

THE
CARTER CENTER



PRESIDENTIAL AND LEGISLATIVE
ELECTIONS IN THE DEMOCRATIC
REPUBLIC OF THE CONGO

NOVEMBER 28, 2011

FINAL REPORT

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FOREWORD

By Dr. John Stremlau
Vice President, *The Carter Center Peace Programs*
Co-leader, *The Carter Center International Election Observation Mission to the DRC*

Millions of Congolese citizens voted in national elections on Nov. 28, 2011, their second opportunity to exercise this basic human right since a still fragile peace accord was brokered by South Africa in April 2002 following five years of Africa's deadliest conflicts. The Carter Center accepted invitations from the Independent National Elections Commission (CENI) to observe the 2006 and the 2011 elections. On both occasions, we witnessed the spirit of the Congolese people and a determination to vote that deserves continued international support and encouragement. These two national elections are rightly regarded to be the freest and most inclusive since Belgian colonialism collapsed in 1960.

As the following report details, there were many challenges in the conduct of these elections, especially the compilation of results, which also should be a cause for continuing international interest and concern. Problems with registration, voter lists, long lines, complex voting procedures and candidate lists, and instances of intimidation and physical danger did not deter the majority of people from demonstrating their desire for democracy and the opportunity to vote for their candidates of choice. Promoting and protecting these rights are responsibilities of the CENI, with the support of the government of the Democratic Republic of the Congo (DRC) and the active encouragement of the international community.

We are grateful for the welcome we received from all major political actors in this vital election. We were honored to have as our senior mission leader Zambia's former president, Rupiah Banda. Our mission was funded primarily through the generous

support of the American and Dutch people, and we give special thanks to their representatives in the DRC, U.S. Ambassador James F. Entwistle and Royal Netherlands Ambassador Robert van Embden.

The U.N. peacekeeping mission to the DRC, while much less helpful than in 2006 in ensuring security during the voting, continues to play an essential role helping secure the nation and the opportunity to build a more inclusive, productive, and equitable democratic republic. We continued to rely on the help of the United Nations in deploying our observers to distant and otherwise inaccessible voting precincts, and we thank the secretary-general's special representative Roger Meece and his team for their advice and assistance. One major difference between the 2006 and 2011 elections was that the United Nations ran and international donors paid for the first round, but the Congolese authorities managed and mostly paid for last year's election.

Not covered in this report is a parallel Carter Center project to assist in the training and development of a large cohort of domestic observers who also played a vital role in monitoring the conduct of the 2011 election. The Center's partnership with civil society organizations in the DRC, under the terms of a memorandum of understanding with the Congolese government, reflects our deep belief in the future of the DRC as a stable, prosperous democracy. We decided to pursue this opportunity following the 2006 election and extensive consultations with Congolese authorities and civil society representatives. This process continues, and we hope it will benefit from the insights and lessons contained in this report.

The second postelection statement of the Center's international observation mission, issued on Dec. 10, 2011, concluded that the final presidential results announced by the CENI "were not credible," although we were unable to determine if the ranking of the candidates "necessarily would



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have been different.” In essence, we do not know who actually won the presidential election, a finding reaffirmed but explained in greater detail in this final report.

Supporters of the current government have vigorously challenged our findings, noting that while there were shortcomings in the process, these could not have been on a scale to wipe out the incumbent’s 3 million-vote plurality. The opposition disagrees. While Carter Center observers could not visit all precincts in a country as vast and as deficient in basic infrastructure as the DRC, we were able to deploy long-term observers who traveled throughout the country for four months to assess the political context and conduct of the elections.

We readily acknowledge the huge logistical and technical challenges the CENI had to overcome in order to meet deadlines for the registration and voting that many impartial international experts believed to be impossible. In many areas, our observers strongly commended the dedication and determination of the local election staff and supervisors who demonstrated that under daunting conditions, they could perform at or above international standards. Yet we also noted that the worst examples of mismanaged voting procedures and results compilations, which we observed and documented, were in opposition strongholds, most notably Kinshasa. Elsewhere, notably in Katanga

province, the CENI certified implausibly high turnout numbers that typically favored the incumbent by margins as high as 100 percent. What we do not know is how many of the votes in areas where the incumbent has long enjoyed majority support may be due to vote-stuffing or how many of the lost and mishandled ballots in the precincts where the opposition traditionally dominates were actually due to vote suppression by authorities loyal to the incumbent.

We share these findings and the recommendations for improving electoral practices in the hope that improvements will be made ahead of the upcoming provincial and local elections and well before the next presidential election in 2016. The Carter Center has observed more than 80 national elections in all regions of the world. We conduct our work in accordance with the Declaration of Principles for International Election Observers that was adopted by all the major international monitoring organizations at the United Nations in 2005; and we assess elections based on the country’s national legal framework and its international obligations for genuine democratic elections. These widely accepted, impartial international principles and standards provide the framework for the following report and we hope will gain greater acceptance and application in all future elections in the Democratic Republic of the Congo, solely for the benefit of the Congolese people.



EXECUTIVE SUMMARY

The history of elections in the Democratic Republic of the Congo has been marked by extreme challenges, starting with the 1961 assassination of the first elected prime minister, Patrice Lumumba. Democratic elections would not be held again until the 2006 transition elections, designed to consolidate the Congolese peace process after 10 years of civil war. The 2011 elections were an opportunity to reinforce a democratic culture with participation from the full range of political actors and the support of the international community. For the newly established Independent National Election Commission (CENI), the Nov. 28, 2011, presidential and national legislative elections were the first test for a Congolese-led organization of elections. Although it still benefited from international donor assistance and support from the United Nations mission in the Congo, the role of international actors in these elections was much reduced compared to 2006.

Upon receiving a formal invitation to observe from the CENI on June 16, 2011, The Carter Center established an international election observation mission in the DRC on Aug. 1, 2011, and deployed its first group of 10 long-term observers (LTOs) on Aug. 17, followed by another 10 LTOs in September.

The principal stakes of the elections were twofold. They were a test for the CENI, which for the first time had complete control of the organization of the electoral process. The elections also were a test for the reaction of opposition parties and voters to an early 2011 constitutional amendment that changed the presidential race from a majoritarian election

(with runoff between top two candidates if necessary) to a single round plurality.

Compared to 2006, the current political environment of the DRC, with its 417 political parties at the time of the elections, was very different. The Presidential Majority (MP) bloc of President Joseph Kabila hardened conditions for parties to join its coalition, and the pro-Kabila People's Party for Reconstruction and Democracy (PPRD) became the leader of this bloc. In contrast to his 2006 election boycott, long-time opposition leader Etienne Tshisekedi announced his candidacy for the presidency. The Movement for the Liberation of Congo (MLC) party, which produced the second-place finisher in the

2006 elections (Jean-Pierre Bemba, now detained in The Hague facing charges of crimes against humanity), did not submit a presidential candidate in 2011. An additional important contrast to the 2006 elections was the emergence of a new high-profile party, Congolese Union for the Nation (UNC), led by a former Kabila loyalist, Vital Kamerhe. The absence of a common opposition candidate coupled with the constitutional change to the electoral system greatly increased the chance of a Kabila single-round victory.

Besides the 11 presidential candidates, 18,386 candidates were accepted by the CENI to compete for 500 National Assembly seats. There was no female candidate for the presidential elections, and only 12 percent of legislative candidates were women.

The CENI faced significant organizational and logistical challenges. Established in April 2011, the

The 2011 elections were an opportunity to reinforce a democratic culture with participation from the full range of political actors and the support of the international community.



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CENI was behind schedule even before it started to organize for the elections. The very high number of candidates for the legislative elections also created formidable complications. In many districts, the CENI was obliged to create a legislative ballot of several dozen pages to accommodate the large number of candidates. The design, printing, and distribution of ballots as well as the ballot boxes needed to accommodate the large ballots presented procurement and distribution problems for the CENI, leading to speculation right up to election day that a delay for technical reasons would be necessary.

Added to the persistent uncertainty about the CENI capacity was an equally challenging lack of confidence on the part of opposition parties that the election commission was acting in a neutral and unbiased fashion. The CENI thus faced management and logistical challenges that were in turn often rapidly politicized. Also overshadowing the campaign period were a variety of problems, including:

- Delays attributed to the poor management of orders for ballots and ballot boxes
- Delayed publication of the map of polling station locations and the concerns of the political opposition regarding its accuracy
- Recruitment of polling station workers that was done in a short period without consultation with political parties
- Failure to post voter lists within the time frame mandated by the electoral law

These and other missed deadlines pointed to a chronic management problem at the CENI in which, although tasks were generally completed, the body could not meet the demands of its own election calendar, operating instead on a near constant crisis basis. Faced with a constitutional deadline to hold the elections by Dec. 6, 2011, any delay to hold the election could have opened the door to legal complaints concerning the legitimacy of the incumbent president. Some analysts believed that opposition parties hoped for such an outcome, as they might try to capitalize on a constitutional crisis and use political negotiations for access to power.

Nevertheless, certain shortcomings of the CENI cannot be attributed to time pressures but rather a lack of political will, including:

- The lack of sustained and structured consultation with political parties, which could have corrected certain technical challenges of this process
- The lack of transparency shown by the CENI to its partners, above all, national and international observation missions
- The lack of opposition access to the central server of the CENI

Carter Center LTOs reported that the formal election campaign period was largely peaceful with few significant incidents of violence (with the exception of one death). Analysis of the media showed a strong bias by the state broadcaster in favor of Joseph Kabila.

In addition to the 20 LTOs deployed by The Carter Center, 40 short-term observers arrived in the DRC shortly before election day to observe polling, counting, and tabulation. The observers were led by former Zambia President Rupiah Banda and Carter Center Vice President for Peace Programs Dr. John Stremmler. The Center's assessment of the election process was conducted with reference to Congolese law and international standards for elections and in accordance with the Declaration of Principles for International Election Observation and the Code of Conduct for International Observers. In the DRC, the Center's mission coordinated and consulted with other international and domestic nonpartisan election observers.

The presidential and legislative elections were held on Nov. 28 but were extended until Nov. 29 and even Nov. 30 in some places. When certain districts were still in the middle of voting, others were in the process of counting ballots, while some districts were still waiting to receive ballot papers flown in from South Africa. Thus, the CENI was responsible for managing several unorganized and disjointed processes throughout the voting districts for the same election.



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Congolese voters turned up on election day, and polls were generally peaceful despite incidents in some parts that caused destruction at polling stations. Carter Center observers found significant confusion on the part of voters about where they were supposed to vote and general mismanagement of the voter list by election workers. The national average voter turnout was 58.81 percent, excluding Katanga province, which recorded a higher level of participation than the national average and where certain districts reported 100 percent participation, leaving doubts about the credibility of these figures.

After the close of polls, ballots were counted at polling stations with the results announced and posted at the conclusion of counting. Ballots and ballot boxes were then transported to one of 169 local tabulation centers (CLCR) for processing and tabulation. Although many CLCRs were able to complete their work according to procedures, many others were

the scene of chaotic activity that reflected a lack of organization on the part of the CENI. Tabulation centers in several politically sensitive parts of the country, notably in the capital Kinshasa and the southeastern city of Lubumbashi, were very badly managed with significant obstacles to the timely and secure receipt of results forms and ballot papers arriving from polling stations. The CENI was not prepared to provide physical protection from the elements for either the CENI staff or their materials, leaving such sensitive documents as the results forms exposed and insecure.

In Kinshasa, Carter Center observers saw damaged results envelopes lying on wet ground, rendering them inadmissible upon receipt by the CLCR; yet others were opened by the CENI workers, who said they needed to finish the paperwork. In Lubumbashi, Carter Center observers witnessed wet results forms

hung on a line to dry. This chaotic management of the reception of results envelopes—along with violence in some places on election day—resulted in the loss of at least 3,000 envelopes at the national level, 2,000 of which were in Kinshasa, in total representing more than 1.2 million lost votes of approximately 18.5 million total.¹

Beginning on Dec. 2, the CENI began to publish partial results for the presidential election. This was a welcome move as partial results could help to reduce rumors and permit the remainder of CLCRs to finish their tabulation work.

On Dec. 9, the CENI announced the provisional results for the presidential election, giving incumbent president Joseph Kabila 48.95 percent of the vote, Etienne Tshisekedi in second position with 32.33 percent, and Vital Kamerhe in third position with 7.74 percent.

In a Dec. 10 public statement, the Center reported that these results lacked credibility in a number of aspects. Notably, in Katanga province, the rate of voter turnout was at or near 100 percent in more than a dozen districts; the rate of spoiled ballots was extremely low; the rate of collection was also 100 percent; and in four districts, vote totals for Kabila were at or very close to 100 percent. Coupled with the loss of a significant number of polling station results, the Center concluded that the CENI's overall management of the results process was poor and the results lacked credibility.

Only the third-place candidate, Vital Kamerhe, submitted a complaint to contest the provisional

Congolese voters turned up on election day, and polls were generally peaceful despite incidents in some parts that caused destruction at polling stations.

¹ The European Union (EU) election observation mission cites a higher figure of 4,875 missing polling stations results, representing 7.63 percent of the national total of voters.



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presidential election results. Etienne Tshisekedi chose not to seek recourse through the Supreme Court, stating that he lacked confidence in its impartiality. In a Dec. 16 ruling, the Supreme Court rejected Kamerhe's complaint, upheld the provisional CENI results, and officially proclaimed Joseph Kabila's re-election by a plurality of votes for a mandate of five years. The elected candidate took his presidential oath on Dec. 20, 2011, before the Supreme Court, as called for by the constitution.

Etienne Tshisekedi did not wait for the final results before refusing to accept the results announced by the CENI and asking Kabila to step down. He proclaimed himself president on Dec. 23 at his residence in Limite district of Kinshasa, where he was surrounded by police and under *de facto* house arrest. Multiple public protests occurred, and protesters were often met with brutal police response. A U.N. report documented at least 36 confirmed killings by police and other security forces in Kinshasa, the wounding of 83 others, and the arrest of hundreds.

The CENI suspended tabulation of legislative results on Dec. 21 after observers, party agents, candidates, and political organizations reported a number of cases of fraud. On Dec. 28, the CENI resumed tabulation work and began to announce partial results. After several delays, on Jan. 26, 2012, the CENI announced the final provisional results for 155 of 169 CLCRs, excepting Kongolo, Popokabaka, Rutshuru, Mbuji Mayi, Kinshasa's Lukunga District, Mt. Amba, and Tshangu, as well as seven districts in which the CENI had difficulties compiling the results, citing cases of violence on election day.

On Feb. 1, 2012, the CENI published the remaining provisional legislative results. The commission leadership proposed a cancellation of the voting from seven districts: Kiri in Bandundu; Demba in Kasai Occidental; Ikela in Equateur; Kole and Lomela in Kasai Oriental; Masisi in North Kivu; and Punia in Maniema. The commission justified its request to the Supreme Court of Justice (CSJ) on the grounds of cases of violence that took place on the day of elections.² It is unclear why results from these

same seven locations were included in the presidential tally without question. There is no public record of the aforementioned violence and disruption on election day.

The legislative elections results have produced a fractured National Assembly in which 98 political parties are represented. The composition of the assembly is further politically fragmented by 76 political parties with five or fewer seats (of which 45 parties have a single deputy). The 12 parties with the largest representation are: People's Party for Reconstruction and Democracy (PPRD), Union for Democracy and Social Progress (UDPS), People's Party for Peace and Democracy (PPPD), Social Movement for the Renewal (MSR), Movement for the Liberation of Congo (MLC), United Lumumbist Party (PALU), Congolese Union for the Nation (UNC), Alliance for Congo's Renewal (ARC), Alliance of Congo Democratic Forces (AFDC), Awakening of Conscious for Work and Development (ECT), Rally for the Reconstruction of Congo (RRC), and the Movement for the Integrity of the People (MIP).

Only the PPRD has at least one elected deputy from each of the Congo's 11 provinces. This fragmentation of the political landscape, along with the large number of candidates and political parties that contested the legislative elections, shows the fragility of the political class and its attachment to ethnic or territorial ties.³

As of May 2012, many legislative election complaints remained before the Supreme Court, but it seems unlikely that the court will exercise its mandate to order a more thorough review of the electoral process and accountability of the election

² The Supreme Court denied CENI's request to exclude these legislative results.

³ Tribalism and regionalism are contrary to Article 5 of Law 04/002 of March 15, 2004, for the organization and functioning of political parties.



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commission. The legitimacy of the Congo's fragile democratic institutions—the office of the president, the National Assembly, the election commission, and Supreme Court—has been undermined rather than strengthened by the 2011 election experience. The Carter Center appreciates the invitation to observe these elections and hopes that the assessment communicated in this report will contribute to the future strengthening of those institutions in pursuit of genuine democratic elections.

The Carter Center recommends a number of important steps to improve the conduct of future elections, including the upcoming provincial elections. The Center recommends that the president accelerate the establishment of the constitutional court, as called for under the constitution, to allow for greater transparency and impartial effective remedy for voters and candidates. The Center also urges the government to re-examine the composition of CENI leadership to reform its structure so that it represents all Congolese political actors and allows for civil society representation.

The Center encourages Parliament to allow the CENI at least 18 months, in contrast to seven months for the 2011 elections, to prepare for the next presidential and parliamentary elections in 2016. The Center strongly advises the CENI to set a firm date for an audit of these presidential and legislative elections by political opposition representatives. The Center also recommends that the newly elected Parliament take steps to ensure that every citizen is able to exercise his or her right to stand for office. This should be accomplished by reducing or eliminating the requirement to have a minimum amount of money in bank accounts and by establishing

an upper limit to campaign spending to balance the weight of the respective candidates on the campaign trail.

The Center will continue to remain engaged in the DRC through initiatives including human rights defense, mining contracts, and training of domestic observers for the provincial elections.

THE CARTER CENTER IN THE DRC

The Carter Center's current involvement in the DRC began when the Center observed the milestone

2006 presidential and parliamentary elections. The Center's Democracy Program launched its international election observation mission in March 2006 with the establishment of a small field office in Kinshasa and deployment of long-term observers shortly thereafter. A 58-member delegation, led by former Prime Minister of Canada Joe Clark and Carter

Center Vice President of Peace Programs Dr. John Stremlau, observed voting on July 30, 2006.

With no presidential candidate reaching the 50 percent of votes necessary for a majority victory, a runoff was scheduled between the top two candidates, Jean Pierre Bemba and Joseph Kabila. The Center deployed a 45-member delegation, again led by former Prime Minister Clark and Dr. Stremlau, to observe the runoff and found voting on Oct. 29 to be peaceful and orderly. With Bemba accepting defeat on Nov. 28, the Center completed its observation mission and closed its elections field office in Kinshasa.

Following the 2006 elections, the Center maintained an active presence in the DRC through its Human Rights Program. Stemming from a demand from Congolese civil society organizations (CSOs),

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the Center established the Human Rights House (HRH) in the spring of 2007. The HRH enables over 200 Carter Center partner CSOs to become more effective through training, research, and meeting facilities and provides them with a safe space where they can meet with state officials to work toward policy reform. For CSOs to be able to operate, however, there needs to be a minimum of security and protection. In coordination with its partners, HRH staff advocates for increased protection of human rights defenders and organizations and strives to ensure that political space is sufficient for these organizations to carry out their vital work. The HRH also supports local organizations in developing solidarity-based alert and prevention systems.

The Center's Human Rights Program also focuses on natural resource governance, with a particular focus on industrial mining governance. In cooperation with selected local partners, the Human Rights Program works to improve transparency and accountability in the mining sector in order to increase revenue generation, a stepping stone for the realization of social and economic rights. This work includes mining contract negotiations, training NGOs to conduct human rights impact assessments in mining communities, and bringing technical expertise to multistakeholder (civil society, government, and mining companies) meetings convened for policy dialogue and joint problem solving in mining practice.

Recognizing the importance of the 2011 elections for solidifying democracy in the DRC, and at the invitation of the electoral commission (CENI), the



President Rupiah Banda (center), accompanied by field office director Baya Kara (far left), co-leader Dr. John Stremlau (second from left), and project manager David Pottie (far right), reads recommendations from the Carter Center's preliminary statement.

Jules Lalancette

Center launched its international election observation mission in August 2011 with the establishment of a field office in Kinshasa and the deployment of 10 long-term observers to key provinces. These 10 observers were joined by an additional 10 in September, allowing the Center to have full coverage across all 11 provinces. For the single round of presidential and parliamentary elections scheduled for Nov. 28, the Center fielded a 75-member international delegation representing 37 countries.

Concurrent to the Center's 75-member delegation for the international election mission, the HRH worked with the Catholic Episcopal Justice and Peace Commission (CEJP) to train and deploy 6,300 domestic observers throughout the country to observe the electoral campaign and election day. In the months prior to the election, HRH staff worked with CEJP to build capacity among their project staff and trainers to conduct two waves of cascade



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training for 300 domestic long-term observers. In the weeks prior to election day, these domestic long-term observers trained some 6,000 observers for polling day observation across the country. Observation results were collected via coded short message service (SMS) messages sent to the CEJP/Carter Center data center in Kinshasa in the hours and days that followed poll opening, allowing for the rapid collection of results—the first operation of its kind for domestic observation networks in the DRC. The CEJP's separate findings were released in two statements and a comprehensive report following the elections. For further information regarding CEJP's observations of the presidential and legislative elections, please visit www.cejp-rdc.org.

ELECTION OBSERVATION METHODOLOGY

Electoral observation involves the collection of information from the electoral process and its evaluation against international standards. The Carter Center deployed a pre-election assessment mission to the DRC in April 2011 and established an international election observation mission office in Kinshasa in August. The Center deployed long-term observers (LTOs) to assess the election preparations during the four-month period preceding election day. On election day, observers were responsible for observing the opening in at least one polling station, voting operations in at least 10 polling stations, and the closure and counting of ballots in one polling station. Observers completed forms with questions relating to implementation of voting and counting procedures. The mission set up a telephone call center in Kinshasa to collect data from observers in order to assess the electoral process.

After establishing the international observation mission in Kinshasa, 10 long-term observers arrived Aug. 8–9, 2011, and received orientation prior to their deployment. Different topics were presented to observers to remind them of international observation principles and the code of conduct, as well as international standards concerning elections. Legal and political analysts participated in the training to familiarize observers with the national legal framework and to inform on recent political events.

The Center's LTOs represented nine nationalities from the Americas, Europe, and Africa. They were divided into pairs to form five teams of LTOs deployed in seven provinces. North and South Kivu and Kinshasa and Bas Congo each was covered by one team with other teams deployed to Kasai Oriental, Oriental, and Katanga provinces.

LTOs were deployed on Aug. 15, 2011, and the Center was the only international observation mission on the ground at that time. The observers' principal responsibility was to follow the electoral process through contacts with all electoral actors.

LTOs conducted regular meetings with the CENI, political parties, civil society, and relevant departments of United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), which was in charge of technical support to the CENI. Observers were also in contact with the

general population to understand its interest and involvement in the electoral process.

On Sept. 30, 2011, a second group of long-term observers joined the LTOs who had been on the ground for the previous six weeks. An orientation was organized for the new observers, which included a

The Carter Center deployed a pre-election assessment mission to the DRC in April 2011 and established an international election observation mission office in Kinshasa in August.



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debriefing for LTOs returning from the field in order for them to share their assessment of the electoral process to date. After three days of training and discussion, a deployment plan for the new and original observers was implemented. The plan provided complete coverage of the country: Kinshasa, Oriental, North, Kivu, South Kivu, Katanga, Kasai Oriental, Kasai Occidental, Bandundu, Equateur, Maniema, and Bas Congo.

Carter Center observers reported on current events in the electoral process each week through a written report, covering the following topics: political environment; electoral administration; the electoral campaign; voter education; civil society; the role of women in the political process; and pre-election, election-day, and post-election security. LTOs also exchanged information with other domestic and international observers as they arrived in their deployment areas.

Shortly before election day, 40 short-term observers representing 27 countries joined the mission. Their principal responsibilities were to observe the last days of the electoral campaign and observe voting and counting of presidential and legislative votes until their conclusion. Where possible, teams also observed the tabulation of presidential votes at the local tabulation centers (CLCR) in their deployment site.

Taking into consideration the complexity of movement to deployment sites in the interior of the country and wanting to ensure the presence of observers as long as possible through completion of tabulation of presidential ballots, the Center made a strategic decision to deploy short-term observers in two phases. Accordingly, a first group of STOs arrived in Kinshasa on Nov. 18, 2011. They attended

a one-day orientation led by members of the core team and were deployed two days later to sites in the interior of the country by MONUSCO flights. A second group of STOs joined the mission on Nov. 24, 2011, attended orientation, and were deployed by car to sites that were accessible by road from Kinshasa.

In total, 70 observers were deployed for the Nov. 28 elections at the following sites: Kinshasa (Limite, Kalamu, Ngaliema, Gombe, Masina, and Nsele); Bas Congo (Matadi, Muanda); Oriental Province (Kisangani, Bunia, Isiro); Katanga (Lubumbashi, Kalemie, Kolwezi); North Kivu (Beni, Goma); South Kivu (Bukavu, Walungu); Maniema (Kindu);

Kasai Oriental (Mbuji Mayi, Kabinda, Mweni-Ditu); Kasai Occidental (Mweka, Tshikapa); Bandundu (Bandundu ville, Kikwit); and Equateur (Mbandaka, Gemena, Bikoro).⁴ LTOs prepared a regional report in advance for each team of short-term observers arriving in their areas of responsibility. Short-

term observers had a briefing session with long-term observers in provincial capitals before arriving at their final deployment sites in the provinces.

On election day, both long- and short-term observers reported to the core team by completing observation forms with questions concerning the opening, voting, and closing procedures at polling stations. A communication plan was elaborated by the core team for effective and timely receipt of information.

At several key points during the mission, The Carter Center published public statements to inform national and international opinion on the work of the mission and its observations of the process.⁵

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⁴ See Appendices for deployment map.

⁵ See Appendices for copies of these statements.



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1. Press Release of Aug. 17, 2011: Announcing the Establishment of the International Observation Mission of The Carter Center
2. Statement of Oct. 17, 2011: First Pre-electoral Statement of The Carter Center on Preparations for the DRC Elections
3. Press Release of Nov. 22, 2011: Announcement of Carter Center Heads of Mission Former President of Zambia, His Excellency Mr. Rupiah Banda, and Vice President of Peace Programs at The Carter Center, Dr. John Stremlau
4. Statement of Nov. 30, 2011: Preliminary Postelection Statement
5. Statement of Dec. 10, 2011: Postelection Statement on the Presidential Results and Tabulation Process

6. Statement of Feb. 23, 2012: Democratic Republic of the Congo Legislative Election Results Compromised

The international observation missions of The Carter Center conduct their work in accordance with the Declaration of Principles for International Observation of Elections and Code of Conduct for International Election Observers, adopted at the United Nations in 2005 and signed by 37 observation organizations. The Center evaluates the electoral process based on the DRC's national legal framework and its obligations for democratic elections in international and regional agreements.

