

INTERVIEW WITH D. R. CONGO'S INFORMATION MINISTER H.E. LAMBERT MENDE OMALANGA

AFJN: The mandate for President Joseph Kabila expired on December 19, 2016. However, he is still functioning as the President of the Democratic Republic of the Congo. Is there a legal provision that allows him to continue as president?

MINISTER: Article 70 of the Constitution of the Democratic Republic of the Congo (DRC) stipulates that “At the end of his term, the President stays in office until the President-Elect effectively assumes his functions.” It is a constitutional provision, not a decision made by negotiators of the recent political agreements between different political actors in our country.

AFJN: Why was it important for the constitutional court to rule on the extension of the President after his mandate expired?

MINISTER: The Constitutional court ruled on this matter in response to a request from some members of the parliament to the constitutional court. When the court is asked to interpret the constitution it has to do so by law. Even the Independent Electoral Commission asked the Constitutional Court for an extension to comply with article 73 of the constitution which says that “The ballot for the election of the President of the Republic is scheduled by the National Elections Commission ninety days before the end of term of the incumbent President.” Without the extension our elections would not be legal.

AFJN: It was reported that the number of justices required for a ruling to be legal was not met when the constitutional court convened to extend the mandate of the president, can you please explain the legality of their decision?

MINISTER: It is true that only 5 judges out of 9 were present. The required quorum to for a ruling to be legal is 7. However, in accordance with administrative and constitutional customs in the practice of law in the DRC when the court met for the first time without the required quorum of 7 they did not rule on the matter. But, the next time they met, again in accordance with the legal customs of any deliberative body in DRC, they ruled and it is legal. The constitutional court like

any other deliberative body can take decisions by simple majority when they meet for the second time without the required quorum.

AFJN: People wonder why President Joseph Kabila has not personally signed the agreement brokered by the African Union on October 18, 2016 and the agreement brokered by the DRC Catholic Conference of Bishops on December 31, 2016.

MINISTER: Because under DR Congo law it is strictly forbidden that the President, as Head of State, takes part to political activities. The October agreement facilitated by the African Union and the December one brokered by Catholic Church were among political coalition which are independent entities not government institutions. The office of the president is an institution like the speaker of the house and the president of the senate. By participating to such meetings or signing their conclusions, the President would be violating the constitutional and can be sued for high treason offence. This was made clear by the President to both M. Edem Kodjo, the African Union mediator as well as the Catholic Bishops.

AFJN: There were many mediators including some from the United Nations who were willing to facilitate the political dialogue called by President Joseph Kabila, but were often rejected by either the opposition or the president's majority party. Is there any political or strategic reason why the Congolese politicians, including the president's party, finally agreed to the mediation of the African Union in the person of the former AU President Edem Kodjo followed by the DRC Conference of the Catholic Bishops?

MINISTER: For the opposition, the dialogue among politicians called by the President one year and half ago had to be mediated by non African mediators such as the UN, the USA and European Union's officials, especially former colonial power Belgium and France. The presidential majority thinking that those foreign powers were just willing to undermine the national independence and self-determination of Congolese people through such mediation was advocating for a strictly Congolese mediation saying that 56 years after independence the Congolese people were adult enough to meet among themselves and solve whatever problems they might have. Then the compromise solution was to find an African mediator, but not strictly Congolese. For this reason, the African Union mediation proposed by former UN Secretary General Ban Ki Moon was acceptable to stakeholders. That is how H.E. Dr. Nkosazana Dlamini Zuma Chairperson of the African Union designated Mr. Edem Kodjo, former Togolese Prime as African Union mediator for the political dialogue in the D.R. Congo. It is important to note

a part of the opposition refused him as a mediator. After the October meeting mediated by Mr. Kodjo, the Catholic Church, with the support of Pope Francis and the Vatican Ambassador in Kinshasa convinced the opposition members who boycotted the African Union mediation to take part in a second round of talks mediated by the Catholic Bishops. The Presidential Majority coalition accepted the Bishops mediation because they are all Congolese nationals.

AFJN: The October 18, 2016 agreement facilitated by the African Union and the December 31, 2016 agreement facilitated by Congolese Catholic Bishops stipulates that President Joseph Kabila remain in office during the transition. As a compromise, the opposition designates a candidate for Prime Minister to be nominated by the President and confirmed by the lawmakers. The Current Prime Minister, Mr. Samy Badibanga is from the opposition and holds the position in compliance with the African Union Agreement signed in October 2016. What is the likelihood that the current Prime Minister Mr. Badibanga remains in office to comply the December 31st agreement? If not, what is the legal basis for the opposition to force him out?

