

When these statements are considered alongside the findings of the United Nations Security Council Group of Experts on the Democratic Republic of the Congo, which document direct interventions by the Rwanda Defence Force and its support for the M23, as well as United Nations Security Council Resolution 2773, which calls for the cessation of such support and the withdrawal of foreign troops, they may be interpreted as forming part of a politico-historical narrative that seeks to justify external involvement. This narrative appears structured around themes of territorial dispossession, the protection of cross-border populations, and the securitization of border regions<sup>12</sup>.

Nevertheless, the preamble to the Constitution of 18 February 2006 affirms the foundational principles of the Congolese constitutional order. It proclaims the aspiration to build a nation grounded in liberty, justice, peace, and solidarity, and explicitly commits the state to the establishment of the rule of law and democratic governance. It denounces systemic pathologies such as injustice, impunity, nepotism, and tribalism as primary causes of national instability, while emphasizing the importance of unity in diversity, the protection of human rights, gender equality, and African solidarity. Finally, it recognizes the necessity of international cooperation while reaffirming the imperative of preserving national sovereignty<sup>13</sup>.

### 3.1.2. Guiding Principles

#### 1) A State Governed by the Rule of Law: the DRC as a Sovereign, United, Indivisible, Secular, Social, and Democratic State

The Democratic Republic of the Congo, within its borders of 30 June 1960, defines itself as a state governed by the rule of law, sovereign, united, indivisible, secular, social, and democratic. Its flag is sky blue, adorned with a yellow star and crossed by a red diagonal stripe edged in yellow, and its motto is “Justice-Peace-Work”. The national coat of arms consists of a leopard’s head, accompanied by an ivory tusk and a spear, resting upon a stone. The national anthem is *Debout Congolais!* and the currency is the Congolese franc. French is the official language, while Kikongo, Lingala, Swahili, and Tshiluba are the national languages, promoted by the state without discrimination. Other languages constitute a protected cultural heritage.

The country comprises the city of Kinshasa, capital and seat of national institutions, as well as 25 autonomous and decentralized provinces endowed with legal personality and managed by local bodies. These provinces may be reorganized

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<sup>11</sup>Paul Kagame, Remarks at Citizen Outreach, Kigali, March 16, 2025; Address, Kigali, April 7, 2025.

<sup>12</sup>United Nations Security Council, Report of the Group of Experts on the Democratic Republic of the Congo, S/2023/431; S/2024/432; Resolution 2773 (2025).

<sup>13</sup>Constitution of the Democratic Republic of the Congo, Official Gazette, special issue of 18 February 2006.

through partition or regrouping in accordance with the Constitution and the law.

## **2) A State Governed by the Rule of Law**

The Constitution of 18 February 2006 enshrines the Democratic Republic of the Congo as a state governed by the rule of law, founded on the supremacy of law, the separation of powers, the independence of the judiciary, and the protection of fundamental rights. As the supreme source of legality, it imposes its authority over all other norms and guarantees institutional balance through a strict separation between executive, legislative, and judicial powers. Judicial independence enables magistrates to safeguard the integrity of the legal order by ensuring impartial and equal treatment of all citizens. At the core of this constitutional framework, fundamental rights are recognized as inalienable, and the state is entrusted with the duty to protect them against all forms of oppression. As emphasized by Carré de Malberg, a genuine rule-of-law state is one that subjects itself to the legal norms it establishes, thereby ensuring both the protection of individual rights and the predictability of public action (Carré de Malberg, 1922).

A state governed by the rule of law is thus characterized by the subordination of all state actions, including those of its administration, to higher-ranking legal norms culminating in constitutional principles. These norms are structured within a hierarchy in which ordinary laws must conform to constitutional provisions, themselves aligned with international commitments binding upon the state. At the center of this legal architecture lies the principle of equality before the law, which prohibits any form of discrimination based on social or institutional status: a minister or business leader is therefore subject to the law in the same manner as any ordinary citizen. In contrast to a police state—where authority operates arbitrarily and coercively—the rule of law ensures that public power is exercised within legal constraints. Likewise, it differs from a “society of law”, in which social or customary norms prevail over state authority, reducing the latter to a merely instrumental role (Favoreu et al., 2018).

In the Democratic Republic of the Congo, however, the realization of the rule of law remains confronted with significant challenges, revealing a persistent gap between constitutional proclamation and practical implementation. Although equality before the law is constitutionally guaranteed, its application is frequently undermined by discriminatory practices and abuses of power that appear to confer de facto impunity upon certain individuals or groups. This situation contradicts the constitutional imperative that all persons, including political and economic elites, remain subject to the same legal standards. Moreover, internal political tensions and external geopolitical pressures further weaken the effective application of constitutional norms, at times imposing international dynamics that do not fully align with domestic legal constraints, thereby raising concerns regarding national sovereignty. Rooted in the principles of political liberalism, the rule of law presupposes the limitation of power within a clearly defined institutional framework, ensuring that individual freedoms are protected against authoritarian excess (Raynaud, 1996).

The quest for a genuine rule-of-law state in the Democratic Republic of the

Congo cannot be confined to formal legality or the nominal independence of judicial institutions; it necessarily entails the effective protection of fundamental rights against the interests of those who exercise power. Human rights constitute both the foundation and the limit of public authority, ensuring that power is exercised in a manner consistent with the dignity and freedoms of all citizens. The consolidation of this ideal requires a sustained democratic commitment in which public authorities renounce the instrumentalization of state apparatuses for personal or partisan ends (Cohendet, 2013).