After a seven-month presence in the DRC, The Carter Center concluded its observation mission by publishing this final report with the Center's findings and analysis on the electoral process, as well as recommendations to various stakeholders.



HISTORICAL AND POLITICAL BACKGROUND

The DRC covers almost 2.3 million square kilometers, which is the equivalent of 33 times the size of Belgium, the Netherlands, and Luxembourg together, or four times the size of France, or one-quarter the size of the United States. Landlocked in central Africa, except for a small coast bordering the Atlantic Ocean, it is the second largest country in Africa. Because of its size and enormous wealth, the DRC has long attracted the greed of its regional neighbors and international powers.

The administrative structure of the DRC consists of the city-province of Kinshasa and 10 provinces

endowed with legal capacity. It is a unitary state with a president as head of the executive branch elected by direct universal suffrage, a bicameral

Parliament composed of a National Assembly elected by direct universal suffrage, and a Senate elected by indirect vote. The government is responsible to Parliament, and the independence of the judiciary is guaranteed by the constitution. The 2006 constitution organizes the judicial institutions in three divisions under the respective

control of the Court of Appeal (or Cassation), the Council of State, and the Constitutional Court. However, these three divisions have not yet been installed, and their duties are assumed by the Supreme Court of Justice. Political pluralism is enshrined in the constitution, which punishes as high treason the institution of a one-party system. Treaties and international agreements have superior authority over national laws, under reserve for every treaty or agreement of its application by the other party.

In December 1990, under international pressure and after several years of resisting, then Zaire President Mobutu Sese Seko accepted the principle of a multiparty system and asserted his intent to return the country to competitive elections. Recurring political unrest prevented the promised democratization from coming to fruition

In March 1997, Désiré Kabila led an armed march on Kinshasa. Efforts by the Alliance of Democratic Forces for the Liberation of Congo (AFDL) and support by neighboring countries brought Kabila to power and forced Mobutu from his position. The absence of elections, coupled with the appointment of provisional governors by the central power under Kabila, brought an end to the hope of free elections under the new regime. Kabila was assassinated in

Because of its size and enormous wealth, the DRC has long attracted the greed of its regional neighbors and international powers.

Table 1: Statistics

Full name	Democratic Republic of the Congo
Polling stations	63,865 (CENI, 2011)
Capital	Kinshasa
Registered voters	32,024,640 (CENI, 2011)
Area	2.34 million sq km (905,354 sq miles)
Political parties	428 (registered as of Nov. 23, 2011)
Population	67.7 million (U.N., 2011)
Official languages	French, Lingala, Kiswahili, Kikongo, Tshiluba
Major religions	Christianity, Islam
Life expectancy	47 years (men), 51 years (women) (U.N.)
Main exports	Diamonds, copper, coffee, cobalt, crude oil, coltan



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2001. After a few days of confusion and tension surrounding his death, the temporary Parliament chose to proclaim Major-General Joseph Kabila, the elder son of the late president, as president of the Republic on Jan. 24, 2001. This 29-year-old newcomer to politics inherited a country divided into three occupied and decentralized zones.

On Dec. 17, 2002, after long negotiations under the mediation of South African President Thabo Mbeki, a global and inclusive transition agreement was signed in Pretoria. According to this agreement, all parties were to commit to a democratic transition that would end with the organization of presidential and legislative elections within two years. The agreement contained conditions for demilitarization of rebel groups and the formation of a government of transition. According to this agreement, all foreign troops were to withdraw from the DRC, and all militias were to be disarmed. It was in respect for these agreements that President Joseph Kabila promulgated the interim constitution on April 4, 2003, and he took the oath of office on April 7, 2003, before the Supreme Court of Justice (CSJ). Government power was shared between the president of the republic and four vice presidents, who were selected among the parties to the peace agreement.

The government of national unity, formed on June 30, 2003, was responsible for implementing an electoral process, with a constitutional referendum that would take place Dec. 18–19, 2005, followed by the presidential elections and general election in July and October 2006. The government was also charged with restoring state authority over all provinces to counter the activities of belligerent parties, which had divided up their administrative and military control according to their alliances and economic interests.

With the organization of the constitutional referendum and the presidential, legislative, and provincial elections (July 30 and Oct. 29, 2006), the transition process was coming to an end. The 2006 elections were marked by a high level of voter participation (65 percent) despite the boycott of long-time opposition leader Etienne Tshisekedi and his supporters. Incumbent Joseph Kabila was victorious

in the presidential election (receiving 58 percent of votes in the runoff) over Vice President Jean Pierre Bemba. Kabila was inaugurated on Dec. 6, 2006. The presidential coalition Alliance for the Presidential Majority (AMP) and its allies, including the Unified Lumumbist Party (PALU), formed a majority in the National Assembly and the Senate. PALU leader Antoine Gizenga was appointed prime minister, and Léon Kengo wa Dondo of the opposition was elected president of the Senate in May 2007.

After the resignation of Prime Minister Gizenga on Sept. 25, 2008, and his replacement by Adolphe Muzito (also a member of PALU), a new government was established on Oct. 27, 2008. During subsequent government reshuffles in February 2010 and September 2011, Prime Minister Muzito remained in his position.

The Nov. 28, 2011, elections took place in a very different political climate from 2006. In 2006, the political stakes involved placing the country on the path of democracy after a long period of dictatorship and years of conflict. In the first pluralistic elections since independence, Tshisekedi's UDPS chose to boycott voter registration and presidential and legislative elections, counting on the failure of an electoral process under the supervision of the international community. The two-round presidential elections included 11 candidates, ranging from well-known personalities from the political class to unknown



Myriam Asmani

These voting booths and ballot boxes for the legislative and presidential elections were set up in a Kinshasa polling station.



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Laura Curtis

Boxes of voting materials were stored in a CENI warehouse in Kananga, Kasai Occidental province.

actors competing as outsiders with an untarnished past. Five years later, the political situation was very different, with Tshisekedi participating as a presidential candidate and a newly established election commission assuming full control of the organization of presidential, legislative, provincial, and local elections.

The objective of the PPRD in 2011 was to obtain a legislative majority allowing it to govern on its own, but doing so proved to be a major challenge considering that the number of candidates had doubled since the 2006 election.

Uncertainty about the CENI capacity to organize the elections by Nov. 28 weighed heavily throughout the pre-election period and figured prominently in the election campaign. The mismanagement of ballot box and ballot paper acquisition reinforced doubts

over the ability of the commission to respect the constitutional deadline to hold the elections before Dec. 6. Opposition candidates played on the concern that any delay in the elections could open the door to legal complaints concerning the legitimacy of the

sitting president despite Article 70 of the constitution, which states: “At the end of his mandate, the President of the Republic remains in office until the installation of the new elected President.” Some political commentators believed that opposition figures eagerly plied the

CENI with criticisms in the hope that through a delay in the elections, they could make political gain through a negotiated solution. No doubt such political pressures contributed to the CENI’s organizational challenges, though ultimately it remained the body responsible for the conduct of the elections.

The two-round presidential elections included 11 candidates, ranging from well-known personalities from the political class to unknown actors competing as outsiders with an untarnished past.



ELECTORAL INSTITUTIONS AND LEGAL FRAMEWORK FOR THE PRESIDENTIAL AND LEGISLATIVE ELECTIONS

Effective electoral institutions and a sound legal framework are essential to ensuring that a country upholds its international obligations, including but not limited to conducting periodic genuine elections that accurately reflect the will of the people for democratic elections.⁶

LEGAL FRAMEWORK

The DRC has ratified a number of international treaties through which the country made a commitment to respect key standards of human rights (see Table 2).

According to the DRC Constitution, “treaties and international agreements regularly concluded have, from their ratification, an authority superior to that of [national] laws.”⁷ Consequently, international standards on elections encompassed in these treaties are of direct application and have authority superior to any national laws in the event of contradiction. The DRC’s responsibility to meet these obligations is clearly established through the voluntary initiative by the Congolese government in such international instruments so as to ensure citizens are able to participate in genuine democratic elections.

These international standards, derived from a country’s national legal framework and international commitments for democratic elections, provide criteria that The Carter Center has used to assess the quality of the 2011 elections in the DRC. Reference to international standards allows observers to assess how well a country is meeting its obligations, identify

the strengths and weaknesses of an electoral process, and offer a clear basis for impartial analysis.

Constitution

The constitution and electoral law are the central elements of the electoral framework. The DRC’s constitution gives important consideration to human rights and fundamental liberties. The principal rights and liberties relating to elections are the freedoms of meeting, assembly, speech, association, and movement; the principle of nondiscrimination; the right of participation; and the rights to safety and to a free and fair trial.⁸

The constitution recognizes political pluralism and prohibits the establishment of a single party with a penalty of high treason.⁹ A political opposition is recognized and its rights protected, providing its respect of the constitution and the law. Specific laws govern the organization and functioning of political

parties, the status of political opposition, and political party finances.¹⁰ However this last law specifies in its final article that it does not apply to 2011 elections. The absence of public financing of political parties disadvantages smaller parties and does not favor

According to the DRC Constitution, “treaties and international agreements regularly concluded have, from their ratification, an authority superior to that of [national] laws.”

6 International Covenant on Civil and Political Rights (ICCPR), Article 25(b); Universal Declaration of Human Rights (UDHR), Article 21

7 Article 214 of the constitution

8 Articles 5–37 of the constitution

9 Article 7 of the constitution

10 Political parties: Law 04/002 of March 15, 2004; status of political opposition: Law 07/008 of Dec. 4, 2007; and political party finance: Law 08/005 of June 10, 2008



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Table 2: International Standards

International Standards From These Treaties Are Applicable Under the Congolese Legal System
✓ International Covenant on Civil and Political Rights
✓ Convention on the Elimination of Racial Discrimination
✓ International Covenant on Economic, Social, and Cultural Rights
✓ Convention on the Political Rights of Women
✓ Convention on the Rights of the Child
✓ Vienna Convention on the Law of Treaties
✓ African Charter on Human and Peoples' Rights
✓ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
✓ African Union Convention on Preventing and Combating Corruption
✓ African Charter on Democracy, Elections, and Governance
✓ SADC Protocol Against Corruption

transparency in the financing of parties and election campaigns, for which accounts are not made public at any time.

The existence of 417 political parties registered with the Ministry of the Interior demonstrates the reality of political pluralism in the DRC. However, this magnitude of so many (often small) political parties reflects a very fragmented electorate. Many parties also appear to lack internal democracy and/or are organized around an individual. Ideological or issue-based differences among parties are all the more difficult to identify, as many parties lack a clear description of their views. Some commentators note that parties more often reflect various identities such as region, clan, or language than other considerations.

During the presidential election of 2006, Article 71 of the constitution provided that, "the President of the Republic is elected by direct universal suffrage in a majority vote in two rounds for a five-year term renewable only once."¹¹ On Jan. 25, 2011, the National Assembly and Senate amended this article to change the presidential voting system from a majority basis to a single round plurality election. Though the constitutional amendment was supported by opposition members in Parliament,

the amendment was considered most favorable to President Kabila, who had won the largest proportion of votes in the first round of the presidential election of 2006.

Some sources that serve as evidence of state practice indicate that no substantial change to the electoral law should be made within six months of an election without the consent of a majority of political actors.¹² Although the DRC's constitutional amendment occurred at the start of 2011, better consultation with civil society and political parties for such a fundamental modification of the presidential electoral system would have strengthened public confidence in the elections and the CENI.

¹¹ Consistent with the Electoral Commissions Forum of South African Development Community (SADC), "The electoral system should be entrenched in the constitution. The form, content and operation of the adopted system should be elaborated in the electoral act." See also, United Nations Human Rights Committee (UNHRC), General Comment 25, para. 21: "Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by Article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another."

¹² See, for example, Economic Community of West African States (ECOWAS), Protocol on Democratic and Good Governance, Article 2



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Participation of Women, Minorities, and Marginalized Groups

State obligations to promote equality for women derive, in part, from political obligations regarding absence of discrimination and the right of all citizens to participate in the public affairs of their country regardless of gender.¹³

The DRC Constitution guarantees equality for all Congolese and equal protection under the law.¹⁴ Public authorities are responsible for ensuring the elimination of any form of discrimination against women by insuring the protection and promotion of the rights of women.¹⁵ Concerning political representation of women, the constitution establishes a “right to fair representation within the national, provincial, and local institutions. The state guarantees the implementation of the parity between genders in aforementioned institutions.”¹⁶

The population’s distribution between men and women is relatively equal, but women are far from being represented proportionately in Congolese political life. Congolese law still contains provisions that violate the DRC’s international commitments and the constitution.¹⁷ Under the family code, a

“woman has to obtain the authorization of her husband for all legal acts in which she obliges herself to a service.”¹⁸ Although some measures exist in the law to encourage participation of women in government and respect of their rights, the government has yet to establish a coherent policy and legal framework regarding the place of women in society. For example, the law on public finance of political parties states that to benefit from state subsidies, any political party must “take into account the parity men/women during the establishment of party lists,” but as noted above, this law has yet to be enacted.¹⁹

The constitution guarantees equal access to public resources regardless of ethnicity, tribe, or cultural minority.²⁰ About 250 ethnic groups and 700 languages and dialects exist in the DRC. The U.N. High Commissioner for Human Rights has highlighted the discrimination of the Pygmy minority in particular, concerning education, health, and employment. This included the Batwa of the eastern borders and Bayaka on the border with Congo-Brazzaville and the Central African Republic. Their lack of representation in public institutions is an example of the effect of discrimination.

ELECTORAL SYSTEM

Opposition parties and civil society organizations regretted the absence of public debate before the constitutional amendment to the presidential electoral system from a majority to a plurality of votes.



John Stremiau

A woman is proud to hold up her voter registration card outside a polling station.

13 ICCPR, Article 25(a). Not only are states obligated to take steps to prevent discrimination, they must also take the steps necessary to give effect to human rights. ICCPR, Article 2, AU African Court on Human and People’s Rights (AfCHPR), Article 1. This obligation is unqualified and of immediate effect (UNHRC, General Comment 31, para. 14).

14 Article 12 of the constitution

15 Article 14 of the constitution

16 Article 14 of the constitution

17 Article 14 of the constitution

18 Article 448 of the family code

19 Article 3 (5) of the law on public finance of political parties

20 Article 13 of the constitution



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Although not inconsistent with acceptable norms of the DRC's international obligations, this modification of the voting system prompted a change of political strategy in which the opposition no longer could run for the presidency divided in the first round and build alliances around a common front-runner in the second. With the amendment, electoral success by an opposition presidential candidate required advance unity from the very first round. This was anticipated as being very difficult, as personal agendas and the strong personalities of opposition leaders would play a major role in determining who could be the opposition candidate. Moreover, the single round majority system also ran the risk of having an elected president with only a plurality of votes and perhaps without sufficient legitimacy to assert his authority.

As for legislative elections, a proposed electoral law submitted on March 11, 2011, by PPRD National Assembly Deputy Tunda Yakasendwe would have reformed the legislative voting system by shifting from a proportional election to a majoritarian party list system, which would have allowed a party list obtaining an absolute majority of votes to win the totality of seats in a district. This voting system would have favored the representation of big parties to the detriment of minorities and local parties. At the time of the vote on June 15, 2011, members of Parliament rejected the proposition and kept the voting system used in 2006. The time spent examining the text and waging negotiations, under which members of Parliament chose to condition their vote, delayed the work of the CENI and may have impacted negatively the organization of the elections.

On Aug. 17, 2011, another law was enacted modifying the distribution of seats in the National Assembly. Political parties from districts that lost seats questioned the integrity of figures drawn from the voter register, which was suspect in their view.



Myriam Asmani

These legislative and presidential ballot boxes are in the center of a Kinshasa polling station.

Members of Parliament are elected for five years, expiring at the installation of the new assembly.²¹ The legislative elections of Nov. 28, 2011, used a mixed voting system.²² In districts with only one seat in competition, the vote took place on a simple majority basis. The single candidate who obtained the largest number of votes was elected.

In districts with two or more seats, the vote took place under the open party list proportional system. This voting system allocates seats according to the number of times the party reaches the electoral quota. The quota is calculated by the number of total votes divided by the number of seats in competition in the district. The "largest remainder formula" was used to apportion remaining seats after the initial allocation of seats. When voters voted for a candidate on a list, their votes were counted for both the party and the candidate.

²¹ Article 117 of the electoral law

²² Articles 118 and 119 of the electoral law



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In general, the electoral law respects international standards; however, some decisions and additions made in 2011 contradict international agreements signed by the DRC. The electoral law contains elements of transparency that are very positive when applied. However, noncompliance with multiple articles in the electoral law eroded public confidence in the commission. The CENI failure to meet its own deadlines included:

- Article 6 (publication of voter list at least 30 days before start of official campaign period)
- Article 8 (posting of voter list at respective polling stations at least 30 days before election day)
- Article 39 (delivery of party witness accreditation within five days of election day)
- Article 43 (delivery of observer accreditation within seven days of application)
- Article 47 (publication of polling station locations 30 days before election day)
- Article 56 (final delivery to polling stations of electoral materials 48 hours in advance of polls opening)

In general, the electoral law respects international standards; however, some decisions and additions made in 2011 contradict international agreements signed by the DRC.

The electoral law of 2011 contains an additional criterion of candidate eligibility requiring a level of education or proven work experience. This education/experience criterion is inconsistent with the right to stand for elections under the international obligations concerning civil and political rights.²³ The provision to exclude from eligibility those individuals with a final conviction for the gravest crimes is intended to enhance the image of politicians and fight impunity against criminals trying to benefit from the protection of public office (and is considered to be consistent with reasonable restrictions on candidacy).

Many members of the Congolese diaspora—citizens abroad with continued economic and social ties to the country—were deprived of their right to vote.²⁴

Participation of Women, Minorities, and Marginalized Groups

The electoral law does not allow full application of the constitution by allowing de facto limits in the representation of women: “... every party list is established by taking into account the equal representation of men and women... however, the nonrealization of the parity in party lists... is not grounds for inadmissibility of the list.”²⁵ This measure also contradicts the DRC’s commitment to reach the threshold of at



G. Dubourthoumieu

A woman casts her ballot in a polling station.

23 ICCPR, Article 25(a) “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;” AU African Charter on Democracy, Elections and Governance, Article 3(7) and SADC, Principles and Guidelines Governing Democratic Elections, para. 2.1.1. See also, UNHRC, General Comment 25, para. 15, which cites education level as an unreasonable restriction.

24 Council of Europe, Code of Good Practice in Electoral Matters, Sec. I.1.1.c, “...the right to vote and to be elected may be accorded to citizens residing abroad.”

25 Article 13 of the electoral law



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least 30 percent of women in parliamentary seats by 2005 and does not further the commitment to reach a new objective of 50 percent of women in Parliament before 2015.²⁶

Nearly half of Congolese registered voters are women. Unfortunately, no political party presented a female candidate in the presidential election, compared to four female candidates in the 2006 elections. It is also regrettable that the percentage of female legislative candidates did not increase from 12 percent in 2006 to a greater number in 2011.

In the previous legislature, 8.4 percent of National Assembly deputies were female, with 4.6 percent in the Senate. The first two DRC governments included four female ministers and five vice ministers. Both governments of Prime Minister Muzito included five female ministers and four vice ministers. At the provincial level, no woman occupies a governor or deputy governor post. Three women were members of the CENI's top leadership.

Few other measures are taken to encourage the participation of women in politics, and those that are either are optional or not respected. The DRC should undertake clear steps to meet its international obligations in this regard.²⁷

The electoral law guarantees in a general way the electoral rights of displaced people.²⁸ Nevertheless, no indication exists of measures taken to guarantee the exercise of the right to vote by these populations during the 2006 or 2011 elections. According to the UNHCR, there are approximately 1.5 million internally displaced people (IDPs) in the country, in particular in Katanga, Oriental province, and North and South Kivu.

ELECTION MANAGEMENT

An independent and impartial electoral authority that functions transparently and professionally is

recognized internationally as an effective means of ensuring genuine democratic elections and that other international obligations related to the electoral process can be met.²⁹ Election management includes issues largely related to the professional and impartial conduct of election activities by the election management body, as well as the structure and mandate of that body on all levels of administration.

The National Independent Electoral Commission (CENI) is the principal authority supporting democracy in the DRC. Article 211 of the DRC

Constitution entrusts the CENI to assure the electoral process conforms to the law. Article 2 of the electoral law of June 2011 accords the CENI responsibility for organizing the electoral process, including voter registration, voting operations, vote counting, and tabulation, as well as the announcement of provisional results.

The CENI was established on Feb. 26, 2011, replacing the Independent Electoral Commission (CEI) that organized the presidential, legislative, and provincial elections in 2006. The designation of members of the CENI leadership was debated within Parliament before arriving at the final composition of four members representing the majority party and three members from the political opposition. Pastor Ngoy Mulunda was designated as the CENI president. The absence of civil society representation within the CENI leadership generated criticism.

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²⁶ SADC, Declaration on Gender and Development, 1997 and Protocol on Gender and Development, 2008

²⁷ Women's rights in the DRC are supported by many international obligations, including U.N. Convention on the Elimination of All Forms of Discrimination Against Women, Article 1; African Union (AU) African Charter on Human and People's Rights, Article 2; and AU Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Article 2(a)

²⁸ Article 5 of the electoral law

²⁹ UNHCR, General Comment 25, para. 20



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Laura Curtis



Carter Center long-term observer Curtis Palmer (left) meets with a CENI official in Kananga, Kasai Occidental province.

The CENI head office provides overall political management and national coordination with provincial executive secretaries (SEPs) and heads of offices at the local level. The management structure that the CENI inherited from the CEI was not changed significantly.

An electoral calendar was published on April 30, 2011, for the organization of the presidential, legislative, provincial, and local elections. This calendar was the result of a political compromise realized after a workshop in Lubumbashi during consultations with the opposition and other political actors. Meeting calendar deadlines proved to be a consistent challenge for the election commission, starting with the revision of the voter list and the late adoption

of the annexes to the electoral law that apportioned parliamentary seats per district. These delays required the CENI to modify its calendar on Aug. 18, 2011, just three months before election day. Table 3 illustrates the commission's performance record against key deadlines.

Election Assistance

On June 5, 2010, Prime Minister Muzito confirmed his government's request for electoral assistance from the United Nations to support the organization of presidential and legislative elections in 2011 and provincial and local elections in 2012. The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) provided support for the elections through technical assistance, logistical assistance, and support to the CENI for facilitating dialogue with various actors.

MONUSCO electoral division was in charge of technical assistance. Since 2007, the Support Project for the Electoral Commission (PACE) of UNDP has managed funds allocated by donors and provided support for budget and human resource questions. PACE also manages funds for supporting the operational capacity of the CENI.

Candidate Nomination

After the adoption of the annexes to the electoral law on Aug. 17, 2011, the election commission opened candidate registration centers (BRTCs) in each electoral district. The provisional list of 11 candidates for the presidential election was published on Sept. 15.

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Table 3: Target Dates

Activity	Target Date(s) May 2011 CENI Calendar	Actual Date of Completion	Target Date Met?
Revision of electoral register	April 2–June 30	July 19	NO
Packaging and sending of “nonsensitive materiel” (ballot boxes, voting booths, etc)	July 1–Sept. 18	Nov. 3	NO
Process disputes to the electoral register	July 1–July 7	July 17	NO
Passing of appendices to redistricting law	July 23–July 27	Aug. 13	NO
Promulgation of appendices to redistricting law	July 28–Aug. 8	Aug. 17	NO
Reception and processing of candidates for presidential and legislative elections	Aug. 4–6, Sept. 6	Sept. 12	NO
Printing and mailing of electoral register	Sept. 6–Oct. 9	October	NO
Publication of preliminary list of candidates for presidential and legislative elections	Sept. 7	Sept. 12	NO
Publication of final list of candidates for presidential and legislative elections	Sept. 17	Sept. 23	NO
Ordering and production of ballots for presidential and legislative elections	Sept. 18–Oct. 21	Nov. 28	NO
Packaging and sending of “sensitive materials” (ballots and voter lists)	Oct. 22–Nov. 15	Nov. 28	NO
Campaign period for presidential and legislative elections	Oct. 28–Nov. 26	Nov. 26	•
Training of polling workers and preparations of materials at polling stations	Nov. 23–Nov. 28	Nov. 28– Nov. 30	NO
Election day	Nov. 28	Nov. 28	•
Compilation and tabulation of results	Nov. 29–Jan. 12	Feb. 7	NO
Announcement of provisional presidential results	Dec. 6	Dec. 6	•
Processing of disputes to results at the Supreme Court	Dec. 7–16	Dec. 16	•
Announcement of final results from presidential elections	Dec. 17	Dec. 17	•
Inauguration of the president	Dec. 20	Dec. 20	•
Announcement of provisional results for the legislative elections	Jan. 13	Feb. 7	NO

A very high number of individuals sought candidate nomination for the legislative elections. On Sept. 26, the CENI announced receipt of 19,006 candidates (18,386 qualified) for the 500 seats in the National Assembly. Given this volume of applications and unprecedented interest in the national deputy

position, the CENI should be recognized for its great effort to process all of the applications in a short time.

Ballot Paper Design

With a final list of 11 presidential candidates and 18,386 legislative candidates, the CENI had the task



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of handling a multipage ballot in several districts. The design, printing, and distribution of ballots with large numbers of candidates, as well as procurement of ballot boxes that could accommodate the size of the ballots, created additional challenges for the CENI.

Polling Station Location

The CENI sent agents throughout the 11 provinces of the DRC to identify polling station locations and recruit workers to staff these polling stations. This assessment took place over approximately two weeks, and the commission published the map of polling stations, as required under the electoral law. Opposition parties raised questions concerning the accuracy of the map published by the CENI, which listed 63,865 polling stations. Opposition parties, notably UDPS, said that several polling stations on the list were incorrect and some were fictitious. UDPS shared its list of fictitious polling stations in Kinshasa with The Carter Center. After conducting related observation for verification of that information, Carter Center observers found there was a shortage of polling stations in voting centers but there were no fictitious locations for voting centers.

Schools were given priority as sites of polling stations, and the CENI favored the staff already working at those schools, along with poll workers from the 2006 election, in their selection of poll workers. The process of recruitment of agents as well as the choice of polling station sites were not done in consultation with local or national stakeholders. The CENI recruitment of the local tabulation center (CLCR) workers for vote tabulation was criticized by opposition parties and even by some commission members. Some CLCR workers were accused of arrangements with political candidates and parties

and perceived to have engaged in fraud to benefit certain candidates.³⁰

Election Materials

The timely procurement and delivery of electoral material faced several challenges. The logistics plan prepared by the CENI and MONUSCO was revised on several occasions after delays linked to the purchase of materials and the short time frame remaining for deployment in advance of the election.³¹ MONUSCO flight capacity was limited, and the multiple logistical problems in the CENI procurement almost threatened the election date. The timely delivery of sensitive election material, namely the ballots and voter lists, proved a particularly important challenge. Ballots were printed in South Africa, and the

South African military delivered the ballots directly to each of the 16 primary deployment sites in the DRC. As this measure alone could not ensure delivery to the 63,865 polling stations, neighboring countries, in particular Angola and the Republic of Congo, assisted with deployment by helicopter.