MINISTER: Since both the October 18 agreement and the December 31 agreement underscore the need to strictly abide by the DRC Constitution, there are only two legal ways he can vacate his post as Prime Ministry. He can either voluntarily resign or the Parliament can launch a vote of no confidence against him. There is not a third way to remove a Prime Minister from his position in accordance with the DRC Constitution. Even the President cannot fire him. Prime Minister Badibanga was recently certified by the parliament and it is the same parliament which can revoke him. Fortunately for him he has the largest coalition in the parliament and we do not see how his members will be interested in voting him out of the office when he himself wants to remain in his post. It is a matter for the opposition wing that was not part to the October 18 agreement to try its best to convince Mr. Badibanga to resign or the parliament to adopt a vote of no confidence to him. Any other move would be unconstitutional, a kind of “coup”.

AFJN: President Joseph Kabila has led the Democratic Republic of the Congo for two terms and has therefore set his own record for the history books with regard to the top leadership of that country. Now he is facing pressures from everywhere asking him to respect the constitution which sets the presidential term to two only. Can you inform the national and the international opinion whether the President is going to respect the law and leave power instead of seeking a third term?

MINISTER: There is nothing in HE Excellency Joseph Kabila acts or speeches that shows that he intends not respect the Constitution that limit at two the number of terms for a President in Office. He declared in his last speech before the National Assembly and the Senate (December 2016) he repeated that the Constitution will be strictly respected. To ask him to elaborate more than that is just a game by some opposition politicians to humiliate him as some actors of the politics in DRC are fond of.

AFJN: What is your take on the economic sanctions imposed against current and former officials of the Democratic Republic of the Congo?

MINISTER: These targeted sanctions are totally illegal according to international law because no country, being a superpower or not, is entitled to “police” the world by “punishing so-called bad elements of the international community. Any sanction by a country against officials of another country out of a conflict between the two countries must be taken by the UN Security Council. These sanctions taken by President Barack Obama’s administration followed by European Union against DRC officials did not pass through the UN Security Council. Many people in DRC think the sanctions were taken because the DRC decided to diversify its economic partnerships and started to make big business deals with new partners like China and others. That made DRC’s traditional partners like the US and Europe countries angry. It is a conviction that is largely shared by Congolese. Furthermore, the negotiators of the December 31 agreement facilitated by the catholic bishops called upon the USA and EU to cancel the said sanctions because they see them as counterproductive.

AFJN: Your Excellency, you have been heard on media recently making the case that there is a lot of foreign interference in internal matters of the Democratic Republic of the Congo. How is calling, for example, for the release from jail of members of Filimbi and la LUCHA both of which are youth civil Society groups politically active in calling for greater freedoms of press, assembly and government accountability an interference in internal matters of the Congo?

MINISTER: It is their right to advocate for anything they want. To my knowledge, they have problems with the Police and DRC municipal authorities in charge of public demonstration because they refused to register themselves as not for profit organizations or associations on the basis that the DRC is a “failed State”. The lack of proper identification makes it difficult to hold them accountable if they break any laws. Unfortunately, they are encouraged by some foreign embassies such as USA and Belgium which continue to be blind to the fact they

are not legally registered organizations, something required and enforced in their respective countries. We do not understand why they don't encourage them to register.

AFJN: Do you support the repeal of section 1502 of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, a US law which calls on companies registered with the Securities and Exchange Commission in the United States of America to make public whether or not Tungsten, Tin, Tantalum and Gold used in the products they manufacture originated from the Democratic Republic of the Congo (DRC) or neighboring countries as a measure to ensure warlords do not access to cash flow to continue waging the war against the Congolese people?

MINISTER: Any Congolese do support the Dodd-Frank Act as a way of protecting our wealth and security all over Africa' Great Lakes Countries because our people paid a very heavy price with their blood to these warlords and their clients abroad.

AFJN: Do you have any closing thought for those who follow closely and passionately the events in the Democratic Republic of the Congo and are concerned about losing the gains already made so far in terms of advancing peace and democracy in the your country?

MINISTER: The DRC, Africa, and the world will lose more if the elections are not well prepared in this enormous country where wars disrupted the preparatory process of enrollment of electors. Many do not know that electoral equipment was looted by warlords in eastern Congo and as a result fake electors' cards have been printed and distributed in some neighboring countries. That is why wise steps were taken by both the October 18 and December 31 agreements to start all over the enrollment of electors.

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