In this regard, the preservation of the general interest—including the guarantee of space for opposition expression—remains essential for democratic stability. As articulated by Rousseau, the general will constitute the foundation of the social contract and must guide political authority toward the common good (Rousseau, 1894). Yet, recurring violations of human rights and democratic principles reveal the fragility of institutional oversight mechanisms. Furthermore, certain international agreements, even when perceived as inconsistent with constitutional provisions or popular will, may impose themselves through external influence, thereby challenging the sovereign prerogatives of the Congolese state. Achieving a substantive rule-of-law system therefore requires equipping citizens with effective democratic instruments capable of ensuring accountability and compensating for the deficiencies of existing oversight structures (Rosanvallon, 2014).

Ultimately, the rule of law in the Democratic Republic of the Congo cannot be assessed solely on the basis of its constitutional enshrinement; it must be evaluated through its effective implementation. While the 2006 Constitution affirms judicial independence and entrusts the Constitutional Court with safeguarding constitutional supremacy, recurrent criticisms highlight political interference in sensitive judicial decisions. Similarly, although the separation of powers is formally established, the predominance of executive-aligned parliamentary majorities tends to weaken legislative oversight. Finally, the protection of fundamental rights, though extensively guaranteed in principle, remains uneven in practice, particularly in relation to restrictions on public demonstrations and barriers to access to justice. These elements collectively illustrate a persistent discrepancy between constitutional norms and institutional realities, underscoring the unfinished nature of the effective subjection of the State to the rule of law.

#### 4. Conclusion

At the conclusion of this study, it clearly appears that the birth of the State in the Democratic Republic of the Congo cannot be reduced either to the colonial sequence alone or to the sole legal act arising from the Berlin Conference. Congolese institutional and constitutional history is rooted in a far deeper temporal horizon, in which peoples, territories, powers, kingdoms, and political traditions converged. Although these precolonial formations did not in every respect correspond to the canons of the modern Western state, they nonetheless embodied an authentic reality of collective organization, public authority, and political con-

sciousness. From the ancient Kingdom of Kongo to the political formations of the Congo Basin, from diplomatic relations established with Portugal, the Holy See, and the United Provinces, to the administrative, ecclesiastical, and military structures attesting to an early capacity for integration into the international order of the time, one discerns the existence of an ancient political subject endowed with its own historicity, collective memory, and will to endure (Thornton, 1998). Congolese state modernity did not emerge *ex nihilo*; it developed in continuity with a prior heritage—disrupted, fragmented, and often violated by the logics of slavery, colonialism, and empire, yet never entirely erased.

The institutional evolution of the Congo reveals a discontinuous trajectory marked by major ruptures, successive recompositions, and enduring tensions between sovereignty, external domination, and the quest for self-determination. The Congo Free State, far from representing the culmination of a political project serving the population, constituted above all an instrument of economic exploitation and territorial appropriation (Stengers, 2005). The Belgian Congo prolonged this logic within a more structured administrative framework, yet without fully recognizing the political personality of the Congolese people. Independence in 1960 inaugurated a decisive but turbulent phase, during which the nascent state faced fragmentation, institutional instability, crises of legitimacy, and the authoritarian capture of power. The successive constitutional texts—from the Fundamental Laws of 1960 to the Constitution of 18 February 2006—reflect a constant search for a political order capable of reconciling national unity, democratic legitimacy, the effectiveness of public authority, and the subjection of the State to the rule of law (Kamatanda & Tshitshi Ndouba, 2021).

In this perspective, the constitutional history of the Democratic Republic of the Congo appears less as a mere succession of legal texts than as the expression of a continuous struggle to define the very foundation of the State. Each stage of this evolution bears the imprint of fundamental challenges: territorial control, preservation of sovereignty, legal regulation of power, recognition of internal diversity, resistance to external interference, and the construction of a fully realized political citizenship. By consecrating the Democratic Republic of the Congo as a sovereign, united, indivisible, democratic, and social state governed by the rule of law, the Constitution of 18 February 2006 represents a provisional culmination of this long historical trajectory<sup>14</sup>. Yet it does not mark the end of history; rather, it constitutes a stage whose true significance depends on the capacity of institutions to ensure the primacy of legal norms over arbitrariness, the general interest over particular interests, and constitutional legitimacy over contingent power relations.

Thus, the birth of the State in the Democratic Republic of the Congo must be understood as a long, complex, and unfinished historical process, in which ancient legacies, profound ruptures, collective resistance, and renewed aspirations to political justice are intertwined. The evolution of the Congolese institutional and constitutional system reveals, beyond crises and upheavals, the persistence of a

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<sup>14</sup>Ibid.

fundamental idea: that of a people who, through the centuries, have never ceased to assert their right to political existence, sovereignty, and mastery of their own destiny. For this reason, the study of this trajectory is not merely of historical or descriptive interest; it also sheds light on the demands of the present. To understand the genesis of the Congolese State is to better apprehend the conditions of its future consolidation. It is to recognize that institutional stability, fidelity to the Constitution, the protection of fundamental rights, and the effective submission of the State to the rule of law are not merely legal imperatives, but the very foundations of the survival, dignity, and greatness of the Congolese nation (Favoreu et al., 2018; Carré de Malberg, 1922).

### Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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