The CENI president, Ngoy Mulunda, consistently reaffirmed his commitment to hold the elections on time despite the mounting technical and logistical difficulties as Nov. 28 approached. In its statement of Oct. 17, 2011, The Carter Center shared its concerns

After conducting related observation for verification of that information, Carter Center observers found there was a shortage of polling stations in voting centers but there were no fictitious locations for voting centers.

³⁰ Random interviews by Carter Center observers with several CLCR workers revealed that they were hired at the last minute and received little or no training. Though unscientific, these anecdotes are troubling. CENI may be able to determine if the many problems encountered in tabulation are attributable to problems in recruitment and training and/or partisan interference.

³¹ The scheduling of an election must allow sufficient time to successfully implement necessary components of the electoral process: "Each time elections are scheduled, the dates set out in the calendar for each phase of the process must allow adequate time for ... the necessary ... logistic arrangements to be made." U.N. Human Rights and Elections, para. 7



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John Stremiau



Ballots arrived late to a polling station in Lubumbashi.

on the feasibility of satisfactory organization of the elections on Nov. 28 and recommended the CENI prepare a contingency plan in the event the elections were postponed.³² The CENI cited the fragile post-conflict context of the DRC and the institutional obligation concerning the end of President Kabila's mandate on Dec. 6, 2011, as grounds to hold the elections on Nov. 28 as planned despite logistical and other constraints. It is not clear if the CENI accurately assessed its preparedness to organize the elections on Nov. 28. It is likely a decision to delay the election by a few days would have allowed the vote to take place in one day rather than over two to three days, as was seen in some parts of the country. It is also possible a delay early in the process would have allowed aspects of the electoral process, especially plans for the secure and transparent collection of election results and ballot boxes and their handling at the tabulation centers, to have been better organized. The Carter Center and other observation missions, both domestic and international, found that electoral preparations for Nov. 28 were made under enormous time pressure, especially the deployment of the

ballot boxes and the processing of the large number of legislative candidates.³³

On Sept. 23, 2011, the CENI began transferring executive provincial secretaries (SEP) to new locations and created the additional post of deputy SEP. This change in composition of the CENI management compromised the preparations for election day by putting in place new provincial leadership during a critical period, only nine weeks before election day, while the sensitive work identifying polling stations and recruitment of electoral agents was already in process.

Public Communication

The election commission held weekly press conferences that allowed it to inform the Congolese public on election preparations.

This measure alone could not succeed in compensating for a general lack of information on the electoral process. A communication plan to disseminate information on the work of the CENI and its partners should have been elaborated and implemented, especially as outreach to opposition parties who sought to politicize their criticisms of the CENI's actions.

Budget

The budget for the 2012–2013 electoral cycle included \$90 million for the revision of the voter registry, \$260 million for the organization of the presidential and legislative elections, \$170 million for organization of the provincial elections, and \$226 million for the organization of the local elections. CENI used more than \$350 million for the

³² See Appendix, Carter Center Oct. 17 Statement: "Carter Center Calls for Urgent Steps by DRC's Election Commission to Prepare for Nov. 28 Elections."

³³ See Appendix, Carter Center Nov. 30 Statement: "The Carter Center Preliminary Statement on the Democratic Republic of the Congo's Elections." See also "Message of the CENCO to the Catholics and to the Congolese People" (Jan. 16, 2012) and EU-EOM press release: "The Election Observation Mission of the European Union deplores the lack of transparency and irregularities in the collection, compilation and publication of results," Dec. 13, 2011.



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organization of the presidential and legislative elections alone (not including the voter registration process from 2010–2011). The procurement of sensitive and nonsensitive material represented the largest expenses for the CENI, due to the cost for transport of ballot boxes manufactured in China as well as cost associated with the design, printing, and delivery of ballots in a very short time frame. The Congolese government was responsible for 70 percent of election costs, and the international community contributed 30 percent (20 percent through United Nations Development Program Project to Support the Election Commission (UNDP PACE); 7 percent through MONUSCO logistics; and 3 percent from other partners).

The process of purchasing electoral material was not conducted transparently. The purchase involved different manufacturers and intermediaries in different countries. The purchase of ballot boxes, which originally was to be done in South Africa and Germany, was finally completed in China, with the additional cost and time of transport delaying distribution.

Political Party Dialogue

MONUSCO and the National Democratic Institute provided support for events relating to engagement with political parties by the CENI. Dialogue between the CENI and political parties was organized three times during a six-month period preceding the November election: a July 25 meeting with 275 political parties; a Sept. 8 meeting with 200 parties; and Oct. 26–27 meetings with presidential candidates on electoral preparations.

Code of Conduct

A code of conduct was published by the CENI to encourage respect of democratic “rules of play,” including the acceptance of final election results by political actors. Each of the presidential candidates signed this code of conduct by the opening of the

campaign period except for Etienne Tshisekedi, who conditioned his signature to the acceptance by the CENI for an audit of the voter registry. There was no initiative by the CENI for signature of the code of conduct for legislative candidates because political parties also signed on to the code, thus leaving out independent legislative candidates.

The Carter Center recommends that the CENI conduct a detailed evaluation of the management of the presidential and legislative elections in order to identify lessons learned and prevent similar errors during the next set of elections. The

various national and international partners, especially all political parties, should be an integral part of this evaluation in order to ensure transparency and to increase the credibility the 2011 elections.

BOUNDARY DELIMITATION

Boundary delimitation must be consistent with a state’s human rights obligations, ensuring that its commitments to equal and universal suffrage and absence of discrimination are met. Although equal suffrage is best achieved by assigning the same number of voters to each representative, it may be achieved through boundary assignment based on specific apportionment criteria.³⁴

A modification to the electoral law of February 2006 was adopted on Aug. 17, 2011.³⁵ The revision was promulgated late in the CENI calendar, which originally proposed July 23–27.³⁶ Ideally, the seat allocation would have been published as part of the June 25, 2011, modification of the 2006 electoral law,

The process of purchasing electoral material was not conducted transparently.

³⁴ UNHRC, General Comment 25, para. 21

³⁵ Law pertaining to the succession and partition of electoral conscriptions for the legislative and provincial elections (Law 11/014)

³⁶ Calendar of General and Provincial Elections 2011–2013 in the DRC (April 29, 2011)



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but it was published without the necessary annexes to provide the formula for the seat allocations because voter registration was still under way at the time.³⁷

There is no current census data available to be used as basis for allocation of seats by population, so the allocations are determined by the number of registered voters.³⁸ The modification was necessary to redistribute legislative seats since the previous allocation for the 2006 elections based on voting population changes and to ensure equal representation among voters.

The allocation of parliamentary seats per province and territory was calculated by the CENI and submitted to the National Assembly and Senate for adoption.³⁹ The electoral district boundaries remained the same as administrative districts, and the 500 National Assembly seats were apportioned at the provincial and territorial/municipal levels.⁴⁰ The formula used to determine seat allocations divides 500 assembly seats by the total number of registered voters, for an electoral quotient of 64,049 voters per parliamentary seat. The number of seats allocated to each province is equal to the total number of its registered voters divided by this quotient.

In the context of the DRC's post-conflict environment, it is evident that special care should be taken to ensure each aspect of the electoral process is fair, in fact and in perception, for all political actors and groups. Electoral units with parliamentary seats

disproportionate to voters would result in some voters being over- or under-represented in the National Assembly. Most provinces lost or gained one to three seats.

UDPS leader Etienne Tshisekedi had asked his supporters to boycott the 2005 voter registration process, so many of his supporters registered for

the first time in 2011. The resulting reallocation brought an additional four seats to the two Kasai provinces, where much of his support is concentrated. In contrast, the loss of seven seats in Kinshasa province (based on a decline in the number of registered voters) generated controversy and was perceived as an effort to limit Tshisekedi support.

In the context of the DRC's post-conflict environment, it is evident that special care should be taken to ensure each aspect of the electoral process is fair, in fact and in perception, for all political actors and groups.

37 Law 11/003 (June 25, 2011)

38 It is common under list proportional representation systems to set electoral boundaries the same as pre-existing administrative boundaries. The adopted law concerns the number of legislators to be elected per single constituency. The total population or the number of registered voters are both recognized means to allocate electoral seats between districts. The last national census was conducted in 1984 and is, therefore, out of date.

39 As designated under Article 147 of the electoral law of 2006

40 Kinshasa is apportioned by province and district.



PRE-ELECTION DEVELOPMENTS

VOTER REGISTRATION

The voter registration process and the establishment of a complete, current, and accurate voter list are recognized as critical to the right to vote. It should be made accessible to the broadest pool of citizens possible to ensure that both universal and equal suffrage are adequately protected as required by the DRC's international commitments.⁴¹

Law 04/028 of December 2004 designates the CEI (the predecessor of CENI) as the institution responsible for organization and management of voter registration. CENI's voter registration of eligible voters for the 2011–2013 electoral cycle was completed on July 17, 2011.⁴² An additional 6,312,088 voters were added to the voter list since the last registration exercise in 2005, in advance of the constitutional referendum.⁴³ The total number of voters registered by the CENI was 32,024,640.

An accurate voter registry is essential for public confidence in both the electoral process and results of the election.

The CENI set up 10,000 registration centers for voter enrollment in 2011, compared to 9,120 centers in 2005.⁴⁴ Despite this increase in the number of centers and the large number of new voters enrolled, civil society groups and political parties expressed concern to Carter Center observers that eligible voters were concentrated in rural areas of the country that the CENI was unable to reach.⁴⁵ Consequently, eligible voters were not enrolled or had to travel long distances to reach registration centers. Carter

Center observers were told by Congolese voters that the distance to reach their nearest voter registration center ranged as far as 20 kilometers.⁴⁶ The need to travel long distances particularly disadvantaged certain categories of voters (e.g., elderly, sick, women). Women work at home or in the informal

sector, at markets or in the fields, without a weekly day off. Extra distance augments the time lost from work and the burden of traveling pregnant or with small children. Despite such challenges uniquely borne by women, Congolese female electors demonstrated their strong

commitment to participating in the electoral process by enrolling in similar proportions to male voters.

The presence of party witnesses during voter registration was permitted though not a requirement of voter registration, and few party witnesses, especially from opposition parties, were reported to have been

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⁴¹ UNHRC, General Comment 25, para. 11; ICCPR, Article 25(b)

⁴² The Carter Center's international observation mission began shortly after the CENI's revision of the voter registry concluded, and the Center's long-term observers conducted meetings across the country with relevant stakeholders in civil society, political parties, and the CENI in order to offer the following commentary on the process.

⁴³ 25,712,552 voters were registered between June and December 2005.

⁴⁴ European Union Election Observation Mission, Final Election Report (Feb. 23, 2007)

⁴⁵ The International Crisis Group (ICG) referenced use of itinerant (mobile) registration centers by the CENI to reach voters in remote parts with conflicting data in its report, "The Electoral Process Seen from the East" (September 2011). Carter Center observer contacts did not mention itinerant centers.

⁴⁶ Observer meetings in Equateur. "Registration...facilities should be readily accessible to the electorate," Norwegian Helsinki Committee, Human Rights Monitoring, p. 11



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Ahmad Issa



Voters in Isiro display their voter registration cards.

present. Observation of this important aspect of the election would have allowed opposition parties to have more confidence in the quality of the voter registry or have specific data upon which to challenge the authenticity of the voter roll. It appears national party offices were unable to allocate funds to pay salaries and/or for deployment of party agents, and local party offices and members did not try to observe without this support.

Congolese civil society groups and other independent domestic observers had a larger presence during the registration process. The human rights organization African Association for the Defense of Human Rights (ASADHO), observed registration activities in six of 11 provinces and published a report in August 2011. The findings in ASADHO's report are similar to information provided to Carter Center observers by various Congolese civil society groups and other stakeholders. Observers were told registration centers lacked basic supplies such as computers and enrollment kits, hindering operations in some areas.⁴⁷ In Oriental province, Carter Center observers were told by CENI workers in Isangi territory that computers were delivered without data for previously

enrolled voters, preventing printing of replacement voter identification cards. Voter registration materials arrived late to the territory, and CENI lacked vehicles and fuel needed to distribute materials to all of the registration centers located there. Civil society groups also reported that CENI employees at registration centers were not paid for their labor within a reasonable time frame, and as a result a small number of workers exacted payments (50 cents to \$1.50) before registering voters.⁴⁸ Civil society groups also told

observers they witnessed first-hand incidents of minors being registered.⁴⁹ These groups also witnessed bribes paid to police for applicants to go to the front of the registration line.

Congolese civil society groups reported mixed access to registration centers. According to the International Crisis Group, nongovernmental organizations observed registration in South Kivu, while in North Kivu, observers from an NGO network were not given national observer accreditation badges by CENI. A CENI representative in North Kivu confirmed to Carter Center observers that civil society groups (as well as political parties) did not have monitors in North Kivu but did not attribute this to a lack of accreditation.

⁴⁷ This was observed most notably in North Kivu, where registration began late due to delay in kit distribution. Despite a 10-day extension for the province, Carter Center observers were told there was insufficient time to register all voters.

⁴⁸ In September, Carter Center long-term observers in Kinshasa observed CENI workers waiting in line to be paid for their work during the voter registration process.

⁴⁹ ASADHO report, p. 10 (Mbuji-Mayi); Carter Center observer meetings in Kinshasa, Equateur, and Katanga



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Table 4: Voters by Province

Province	Registered Voters
Kinshasa	3,287,745
Bas-Congo	1,502,939
Bandundu	3,553,322
Équateur	3,960,643
Orientale	3,886,524
Nord-Kivu	3,003,246
Sud-Kivu	2,022,960
Maniema	874,809
Katanga	4,627,302
Kasaï-Or.	2,643,905
Kasaï-Occ.	2,661,245
Total	32,024,640

Nevertheless, opposition parties were vocal in their concerns about the preparedness of CENI and the integrity of the registration process. They claimed the number of voter registration kits was not sufficient to meet the demand. Registration kits were shared between provinces, and parties alleged that CENI provided privileged distribution to areas considered favorable to the ruling party. They also raised questions about registration data accuracy, alleging the presence of duplicate names and that minors, non-Congolese nationals, active-duty police, and military registered and obtained voter cards.⁵⁰

Some 78 opposition parties issued a July 26 memorandum to urge CENI to take into consideration certain needs relating to the organization of democratic, transparent, credible, and peaceful elections. Opposition parties as well as some national observers did not perceive CENI as an organ independent of the government. Both groups expressed concern about CENI's lack of engagement with political parties and its lack of transparency in the management of the electoral process.

When the revised electoral law was passed in August, opposition political parties and civil society groups once again voiced their concerns about the quality of the voter registry data. These groups alleged



Myriam Asmani

A CENI official checks a voter's ID card against the voter list in a polling station.

the voter register contained duplicate names, active-duty military and police, and other ineligible voters.⁵¹ According to CENI, 119,941 duplicate names were removed before finalizing the registry in advance of parliamentary seat allocations. Voters with duplicate names were removed completely from the voter registry and were unable to vote. Though this effectively disenfranchised some voters, it was seen as a necessary measure to ensure individuals were not able to vote more than once.⁵²

In mid-October, civil society and opposition parties once again called on CENI to make its voter registry database, managed by CENI's National Data Center (CNT), available to actors in the electoral process for verification.⁵³ Though terms of reference for an audit of the voter registry were signed by a

50 Carter Center observers conducted interviews with students and headmasters in Kamina, Katanga province, and found reports of minors registering in Haut-Lomami territory to be credible.

51 Duplicate names can result from a technical error or a single voter registering in more than one constituency. The latter type was alleged by UDPS and other opposition parties.

52 Three days before the election, CENI decided to allow lists of omitted voters, which means it was possible that a voter whose name was purged from the voter registry was still able to vote in the center listed on his voter ID card(s).

53 Communiqué de Presse No. 34/ASADHO/2011 (Oct. 11, 2011)



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representative for the political opposition, CENI and opposition groups were unable to agree on specific conditions under which a review would take place in advance of the elections.⁵⁴

In its public statement of Oct. 17, 2011, The Carter Center recommended CENI accommodate as many reasonable requests as possible from political parties, as an essential confidence-building measure.⁵⁵ Although there is no legal obligation to provide parties access to the data processing center, doing so in advance of provincial and local elections would demonstrate strong commitment on the part of CENI leadership to transparency in its work.⁵⁶

Participation of Women, Minorities, and Marginalized Groups

State obligations to promote participation of women derive, in part, from political obligations to permit women to vote in all elections and public referenda and to eliminate discrimination of women in political life.⁵⁷ Congolese female voters enrolled in large numbers across the DRC. While Carter Center observers were told some registration centers implemented measures to accommodate women who were pregnant or carrying very small children by permitting them to forgo the general line and enter separately, many centers did not privilege this category of voters. Carter Center observers credit Congolese civil society groups for voter education efforts on the importance on voting and information on where to register to vote to mobilize women to take part in the elections.⁵⁸ These efforts by civil society groups contributed to the strong enrollment of women—especially promising in the context of cultural and social norms that discourage women from involvement in politics and voting.

Minority Voter Registration

Members of the Pygmy minority group were also

registered in large numbers.⁵⁹ For this election, there were sensitization efforts targeting Pygmies in their two provinces of concentration, Katanga (48 percent of Pygmies in the DRC) and Equateur (26 percent). In Katanga province, authorities reported very high levels of enrollment in Manono, Kongolo, and Nyunzu. In Equateur, the local authorities in Ingende and Bikoro told Carter Center observers that registration in these two territories was almost 100 percent of eligible voters.

Local authorities confirmed to observers they told Pygmies that registering was obligatory under the law in order to encourage high enrollment.

⁵⁴ Protocole de Collaboration Entre la Commission Electorale Nationale Independante et l'Opposition Politique sur les Operations d'Audit du Fichier Electoral (Oct. 18, 2011). The two sides disagreed on the number of opposition party agents who could be present during an audit conducted by technical experts.

⁵⁵ See Appendix, Carter Center Oct. 17, 2011, Statement: "First Carter Center Pre-Election Statement on Preparations in the Democratic Republic of Congo"

⁵⁶ Though Congolese electoral law does not entitle parties access to the central server—only a published list under Article 6—international standards of practice expect electoral information to be publicly accessible to reinforce confidence in the work of election officials. See, for example, ICCPR, Article 19(2) and African Union Convention on Preventing and Combating Corruption, Article 9: "Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences."

⁵⁷ "States shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure women, on equal terms with men, the right: (a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) to participate in nongovernmental organizations and associations concerned with the public and political life of the country." U.N. Convention on the Elimination of All Forms of Discrimination Against Women, Article 7

⁵⁸ Congolese NGOs reported they had little funds to undertake activities. See Voter Education section of report.

⁵⁹ "In compliance with the fundamental obligations laid out in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone... political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service." U.N. International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(c); Pygmies comprise 85 percent and 40 percent in those territories respectively.



Pygmies experience various forms of social discrimination and are harassed by police. Pygmies told observers they registered to obtain a voter ID card, which is frequently asked to be shown by police and other authorities.⁶⁰ The Pygmies who spoke with observers in Equateur also said they registered because they were told they would be arrested if they did not register. Local authorities confirmed to observers they told Pygmies that registering was obligatory under the law in order to encourage high enrollment.⁶¹ Electoral districting based on registered voters provides strong incentive for parties and local administrators to encourage voter enrollment so territories are allocated as many parliamentary seats as possible. Carter Center observers in Equateur and Katanga reported that Pygmy communities did not feel engaged in the political process—they registered for other reasons—indicating a lack of candidates or parties who would represent Pygmy interests and help improve their situation.⁶²

Mobile Voter Registration and Overseas Voting

The well-known infrastructure limitations of the DRC may justify additional emphasis on the use of mobile voter registration centers.⁶³ An International Crises Group (ICG) report referenced at least 511 “itinerant centers” were used in the East, although this figure was challenged by civil society groups. These centers can be seen as an appropriate response by CENI to the challenge of reaching electors in remote parts of the country. Although voters may still need to travel to reach polling stations on election day, voter registration data would be more accurate to inform both apportioning of legislative seats and the selection of locations for polling stations on election day.

Under Congolese law, there is no provision for absentee registration or voting.⁶⁴ Congolese citizens

residing abroad are not able to register to vote or vote on election day at the Congolese Embassy in their country of residence. In the future, CENI may consider how best to implement measures to allow this community to vote in future presidential elections. Future election law revisions may consider allowing Congolese citizens abroad the right to register and to vote at their local embassy or other facilities.

These centers can be seen as an appropriate response by CENI to the challenge of reaching electors in remote parts of the country.

VOTER EDUCATION

The voter education process is integral to the development of an informed electorate that can properly exercise the right to vote.⁶⁵ Furthermore, the fulfillment of the international obligation of universal suffrage is partially dependent on access to information and education regarding fundamental freedoms.⁶⁶ Adequate voter education fosters greater participation in the electoral process by citizens. Full participation of electors is necessary for representative government, and voter education is especially important in contexts where citizens have not received civic education in school.

60 The voter ID card serves as the only national identification card for those without a driver's license or passport.

61 Article 4 of the 2004 registration law says that registration is a “civic obligation” but does not criminalize citizens who do not register or vote.

62 Observers in Equateur and Katanga learned of only one Pygmy legislative candidate, in Mbandaka with the ADECO party.

63 Such a model was used by Lawyers Without Borders to establish mobile courts (audiences foraines) to increase access to justice in parts of eastern DRC, where local courts were not operational.

64 The right to vote is not absolute and may be subject to various restrictions. However, many countries have introduced provisions for overseas voting.

65 African Charter on Human and People's Rights (ACHPR), Article 13

66 “Everyone has the right, individually and in association with others: (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.” U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 6(a)



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CENI is responsible for coordinating civic education.⁶⁷ CENI undertook few activities itself to inform and educate voters, although CENI staff participated in events led by MONUSCO and NGOs. In many provinces, governors and mayors contributed to voter education. CENI officials gave two related responses to Carter Center observers when discussing voter education for this electoral period. Executive provincial secretariats (SEP) told observers that CENI was not responsible for implementing civic education events; rather its role was to coordinate the efforts of civil society groups, and CENI wanted to organize civic education activities directly but did not have funds.⁶⁸

As emphasized by CENI, the principal actor in voter education was civil society. Congolese civil society groups told Carter Center observers they were eager to reprise the important role they played in 2006 in advance of elections, but international donors for the most part were not directing funds to their groups.⁶⁹ Congolese NGOs organized civic education events; however, the impact of their work, by their own estimation, was on a much smaller scale than in 2006 due to the limited frequency and geographic coverage of their activities. NGOs reported that one significant difference between 2006 and 2011 was that they simply could not reach the base of Congolese voters who live outside large, urban areas. Carter Center observers confirmed the limited reach of civic education efforts, especially outside city centers.⁷⁰

CENI tried to address the difficulty of communicating with voters in remote areas by appointing Information Relay Agents (ARS). The ARS were to implement voter education events at the local level, where most NGO initiatives could not reach. Using creativity to compensate for a lack of resources, agents planned to be sent to remote parts of each province with motorbikes and megaphones to spread election

information and demonstrate voting with a sample ballot. This promising initiative, however, was not implemented due to funding problems and related contract disputes. Some ARS contracts were finalized in late November, so these agents may be positioned to execute this project in advance of provincial and local elections.

Carter Center observers found shortcomings in CENI's efforts to coordinate voter education. For example, distribution of voter education supplies by CENI offices to local NGOs was described as

unsystematic and disorganized. UNDP's PACE project published posters and other educational materials in various local languages, with pictures, to reach as many voters as possible. Observers reported there appeared to be no system in place by CENI to screen NGO

recipients in advance of distribution of these sensitization materials. As the majority of civil society groups lacked funds necessary to implement the educational initiatives they prepared, it is not clear that CENI materials reached those groups that were most capable in terms of financial resources of leading education activities.

Carter Center observers found shortcomings in CENI's efforts to coordinate voter education.

67 CENI's governing document (July 2011): "Election matters, including the establishment of a program of information and awareness for voters in French and other national languages." Law 10/013 creating CENI has the same text under Article 9(7).

68 Maniema, Equateur, Bas Congo SEP offices. In Equateur, observers were told there was no dedicated funding but the office would find a way to undertake activities nonetheless. CENI reported at a press conference in late September that it lacked funding to implement voter education. IRI in its pre-election assessment report said the DRC government does not have a budget for civic education (as of July 2011), p. 4.

69 Exceptions include international NGO IFES, which managed small grants to Congolese NGOs.

70 "Everyone has the right, individually and in association with others: (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems." U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 6(a)



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Oct. 21, 2011, marked the official launch of voter education activities. Throughout the electoral period, infrastructure limitations hindered deployment of materials, including voter education supplies. Provinces such as Kinshasa and Bas Congo benefited from more timely receipt of education materials due to road systems in place, while observers in the Kasais and other provinces reported that CENI provincial offices had not received voter education material by this date.

Carter Center observers found CENI made good use of media to communicate information to voters. Public access television and radio were valuable tools used by CENI to inform voters about important dates in the electoral period and disseminate news concerning voter and candidate registration. Similar to the distribution challenges for CENI education materials in the Kasais, weak radio signals in Kasai Occidental limited the reach of this method to educate voters in the province.

Political parties also contributed to voter education, but efforts were generally linked to information about particular parties and candidates. For example, Carter Center observers in Ilebo, Kasai Occidental, attended a UDPS session that prepared women voters for election day by teaching how to spell the name Tshisekedi, so it could be recognized on the presidential ballot.

Participation of Women, Minorities, and Marginalized Groups

Women are represented and play an important role in Congolese civil society organizations, and women's civil society groups took the lead in voter education. Carter Center observers remarked that given the limited means, women's groups are to be credited for their dedication and resourcefulness. Initiatives targeted women on the importance of voting as well as more practical aspects, such as where and when to vote and how to mark a ballot. NGOs described to

observers the significance of their work when local customs sometimes contradict principles of equal participation of women and men in public and civic life. Traditionally, women have not been encouraged to run for office, work on a campaign, or even vote for the candidate of their own choice, though women's groups say these attitudes are beginning to change through their work.

CANDIDATES AND PARTIES

The DRC's international commitments create significant obligations to candidates and political parties, including the right to be elected and participate in public affairs, freedom of expression, freedom of association,

and freedom of movement.⁷¹

According to the electoral law, CENI is in charge of receiving and validating applications from presidential and legislative candidates. The conditions under which Congolese citizens can apply are described in the electoral law for each of the elections.⁷² The major elements added to pre-existing criteria from 2006 are the possession of a "graduate" diploma or five years of work experience in one of the domains specified in the law. Elements of ineligibility concern people who have received a criminal sentence without possible appeal for rape, illegal exploitation of natural resources, corruption, misappropriation of public funds, murder, torture, or bankruptcy.

Initiatives targeted women on the importance of voting as well as more practical aspects, such as where and when to vote and how to mark a ballot.

71 The right to be elected is a universal right requiring that states ensure that their citizens have the opportunity to stand for elected office, free from unreasonable restrictions. All citizens are guaranteed the right of equal access to the public services and property of their country; and any derogation from this right that gives advantage to a particular party or candidate may be considered discriminatory. ICCPR, Article 19(2); AfCHPR, Article 13(2). "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." ICCPR, Article 19(2)

72 Articles 9, 10, 103, and 120 of the electoral law



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Eleven candidates contested the presidential elections of Nov. 28, 2011.

Table 5: Presidential Candidates

Presidential Candidate	Party
Adam Bombole	Independent
Jean Andeka Djamba	Alliance of National Congolese Believers
Joseph Kabila	Independent
Leon Kengo wa Dondo	Union of Forces of Change
Josue Mukendi Kamama	Independent
Vital Kamerhe	Union for the Congolese Nation (UNC)
Nicephore Kasese Malela	Union for the Awakening and Development of Congo (ECT)
Oscar Lukumuena Kashala	Union for the Reconstruction of Congo (RRC)
Francois-Joseph Nzanga Mobutu Nganbagawe	Union of Mobutu Democrats
Antipas Mbusa Nyamwisi	Congolese Rally for Democracy
Etienne Tshisekedi	Union for Development and Social Progress (UDPS)

Among the presidential candidates, Joseph Kabila and Joseph Mobutu Nzanga, sons of past leaders, ran for a second time, along with Oscar Kashala. Incumbent President Joseph Kabila registered as an independent, with the support of the Presidential Majority, a coalition of political parties allied with the ruling PPRD party. Etienne Tshisekedi, candidate for UDPS, appeared to have the support of 70 opposition political parties. Jean-Pierre Bemba, arrested in Belgium in 2008 for alleged war crimes committed by his forces in the Central African Republic in 2003, is rumored to have given voting instructions from his prison cell in The Hague, but the information was



Myriam Asmani

UNC presidential candidate Vital Kamerhe is carried through the streets by supporters during his campaign.

well-guarded despite different attempts by the opposition to learn who he supported for the presidency. Former Prime Minister Antoine Gizenga, leader of PALU, retired from the political scene while former ally of President Kabila, Vital Kamerhe, a former president of the National Assembly, presented his candidacy, as well as Leon Kengo, former prime minister under Mobutu and outgoing president of the Senate. The other candidates ran on behalf of their parties or as independents.

Various attempts to adopt a common strategy and presidential candidate among opposition parties failed. UDPS, through its leader Etienne Tshisekedi, consistently refused to work toward a common strategy, explaining that the people are self-governing, and they will know which candidate to choose in the end. Vital Kamerhe, for his part, said it would not be possible to defeat Kabila without a strategy combining electoral support around the country from among the various opposition groups. In putting forward competing candidates for the presidency, the opposition could only rely on a strategy of drawing away a sufficient loss of votes for Kabila. In contrast, President Kabila had the support of a coalition united around his sole candidacy and an



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extremely high number of voters (some 4.6 million) in his presumed stronghold of Katanga province. The inclusion of PALU brought additional support to Kabila's candidacy.

Legislative Candidates

For the legislative elections, 18,386 candidates registered to compete for 500 seats in the lower chamber of Parliament. This very high number of candidates placed a burden on the organization of the elections and made it more difficult for voters to choose among candidates.

The district of Tshangu in Kinshasa had the highest number of candidates—1,575 candidates competing for only 15 seats. The Tshangu ballot was 57 pages long. Paradoxically, this high number of candidates may offer less effective choice to voters if they are not provided the opportunity to be informed about the candidates in their district or should the ballot prove too complicated for them to manage.⁷³

Table 6: Candidates by Province

Province	Registered Voters	Seats	Candidates	Constituencies
Kinshasa	3,287,745	51	5,491	4
Bas-Congo	1,502,939	23	991	12
Bandundu	3,553,322	55	2,182	20
Equateur	3,960,643	62	1,483	27
Province Orientale	3,886,524	61	1,277	25
Nord-Kivu	3,003,246	47	1,463	9
Sud-Kivu	2,022,960	32	881	9
Maniema	874,809	14	326	8
Katanga	4,627,302	72	1,928	25
Kasai Oriental	2,643,905	41	1,521	18
Kasai Occidental	2,661,245	42	1,273	12

Source: CENI

Political parties that presented lists of legislative candidates totaled 443 along with 99 independents, for a total of 542. Only a dozen of this number could

claim more or less national representation or at least a degree of regional power. More than 130 parties had fewer than 10 candidates contesting in these legislative elections. Despite the challenges for CENI administration of the candidate nomination process given the volume of applicants, The Carter Center found that the right to participate in

public affairs and the right to be elected were largely respected.

Participation of Women, Minorities, and Marginalized Groups

There were no female candidates for the presidential elections.⁷⁴ Only one woman attempted to present her candidacy, but she was unable to pay the \$54,000 registration fee.

For the legislative elections, 2,276 women were registered, representing 12.4 percent of the total number of legislative candidates. Sixteen of 169 districts had no female candidate on the ballot. These 16 districts each have one National Assembly seat and are located in the interior of the country. As described above in the section on the electoral system, there is no requirement in the electoral law to ensure the inclusion of female candidates. In addition, financing of electoral campaigns is even more difficult for female candidates, who generally have fewer financial resources.

⁷³ "Reasonable restrictions on persons wishing to become candidates may include...minimum support among voters." Office for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODHIT), Domestic Election Observers, p.72. Minimum threshold levels of support are typically demonstrated by validated signatures of registered voters.

⁷⁴ Measures that should be identified, implemented, and monitored for effectiveness include "those designated to... Assist women experiencing such disadvantages to exercise their right to vote and to be elected." U.N. Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 5, para. 45(c)



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CAMPAIGNS

A number of the DRC’s international obligations are relevant to the campaign period. These include but are not limited to the right to participate in public affairs, including the establishment of political parties and the freedom of expression, association, and assembly, each of which plays an important role in the campaign period.⁷⁵

The campaign period for presidential and legislative candidates took place from Oct. 28 to Nov. 26. The majority of political parties told observers they had limited funds to hold events and conduct outreach to potential voters. Observers described campaigning as modest and found PPRD to be the most active; PPRD candidates held more frequent and larger-scale events.⁷⁶ Parties had limited access to free state media as means to disseminate their messages. Observers witnessed candidates from both the opposition and majority party distributing small gifts and money to attendees at campaign events.

The campaign period was characterized by misuse of state resources by public officials, including candidates running for re-election or new office and public officials not running in the legislative race. Governors in Equateur, Kasai Oriental, and Bas-Congo used official government events to promote their party, their party’s presidential candidate, and in the case of Equateur and Kasai Oriental, themselves as legislative candidates.⁷⁷ The mixing of party promotion and official events or launches of municipal projects also allowed unofficial campaigning to begin before the official campaign period started on Oct. 28. Carter Center observers reported this activity was particularly visible among PPRD/MP local officials. Observers also saw first-hand the use of (marked) public vehicles for campaign activities during the campaign period.⁷⁸ Some of these candidates were

nonelected government officials and thus required under Article 10 (5) and (6) of the 2006 electoral law to resign or request and be granted temporary leave in advance of registration.⁷⁹ The intent of the law is to prevent the use of public resources for individual campaigns or political party benefit. Carter Center observers in South Kivu were told by opposition parties that a PPRD legislative candidate in Bukavu was able to register while serving as mayor (an appointed office). Though media violations were monitored by the Superior Audiovisual and Communications Council (CSAC), violations of electoral law by candidates or parties during the

campaign period were not formally addressed by any institution.⁸⁰

The right of assembly was not consistently respected by Congolese authorities in regard to political parties.⁸¹ Under the constitution’s Articles 25 and 26 and Article 81 of the electoral law, parties are only required to issue a notice of plans to congregate

The campaign period was characterized by misuse of state resources by public officials, including candidates running for re-election or new office and public officials not running in the legislative race.

75 ICCPR, Article 25(a); ICCPR, Article 21; UNHRC General Comment 25, para. 26; SADC, Principles and Guidelines, para. 7.4

76 It was reported that PPRD pledged to reimburse victorious candidates for a portion of expenses to encourage campaigning.

77 “The fairness of a campaign will be undermined where state resources are unreasonably used to favour the campaign of one candidate or political party. State resources—such as the use of public buildings for campaign events—should be available on an equitable basis to all contestants.” Handbook on EU Election Observation (2nd edition), p. 52.

78 This was observed most frequently in Mbandaka in Equateur province.

79 Those who “presently hold certain other governmental offices” may be denied “qualification for candidacy to elected office...on the basis of conflicts of interest or the doctrine of incompatibility of offices.” OSCE/ODIHR, Existing Commitments, p. 63

80 Under the African Charter on Democracy, Elections, and Governance, Article 17(2), “State parties shall establish... national mechanisms that redress election-related disputes in a timely manner.”

81 For a comprehensive documentation of violations during the electoral period, see Office of the High Commissioner for Human Rights-Joint Human Rights Office (OHCHR-JHRO) report of October 2011.



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Gwenn Dubourthoumieu

Citizens show their excitement in the streets on election day.

or march. UDPS's weekly Thursday protests outside CENI headquarters in Kinshasa were repressed by police and sometimes escalated into violence that involved excessive use of force by police. Carter Center observers were present at the weekly rallies in Kinshasa and described the use of tear gas and live ammunition fired in the air to control and disperse UDPS crowds. The United Nations' systematic logging of electoral incidents in 2011 found that party candidates were more likely to be targeted by authorities if they appeared to enjoy strong or increasing public support.⁸²

Parties also alleged various administrative techniques not involving force were used to hinder party activities in public areas.⁸³ UNC representatives told observers in Bas-Congo they were blocked by police from entering venues in Matadi and Boma after PPRD held events in the same stadiums. Parties also reported harassment from national intelligence agents (ANR). The ANR is run by the president's office with a mandate to investigate treason and other crimes against the security of the state. UNC party members told observers in Maniema that the ANR confiscated shipments of party paraphernalia planned for the campaign period.

Tensions between individual parties escalated

into violence at times, most notably between PPRD and UDPS and between UDPS and National Union of Congolese Federalists (UNAFEC). The tension between UDPS and UNAFEC is linked to family origin. The UDPS supporters in Katanga who are of Kasai provinces origins and UNAFEC Katanga supporters compete over resources and land in Katanga province. While voting in the DRC falls along ethnic lines, observers did not report instances of hate speech used by parties or incitements to violence on the basis of ethnicity by parties.⁸⁴

For the most part, parties exhibited undeveloped campaign platforms and community programs. Carter Center observers noted the parties, including legislative candidates, campaigned in the provinces on a national platform that broadly promoted infrastructure development for the DRC, rather than offering programs with development plans specific to a province. Voters had difficulty discerning differences among the large number of legislative candidates, many of whom had insufficiently elaborated political programs and/or limited means to reach out to voters. This context reinforces a tendency in the DRC to vote along ethnic lines.

CAMPAIGN FINANCE

Through its international obligations, the DRC is required to take measures to prevent corruption while treating all political parties and candidates equitably and maintaining a transparent campaign environment.⁸⁵

⁸² "A trend seems to be emerging wherein parties were targeted more often in regions where they have significant numbers of followers and are predicted to be the biggest threat against the ruling majority and the President." OHCHR-JHRO report, (2011), p. 22

⁸³ Under international law, everyone has the right of equal access to any place intended for use by the public without discrimination based on his/her political views or affiliations. See ICCPR, Articles 2(1) and 26.

⁸⁴ CSAC prohibits hate speech. Human Rights Watch (HRW) reported several instances of hate speech during the campaign period.

⁸⁵ U.N. Convention Against Corruption (UNCAC), Article 7; ICCPR, Article 25(b); International Convention on the Elimination of all Forms of Racial Discrimination (ICEFRD), Article 5(c); UNHCR General Comment 25



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Legislation on public financing of political campaigns was adopted on June 10, 2008.⁸⁶ It sets aside public funds to support general party activities, such as administration, development of party platforms, lobbying, constituency meetings, civic and political education for its members and the public at large, and increasing opportunities for women.

The law does not take effect until the 2012–2017 National Assembly and Senate members take office and, therefore, did not apply to the 2011 elections.

The Carter Center offers its analysis of the law in advance of implementation. The Center has identified some aspects of the law that may be at odds with its stated aim to deepen democratic pluralism and consequently merit close monitoring in practice.

The law specifies funding to parties will be supplementary as a government subsidy to a party’s own resources. The amount contributed by the state for general party activities and support cannot be less than 0.5 percent or exceed 1 percent of the total revenue of the state. The amount contributed for campaign activities is fixed at 2 percent of state revenue. Linking public party funding to percentages of total state revenue reinforces the importance of revenue transparency by the government.⁸⁷ The proportion of these percentages allocated to each party is based on its representation in the National Assembly and Senate or other deliberative body.⁸⁸

In order to be eligible to receive these funds, parties must satisfy certain criteria. Parties must be registered with the Ministry of Interior, establish a headquarters, have a bank account with a minimum balance of 2,500,000 Congolese francs (equivalent to \$25,000), conduct a regular inventory of supplies and regular bookkeeping, and respect parity between men and women in establishing party lists.⁸⁹ Parties must request in writing to receive the funds.

A key limitation imposed by the law is that a party without parliamentary representation (either because it did not win seats in a previous election or is a newly created party) is not eligible for either type of funding. The large number of registered political parties in the DRC (over 400 as of August 2011), some of which serve as “satellite” parties to

established political parties, necessitates a control to ensure groups merit public funds by contributing to genuine political pluralism. Attaching funds to parliamentary representation is a common characteristic of public finance legislation, and given the large number of parties elected on

Nov. 28 to the National Assembly, this threshold seems to be within the reach of many political parties.⁹⁰

Though this threshold is also intended as a control to ensure funds are directed to legitimate parties, this amount may be out of line with the realistic means available to all parties that have amassed public support and represent constituencies.⁹¹ In the context of the DRC’s vast mining riches, where the majority is poor and a select few have wealth, the DRC may

States should take active measures to prevent public officials from making personal gain or profit from their position or privileging certain constituencies or companies for their financial support.

86 Law on Public Finance for Political Parties, Law 08/005

87 According to the Revenue Watch Institute, the DRC has made significant progress in reporting company payments, though revenue data is still missing from its reports.

88 Provincial Assembly; Urban Council; Chief/Local Council

89 The law requires parties to keep records, which may not legally obligate parties to share records with authorities beyond proof of tax payments. Under the law, parties are not required to publish and to make public to voters their sources of funding.

90 Ninety-four parties won seats in the National Assembly in the Nov. 28 election. Lawmakers should nonetheless monitor the ability of “new parties to enter the political arena and to compete under fair conditions with the more well-established parties,” to determine any necessary state contributions and modifications to the current law. PACE Recommendation 1516 (2001) on funding political parties, para. 8(ii)

91 Political parties have not shared their organizational assets or budgets with The Carter Center. Without this information, the extent that a \$25,000 minimum threshold is reasonable or unreasonable cannot be fully understood.



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find that application of this provision of the law does not contribute to the development of representative parties and level opportunities between established and smaller parties.⁹² Those parties that are able to satisfy this requirement are arguably less in need of public funding than are their counterparts that are unable to meet this threshold.

Providing public subsidies to parties with substantial resources relative to other parties may reinforce stratification, widening the gap between elite and nonelite parties.⁹³

This possibility increases further because Congolese law does not impose limits on campaign spending.⁹⁴ A more robust party finance law would place spending limits on amounts that may be used during the election period for campaign purposes, in order to level the playing field for actors. If the law contained this characteristic, it may be better placed to achieve its stated purpose to guarantee equality of opportunity among elected parties.

One important purpose political finance legislation can serve is to limit corruption through disclosure laws concerning contributions and spending. States should take active measures to prevent public officials from making personal gain or profit from their position or privileging certain constituencies or companies for their financial support. There is no obligation under this law for parties to make available their total budget, expenses, and sources of funding for the campaign period or in general.⁹⁵

Carter Center observers were told in meetings with a range of political opposition parties that the lack of public financing available in this election was a significant hardship.⁹⁶ Political parties told observers they had very limited funds, which they derive largely from individual membership fees, sales of party paraphernalia, and donations.⁹⁷ The consequence of this lack of funding was demonstrated by the modest number of campaign events in advance of the Nov. 28 elections. This limited outreach by parties during the electoral period provided voters less opportunity

to be informed on party positions—the small number of campaign events was coupled with minimal access by parties to airtime on free public media. Further, parties that were elected on Nov. 28 to serve in the National Assembly have limited resources going forward to engage in consultation with their constitu-

encies to inform the development of political platforms and formulation of policies.

Participation of Women, Minorities, and Marginalized Groups

The National Assembly operates under a party list system.

This places a special responsibility on political parties to find parity between genders in the party lists they put forward. In recognition of this responsibility, the finance law of 2008 links funding to gender parity in party lists for those parties wishing to benefit from public funds. If this law had been in effect for the 2011 election, it is reasonable to assume party lists would have been comprised very differently. As it

Many Congolese media stations are associated with or owned by a political party or politician.

92 Per capita income in 2008 (when this law was passed) was \$327.

93 As explained in Goodwin-Gill, Free and Fair Elections, “the rationale for public funding of political parties and election expenses is usually linked to the desirability of establishing, as far as possible, a ‘level playing field,’” p.141 (2006).

94 There are no campaign spending limits in the two laws governing political parties: Law 04/002 and Law 08/005. According the Vienna Commission’s Code of Good Practice, Sec. 1.2.3.ee, “...to ensure equality of opportunities...electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country.”

95 “There should be a transparent system of disclosure of the funding received by any party or candidate.” International IDEA, Legal Framework, p. 65. See also Carter Center, Atlanta Declaration, “Companion legislation that would further promote the right of access to information...should be enacted, including: laws compelling disclosure of political party and campaign financing.”

96 “Political parties should receive financial contributions from the state budget in order to...guarantee equality of chances between political parties.” PACE, Recommendation 1516 (2001) on financing political parties, para. 8(ii)

97 “Guarantees of free speech, opinion, information, assembly, movement and association take on greater significance during elections. The prevailing atmosphere should be one of respect for human rights and fundamental freedoms...” U.N., Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 115



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stands, out of the 18,386 individuals registered as legislative candidates, only 2,277 were women, or 12.4 percent. Congolese law strikes a sensible balance on the issue of participation of women. Though it does not require quotas for female legislatures, as envisioned under the Beijing guidelines, it conditions important public funding of parties to those parties that satisfy a high threshold (50 percent) for representation of women.⁹⁸ The current law does not include incentives to increase representation of Pygmies or other historically marginalized groups.

THE MEDIA

International obligations require the DRC to protect the rights of freedom of opinion and expression, along with the right to seek, receive, and impart information through a range of media.⁹⁹

Public and private Congolese media played potentially contradictory roles in the electoral process. On the one hand, they were a source of independent information for the public, but on the other, they served as propaganda tools for candidates and their followers, abandoning the exchange of ideas and debate in favor of sometimes inflammatory rhetoric and serious inaccuracy.

The DRC has a large number of print and digital media outlets. There are a large number of television stations (52) and radio stations (240). There are approximately 200 newspapers in circulation in major cities. Community radio stations played a crucial role in the electoral process as a way to reach populations in remote areas. Many Congolese media stations are associated with or owned by a political party or politician.

The media, whether written press, television, or radio, public or private—largely pursued the objective of electoral victory for their candidates, putting aside much of the work of responsible journalism or

providing impartial voter information. The work of analyzing the political environment by giving citizens the possibility to watch various media events challenging ideas and programs on electoral strategies was nonexistent.

The Congolese government as well as the international community should reinforce the capacity of the media and permit Congolese journalists to conduct their work professionally.

Freedom of thought and expression is guaranteed under Congolese law and is a necessary component of the electoral period to allow voters to make free and informed choices for their representatives on election day.¹⁰⁰ Journalists who write critically about the ruling party in the DRC risk personal or profes-

sional harm. According to a reporter from Radio Okapi who met with Carter Center observers in Kinshasa, the environment for journalists reporting on sensitive political issues is improving. Journalists in Danger (JED) released a report in December 2011 documenting violations of press freedom and harm to journalists over the year.¹⁰¹ The watchdog group cited one case of a journalist being assassinated; nine arrests of journalists; 33 journalists taken in for questioning; 28 journalists harassed or ill-treated; and 29 journalists who received threats. With the exception of one correspondent from state-owned RNTC, all of the journalists were affiliated with community-based or private radio, television, and newspapers.

The Superior Audiovisual and Communications Council (CSAC), an institution of democratic

98 The Fourth World Conference on Women, held in Beijing, China, called for female representation levels in government of at least 30 percent (1995).

99 ICCPR, Article 19

100 "Freedom of expression and information, including the right to seek, receive, and impart information and ideas...in writing, or in print,... is a fundamental and inalienable human right and an indispensable component of democracy." AU Principles on Freedom of Expression in Africa, Article 1.1

101 Not all of the cases documented by Journalists in Danger (JED) in its report were linked directly to election-related coverage.



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support intended to regulate the media and ensure equal airtime on public stations, was established on Oct. 11, 2011. The government of the DRC's failure to establish CSAC with more lead time prior to the elections hobbled the institution's ability to implement its mandate. Article 33 of the electoral law designates CSAC in charge of the supervision of media activities related to the electoral period. During the campaign period beginning on Oct. 28, CSAC undertook monitoring media across the entire country. Overall, CSAC issued some 60 sanctions to journalists and broadcasters. The first sanction was the interruption of the signal of RLTV for seven days after it broadcast a speech made by Tshisekedi that criticized the government and included an incitement to violence. Though the speech was considered inflammatory, other television stations broadcast the speech and were not sanctioned like RLTV. Also noteworthy was the apparent incapacity of the CSAC to remove large banners depicting President Kabila that hung on the exterior walls of state-owned station National Congolese Television (RNTC). Similar Kabila pictures were removed from the main stadium in Kinshasa. Further damaging its perception as an independent body, CSAC offices were located in the RNTC building.

As a regulatory body, CSAC holds the promise to become a strong instrument to promote the free expression of political actors and regulate infractions that arise. But such a media environment does not yet exist in the DRC. The Congolese government as well as the international community should reinforce the capacity of the media and permit Congolese journalists to conduct their work professionally.

Each of the presidential candidates was offered a 60-minute broadcast slot to present their platform. All but three of the candidates took advantage of this facility.

For its part, international media was not spared from intimidation, and there were obstacles that hindered the free movement of international journalists, including confiscation of supplies and interruptions of signal.¹⁰² The signal of French radio station RFI was interrupted for seven days after it broadcast a speech during which Tshisekedi declared himself the president of the DRC.

During the tabulation of legislative results, a television station in Lubumbashi had its signal interrupted after making a statement that denounced irregularities on election day. The owner of the station is a member of the MP coalition and was a candidate in the legislative elections.

The European Union, which did in-depth media monitoring during the electoral period, took note of similar incidents regarding bias and partiality in the media. Statements cited journalist intimidation as well as biased media sources to be a significant problem. For instance, on RTNC, a public media source, Joseph Kabila has received 86 percent of time spent on presidential candidate coverage, with 7 percent to Kengo, 3 percent to Kamerhe, and 1 percent to Tshisekedi. Their analysis identified significant media bias across the whole country, along with the partiality of CSAC, which arbitrarily shut down opposition radio stations during the elections and tabulation processes. The EU statements concluded that by maintaining a partial stance during the electoral period, CSAC did not fulfill its obligation to ensure that public information was accessible.¹⁰³

Congolese human rights groups critical of government misconduct operate in a restricted environment in the DRC.

¹⁰² "The media should be assured by the government of: 1) the right to gather and report objective information without intimidation; and 2) no arbitrary or discriminatory obstruction or censorship of campaign messages." Norwegian Helsinki Committee, Election Observation in "Manual on Human Rights Monitoring: An Introduction for Human Rights Field Officers," p. 15

¹⁰³ EU Preliminary Statement, Dec. 2, 2011; EU postelection statement Dec. 13, 2011



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Domestic observers watch the counting process at a polling station.

JED also undertook monitoring of public and private media with the largest viewership. JED described a media culture that is often manipulated by candidates and political parties. The influence of money and a partisan bias in coverage of the electoral period was manifest. JED documented 42 cases where the dissemination of information was hindered during the electoral process, limiting voter access to information in advance of the elections. Congolese journalists in many cases engaged in self-censorship to avoid interrogation or arrest. The standard of living of journalists makes them especially vulnerable and susceptible to the power of money in order to provide for their families. Corruption and intimidation as well as a general lack of means for journalists create a media environment that fails Congolese citizens by not showing real debate between candidates or political analysis. It is hoped that the DRC will take measures to fulfill its obligation to prevent corruption in the media and strengthen CSAC so as to implement its mandate more effectively, as noted in the African Union Convention on Preventing and Combating Corruption.¹⁰⁴

CIVIL SOCIETY

All persons have the right to participate in the public affairs of their country. Not only does this include the right to vote and to be elected, it also includes the right of citizens to participate in nongovernmental organizations.¹⁰⁵ Congolese civil society plays a crucial role in monitoring and supporting the electoral process. Throughout its mission, Carter Center observers conducted meetings with human rights defenders, journalists, domestic observers, and church organizations.

Congolese human rights groups critical of government misconduct operate in a restricted environment in the DRC. During the electoral period, these groups felt increasing pressure from authorities, in particular the ANR, which reports directly to the president's office. The agency takes a broad interpretation of its mandate to investigate crimes against the security of the state, monitoring the work of civil society leaders. Directors of a prominent civil society organization that issued public statements on the electoral process left their organizational headquarters for several weeks for security reasons after receiving anonymous threats.

¹⁰⁴ "1. This Convention is applicable to the following acts of corruption and related offences: (f) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result." AU Convention on Preventing and Combating Corruption, Article 4(f)

¹⁰⁵ CEDAW, Article 7



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Many international sources recognize the important role of independent observation in free elections.¹⁰⁶ The presence of neutral and capable domestic observers in polling stations on election day can deter fraud and strengthen confidence in the final results. CENI issued 187, 238 individual accreditations. There were 99,426 domestic observers who observed the conduct of the polls on Nov. 28. CENI accomplished the enormous task of accreditation for domestic observers in advance of election day, though groups in Bas-Congo reported to The Carter Center that the processing period frequently exceeded the seven-day limit under Article 43 of the electoral law.¹⁰⁷

Important domestic observer groups included: Episcopal Commission for Justice and Peace (CEJP); National Network for the Observation and the Supervision of the Elections to Congo (RENOSEC); Network of the Main Religious Groups (ROC); Framework of Consultation of the Congolese Woman (CAFCO); and National Counsel of the Youth (CNJ). RENOSSEC, ROC, CAFCO, and CNJ published their findings in four joint reports. These reports documented instances of irregularities and reported problems in transparency and obstruction of the work of independent observers during the tabulation. The Catholic Church released a statement in December based on their observations with similar findings of irregularities and questioned the accuracy of results announced for the presidential vote.

Since 2007, the Carter Center's Human Rights House has supported the work of Congolese civil society. The Human Rights House reinforced local observer capacity during this election period by assisting CEJP's deployment of 6,000 observers on election day. The Human Rights House developed

reporting forms and a reference manual for CEJP observers and contributed to a series of trainings in several provinces.

The Supreme Court of Justice (CSJ) declared itself competent to settle disputes on behalf of the Constitutional Court when no court was planned to assume its functions concerning the laws governing the elections of 2011.

Participation of Women, Minorities, and Marginalized Groups

One of the principal domestic observation groups was the women's umbrella network CAFCO. They deployed 1,882 observers on election day. They reported that women appeared to be voting in equal numbers to male voters despite family responsibilities that

influence women to stay home. Women comprised a significant number of the observers deployed by other NGOs. International NGO EISA supported the deployment of 278 Pygmy and 60 albino observers in Equateur, Katanga, and province Orientale on election day.

ELECTORAL DISPUTE RESOLUTION

Formalized electoral dispute resolution is necessary for meeting international and national obligations to ensure that effective remedies are available for the redress of violations of fundamental human rights related to the electoral process.¹⁰⁸

¹⁰⁶ See, for example, SADC, Principles and Guidelines Governing Democratic Elections, para. 7.8. To support the role of party witnesses and independent observers: "Ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and other observers/monitors."

¹⁰⁷ "Accreditation is given at the latest seven days after submission of the request." (Party witness accreditation has a five-day processing period.)

¹⁰⁸ This principle provides "a safety mechanism ensuring that the rule of law, rather than any politician or external body, controls the conduct of elections. A judiciary functioning under these principles serves both the important cause of peaceful dispute resolution and that of protecting the process from bias or fraud." U.N., Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 47



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The Supreme Court of Justice (CSJ) declared itself competent to settle disputes on behalf of the Constitutional Court when no court was planned to assume its functions concerning the laws governing the elections of 2011. According to the constitution of 2006, the CSJ would be replaced by three courts, a Court of Cassation, a Council of State, and a Constitutional Court. While waiting for the implementation of these institutions, the Supreme Court of Justice adjudicates civil, administrative, and electoral disputes, as well as the interpretation of the constitution. The CSJ sits in Kinshasa and has no representation in other provinces.

The composition of the Constitutional Court as planned in the constitution will be very different from the current CSJ. Its nine members will be appointed by the president of the republic by proposition of the Council Superior of the Judiciary (CSM). A third of its members will be appointed on initiative of the president of the republic, a third by Parliament, and a third by the CSM. This mode of appointment will strengthen the independence of its members and consequently the confidence of citizens.

The current magistrates of the CSJ were trained twice in electoral law. From Oct. 12–15, 2011, UNDP supported a training organized by the Superior Council of the Judiciary. This three-day training was not open to the public or election observers.

The second training, with partnership of the International Organization for the Francophonie, was led by European and African academics and electoral dispute practitioners. This session centered on the interpretation of the electoral law to prepare for ruling on electoral disputes.

At the end of the deadline for registration and after analysis of applications, CENI publishes a provisional list of candidates, which can be challenged before the Supreme Court of Justice (acting on behalf of the Constitutional Court) within four days of publication.¹⁰⁹ This time frame is very short considering the size of the country, the lack of infrastructure, and absence of representation of the CSJ in provinces. It can constitute an obstacle to the right of due process for the candidates and an unreasonable obstacle to the right to stand.¹¹⁰

The Carter Center regrets that the Supreme Court of Justice did not make its rulings public despite requests to do so from various groups.

Table 7: Election Dispute

Submission of candidacies	Time frame to submit complaint	Responsible court	Time frame to settle the case
Presidential election	Two days following publication of provisional candidate list or notification of the decision of denial by CENI (Article 107)	Constitutional Court (Article 107)	Seven days starting after expiration of the 48-hour delay (Article 107)
Legislative elections	Four days starting the first working day after publication of provisional candidate list (Article 25)	Constitutional Court (Article 27)	Seven days starting when the case is submitted (Article 27)

¹⁰⁹ Article 25 of the electoral law

¹¹⁰ “Time-limits and procedures governing the admissibility of complaints and appeals should be designed so as to preserve the right of aggrieved

parties to seek redress.” OSCE, Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System, para. II.H.40-43



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On Oct. 13, 2011, 17 new judges were appointed to the CSJ in anticipation of electoral disputes. These new appointments were made after disputes emerged from the submission of candidacies earlier in October.

Three judges sitting at the time of these disputes settled 84 cases regarding candidate nomination (56 were considered nonreceivable, and 10 were rejected for procedural reasons). Out of the 18 complaints examined, 14 were withheld. The Carter Center regrets that the Supreme Court of Justice did not make its rulings public despite requests to do so from various groups.¹¹¹ This lack of transparency does not respect international best practice in treatment of legal disputes by concealing possible modifications of election results stemming from electoral disputes.¹¹²

Notwithstanding concerns on the conformity of procedures with international standards, the judicial procedures before the CSJ as defined in the law are improved compared to previous elections and contain elements that strengthen its quality. However, the Supreme Court of Justice showed a lack of rigor and transparency in the application of these texts. Appointed shortly before election day, the new magistrates who were said to be very close to the ruling party did not address concerns regarding their independence and impartiality. The legitimacy of the court rests on the trust in which citizens put in its decisions. In its treatment of electoral disputes of 2011 elections, the court did not earn or keep the trust of citizens, especially candidates and political actors.

ELECTION-RELATED VIOLENCE

The security situation in the DRC was always an important consideration in this electoral process. The violence during the elections of 2006, particularly after the official announcement of the first round presidential results, left a bitter memory. Forty-five

acts of election-related violence were documented by the United Nations in advance of the Nov. 28, 2011, elections. These incidents were linked directly to the elections and targeted political parties, especially parties among the opposition; journalists; and

human rights defenders. Kinshasa, Lubumbashi, and Mbuji-Mayi were at the center of this violence.

Clashes between supporters of UDPS and PPRD occurred on several occasions, starting just after the submission of Etienne Tshikedi's presidential application. The violence damaged the headquarters of

both parties as well as the RLTV, a television station linked to UDPS, which was set on fire. Details on who started the fire and how it happened are not known.

During the different incidents of political party violence, youth were mobilized by different parties. Typically, the young men involved in the confrontations were not politically engaged with the parties.

Postelection Violence

According to Human Rights Watch, at least 24 civilians were killed, and many others were injured by Congolese security forces in the weeks following the announcement of election results.¹¹³ Those killed included opposition members and others gathered on the street or even in their homes. HRW also cited the involvement of the Republican Guard in illegal

Forty-five acts of election-related violence were documented by the United Nations in advance of the Nov. 28, 2011, elections.

111 On Nov. 22, The Carter Center published a press release asking the Supreme Court to publish its decisions on the submission of candidacies for the presidential elections to reinforce public and political party trust in the judicial system.

112 "Responses to complaints should be provided in a timely manner, and all hearings and rulings should be public." OSCE, Election Observation Handbook (Fifth Edition), p. 36. See also "The complaints procedure should be undertaken in a transparent manner, including public hearings and the publication of decisions and reasons." Handbook for European Union Election Observation (Second Edition), p. 60

113 Human Rights Watch press release, Dec. 22, 2011, "DR Congo: 24 Killed Since Election Results Announced"



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detention and arrests. The guard is tasked solely with protection of the president but forbidden by Congolese law to arrest civilians.

After the announcement of provisional results for the presidential election, Kinshasa saw clashes between the MP supporters and opposition parties challenging the results. The Congolese National Police (PNC) was deployed to volatile parts of the city. On Dec. 9, three people were killed and many others injured in the neighborhoods of Ngiri-Ngiri and Makala. In Lubumbashi and Mbuji-Mayi, protests following the results escalated to clashes with several injuries involving opposition supporters and security forces.

After Etienne Tshisekedi's self-proclamation as president, security forces surrounded his residence in Limite, Kinshasa. Since December 2011, he has been under de facto house arrest.

The lack of preparation of the PNC to provide security during the electoral process introduced the presence of the Republican Guard to repress public protests at crucial moments. Every intervention by the Republican Guard demonstrated the lack of preparedness and capacity of the national police to

maintain public order and, by extension, to protect citizens and property.¹¹⁴

The security situation in eastern DRC worsened during the electoral period with cases of violence documented and a population that was traumatized

and in some cases forcibly displaced from their homes. The reform of Congo's security sector lessened military pressure on armed groups, leaving the population isolated in certain cases.

The capacity limitations of the PNC have several sources: lack of material means; limitations of the legal framework and

the particular regulations governing the PNC; the absence of uniform, professional training; insufficient salary; and an absence of social responsibility. The inadequate security of the polling stations on election day and the CLCRs during the tabulation process compounded the CENI's technical and procedural problems. Security sector reform remains an ongoing area of development in Congo, and efforts to ensure electoral security must enable the Congolese people to exercise their democratic rights without fear of violence or intimidation.¹¹⁵

After the announcement of provisional results for the presidential election, Kinshasa saw clashes between the MP supporters and opposition parties challenging the results.

114 "Every individual shall have the right to liberty and to the security of the person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law." AU, African Charter on Human and People's Rights, Article 6

115 This reform should be undertaken so that security forces are better able to meet their responsibilities to support the right to security of the person.



ELECTION DAY

The voting process is the cornerstone of the obligation to fulfill genuine, periodic elections that express the will of the people.¹¹⁶

The Congolese people demonstrated their strong desire to have their voices heard on election day by coming out to vote in large numbers, despite some having to travel long distances to reach the polls and others facing heavy rain.¹¹⁷ In some districts, particularly in eastern DRC, voting was extended through Nov. 29 and 30 because of insecurity and lack of voting materials.¹¹⁸ Some polling stations had not received ballots to begin voting on Nov. 28, and others ran out of ballot papers before voting was completed.¹¹⁹

Overall, voting took place under calm and peaceful conditions, though the presence of illegal armed groups hindered transport of electoral materials in

parts of eastern DRC. Isolated incidents of violence in or near polling stations were also reported on election day. As in 2006, there were reports of blank

ballots being burned by citizens (presumably to prevent electoral fraud) as well as cast ballots that were burned after voting. PNC were deployed to voting centers in insufficient numbers to protect and secure every polling station.

Carter Center observers visited nearly 300 polling stations on Nov. 28 across the DRC's 11 provinces. Though

the Center's deployment provided broad geographic coverage of the country, including both urban and rural areas, the findings they reported are not based on a probability sampling design, which could ensure results are statistically representative of the country's 63,000 polling stations. Nevertheless, each team completed a detailed checklist for each polling station visited, and these findings were compiled to provide an indication of potential patterns.

LIST OF "OMITTED VOTERS"

Carter Center observers reported that the CENI posted the majority of voter lists at polling stations only two to three days before the election, a full month behind the CENI election calendar, denying the 32,024,640 registered voters the appropriate opportunity to confirm their names were on the list

Overall, voting took place under calm and peaceful conditions, though the presence of illegal armed groups hindered transport of electoral materials in parts of eastern DRC.

Laura Salich



Carter Center observer Koffi Anzoua speaks with a CENI representative outside a polling center in Kindu, Maniema province.

116 ICCPR, Article 25

117 Voter turnout was 58.4 percent for the country, ranging from 47.2 percent in Kinshasa to 69.7 percent in Kananga.

118 CENI communicated the extension in the media; there was no written directive made public.

119 Insufficient numbers of ballots could be attributed to general error or a large number of derogation voters.



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Myriam Asmani



Voters search for their names on the voter list outside a polling station.

and to identify their polling station. As late as Nov. 27, Carter Center observers reported voter lists were missing from some polling stations in Kalemie, Mbuji-Mayi, and Beni. Observers were told the month delay in posting lists was a precaution to prevent damage from rain, vandalism, or theft.¹²⁰ The late arrival of voter lists to local offices from the CENI headquarters in Kinshasa also contributed to the delay.

This late posting violated Congolese law and the rights of voters. Article 8 of the electoral law obligated CENI to publish voter lists at polling stations no later than Oct. 28 so that voters may identify their polling station in advance of election day and have sufficient time to inform CENI of any errors. On election day, observers found that voter lists were displayed outside in 80 percent of polling stations they visited. Observers reported large numbers of voters were unable to find their assigned polling station after reaching the voting center listed on their voter identification card.

Some voters who could not find their names on the list went home without voting, while others voted based on a last-minute provision introduced by the CENI on Nov. 25, 2011. This CENI press release stated that those “who have voter cards and whose

names are missing from voter lists will be allowed to vote at the site listed on the voter card or the nearest site in the same district.” Polling officials were to make note of their names on a ‘list of omitted voters.’¹²¹

While the use of a list of omitted voters can serve to affirm and further the right to vote, it contradicts Article 6 of the electoral law, which prescribes that, “the quality of being a voter is recognized by being recorded in the voters lists and holding a voter registration card issued by the Independent National Electoral Commission.” Use of lists of omitted voters also weakens safeguards that are in place to prevent multiple voting or to prevent ineligible voters (active-duty military, police)

who manage to obtain a voter ID card from voting.

Under its international commitments, the CENI should have taken more vigilant measures to ensure that access to voting was sufficiently secure.¹²² The decision to allow omitted voters to cast a ballot was a significant course of action, but it was announced too late to be incorporated into the training of polling station workers.¹²³ Carter Center observers found that many poll workers were unaware of the decision to implement this procedure. As a result, application of a list of omitted voters was inconsistent between

120 Interestingly, CENI also justified the late posting of lists as precisely to prevent voters from verifying their names, since most polling stations were to be found at schools with children.

121 In 2006, CENI allowed lists of omitted voters in selected parts of the East because voters’ list data was missing from some polling stations. The Carter Center cautioned against use of lists of omitted voters in 2006 and 2011 due to inadequate measures in place to protect against electoral fraud through multiple voting.

122 “...Take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security.” SADC, Principles and Guidelines Governing Democratic Elections, para. 7.6

123 Poll workers were trained over a three-day period from Nov. 23–25 (shortened from five days). “Polling personnel will require clear guidance in admitting...qualified voters.” U.N., Human Rights and Elections, para. 11



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Myriam Asmani



Field office director Baya Kara (right) speaks with a CENI official at a CLCR in Kinshasa.

polling stations; voters were turned away from some polling stations, while others in the same situation at different polling stations were able to vote. Notwithstanding concerns with use of lists of omitted voters, inconsistent application of this procedure compromised the equal participation rights of citizens.

According to the EU election observation mission, 17 percent of all voters were “omitted voters” or “derogation voters.”¹²⁴ Carter Center observers noted that lists of omitted voters were included in the lists of derogation voters, though they are distinct categories. It is thus recommended that the CENI better anticipate difficulties to avoid having to resort to the use of remedial procedures such as a list of omitted voters or other measures that might compromise the integrity of the vote.

OPENING AND POLLING

The election commission set up 63,865 polling stations across the DRC divided among 16,000 voting centers. Each polling station was staffed by a president, a secretary, first and second assessors, and a supplementary assessor.¹²⁵ The majority of polling stations visited by Carter Center observers opened late. Only a quarter of polling stations opened on

time, at 6:00 a.m., and only half were open by 7:00 a.m.¹²⁶ In these cases, observers reported that polling station workers were present and that delays were due to unfinished preparations for opening or missing ballots. Under Article 56 of the electoral law, each polling station is to receive enough ballots to accommodate the number of registered and anticipated voters 48 hours before the vote begins. Such delays in opening as were seen on election day compromise the right to vote. However, in most cases, polling stations with late openings extended their hours proportionately to respect the electoral law designation of 11 voting hours and ensure voters could cast their ballots.

Polling stations displayed empty ballot boxes before voting began. Observers found good or satisfactory adherence to opening procedures in the majority of polling stations they visited.

During polling, observers reported that indelible ink was not consistently used in polling stations. Marking fingers with ink is required under Article 57 and is an essential safeguard to protect against multiple voting. Observers in Kisangani were told by some voters that they voted more than once. Observer teams in Bandundu, Katanga, Equateur, and Kasai-Occidental reported that minors who appeared to be well under the age of 18 were voting, some who looked as young as 10 or 11. No Carter Center observer reported electoral propaganda inside or near polling stations.

¹²⁴ Derogation voters are voters outside their areas of residence. Categories specified under Article 59 include CENI workers, public servants, candidates, party witnesses and domestic observers, and families of military and police on mission.

¹²⁵ Article 49 of the electoral law

¹²⁶ Polling station hours are 6 a.m.–5 p.m.



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John Stremiau

A voter's finger is marked with indelible ink. Not all polling stations used the indelible ink, which reduces incidence of voter fraud.

Observers reported that some polling stations were without ballots, some with only legislative ballots or presidential ballots, some without ballot boxes, and some without voting booths.¹²⁷ Observers reported that in 53 percent of cases ballot papers were not in sufficient quantity to accommodate all voters. In cases of missing voting booths, polling stations were operational to give electors the opportunity to vote, although obscuring the privacy of the vote.

Voting took place in at least 400 polling stations on Nov. 29 after delivery of ballots by truck and MONUSCO helicopters. The CENI also attempted to send extra, unused ballots from polling stations (some polling stations had 10–20 percent excess ballots) to redistribute to other polling stations, raising concerns among groups of how the commission would track and account for these ballots.¹²⁸

Legislative ballots for the 169 electoral districts were very lengthy due to the unrestricted number of parties submitting candidates under the open party list system.¹²⁹ The ballot in Kinshasa's Tshangu district was a 57-page booklet with over 1,500 candidates. As in 2006, the CENI took the sensible measure to reduce the number of voters per polling station in Kinshasa by 200 to balance the additional time needed to cast legislative ballots there.¹³⁰

Observers reported the time it took voters to consult ballots allowed opportunities for party agents to intervene. Observers said the practice of party agents accompanying voters inside the voting booths was frequent and widespread. Allowing partisan agents to assist voters compromised free expression of the Congolese electorate and secrecy of the vote. In some of these cases, observers said the voter did not ask for assistance in casting the ballot before it was volunteered by a party agent.¹³¹ The CENI voting procedures allow blind or illiterate voters to have a person of their choosing accompany them into voting booths. This ideally should be a polling station worker, relative, or other neutral person. The CENI designed ballots with the name of the candidate, a color photo, the party symbol and acronym, and the candidate number. These measures increased the length of the ballot and the time and cost of printing but were seen as necessary measures to help voters cast their ballot for the candidate of their choice, with little or no assistance. Poll workers undermined the benefit of these ballots as well as the voting booths used to ensure secrecy of the vote in cases where party agents were allowed to volunteer and assist voters.¹³²

¹²⁷ "Sufficient quantities of voting materials must be available at each polling place," U.N., Human Rights and Elections, para. 111

¹²⁸ For example, OSISA, which supported a network of 5,000 domestic observers, reported that already-filled-in ballot papers were seen across the country.

¹²⁹ However, the number of candidates on each party's list was limited to the number of seats per electoral district.

¹³⁰ CENI planned for 600 voters per polling station in provinces outside of Kinshasa and 400 for Kinshasa.

¹³¹ Assistance should be provided by a person of the voter's choice, at his/her request. U.N. Convention on the Rights of Persons with Disabilities, Article 29(a)(iii); "Assistance provided to the disabled, blind, or illiterate should be independent." UNHRC, General Comment 25, para. 20

¹³² Under Article 58 of the electoral law, no voter may assist more than one voter.



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Hélène Helbig de Balzac



A page out of a legislative ballot in Kinshasa. Some ballots contained as many as 1,400 candidates for one constituency.

There were reports of polling stations being moved in the middle of voting operations to new locations.¹³³ While the CENI's apparent aim of increasing access of polling stations to all voters is commendable, moving cast ballots before counting presents an opportunity for electoral fraud and contravenes the CENI's own voting procedures.

Moving polling stations with cast ballots and instituting lists of omitted voters may allow some voters who otherwise would not be able to cast their ballots to do so. However, the integrity of the overall results is put into question because important safeguards have been removed from the process. The CENI can better respect the right to vote of Congolese citizens through improved organization of polling station selection and the assignment of voters to each station.

CLOSING AND VOTE COUNTING

International and regional agreements recommend that votes be counted by an independent and impartial electoral management body whose counting process is public, transparent, and free of corruption. A transparent and nondiscriminatory vote-counting process is an essential means of ensuring that the fundamental right to be elected is fulfilled.¹³⁴ Moreover, accurate and secure counting of votes can help to ensure that the principle of one person, one

vote is respected and that the election results reflect free expression of the will of the voters.¹³⁵

Voters standing in line at the time of the close of the polling station are entitled to remain in line and cast their ballots. Observers reported this rule was respected at polling stations in 75 percent of cases. Under the watch of party agents and independent observers, ballots were counted out loud and recorded by poll workers. Carter Center observers reported the counting process continued through the morning of Nov. 29 in districts with large numbers of legislative candidates, and some stations temporarily interrupted the counting operation to allow workers to sleep.

In less than half of polling stations visited, observers reported that five voters were not designated by the polling station president at closing time to observe the counting process for presidential and legislative ballots as required under Article 62 of the electoral law. Observers reported in 96 percent of their polling stations that party agents were present for counting of both sets of ballots, with a similar figure (92 percent) for domestic observers. Among party agents, UDPS, PPRD, and UNC were present

133 For example, Carter Center observers in the district of Gemena, in Equateur province, were contacted when the head of a voting center in Bobisi received a phone call at 11 a.m. from a CENI superior to move each of his six polling stations to remote parts of the same district. Voters assigned to these six polling stations were to vote in polling stations in either of the two other voting centers in Bobisi. Around 2:00 p.m., ballot boxes containing already cast ballots and blank ballots and polling station workers were all transported to Bowakara (12 km from Bobisi) and Bosumaka. Voting operation then started in both places. At the end of the day, votes from Bowakara and Bosumaka were returned to the original voting center in Bobisi for counting.

134 UNCAC, Article 13(a); ICCPR, Article 25(b)

135 ICCPR, Article 25(b); ACHR, Article 23; AU New Partnership for Africa's Development (NEPAD), Declaration on Democracy, Political, Economic and Corporate Governance, para. 7



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in the largest numbers. In these stations, 54 percent of party agents received a copy of at least one results tally (presidential or legislative).¹³⁶

In only 70 percent of stations visited were presidential and legislative results posted in front of each polling station as required by procedures.¹³⁷ Distribution of the results copy and the display of results in front of polling stations are the only times parties are guaranteed access to individual polling station results. Posting and distribution of polling station results can provide party agents and observers with an effective means to verify that the vote tabulation takes place on the basis of legitimate counts. The CENI is not required to publish its presidential or legislative results disaggregated by polling stations; it is only required to publish by constituency.

Overall, observers rated the quality of respect for closing and counting procedures as good in 61 percent of cases, 30 percent satisfactory, and 9 percent poor.

SECURITY

The possibility of election-related violence as seen in Kenya in 2007 and Ivory Coast in 2011 gave rise to a warning to Congolese political leaders from the International Criminal Court on Nov. 11, 2011. The ICC, which has indicted leaders from Kenya and Ivory Coast, announced it would be monitoring events in the DRC and that recourse to violence would not be tolerated. This was an unusual action by the court, and though not all types of election violence would rise to crimes against humanity or other international crimes under the ICC's jurisdiction, the statement can be seen as an indication of the strongly perceived threat of violence the DRC faced on election day and during the postelectoral period.

The political climate during the last days of the campaign period was tense, especially in Kinshasa, Katanga province, and Mbandaka. Tensions carried

over into election day in these places, which saw isolated outbreaks of violence. Voters in some instances attacked fellow citizens and election workers they believed were engaging in election fraud. The majority of these attacks were spontaneous, directed at individuals with unmarked or previously

marked ballots. In the Mont Amba district of Kinshasa, voters beat a woman whom they suspected of wrongdoing because she was carrying blank ballots. Other violence targeted polling stations or election materials. The population set fire to polling stations to prevent fraud, which prevented voting and

nullified previous votes. In Bangbemba, six kilometers from Lubumbashi, two CENI trucks delivering ballots were attacked. In Fizi, trucks with ballots were attacked by rebels.

Congolese police were responsible for securing polling stations on election day. Observers reported a police presence at between 88–96 percent of voting centers. However, police were deployed in insufficient numbers to protect workers, citizens, and property. According to the PNC, the late release of the polling station map impacted election day security. Police could not develop a deployment plan without a map of polling station locations.

Insecurity unrelated to the electoral period obstructed voting in some parts of the East. The presence of armed rebel groups discouraged voters in remote areas of South Kivu from traveling to and waiting at polling stations.

Voters in some instances attacked fellow citizens and election workers they believed were engaging in election fraud.

136 Under the electoral law, party agents are entitled to a copy of the results form. Each procès-verbal (PV) had five copies set aside for party agents. Domestic observers are not entitled to a copy but may conduct a parallel tabulation of results based on their notes.

137 EISA and Electoral Commissions Forum of SADC, Principles for Election Management, Monitoring, and Observation (PEMMO), p. 26 recommends that results of the count be published in a timely manner, publicly announced, and posted.



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ACCESS FOR DOMESTIC OBSERVER GROUPS AND PARTY AGENTS

The election commission accredited 99,426 neutral domestic observers. Domestic observers reported that at smaller polling stations, party agents were given privileged access when there were a limited number of places. Under the CENI procedures, six party agents and four domestic observers are permitted in a polling station at one time. If there are more representatives of either group, there is to be a rotation. Domestic observers reported that polling station workers misapplied this procedure. They said that in practice, some polling stations allowed 10 party agents and no domestic observers. They reported the problem occurred most frequently in Bandundu province.¹³⁸

The CENI accredited 1,308,124 party agents. Candidates and political parties had limited resources to conduct outreach during the campaign period, saving their funds for deployment of party agents on election day. Party agents from the opposition and majority were present at almost every polling station

visited by Carter Center observers. Observers encountered a small number of party agents who had little or no advance training and were not familiar with voting and counting procedures.

Participation of Women and Marginalized Groups

Carter Center observers estimated that females voted in equal proportion to male voters, though statistics on the number/proportion of female voters have not been released by the CENI. Carter Center observers reported that 79–82 percent of polling stations had one or more female poll worker. In 25 to 40 percent of these cases, the president of the polling station was female. While this number of polling station presidents is encouraging, improvements remain necessary to reach gender equality. Women were also represented among domestic observers. CAFCO deployed 1,882 observers from their network of women’s groups.

Carter Center observers estimated that females voted in equal proportion to male voters, though statistics on the number/proportion of female voters have not been released by the CENI.

¹³⁸ EISA-supported domestic observer networks, Dec. 16, 2011, report, p. 11



POSTELECTION DEVELOPMENTS

TABULATION

Tabulation of presidential ballots took place between Nov. 29 and Dec. 9, 2011. Just as the tabulation process was beginning on Nov. 29, presidential candidates Vital Kamerhe and Leon Kengo called for results to be annulled in advance on the basis of alleged irregularities observed by their party agents at polling stations. Provisional results released Dec. 9 after a three-day delay indicated a win for incumbent Joseph Kabila with 49 percent of the national vote over Etienne Tshisekedi with 32 percent and Vital Kamerhe with 7.7 percent.¹³⁹

The Carter Center released a statement on Dec. 10 concluding that these results lacked credibility because of significant problems reported by observers during tabulation.

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Problems ranged from general disorganization and related loss of results to the tampering of results forms by voting center officials.¹⁴⁰ The Center also found there to be a lack of transparency in the tabulation process overall. Independent observers and party or candidate agents were

not accorded access to all steps of the compilation process.¹⁴¹ Moreover, the results published for at least two constituencies in Katanga province were implausible because their validity would have meant that every registered voter was able to vote on election day, that all voters voted for Kabila, and that all voters correctly marked their ballots.

The Carter Center deployed 26 teams to observe the tabulation process, covering 15 percent of the country's CLCR sites and all 11 provinces.



Georgia McPeak

Heads of polling stations sit outside the tabulation center in Isiro with bags of results from their polling centers.

¹³⁹ CENI initially selected Dec. 6 because President Kabila's mandate expired Dec. 5, but delays in the completion of counting pushed the announcement back another three days.

¹⁴⁰ Statement of Dec. 10, 2011: Postelection Statement on the Presidential Results and Tabulation Process

¹⁴¹ SADC Principles and Guidelines Governing Democratic Elections require governments to ensure "transparency and integrity" by permitting party agents and candidates access to the tabulation process.



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Tabulation complications began at the level of transferring envelopes containing ballots and results from polling stations to CLCRs on Nov. 29. As in 2006, there appears to have been no system or plan in place for assuring the transport of these envelopes to the various CLCRs.¹⁴² Observers reported wide variance in transport means and securitization—a mixture of CENI trucks making rounds and personal/private transport by car or sometimes bikes and carts. This uncertainty and related delays made it difficult for observers to consistently accompany the transfer of envelopes. Some trips had the police escort required by law, and others were missing guards needed to ensure protection of the 4,000 to 8,000 votes from each voting center. Conditions for envelopes yet to arrive, held in voting centers awaiting transport, were not always secure, and observers reported that voting center chiefs (CCVs) separated from their materials.¹⁴³ On Nov. 30, there were CCVs from stations that voted on Nov. 28 still awaiting transport to their CLCR.¹⁴⁴

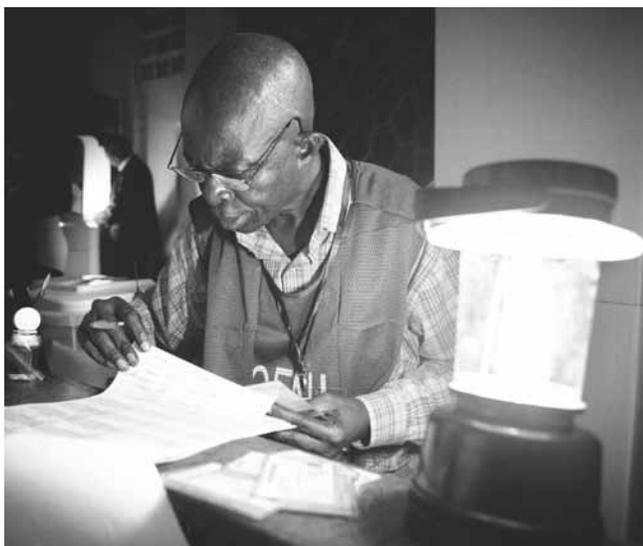
The management of the CLCRs was chaotic, particularly in Kinshasa and Lubumbashi. The crucial



Myriam Asmani

Bags of ballots are left unattended outside a CLCR in Kinshasa.

phase of the reception and registration of results forms and ballots was very badly managed by those in charge at CLCRs. A total lack of organization and preparation was evident at this level. Trucks would arrive and dump mounds of bags containing results and ballots, leaving the responsible CENI agents to pull apart the piles in search of their bags. In Kinshasa and Lubumbashi, the envelopes arriving at the CLCRs from polling stations were found outside CLCRs, in open air, unprotected from the elements. In Kinshasa, after heavy rains on the night of Dec. 2, the damage was evident to all observers. Carter Center observers reported that the envelopes (containing ballots, results forms, and other documents) were seen on the ground, and many were walked on and opened. The protection of these envelopes, necessary to secure the secrecy of ballots



Gwenn Dubourthoumie

A CENI official counts presidential ballots by lantern.

142 A CENI collection plan is referenced in Articles 69 and 70 of the electoral law.

143 “Security arrangements and safeguards against fraud: ensuring that proper arrangements have been made for the security of the polling stations and the ballot boxes/papers during and after the poll and during and after the count.” Council of Europe Handbook for Observers of Elections, para. 2.5.4

144 Under Article 67 of the electoral law, the CCV is responsible for transporting results and ballots in compliance with the plan ordered by CENI.



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Myriam Asmani

CENI officials wait outside the CLCR in Kinshasa amidst the remnants of result forms and ballot boxes.



Georgia McPeak

CENI officials sort through results at a CLCR in Isiro, Orientale province.

and prevent voting fraud, was either not anticipated or not properly organized, and the commission only belatedly erected tents or distributed tarps.¹⁴⁵ Nevertheless, the CENI agents were forced to remain on site for multiple days without provision for proper food, water, shelter, or sanitation.

In Lubumbashi, the results forms were hung on lines to dry them after rain. This total disorganization of CLCRs caused in part the loss of more than 3,000 results forms across the DRC (2,000 from Kinshasa alone). The plan of retrieval and reception of the envelopes had defects, and the CENI does not appear to have attempted to identify those directly responsible for the chaos that delegitimized tabulation of presidential and legislative ballots. Even worse, the commission decided to rotate the presidents of CLCRs after the compilation of the presidential ballots. Though the stated intent was to prevent corruption, this measure appears to absolve responsibility from those CENI workers who lost presidential results during the first compilation.

At the CLCR, observers witnessed serious problems at the level of initial reception of envelopes in Kinshasa, Lubumbashi, and Mbuji-Mayi. Even though many CCVs had not yet arrived at CLCRs, a backlog of CCVs waiting to turn over their envelopes to the CLCR developed very quickly. Observers in these places reported that CCVs often finally went home, leaving their envelopes outside reception tents mixed with other envelopes that would be difficult to locate again when they returned. During this backlog, observers also reported that CCVs were seen opening results forms. After the CLCR reception, observers

reported conditions for storing envelopes did not improve. Some CLCRs kept envelopes under tents in piles with no measure of order.

¹⁴⁵ "Sensitive election materials such as ballot boxes and ballot papers should be stored and delivered under strict security in order to prevent electoral fraud." EISA and Electoral Commission Forum of SADC, PEMMO, p. 25



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Carter Center observers in Goma, Kisangani, Lubumbashi, and Kinshasa reported additional problems of transparency with CLCR workers who would not consistently share data entry progress and information with observers and party witnesses. Transparency on the part of the CENI at the CLCR level is particularly crucial because the strongest potential for error or manipulation of election results is at the tabulation stage.¹⁴⁶ Observers in Goma noted there were more communication and information sharing in the early days of tabulation work, and it was not clear why the approach of Goma CLCR workers changed. Several teams reported that the processing of “difficult cases” (e.g., arithmetic errors on the tally sheet or a missing signature from the polling station president) occurred in a private room, off-limits to party agents and observers. Domestic observers in the EISA network reported that they were expelled from some CLCRs on the grounds that they needed new observer accreditation. Observers also reported that the posting of district results outside the CLCR center was not done in all cases.¹⁴⁷ This is also an important and visible indicator of transparency and a requirement under Article 70 of the electoral law.

Tabulation was well-conducted in some locations. For example, CLCRs in Oriental province finished tabulation two days early. These CLCRs were described as well-organized and managed. The presidential tabulation was completed in five days, and legislative tabulation was expected to be completed in a similar time frame. The CLCR in Mweni-Ditu and



Hélène Helbig de Balzac

Empty ballot boxes are left outside the CLCR in Kinshasa.

several other locations stayed open 24 hours in order to meet the Dec. 5 deadline. Carter Center observers noted that CLCR workers showed dedication and commitment by working long hours in difficult

conditions. In most cases, CLCR workers had limited access to food or water and worked long hours in small rooms with no ventilation or air conditioning.

Transmission of provincial results to the central server from each

The Carter Center’s formal request to the CENI for access to the national data center was never answered, and subsequent attempts by the Center to gain access to the center were unsuccessful. No other observer groups were able to receive access either.

SEP (after transmission of district results to the SEP) was planned to be done via Internet using very-small-aperture-terminals (VSATs). Almost all of the CLCRs visited by Carter Center observers

¹⁴⁶ Election administrators should “ensure that information is collected, compiled, and published in a way that is systematic, clear, and unambiguous.” International IDEA, *The Code of Conduct: Ethical and Professional Administration of Elections*, p. 14

¹⁴⁷ “There should be immediate release of official election results on completion of counting.” SADC Parliamentary Forum (PF), *Norms and Standards for Elections in the SADC Region*, par. 11.ii



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had VSATs; however, they were not operational in advance of the announcement of presidential results.¹⁴⁸

The apparent failure to use VSATs consistently marked another lost opportunity for the CENI to strengthen the verification and transparency of the results process. CENI President Mulunda assured the Carter Center delegation leader President Banda shortly before election day that all 169 CLCRs had fully operational VSATs and that the CENI headquarters would receive an electronically scanned copy of each polling station's results.¹⁴⁹

The Carter Center's formal request to the CENI for access to the national data center was never answered, and subsequent attempts by the Center to gain access to the center were unsuccessful. No

other observer groups were able to receive access either. In theory, had physical copies of the polling station results forms been delivered to Kinshasa, the commission leadership would have been able to cross-check the processed tally forms with their electronic scans. It appears that no such verification was conducted, and Carter Center observers found only sporadic use of VSATs in practice. Following the elections, the CENI leadership maintained that they had no legal requirement to publish polling station results, only to receive the tabulated results from the lower level, namely the provinces, and below them the CLCR. The CENI was unable, or unwilling, to share with the Center what, if any, verification of final results they conducted.

Table 8: Results

Province	Registered voters	Number of votes	Void/blank ballots	Expressed votes	Joseph Kabila	Etienne Tshisekedi	Vital Kamerhe	Leon Kengo
Kinshasa	3,287,745	1,868,549	55,140	1,813,409	544,529	1,162,183	67,288	13,023
Bas-Congo	1,502,939	883,185	37,096	846,089	168,000	626,482	13,404	4,490
Bandundu	3,553,322	2,012,832	78,634	1,934,198	1,419,619	378,182	32,251	26,119
Équateur	3,960,643	2,015,754	79,821	1,935,933	238,169	654,425	73,311	772,202
Orientale	3,886,524	2,223,460	168,313	2,055,147	1,279,912	282,184	155,232	58,311
Nord-Kivu	3,003,246	1,913,685	76,961	1,836,724	712,317	389,350	423,376	8,632
Sud-Kivu	2,022,960	1,402,710	62,129	1,340,581	599,825	132,826	558,564	3,804
Maniema	874,809	525,044	24,901	500,143	433,482	14,548	36,308	1,063
Katanga	4,627,302	3,224,483	86,531	3,137,952	2,823,234	221,922	34,297	4,514
Kasai-Or.	2,643,905	1,432,345	45,915	1,386,430	366,380	976,145	5,337	3,392
Kasai-Occ.	2,661,245	1,412,044	55,546	1,356,498	295,477	1,026,528	4,004	2,812
Total	32,024,640	18,914,091	770,987	18,143,104	8,880,944	5,864,775	1,403,372	898,362
Percent total					48.95%	32.33%	7.74%	4.95%

148 Observers in Mbuji-Mayi reported the VSAT was operational and in use. The majority of CLCRs presumably reported their results to the SEP by phone.

149 During the tabulation process and in the announcement of provisional results, CENI did not cite the use of VSATs, nor did they provide The Carter Center with any information pertaining to their use. In April 2012 at its own evaluation exercise, CENI claimed that 70 percent of VSATs had been operational. No other details on their use were available at the time of writing this report.



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PRESIDENTIAL ELECTION RESULTS

Preliminary results of the presidential elections were announced by the CENI on Dec. 8, 2011, before representatives of political parties and the diplomatic community. A public reading of disaggregated results by constituency was done by the president and vice president of the CENI.

Table 8 shows the results as announced by the CENI for the four candidates who obtained the most votes.

As early as Dec. 2, the election commission began to publish partial results for the presidential elections. Although not mentioned in the electoral law, this publication was a positive measure and is to the credit of the CENI. Broken down into five releases, this diffused the potential for violent clashes in response to both the results and the postponement of complete provisional results, which were not ready by Dec. 6.

The complete provisional results announced Dec. 9 revealed several aspects that discredit the integrity of the results, which were referenced in the postelection statement of The Carter Center on Dec. 10, 2011.¹⁵⁰

- The level of participation in the province of Katanga was much higher than the national average. The participation rate was almost 100 percent throughout the province with the exception of Lubumbashi. This level of participation when compared with the rest of the country is implausible.
- The four Katanga districts of Kabongo, Malemba-Nkulu, Bukama, and Manono recorded voter participation rates of 100 percent; rates of invalid ballots between 0.11 and 0.46 percent, well below the national average; and ballot results reaching 100 percent for Kabila. The four districts alone comprise almost 1 million of the total votes for incumbent President Joseph Kabila.
- In 10 more Katanga districts, Joseph Kabila received 94 percent or higher, also with higher than



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A young man waves a flag of President Joseph Kabila in the Kinshasa streets following the announcement of results.

national average voter turnout, for a total of 1.8 million votes. Even the categories of null or blank votes outperformed the vote totals for all other presidential candidates combined in these districts.

- The vote by derogation and lists of omitted voters was badly managed by the CENI. No official figures have been published by the CENI on numbers of derogation and omitted voters. While this measure permitted eligible voters to vote who would not otherwise, it also increased the risk of multiple voting and voting from military, police, or other ineligible voters who managed to obtain voter identification cards through fraudulent registration or purchase.
- In the two Kasai provinces, the rate of voter participation was between 37 and 73 percent, consistent with the national average. However, the number of invalid ballots was well above the national average, most notably in Ilebo, which had a rate of 6.24 percent.
- The missing results from 3,000 polling stations (2,000 in Kinshasa) represented 1.4 million

¹⁵⁰ Statement of Dec. 10, 2011: Postelection Statement on the Presidential Results and Tabulation Process



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potential votes lost and discredit the CENI arrangements for retrieval of polling station results (the commission did not share its plans for retrieval of results with partners). The absence of coordination between the retrieval and the management of the CLCRs was visible by the disorganization at the basic step of reception at the CLCRs, even before the work of tabulating the results began.

The Supreme Court of Justice established an office within the court registrar to receive all disputes within the required period. Vital Kamerhe was the sole presidential candidate to file a motion challenging the provisional results of the presidential election. After a public hearing, the Supreme Court, in its judgment of Dec. 16, officially declared Joseph Kabila re-elected by a simple majority for a five-year term with 8,880,944 votes, or 48.95 percent. Joseph Kabila was sworn in on Dec. 20, 2011, before the Supreme Court, which performed the oath prescribed by the constitution.

Etienne Tshisekedi did not wait for the final results to deny the figures announced by the CENI and demand Kabila's resignation. He proclaimed himself as the elected president. He chose not to challenge the results before a Supreme Court that he considered biased toward the ruling party. Under de facto arrest at his residence in Limete, the UDPS leader chose to pursue recourse through popular support. However, in the weeks following the election results, his media presence and the impact of his public appeals were less visible. The other candidates in the presidential election chose not to join forces to challenge the results and sought other means of protest.

LEGISLATIVE RESULTS

The CENI tabulation of legislative ballots followed the completion of the presidential results with a deadline of Jan. 12, 2012, though it was unable to meet

this schedule. Carter Center observers concluded their work Dec. 12. Though the Center did not directly observe at CLCRs for legislative tabulation, it remained in close contact with Congolese civil society and party agents monitoring the process. Their assessment was that the organization of tabulating work improved since the presidential tabulation. However, they emphasized that questions regarding the integrity of the tabulation

process remain. The election commission issued a Dec. 21 declaration announcing the suspension of tabulation owing to the large number of complaints they were receiving and dispatched technical support and supervisory teams to tabulation centers. On Dec. 28, the CENI issued a second declaration, announcing that tabulation would restart along

with the public release of interim results.

Many legislative candidates alleged that winners announced in the provisional results did not reflect the records of party agents and have filed disputes before the Supreme Court of Justice. Candidates who have actual copies of results forms will have compelling evidence of error or wrongdoing at the tabulation level. A candidate from Bandundu province submitted results copies to The Carter Center in January. Review of these PVs showed very high numbers of derogation voting. (Bandundu was a province reported to have larger numbers of derogation voting by EU.) In some cases the number of derogation voters greatly exceeded the number of registered voters.¹⁵¹

On Jan. 13, 2012, the announcement of the remaining provisional results was postponed for seven days for districts in the provinces and 14 days for the city of Kinshasa. By Jan. 26, the CENI had announced results for 155 districts,

Many legislative candidates alleged that winners announced in the provisional results did not reflect the records of party agents and have filed disputes before the Supreme Court of Justice.

¹⁵¹ See Appendix for Carter Center Feb. 23, 2012, statement: Democratic Republic of the Congo Legislative Election Results Compromised.



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excepting Kongolo, Popokabaka, Rutshuru, Mbuji-Mayi, Kinshasa's Lukunga district, Mt. Amba, Tshangu, and an additional seven districts where the CENI said tabulation was impossible owing to election-day violence.¹⁵²

On Feb. 1, 2012, the commission published provisional legislative results for 162 of the 169 districts and proposed a cancellation of the results in the seven districts. Several problems arose from this proposed cancellation.

First, the presidential results from those seven CLCRs already had been included in the presidential tally. It is unclear how election-day violence made it impossible to tabulate the legislative results but not the presidential results since the two processes were simultaneous. There is no documentation of significant violence at polling stations or the CLCRs (which were not in any case functioning until after election day). In the absence of compelling evidence, the proposed suspension of results for these locations must be owing to some other reasons, perhaps reflective of the administrative chaos that undermined the credibility of tabulated results elsewhere. Second, the CENI request does not exempt them from releasing the figures at its disposal for the districts in question. Third, the electoral law does not permit a CENI challenge of results before the Supreme Court; therefore, the commission cannot seek annulment of results.

The legislative results announced by the CENI resulted in a National Assembly of 98 political parties. This large number of parties fragments the political scene. Forty-five parties are represented



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A CENI official searches a legislative ballot for the marked candidate during the counting process.

in the assembly by a single member of Parliament, and more than 74 parties have fewer than five seats. The 12 parties with the largest representation are People's Party for Reconstruction and Democracy (PPRD), Union for Democracy and Social Progress (UDPS), People's Party for Peace and Democracy (PPPD), Social Movement for the Renewal (MSR), Movement for the Liberation of Congo (MLC), United Lumumbist Party (PALU), Congolese Union for the Nation (UNC), Alliance for Congo's Renewal (ARC), Alliance of Congo Democratic Forces (AFDC), Awakening of Conscious for Work and Development (ECT), Rally for the Reconstruction of Congo (RRC), and Movement for the Integrity of the People (MIP). Independents obtained a total of 16 seats.

A close reading of legislative election results leaves certain questions about the credibility of the results. The number of voters differs between the two

¹⁵² The seven districts are Kiri in Bandundu, Demba in Kasai-Occidental, Ikela in the province of Équateur, Kole and Lomela in Kasai-Oriental, Masisi in North Kivu, and Punia in Maniema.



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elections in some districts, most notably for Walikale, where a difference of 28,810 was recorded between the two votes, and Malemba-Nkulu in Katanga, which recorded a difference of 5,405. The rate of invalid ballots is also noteworthy, reaching almost 10 percent in the district of Tshangu in Kinshasa. Katanga recorded the lowest rates of invalid ballots in both presidential and legislative elections. The discrepancy in the rate of invalid ballots is also noteworthy, as in the case of Tshangu district of Kinshasa where the rate reached 10 percent in the legislative poll, while the presidential ballot yielded just 3.6 percent. This difference is possibly reflective of the enormous complexity of a legislative ballot with 1,575 candidates for 15 seats. However, Kinshasa, notable as an area of Tshisekedi support, stands in contrast to Kabila’s vote bank in Katanga that recorded the lowest rates of invalid ballots in both presidential (2.7 percent) and legislative elections (5.6 percent). Other patterns are evident in the district results, but more thorough analysis is impossible unless the CENI releases polling station results.

This divided assembly composition clearly advantages Kabila. More than 340 members of Parliament are members of his ruling coalition and under the leadership of his party, while opposition parties are divided among their 110 representatives.

For the opposition, of the 41 deputies elected from UDPS, 25 were elected in Kasais, with a similar configuration for the UNC, and 10 of 17 deputies were elected in Kivus. None of 94 parties represented in the National Assembly succeeded in having a national representation. This fragmentation of the political landscape with the number of candidates and

political parties that were running for office shows the fragility of the political class and its attachment to ethnic and territorial ties, which is contrary to Article 5 of the Law 04/002 of March 15, 2004, on the organization and functioning of political parties.

ELECTORAL DISPUTE RESOLUTION

The establishment of a mediation committee to address complaints from political parties and candidates, as planned by the CENI Code of Conduct, could have been a positive initiative to mitigate conflicts and to open dialogue between presidential candidates and political parties. Regrettably, this institution did not fulfill completely its role. Its installation by the CENI, an institution already lacking credibility in the eyes of opposition political parties, exposed the mediation panel to this lack of confidence. There is little public record of significant interventions by the mediation panel.

Presidential Disputes

The procedure to challenge electoral results under Articles 73 to 76 of the electoral law was modified in 2011 from an adversarial procedure, where the parties engaged in debate and the judge was limited by the arguments they exchanged before a public audience, to an inquisitorial procedure, where the judge controls the line of questioning to establish the truth. In the latter, the procedure is written, and a public audience is not required. This change of procedure gave more control to the Supreme Court to determine the validity of election results. However, the Supreme Court continued to use the common civil procedure by putting parties in competition while reaffirming

Table 9: Presidential Disputes

Election results	Time frame to submit complaint	Responsible court	Time frame to settle the case
Presidential election	Two days after the announcement of provisional results (Article 73)	Constitutional Court	Seven days after receipt (Article 74)



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the character written by the procedure. Consequently, the hearings for challenges to the results of the presidential election were chaotic. The Supreme Court took restrictive interpretations of texts and did not appear to make use of the training received to prepare for this litigation.

Under the terms of Article 75 of the electoral law, the court has real power to correct the results in the case of clerical error, previously awarded to the election commission by Article 71, which attributed it a power of correcting results forms. Additionally, an individual has the right to an appeal to competent national organs against acts of violating fundamental rights recognized and guaranteed by law.¹⁵³

On Dec. 15, 2011, a public hearing was held by the CSJ at the Court of Appeals in the Gombe district of Kinshasa. The hearing began at 1:00 p.m. after a four-hour delay, although states are obligated to ensure individuals the right to be tried within a reasonable time.¹⁵⁴ The court registrar announced in error the case of Joseph Kabila against Vital Kamerhe. In electoral disputes, it is the administrative act of proclamation of results

that is challenged. Candidates are not opposed to one another, as in an adversarial procedure. The hearing ended in the departure of Vital Kamerhe’s lawyers, who denounced what they described as a “parody of justice.” The ruling given by the CSJ rejected all arguments from the plaintiff and confirmed the victory of Joseph Kabila. The Carter Center regrets that this ruling still has not been published.

Under the terms of Article 75 of the electoral law, the court has real power to correct the results in the case of clerical error, previously awarded to the election commission by Article 71, which attributed it a power of correcting results forms.

Legislative Disputes

The settling of disputes for the legislative elections is governed by the same rules of procedures and answers to the same obligations as those of the presidential elections. It is defined by Articles 73 to 76 of the electoral law. Only the deadlines for submission and treatment change.

During the numerous postponements by the CENI to announce legislative results, candidates and parties looked for alternate dispute resolution mechanisms in the interim, before the official dispute period with the Supreme Court could begin. Parties submitted complaints and narratives to the CENI, MONUSCO, and The Carter Center concerning the tabulation process.

Table 10: Legislative Disputes

Election results	Time frame to submit complaint	Responsible court	Time frame to settle the case
Legislative elections	Eight days after announcement of provisional results (Article 74)	Constitutional Court	Two months starting from the date of submission to the court (Article 74)

153 “Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, law, regulations and customs in force.” Article 7, AU ACHPR

154 “Every individual shall have the right to have his cause heard. This comprises the right to be tried within a reasonable time by an impartial court or tribunal.” Article 7, AU ACHPR



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In response to these complaints, the CENI sent supervisory missions to some CLCRs endowed with authority to check and, if necessary, order recounts.¹⁵⁵ The election commission broadly interpreted its role of CLCR supervision in overseeing recounts of votes, but this treatment of disputes by the CENI was done extralegally, because the commission was conducting work reserved for the court system that should take place

only after the publication of preliminary results. The original version of the electoral law awarded the CENI power to correct results forms, but by repealing Article 71, Parliament removed the CENI's power of intervention.¹⁵⁶ Nevertheless, these supervisory missions, though technically illegal, may still have been a positive initiative to address disputes and save the legislative tabulation from even greater harm.

Nevertheless, these supervisory missions, though technically illegal, may still have been a positive initiative to address disputes and save the legislative tabulation from even greater harm.

¹⁵⁵ CENI press release, Jan. 18, 2012

¹⁵⁶ Article 71 of the electoral law, before the June 25, 2011, modification



CONCLUSIONS AND RECOMMENDATIONS

At the invitation of the Independent National Election Commission (CENI), The Carter Center deployed an international election observation to the Democratic Republic of the Congo's Nov. 28, 2011, presidential and legislative elections. During its six-month presence, The Carter Center deployed long- and short-term observers throughout the 11 provinces to observe the preparation and conduct of the elections. The Center observed election preparations, including candidate nomination and the campaign period, along with voting and tabulation of results. The Center's mission issued a substantial pre-election report followed by two postelection reports in December 2011. Following the departure of the Center's long-term observers in mid-December, members of the core team followed electoral developments and returned to Kinshasa in January 2012 to be present for the conclusion of tabulation of legislative results (detailed in a February 2012 public report). Throughout the mission, Center observers met regularly with the CENI members, representatives of political parties, civil society organizations, the diplomatic community, and Congolese citizens. The Center thanks all those with whom it met. This final report summarizes the Center's overall observations from the entire mission.

The DRC faced significant challenges in the overall organization of the elections and in meeting a constitutional deadline of Dec. 6, 2011. The late establishment of the CENI in early 2011 and a divisive and partisan political context created additional pressures on the successful organization of the elections. Despite many missed deadlines in the electoral calendar, the CENI met the overall constitutional

deadline and met the Congo's international obligation to hold periodic elections.¹⁵⁷ With a few exceptions, the election process was peacefully conducted. However, voting and the tabulation process were marred by serious irregularities, undermining the credibility of the presidential and legislative results.

The pressure to hold elections on Nov. 28 to respect the constitutional deadline may have contributed to the flawed polling station map and

compressed period for the recruitment and training of poll workers. However, the lack of engagement with political parties and the refusal to allow opposition political party access to the central server reflect insufficient political will on the part of the CENI to hold transparent and credible elections. The lack of transparency

shown by the CENI should prompt reflection on the commission's political composition and its capacity to be independent and credible for the next round of elections.¹⁵⁸

Incumbent President Joseph Kabila was re-elected in a single round of voting with 49 percent of the vote, followed by Etienne Tshisekedi with 32 percent and Vital Kamerhe with 7.7 percent. Voter turnout was 58 percent. The Carter Center finds the

Voting and the tabulation process were marred by serious irregularities, undermining the credibility of the presidential and legislative results.

¹⁵⁷ The DRC has ratified a number of international and regional treaties through which it has obliged itself to follow certain key human rights standards. Article 215 of the Congolese Constitution importantly notes that international treaties and covenants that the DRC signs or ratifies are superior to any national laws, barring any formal reservations the DRC may have expressed.

¹⁵⁸ "An independent and impartial authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic process, and that other international obligations related to the democratic process can be met." UNHRC, General Comment 25 para. 20



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presidential and legislative election results to lack credibility. The problems observed in the tabulation and announced results were compounded by inadequate access for observers at multiple compilation centers around the country and no official access to the national results center in Kinshasa. Mismanagement of the results process compromised the integrity of the presidential and legislative elections, and The Carter Center is therefore unable to provide independent verification of the accuracy of the overall results or the degree to which they reflect the will of the Congolese people.

The DRC faces a political dilemma. By definition, a contested election result lacks the confidence of many, and perhaps a majority, of the people. Moreover, the institutions designed to safeguard that integrity, notably the CENI and the Supreme Court, lack credibility in the eyes of many Congolese. Restoring this credibility is an urgent matter, and the Center encourages all Congolese to apply themselves to more inclusive political dialogue, a thorough review of the electoral administration, and the use of legal means so that the people of the Congo will be able to claim their rights. To this end, The Carter Center recommends an evaluation and in-depth examination of the entire electoral process, with the participation of all political party actors, and including transparent reviews of polling-station-level results and other key electoral information. If political dialogue and an inclusive assessment of the electoral process are successful, potential outcomes could be a decision to rerun some or all of the elections or some other form of political accommodation to establish a legitimate governing authority. In addition, such a review is essential to prepare for future elections, including provincial and local elections due to take place during 2012–2013.

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The following conclusions and recommendations are based on the Carter Center’s empirical observations included in this report and are provided to help strengthen the conduct of the DRC’s future elections.

The Carter Center once again thanks the CENI for the invitation to observe the 2011 presidential and legislative elections and all those with whom the Center’s international election observation mission members met.

To the CENI:

1. Electoral Calendar

Members of the CENI leadership took office less than one year before the legislative and presidential elections. This time frame was insufficient in consideration of its scope of responsibilities and the size of the DRC. The time frame given to the CENI to revise the voter registry and organize combined elections was not realistic. The Center recommends that the newly elected National Assembly allow the election commission at least 18 months for electoral preparations in advance of the next presidential and legislative elections.

2. The CENI Structure

The partisan nominations of the CENI leaders, along with absence of civil society representation, allowed a politicization of its decisions by majority and opposition political party representatives. This did not permit the CENI to sufficiently fulfill its mandate of independence. The Carter Center recommends a re-examination of the composition of the CENI leadership and efforts to institute a structure that represents the full spectrum of Congolese political actors and civil society representation.



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3. **The CENI Staff**

The CENI decision to replace executive provincial secretaries and heads of local offices a few weeks (and in some cases only a few days) before the elections adversely affected both advance preparations and the physical delivery and tabulation of polling station results. The Center strongly encourages the commission to keep its technical teams on the ground and avoid the transfer of staff who have essential knowledge of the local environment.

4. **Voter Registration Audit**

There is no legal obligation under Congolese law to give political parties access to the central information server holding voter registration data. However, in consideration of international transparency norms and the interest of productive relations with political stakeholders, The Carter Center urges the CENI to set a firm date to enable a timely audit of voter registration data by political opposition representatives. Such an audit would be evidence of transparency in the work of the CENI as provincial and local elections approach and could enhance confidence in the voter register as well as the independence of the election commission.

The Carter Center urges the CENI to set a firm date to enable a timely audit of voter registration data by political opposition representatives.

5. **Public Communications**

More generally, the CENI can improve its political party and public communications strategy. The commission should consider the creation of a political party liaison structure that operates on a regular basis and schedule (e.g., weekly or biweekly meetings) at the national and provincial level (and possibly districts) to serve as an information clearinghouse and provide an opportunity for questions to be answered. The Carter Center

is aware that many political actors will seek to politicize administrative decisions and that this imposes additional pressures on the CENI and their staff. However, failure to address these issues as they arise can lead to growing political disputes and loss of confidence in the CENI, undermining the overall credibility of its efforts to conduct a genuine election.

Similarly, the CENI's public relations strategy can also be strengthened. Weekly press conferences would provide a regular point of contact for the commission to share the status of election preparations and possibly reduce the individual burdens on the CENI members, who field many separate requests for information and meetings.

6. **Polling Center Management**

The management of polling centers and especially the voter list needs to be improved. The CENI can do so by assigning teams of election officials to serve as information officers at larger polling centers where there are multiple polling stations. Too many Congolese voters were unable to find their correct polling station. The commission can also improve polling center security by ensuring that traffic flow is managed to get eligible voters to the correct polling station and discourage those who have voted from lingering in the immediate vicinity of polling stations.

The CENI should also take all necessary measures to ensure that polling stations have full and accurate lists of registered voters. The decision to allow voters omitted from the register to cast a ballot opened the possibility for multiple voting and for categories of noneligible citizens to vote.



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

7. **Observer Access**

Carter Center observers received appropriate access to all phases and aspects of the electoral process with the important exception of local tabulation centers. On several occasions, observer access to tabulation centers was blocked, or once inside, observers were unable to see what was happening in key locations of the center or steps of the procedure. Where physical space limitations were a factor, the CENI should plan tabulation center selection and layout to provide observers with appropriate space to watch the proceedings. Where some steps of the tabulation process appear to have been conducted out of sight, such as deliberations over disputed polling station tally sheets, party witnesses and observers should be accorded appropriate ability to observe.

8. **The CENI Staff Training**

Recruitment and training of polling officials should place more emphasis on the procedures to control potential multiple voting (such as application of ink to the voter's finger after a ballot is cast) and especially to counting and tabulation. Perhaps owing to the accumulation of missed deadlines in the election calendar or other reasons, possibly including the poor physical layout or inadequate capacity of tabulation centers to manage the influx of sensitive election materials, it appears that the CENI planning and training of tabulation center staff were inadequate.

9. **Transparency of Results**

The posting of polling station results at stations following the count is a welcome practice, and the CENI should continue to ensure that the maximum steps are taken to ensure the greatest

possible transparency of the results. The CENI's announcement of partial provisional results was a second positive approach to ensuring maximum public information as results were confirmed. Further, the publication of presidential results by polling station was also a step in the right direction.

However, the election commission did not publish the legislative results by polling station, eliminating the possibility of Congolese voters verifying their own local results. Moreover, although the CENI claimed to have installed scanning devices (VSAT) in every tabulation center, these were not operational everywhere, nor did the CENI produce any record of their actual use to double-check results as processed at tabulation centers against scanned copies of the original tally sheets. The election procedures call for multiple copies of tally sheets to be placed in separate sealed envelopes to allow for this type of verification, and therefore, this check should be put to use. A polling station numbering scheme should be established and used to organize and reference the complete set of polling station results.

However, the election commission did not publish the legislative results by polling station, eliminating the possibility of Congolese voters verifying their own local results.

10. **Tabulation of Results**

Many tabulation centers appear to have produced credible tallies of polling station results to the satisfaction of political party witnesses and other observers. However, many other tabulation centers, especially in Kinshasa and Lubumbashi, were poorly planned and chaotic in their operations, compromising the integrity of the results process in those areas. The CENI must develop better advance planning, physical layout, and efficient and secure reception processes to allow for



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rapid, secure, and transparent tabulation. These goals can be achieved with improved site selection and preparation to ensure that as election workers and results arrive at tabulation centers, they are protected from the elements, handled by multiple intake desks, and their materials remain intact and well-organized. Appropriate space and access must be built into the physical and operational design to allow party witnesses and observers unobtrusive access to every stage of the tabulation process.

To the Government and National Assembly:

11. Electoral Law Reform

Should it be determined that the current electoral law does not provide the appropriate guidance to the CENI to implement important measures to improve the electoral process, such as those outlined above, Congolese legislators should consider legal reforms to improve the security and integrity of polling and the transparency of election results tabulation and publication.

The Superior Council for Audiovisual Communications (CSAC) was established too late in the 2011 election cycle to become fully operational, and its resources should be commensurate with its responsibilities.

12. Out-of-Country Voting

The Congolese diaspora consists of very politically engaged citizens, as shown by the numerous demonstrations organized abroad during the election campaign. Eligible Congolese voters abroad are entitled to exercise their right to vote as equal citizens. For this reason, it is incumbent on Parliament to modify the electoral law to authorize absentee voting for presidential elections. In order to vote abroad, provision must also be made to allow enrollment in the voter registry in embassies.

13. Media Monitoring

Media play a central role in the political life of any country, particularly during elections, as a means to publicize campaigns and share voter information about the polls. The Center welcomes the creation of the CSAC but hopes that its performance will improve in subsequent elections. The Superior Council for Audiovisual Communications (CSAC) was established too late in the 2011 election cycle to become fully operational, and its resources should be commensurate

with its responsibilities. Effective media monitoring and the ability to sanction where appropriate require advance planning and resources. Significant discrepancies in the coverage of presidential candidates and parties expose major bias in the Congo's news media, and these must be rectified to provide Congolese voters with better access to impartial information and the

ability to make informed choices. CSAC's impartiality must also be considered, and appropriate appeal procedures should be provided to parties and individuals under its review.

14. Representation of Women

The presence of at least 50 percent women in Parliament is part of international commitments undertaken by the DRC. Institutions have to be given the means to reach this objective by 2015. As such, it is recommended that the Parliament set up financial penalties for parties and independent lists that do not present women as candidates and to impose a strict parity on ballot papers.



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15. *Public Funding*

Public funding of political parties will be applicable for the first time in the next presidential and legislative elections. The conditions to access this funding should be eased; the requirement to have a bank account with a credit balance of 2,500,000 FC is an obstacle to financing the smallest parties even if they won seats in Parliament. The Carter Center recommends that Parliament reduce or eliminate the requirement to have this minimum bank balance.

16. *Campaign Spending*

Campaign spending allows candidates to occupy public space in order to gather the most votes during elections. Previous elections have shown that candidate spending is so disproportionate that it introduces massive imbalances in the campaign. The Center therefore recommends that Parliament establish an upper limit to campaign spending to balance the weight of the respective candidates and parties on the campaign trail.

No laws regulate the campaign accounts of independent candidates and political parties. The amounts spent are unknown, and campaign accounts are neither published nor verified. Lack of publication strengthens rumors of personal enrichment and use of state resources to finance election campaigns. The Center recommends that Parliament introduce legislation to ensure the publication of candidates' financial statements before and after their mandate, as well as verification by the Parliament and publication of campaign spending within one month of the conclusion of the concerned election.

17. *Security of the People*

States are to take measures to promote the principles of the rule of law, freedom from discrimination, the security of the person, and the right to an effective remedy before a competent

national tribunal for acts that violate their rights and freedoms. Aside from several incidents during the campaign period where candidates and supporters were blocked from reaching their meeting destinations and several other deplorable acts of violence, the election process prior to election day was largely peaceful. The postelection period was a different matter, with blockage and disruption of people's rights to peaceful assembly and multiple incidents of security forces firing upon unarmed civilians, leaving scores dead and injured. Unacceptable restrictions on freedom of movement or assembly for presidential candidate Tshisekedi and others after the election are without cause.

The Center recommends the intensification of ongoing efforts to sensitize the security forces to human rights in the discharge of their duties as well as directing more resources to train security forces in nonlethal crowd control.

To the Supreme Court:

18. *Transparency and Publication of Proceedings*

The first president of the Supreme Court of Justice was not cooperative with the Carter Center mission during the electoral process. Currently the only court with jurisdiction to rule on electoral disputes, it demonstrated a lack of transparency, which compromised its role as impartial arbitrator and final judge of the election.

19. *Establishment of Constitutional Court*

The Center recommends that the DRC president accelerate the establishment of the constitutional court, as called for under the constitution. Training for the high magistrates of this new court in electoral law and dispute procedures and constitutional law will be necessary for this court to play completely its role of institutional arbitrator for constitutional questions.



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To the People of the Congo:

20. Right to Participate in Public Affairs

States are obligated to take the steps necessary to give effect to human rights, but the people also bear responsibilities in the exercise of their rights. The people of the DRC are commended for their participation in a largely peaceful election process, several serious incidents of violence notwithstanding. Enthusiasm for the electoral process was high, evident in the 11 presidential candidates and 18,500 candidates standing for the National Assembly. Some 32 million Congolese registered as voters, and voter turnout was reasonably high at nearly 60 percent.

The people of the DRC are commended for their participation in a largely peaceful election process, several serious incidents of violence notwithstanding.

Moreover, many tens of thousands of Congolese participated in these elections as election officials, party witnesses, and impartial, nonpartisan observers, and the Center hopes that these efforts will continue to enjoy the support of the government, CENI, political parties, and international donor community in future elections. It is also hoped that the new government and political parties in the governing coalition and in the opposition will create more structures for the people of the Congo to interact with their government and their elected representatives.



APPENDIX A

ACKNOWLEDGMENTS

The Carter Center gratefully acknowledges the support of the organizations and individuals whose vital contributions enabled the electoral observation mission in the Democratic Republic of Congo. The United States Agency for International Development (USAID) and the Royal Embassy of the Netherlands continued their history of strong support for Carter Center missions. Their contributions enabled a sustained Carter Center election engagement in the DRC from August 2011 through February 2012.

The Center is especially grateful for the support of U.N. SRSG Ambassador Roger Meece and the staff of MONUSCO, who assisted the Center's observers with access to U.N. aircraft for travel throughout the DRC as well as regional security briefings once deployed.

The Center expresses its appreciation to the government of the Democratic Republic of the Congo and the National Independent Election Commission for inviting the Center to observe the elections. The Center acknowledges the dedicated contribution of the Congolese national observers and their important role in bearing witness to the second presidential and legislative vote in their country since the recent war ended.

The efficacy of Carter Center missions is a product of the excellent staff and leadership whose dedication has consistently given excellent representation to the Center overseas. A special thank-you goes to His Excellency Rupiah Banda, for his time and experience in serving as mission co-leader with Dr. John Stremlau, Carter Center vice president for peace programs. The Center also acknowledges the distinguished leadership of field office director Baya Kara in Kinshasa. The Carter Center has benefited from the experience of Baya Kara in prior missions, and

the respect afforded The Carter Center in the DRC by both national and international officials is a testament to the respect she earned through the quality of her work.

The Kinshasa staff operated effectively under a fluid and uncertain electoral environment. Mission security officer Jules Lalancette designed and managed the security for a mission of more than 60 members, including observers, staff, and mission leadership, over extraordinary deployment distances. Pedro Teixeira served as director of operations, managing office and in-country operations and observer transport and accommodation. Logistics support was provided by Augustin Kibassa. Legal analyst Stephane Mondon contributed his legal expertise and knowledge of electoral processes in the DRC. Valerie Harden served as LTO coordinator, managing the deployment of and reporting by long-term observers. Additional support was provided by Eugene Salamu, field financial officer; Anne-Marie Bipendu, administrative officer; and Christian Bisimwa Mulume, field press officer.

The Carter Center thanks the long-term observers for their invaluable work in bearing the weight of providing political and logistics reports from areas throughout the DRC over the course of many months. These individuals worked in diverse and uncertain conditions, demonstrating a deep commitment to the success of the Carter Center mission and to the furthering of democracy in the Democratic Republic of the Congo.

The Carter Center's Democracy Program in Atlanta had the overall responsibility for managing the project to the Democratic Republic of the Congo, beginning with the initial assessment in May 2011 through this final report. The project was managed by Dr. David Pottie, associate director. A number of staff and interns provided crucial support to the



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mission, including Jennifer Russi, Tynesha Green, Olivia Fernandez Owens, Rahul Garabadu, Anna Taquet, and Gina Chirillo. They contributed to the smooth execution of the mission through logistics, research, and delegation preparation both in Atlanta and on the ground in the DRC during the elections. Without this handful of staff and interns alike, the

Center would not have been able to implement such a successful project.

This report was written by Baya Kara, Valerie Harden, and Stephane Mondon based on input from the entire delegation. David Pottie, David Carroll, and Jennifer Russi edited and prepared the final version of the report.



APPENDIX B

TERMS AND ABBREVIATIONS

AMP	Alliance for the Presidential Majority	MONUSCO	United Nations Stabilization Mission to the Congo (replaced MONUC in 2010)
BV	Polling station		
CEI	Independent Electoral Commission	PALU	Unified Lumumbist Party
CENI	National Independent Electoral Commission (replaced the CEI in 2010)	PNC	Congolese National Police
CEJP	Episcopal Commission for Peace and Justice	PPRD	Party for Reconciliation and Democracy
CLCR	Local compilation center	PV	Procès-verbal
CNCR	National compilation center	RCD	Congolese Rally for Democracy
CSAC	Superior Audiovisual and Communications Council	RENOSEC	National Election Observation Network in Congo
CSJ	Supreme Court	SADC	South African Development Community
CV	Voting center	SEP	Executive provincial secretary
EISA	Election Institute for Southern Africa	SRSG	Special representative to the secretary general
EUEOM	European Union Election Observation Mission	UDPS	Union for Democracy and Social Progress
FARDC	Armed Forces of the Democratic Republic of the Congo	UNC	Union for the Congolese Nation
HAM	High Media Authority	UNDP	U.N. Development Program
IFES	International Foundation for Election Systems		Alliance of National Congolese Believers
MLC	Movement for Congolese Liberation		Union of Forces of Change
MP	Presidential Majority (replaced AMP in 2011)		Union for the Awakening and Development of Congo
MONUC	United Nations Mission to the Congo		Union for the Reconstruction of Congo
			Union of Mobutu Democrats



APPENDIX C LETTERS OF INVITATION



REPUBLIQUE DEMOCRATIQUE DU CONGO
COMMISSION ELECTORALE INDEPENDANTE
C. E. I.



Le Président

Kinshasa, le 16 FEV. 2011

N/Réf : 064 /cei-rcd/CAB-Prés/11.
V/Réf. :

✓ A Monsieur le Président
Centre Carter
One Copenhill
453 Freedom Parkway
Atlanta, GA 30307
U S A.

Monsieur le Président,

Concerne : Observation et appui au processus électoral.

Nous vous remercions, une fois de plus, pour votre soutien au processus électoral en République Démocratique du Congo en général et à la Commission Electorale Indépendante (CEI) en particulier, avant et pendant les élections de 2006, à travers la mission d'observation électorale qui avait été déployée par le Centre Carter.

Dans la perspective de la tenue des élections présidentielle et législatives au cours du cycle électoral 2011 - 2013, nous apprécierions de bénéficier encore une fois de l'expertise et de l'appui du Centre Carter par :

- l'envoi d'une mission d'observation électorale ;
- le renforcement des capacités de la Société Civile ainsi que des autres acteurs impliqués dans le processus électoral.

Bien évidemment, nous pourrions aux formalités d'accréditation d'usage conformément à la législation en vigueur dont vous avez eu connaissance à l'occasion du déploiement de votre équipe pendant les dernières élections.

En attendant, nous nous tenons à votre disposition pour fournir de plus amples renseignements.

Veuillez agréer, Monsieur le Président, l'expression de notre haute considération.

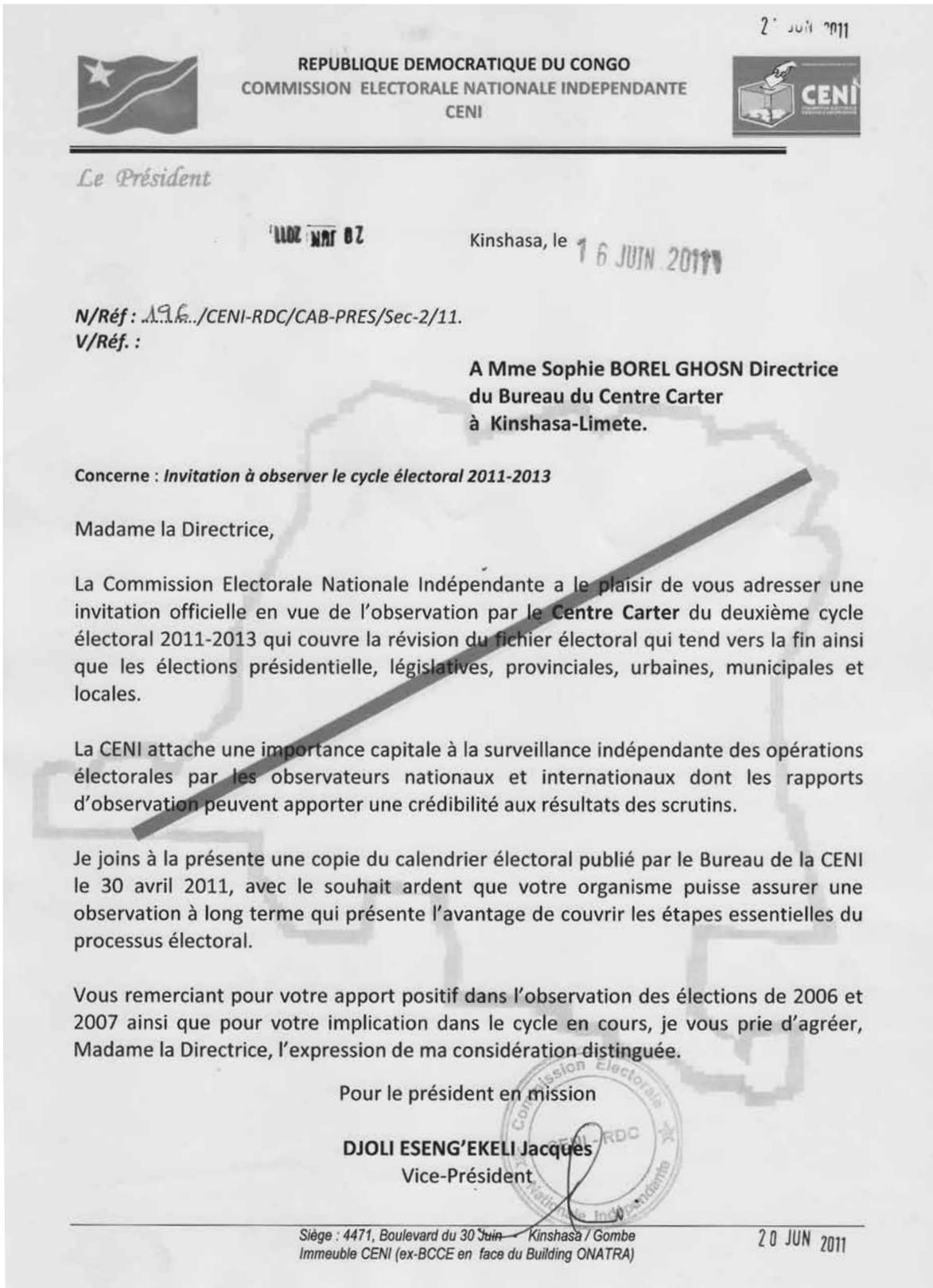


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APPENDIX D

THE CARTER CENTER OBSERVATION DELEGATION AND STAFF

His Excellency Rupiah Banda, Former President of
Zambia, Zambia

Dr. John Stremlau, Vice President of Peace
Programs, The Carter Center, United States

OBSERVERS

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Euloge Aidasso, Benin

Koffi Anzoua, Long-term Observer, Côte d'Ivoire

Ousmane Aouta, Niger

Jean Paul Ombi Bangaya, Central African Republic

Idiatou Barry, Guinea

Raymond Beherou, Central African Republic

Laura Bennison, Long-term Observer, Ireland

Stephanie Berry, Long-term Observer,
Switzerland/Germany

Gert Binder, Austria

Anuradha Chakravarty, India

Oley Cole, Long-term Observer, Gambia

Mvemba Dizolele, United States

Tiago Faia, Portugal

Silvia de Felix, Spain

Idrissa Hassane, Long-term Observer, Niger

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Marta Iniguez de Heredia, Spain

Edward Horgan, Ireland

Ahmad Issa, Lebanon/France

Adingra Kakou, Côte d'Ivoire

Fahiraman Kone, Côte d'Ivoire

Jean Bosson Kouadio, Côte d'Ivoire

Jerry Kovacs, Canada

Jean-Paul Lamah, Long-term Observer, Guinea

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Pippa Matthews, Ireland

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Ronald Mininger, United States

Arba Murati, Albania

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Alfredo Nicoletti, Long-term Observer, Italy

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Marianne Stone, United States

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Judith Vorrath, Germany

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Erinn Wattie, Canada

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Jennifer Russi, Assistant Program Coordinator,
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Anna Taquet, Intern, Democracy Program,
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APPENDIX E OBSERVER CHECKLISTS

Opening

Arrival Time <input type="text"/> <input type="text"/> Departure time <input type="text"/> <input type="text"/>			
Province		Constituency	
Name of the voting center		Polling Station No.	
Number of voters registered in the polling station (PS)			
Number of ballot paper received in the PS			
Number of voters on the "liste de dérogation"			
Number of voters on the omitted voters list			
Number of votes registered at the time of departure			
ENVIRONMENT			
		YES	NO
1 Have you seen electoral propaganda less than 100 meters from the polling station?		<input type="checkbox"/>	<input type="checkbox"/>
2 Have you witnessed cases of intimidation or disturbances of the operations?		<input type="checkbox"/>	<input type="checkbox"/>
a) outside of the PS?		<input type="checkbox"/>	<input type="checkbox"/>
b) inside of the PS?		<input type="checkbox"/>	<input type="checkbox"/>
3 Is the voters list displayed outside of the PS?		<input type="checkbox"/>	<input type="checkbox"/>
4 Is there electoral propaganda inside the PS?		<input type="checkbox"/>	<input type="checkbox"/>
5 Is the PS code visibly displayed?		<input type="checkbox"/>	<input type="checkbox"/>
PS WORKERS AND OPENING PROCEDURES			
		YES	NO
6 Did the polling station open on time? If not, please specify:		<input type="checkbox"/>	<input type="checkbox"/>
a) Between 6:30 and 7:30 <input type="checkbox"/>			
b) After 7:00 <input type="checkbox"/>			
Reason for delay _____			
7 Were the President, two assessors, one secretary, and one supplementary assessor present at your arrival? If no, indicate who was missing:			
a) President <input type="checkbox"/>			
b) Assessor 1 <input type="checkbox"/>			
c) Assessor 2 <input type="checkbox"/>			
d) Secretary <input type="checkbox"/>			
e) Sup. Assessor <input type="checkbox"/>			
8 Is at least one poll worker a woman?		<input type="checkbox"/>	<input type="checkbox"/>
9 Is the President of the PS a woman?		<input type="checkbox"/>	<input type="checkbox"/>
10 Were the political party agents there when you arrived? If yes, which ones?			
a) PPRD <input type="checkbox"/>		f) Others _____	
b) RCD <input type="checkbox"/>		_____	
c) UNC <input type="checkbox"/>		_____	
d) PALU <input type="checkbox"/>		_____	
e) UDPS <input type="checkbox"/>		_____	
11 Was a political party agent forbidden to observe the PS? If yes, which one?		<input type="checkbox"/>	<input type="checkbox"/>
12 Were domestic observers present?		<input type="checkbox"/>	<input type="checkbox"/>

(continues)



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Opening (continued)

<p>13 Were there essential materials missing?</p> <p>a) Ballots <input type="checkbox"/></p> <p>b) Ballot boxes <input type="checkbox"/></p> <p>c) Voting booths <input type="checkbox"/></p> <p>d) Indellible Ink <input type="checkbox"/></p> <p>e) PVs <input type="checkbox"/></p> <p>f) Stamp <input type="checkbox"/></p> <p>g) List of voters <input type="checkbox"/></p>			
<p>14 How many total ballot boxes were in the PS?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15 Does the voting center have extra ballot boxes in case of a shortage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16 Were the ballots counted before the start of operations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17 Are there enough ballots for all of the expected voters?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18 Was the ballot box presented as empty to everyone present?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19 Was the ballot box sealed before all present?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20 Did party agents have the opportunity to discuss observations, objections, or complaints on the results record (PV - Procès Verbal)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21 Did party agents have objections or complaints?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22 Were the complaints or objections recorded on the results record?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23 Was it possible to record a complaint?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24 Did someone talk to you about an objection? If yes, who?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a) Voter <input type="checkbox"/>			
b) Party agent <input type="checkbox"/>			
c) Observer <input type="checkbox"/>			
d) Other <input type="checkbox"/>			
25 Were poll workers, political party agents, domestic observers, and journalists allowed to vote before the opening of the polling station?	<input type="checkbox"/>	<input type="checkbox"/>	
26 Does the polling station have a means of communication?	<input type="checkbox"/>	<input type="checkbox"/>	
27 What was the average distance voters traveled to the PS?			
28 Did the PS members receive training?	<input type="checkbox"/>	<input type="checkbox"/>	
29 Did the location of the voting booth guarantee a secret ballot?	<input type="checkbox"/>	<input type="checkbox"/>	
SECURITY			
27 Is the polling center or voting center secured by the police?	<input type="checkbox"/>	<input type="checkbox"/>	
28 Is the polling center or voting center secured by the military?	<input type="checkbox"/>	<input type="checkbox"/>	
29 Did any of the security services attempt to intimidate or influence the voters?	<input type="checkbox"/>	<input type="checkbox"/>	
GENERAL EVALUATION			
30			
a) Good: The procedures were comprehensively followed.	<input type="checkbox"/>		
b) Satisfactory: Minor problems occurred that will not affect the result.	<input type="checkbox"/>		
c) Poor: There were larger problems that could affect the results.	<input type="checkbox"/>		
COMMENTS			



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Voting (continued)

14 How many ballot boxes does the PS have in total?			
15 Does the voting center have extra ballot boxes in case of a shortage?			
16 Are there enough ballots for the expected number of voters?			
17 Does the location of the voting booth guarantee a secret ballot?			
18 Is the ballot box correctly sealed?			
19 Did you see anyone underage vote?			
20 Did party agents and observers have the opportunity to discuss their observations and complaints in the results record?			
21 Did party agents or observers make any complaints?			
22 Were there any complaints written on the results record?			
23 Was there any reason for anyone to write any complaints?			
24 Did you receive any complaints on the results record? If yes, specify.			
a) Voter	<input type="checkbox"/>		
b) Party agent	<input type="checkbox"/>		
c) Observer	<input type="checkbox"/>		
d) Other	<input type="checkbox"/>		
25 Did the PS have telephone communication means?			
26 Did the voting center have Internet communication means?			

VOTING PROCEDURES

27 Is the PS code visibly posted?			
28 Was the identity of voters verified?			
29 Was the presence of voters on the voter list verified?			
30 Was absence of a mark of ink on the hand of voters verified?			
31 Was the ballot signed by the President of the PS?			
32 Is the voter correctly informed on the process of voting?			
33 Did voters ask for assistance from others?			
34 Did one person assist many voters?			
35 Did you observe any case where the voter list was not signed?			
36 Did you observe any case of family voting?			
37 Did you observe any case where voters were not inked after voting?			
38 Did you observe any case where a voter was denied the right to vote in the PS?			
a) The voter's name was not on the list and he or she does not qualify to vote by "dérogation"	<input type="checkbox"/>		
b) The voter did not have his or her electoral card.	<input type="checkbox"/>		
c) The voter's finger was already inked with indelible ink?	<input type="checkbox"/>		
d) Other: Specify.	<input type="checkbox"/>		
39 Has any behavior of the poll workers led you to doubt his or her impartiality?			
40 Is there any other list that allows the voters to register if his or her name is not on the voter's list? (beside "la liste de dérogation")			
41 How many voters voted by "dérogation" in the PS?			
42 What was the average distance voters traveled to reach the polling station? _____			

SECURITY

43 Was the polling station or voting center secured by the police?			
44 Was the polling station or voting center secured by the military?			
45 Did any of the security services attempt to intimidate or influence the voters?			
46 Did you observe any tension?			

(continues)



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Voting (continued)

GENERAL EVALUATION	
47	
a) Good : The procedures were comprehensively followed.	<input type="checkbox"/>
b) Satisfactory : Minor problems occurred that should not affect the results.	
c) Poor : Larger problems occurred that could affect the results.	
COMMENTS	



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Closing and Counting

Team number	Name of observer		
Arrival time	Departure time		
Province	District		
Name of the voting site	Polling station number		
Number of registered voters			
Number of ballot paper received			
Number of registered on the derogation list			
Number of registered on the omitted list			
Number of voters who signed emargement list when closing the polling station			
CLOSING			
	YES	NO	N/A
1 Did the president announce the closing of the polling station after the official opening time?			
2 Were all voters present upon announcement of the closing allowed to vote?			
3 Were voters who were absent at the announcement of closing allowed to vote?			
4 Was the 'PV des operations' (PV for the voting) completed?			
5 Did the president select five voters to observe the counting?			
COUNTING			
	YES	NO	N/A
6 Were unauthorized persons allowed to witness the counting?			
7 Did the polling station have the following material before beginning the counting?			
a) 'PV de depouillement' (PV for the counting)			
b) Pointing form			
c) Results form			
d) Different envelopes			
e) Pointing form			
8 Is there at least one woman among polling station members?			
9 Is the polling station president a woman?			
10 Are the party agents present during the counting? If yes, which ones?			
a) PPRD			
b) RCD			
c) UNC			
d) PALU			
e) UDPS			
f) Others (precise)			
11 Was any party agent not allow to observe the counting? If yes, which one?			
12 Were domestic observers present?			
13 Were ballot papers counted one by one when taken out of the ballot box?			
14 Is the number of the voters registered on the voting operation document equal to the number of ballot papers in the ballot box?			
15 Did the polling agent read each ballot paper in a loud, clear voice?			
16 Were there any objection concerning rejected ballot papers?			
17 Were there concerns on the validation of any ballot papers?			
18 Was the pointing form was correctly filled?			
19 Was the pointing form mentioned on the PV?			
20			
21 Did all the party agents received a copy of PV results form?			
22 Did the party agent signed the results form?			
23 Were result posted in front of the polling station?			
24 Did all the valid, rejected, spoiled and unused ballot papers parked in the envelope number 1?			
25 Did the CBVD transmitted the 4 envelop to the CCVD?			
26 Did the BV has means to communicate by telephone?			



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Voting (continued)

27 Did the CV has means to communicate by using internet?

COMPLAIN AND RECLAMATIONS

28 Did the complain recorded to the PV?

29 Did the possibility to record the complain on the PV exist?

30 Did they talk to you about the complain? If yes

- a) Party agents
- b) Observer
- c) Others

SECURITY

31 Is the BV/CV secure by the police?

32 Is the BV/CV secure by the army?

33 The behavior of the security services present is susceptible, intimidating or influencing the CVD workers?

GENERAL EVALUATION

34

- a) Good: The procedures were globally followed
- b) Fair: Minor problems Des problèmes mineurs non susceptibles d'affecter le résultat
- c) Poor: Susceptible problem to affect the results

COMMENT



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Compilation of Results

Team Number	<input type="text"/>	Name of Observer	<input style="width:100%;" type="text"/>		
Arrival time		<input type="text"/>	<input type="text"/>	Departure time	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	
Province	<input style="width:100%;" type="text"/>		District	<input style="width:100%;" type="text"/>	
Name of the voting site	<input style="width:100%;" type="text"/>		Station Number	<input style="width:100%;" type="text"/>	
Number of presidential ballots received					
<input style="width:100%;" type="text"/>					
Number of legislative ballots received					
<input style="width:100%;" type="text"/>					
Number of presidential ballots processed					
<input style="width:100%;" type="text"/>					
Number of legislative ballots processed					
<input style="width:100%;" type="text"/>					
Number of voting centers registered with the tabulation center					
<input style="width:100%;" type="text"/>					
CENTRALIZATION					
			YES	NO	N/A
1 Did the head of registration systematically register envelopes received?			<input type="text"/>	<input type="text"/>	<input type="text"/>
2 Did registration center operators input records into a computer database?			<input type="text"/>	<input type="text"/>	<input type="text"/>
3 Were envelopes destined for CENI, CSJ, and SEP sorted to be sent to the archives?			<input type="text"/>	<input type="text"/>	<input type="text"/>
4 Did the BVD count unopened envelopes?			<input type="text"/>	<input type="text"/>	<input type="text"/>
If yes, how many were recognized at the time of your observation?			<input style="width:100%;" type="text"/>		
5 Were the envelopes uniformly forwarded to the collection office?			<input type="text"/>	<input type="text"/>	<input type="text"/>
COLLECTION					
			YES	NO	N/A
6 Did the head of classification assign received envelopes a number by type of election?			<input type="text"/>	<input type="text"/>	<input type="text"/>
7 Did the official in charge of classification label envelopes by district and type of election?			<input type="text"/>	<input type="text"/>	<input type="text"/>
8 Were the ballots consistently transported to tabulation office?			<input type="text"/>	<input type="text"/>	<input type="text"/>
COUNTING					
9 Were there political party agents present when you arrived? If yes, specify which ones:			<input type="text"/>	<input type="text"/>	<input type="text"/>
a) PPRD	<input type="text"/>				
b) RCD	<input type="text"/>				
c) UNC	<input type="text"/>				
d) PALU	<input type="text"/>				
e) UDPS	<input type="text"/>				
f) Other (specify) _____					
10 Were envelopes of the presidential election processed first (before legislative envelopes)?			YES	NO	N/A
11 Was a sequential number assigned to every form in the envelope with the exception of the envelope papers?			<input type="text"/>	<input type="text"/>	<input type="text"/>
12 Were envelopes containing envelopes marked by sequential numbers?			<input type="text"/>	<input type="text"/>	<input type="text"/>
13 How many sheets of reconstructed results were established upon your arrival?			<input style="width:100%;" type="text"/>		
14 How many polling stations required a recount?			<input style="width:100%;" type="text"/>		
15 How many result forms were processed upon your arrival?			<input style="width:100%;" type="text"/>		
16 Were there witnesses present at the tabulation process?			<input type="text"/>	<input type="text"/>	<input type="text"/>
17 Were witnesses and observers able to verify results or were there concerns after counting?			<input style="width:100%;" type="text"/>		
COUNTING AND TABULATION					
19 How many forms of RECONSTITUTION of results were received upon registration at the compilation and tabulation offices?			<input style="width:100%;" type="text"/>		

(continues)



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Compilation of Results (continued)

20	Were results forms accessible by computers?	YES	NO	N/A
21	How many cases of abnormalities and concerns were there after tabulation?			
22	Were the marks of ink on the hand of voters verified?			
ARCHIVAGE				
23	Was the reception of envelopes done in a mannerly order?	YES	NO	N/A
24	Did the archive location allow for the physical integrity of the documents?			
25	Were the envelopes classified systematically?			
26	How often were the different envelopes sent to the following recipients?			
a)	CENI			
b)	SCSJ			
c)	SEP			
EQUIPMENT AND COMMUNICATION				
27	Was the CLCR equipped with a personal computer?	YES	NO	N/A
28	Was the CLCR equipped with a VSAT?			
29	Was the CLCR equipped with a Weymar?			
SECURITY				
30	Was the CLCR secured by police?			
31	Was the CLCR secured by the military?			
32	Did any of the security services attempt to intimidate or influence the voters?			
GENERAL EVALUATION				
33	a) Good : The procedures were comprehensively followed.			
	b) Satisfactory : Minor problems occurred that should not affect the results.			
	c) Poor : Larger problems occurred that could affect the results.			
COMMENTS				



APPENDIX F DEPLOYMENT MAP





APPENDIX G
CARTER CENTER PUBLIC STATEMENTS AND REPORTS



FOR IMMEDIATE RELEASE

Aug. 17, 2011

CONTACTS: Atlanta, Deborah Hakes +1 404 420 5124; Kinshasa, Baya Kara +243-812-407-659

Carter Center Announces Election Observation Mission to DRC

At the invitation of the Independent Electoral Commission (CENI) and the welcome of political parties, The Carter Center has launched an international election observation mission for the Democratic Republic of the Congo (DRC) elections on Nov. 28, 2011.

The early deployment of long-term observers will allow the Center to assess pre-election preparations. The Carter Center also will closely monitor legal and political developments that may impact the election, as well as partner with national organizations to advance domestic election observation skills and training. A field office has been established in Kinshasa to guide these efforts.

“The Carter Center hopes that this election observation mission will reassure the Congolese people that their struggle for democratic and credible elections remains important to the international community. Our assessment will strengthen the efforts of voters, candidates, parties, and election institutions to deliver the best possible elections on Nov. 28,” said Carter Center Election Mission Field Representative Baya Kara.

The Center has deployed 10 long-term observers from nine countries in six provinces across DRC to gain firsthand knowledge of the activities of the election commission, political parties, civil society organizations, and the international community, as well as other domestic and international election observation missions. Their deployment coincides with the beginning of registration for presidential and legislative candidates and adoption of the electoral law annex.

These observers will be joined by a second group of 10 long-term observers in September and an additional 40 members shortly before the elections. The Center will release periodic public statements on electoral findings, available on its website.



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

and its obligations for democratic elections contained in regional and international agreements.

Present in DRC since the 2006 presidential and legislative elections, the Center opened the Kinshasa-based Human Rights House in 2007 to support human rights defenders.

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"Waging Peace. Fighting Disease. Building Hope."

A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers in developing nations to increase crop production. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide.



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

THE
CARTER CENTER



**First Carter Center Pre-Election Statement on
Preparations in the Democratic Republic of Congo**

Oct. 17, 2011

The Carter Center has been closely monitoring the implementation of the electoral calendar that was released by the Independent National Election Commission (CENI) in April of 2011. Voter registration that was scheduled to begin February 28 was postponed until June, which meant that the work of reviewing and validating the voter registry of 32,024,640 could not be concluded before the publication of the annex to the electoral law, determining the number of parliament member seats per district. The delayed publication of the provisional voter register threatens to undermine the public's ability to confirm or challenge their details and lingering opposition party concerns about the quality of the register could be used to call into question the overall credibility of the voter roll. CENI must take rapid and convincing steps to ensure the transparency and credibility of the voter register to meet the state's obligation to ensure that all eligible voters are afforded the right to do so.

CENI and its partners, notably the United Nations Mission in Congo (MONUSCO) which provides air support for distribution of election materials among other assistance, are under serious time pressure to ensure the timely distribution of all necessary materials for a November 28, 2011 presidential and legislative election. The very high number of legislative candidates 18,386 creates a complex challenge for ballot paper design, printing, distribution and accommodation of the resulting large ballots by the ballot boxes. Moreover, ballot box production and delivery is still underway. These and associated scheduling and logistical tasks pose a serious threat to the election date. If a delay becomes necessary the Center strongly urges CENI to consult with its partners, including presidential candidates and political parties, as soon as possible and announce well-defined contingency plans for a realistic alternative calendar for a new election date.

Additional resources are needed to implement civic and voter education in advance of election day. The CENI, perhaps in collaboration with United Nations Development Program (UNDP), should compile a table of activities being conducted around the country by various organizations in order to quickly identify and target education gaps and underserved areas, as was done in 2006 by the previous election commission.

Although the official campaign starts on October 28, political parties and presidential candidates are already active in many parts of the country. Several serious incidents of intimidation and violence have occurred and not all parties have signed the Code of Conduct. Competition is an integral part of an election but CENI, presidential candidates and party members must renew



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

their good faith efforts at communication and respect for the laws and procedures of the elections. The DRC is a large and fractured country with a violent past and continued armed conflict in the East; failure to recognize this context, or worse, to exploit it for electoral gain, will undermine the possibility of genuine democratic elections.

As all electoral disputes related to presidential and legislative elections are adjudicated by the Supreme Court, there is an urgent need to increase human resource capacity and the Court's expertise in electoral law.

The Carter Center International Observation Mission

Following an invitation from the President of the CENI, The Carter Center conducted an assessment mission in April 2011 to meet with Congolese stakeholders concerning the electoral environment and preparations underway for the upcoming elections. On July 16, 2011, the CENI invited the The Carter Center to observe the 2011 presidential and legislative elections. With strong encouragement from political parties, civil society groups, and representatives of the international community, The Carter Center established an office in Kinshasa to coordinate international election observation activities on August 17, 2011. In August, the Center deployed ten long-term observers covering seven provinces, Kinshasa, Bas-Congo, Oriental Province, North Kivu, South Kivu, Katanga, and Kasai Oriental. In September, the Center deployed an additional ten long-term observers for remaining provinces in the DRC. Current Carter Center observers represent fifteen nationalities. In November, they will be joined by an additional forty medium- and short-term observers who will monitor events in the days before the election and observe the entire vote tabulation process.

The Carter Center and its observers appreciate the good will of stakeholders at the local and national levels with whom we have met, including CENI, political parties, presidential and legislative candidates, civil society groups, domestic observers, voters, and media organizations in gathering observations of the electoral process. The Carter Center is also partnering with Congolese national organizations to advance domestic observation efforts through its Human Rights House. The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and has been endorsed by 37 election observation groups.¹ The Center assesses the electoral process based on the DRC's national legal framework and its obligations for democratic elections contained in regional and international agreements.

The Carter Center's international election observation mission to the Democratic Republic of the Congo is pleased to release its first pre-election statement on the 2011 presidential and legislative elections. Subsequent public reports will provide continued in-depth assessment of aspects of the elections based on direct observation and consultation with a wide array of political actors across the country.

¹ Declaration of Principles and Code of Conduct for International Election Observation (2005)



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Historical Background

The Carter Center observed both rounds of the 2006 elections (visit www.cartercenter.org to view public reports). These elections were part of an extraordinary process of transition, which brought together warring parties and forged a consensus on the need for peace and democracy. For any first elections such as these, the Center is well aware that the development of democratic processes and institutions is a long-term project, which will require strong ongoing support from the international community. The following summary points provide important context for the 2011 elections.

- Voting took place on July 30, 2006 in a generally peaceful and orderly manner with a voter turnout of 70% of some 25 million registered voters.
- Overall, polling stations were well organized and polling center staff competently fulfilled their duties.
- The campaign period was marked by abuse of governmental authority.
- There were a number of important procedural flaws that weakened the transparency of the process. The Center recommended that these be addressed prior to the second round in order to avoid more serious problems and to ensure acceptance of the results.
- The tabulation of provisional results for the July 30 presidential election was generally successful, due to the diligence of electoral staff in spite of difficult working conditions.
- However, serious flaws in the collection and chain of custody of electoral materials, especially in Kinshasa but also in other locations around the country, undermined transparency and threatened the credibility of the process.
- The publication of results by polling station was a crucial measure in strengthening public confidence.
- The premises of one of the five democratic bodies of the interim constitution, the Media High Authority, were destroyed by Jean-Pierre Bemba supporters leaving a July political rally in Kinshasa.
- The Carter Center did not find evidence of widespread or systematic manipulation and concluded that the presidential results announced August 20 were credible; legislative results, on the whole, were also credible, but could not be validated in detail (69 of 275 registered parties won seats). Only 42 women were elected. Of 33 presidential candidates, President Joseph Kabila finished in first place with 44% followed by Vice President Jean-Pierre Bemba with 20%, requiring a run-off election.
- The explosive deadly violence following the announcement of the results in Kinshasa between armed troops loyal to Kabila and Bemba's militia revealed the incompleteness of the peace process and the enduring threats to democracy in the DRC.
- On Oct. 29, 2006 the majority of Congolese voters participated in an election that in most parts of the country was extremely orderly and peaceful.
- The administration of these elections was well executed, bearing testimony to the accumulated experience of the many thousands of election workers over three democratic exercises (voter registration, constitutional referendum and 2 rounds of elections) held in less than a year.
- Despite confidence building measures between the two candidates after the August violence, presidential campaigning for the second round was minimal and there were a number of instances where hate language was used and violence occurred.



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- Electoral administration procedures were revised appropriately by the Independent Electoral Commission (CEI) after the first round, and while the new measures were not always fully implemented, voting and counting operations were significantly improved.
- In many areas where a particular candidate was popular, witnesses from the other candidate were not present until the end of the count. This limited the effectiveness of such witnesses and may have led to inaccurate predictions of the results by each candidate.
- The media, including the public broadcaster RTNC, did not honor their responsibilities to provide neutral information to the public.
- Instances of disruption or attempted manipulation of the electoral process, while serious in a few cases, did not undermine the overall success of the vote. Despite suspicious patterns of massive vote counts for each candidate in their respective strongholds, the overall results validated the victory of Joseph Kabila with 58.5% of the vote.
- In protest of the results, on November 21, Jean-Pierre Bemba supporters attacked and set fire to the Supreme Court building.

The many important shortcomings observed by the Center made the electoral process vulnerable to allegations of manipulation and leaves many questions that cannot be answered. However, The Carter Center did not see evidence of systematic or widespread attempts to manipulate the results. The results of the presidential election are sufficiently clear-cut that the overall outcome could not realistically be affected by any of the shortcomings we have cited. While the Center also has general confidence that the published legislative results faithfully reflect the will of Congolese voters, observed procedural weaknesses made it impossible to confirm specific results, especially in constituencies with close races.

Following the 2006 elections, the government of President Joseph Kabila has closed important elements of political space. Constitutionally mandated decentralization of power to the provinces has not even begun, and local elections have not been scheduled despite government promises. Although many militias have ceased fighting and been nominally integrated in the Armed Forces of DRC, army crackdowns in the east have yet to curb ongoing violence, which are in part fueled by conflict minerals. Human rights defenders remain under threat nationwide. The most prominent example of this is the death of human rights icon Floribert Chebeya at the hands of the police.

Given these difficulties, the successful conduct of the November 28, 2011 elections is all the more important to limit the potential for political violence and to promote genuine democratic elections.²

² In addition to the United Nations Universal Declaration of Human Rights and other international sources, DRC is obliged under its commitments to many African sources to ensure the conduct of genuine democratic elections, including AU, African Charter on Democracy, Elections and Governance, Art. 3(4) “State Parties shall implement this Charter in accordance with the following principles: 4. holding of regular, transparent, free and fair elections.” AU, African Union Declaration on the Principles Governing Democratic Elections in Africa, Art. 2 “Regular elections constitute a key element of the democratization process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development.”



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Legal Structure

An important amendment to Article 71 of the Congolese Constitution of 2005 was passed on January 25, 2011, by the Senate and National Assembly, modifying the electoral system for presidential and legislative elections. Most significantly, the presidential election was changed from a two-round voting system to a plurality voting system. In 2006 President Kabila was elected by an absolute majority, which necessitated a run-off election in October between the two candidates who received the highest number of votes, Kabila (44%) and Bemba (20%).

Several articles of the electoral law of February 2006 were amended on July 1, 2011, concerning technical and organizational aspects for elections. On August 17, 2011, an annex to the electoral law was passed allocating seats per voting district.³ The allocation was based on figures from the June-July voter registration period before the voter register had been examined and cross-checked in order to remove duplicate names, active-duty military and police, and other ineligible voters.

Under Article 74 of the electoral law, the Supreme Court is the designated body for adjudication of electoral disputes arising from the presidential and legislative elections, and it has the difficult task of reviewing all electoral issues arising from the candidacy of the eleven presidential candidates and 18,386 legislative candidates.⁴ There is an urgent need to increase the capacity of Congolese justices to ensure a swift review and remedy for electoral disputes by implementing training in electoral law as was done in 2006.⁵ There are only two justices out of the nine current justices that remain on the Court who benefited from the 2006 training. There is also a crucial need to increase the number of support staff. The Court has only 7 days to rule on complaints for presidential candidates (and 2 months for legislative candidates). A member of the Congolese *Conseil Superior de la Magistrature*, an advisory group of leading judges, recommends 30 magistrates be seconded to Supreme Court during election period. Such measures are essential to ensure that every political party and candidate has the right to seek legal remedy for violations of electoral law that may arise during this period.⁶

³ Loi portant succession et repartition des circonscriptions electorales 11/014 (Aug. 17, 2011)

⁴ Article 74 of the Electoral Law designates the Constitutional Court, which is not yet operational.

⁵ Everyone has the right to a timely and effective remedy by a duly constituted national body. AU, African Commission on Peoples' and Human Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, is persuasive upon DRC: c (a) "(a) Everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity." See also DRC signature of AU, African Union Declaration on the Principles Governing Democratic Elections in Africa, para. iii "establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections."

⁶ Article 73 of the Electoral Law



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Election Administration

The CENI is the electoral body responsible for managing the Congolese presidential and legislative elections in 2011.⁷ The mandate of the CENI is to organize and manage the pre-electoral process, the electoral process through identification and enrollment of voters, publication of the voter register, and transmission of provisional results. CENI builds on the experience of the 2005 voter registration and constitutional referendum and 2006 presidential, legislative, and provincial elections under the management of the Independent Election Commission (CEI), its predecessor. The CENI is comprised of members of the majority party (4) and opposition groups (3). In January 2011, these seven members selected Pastor Daniel Ngoy Mulunda as president. In May of 2011, CENI began work on preparations for the 2011 elections. The electoral calendar released by the CENI on April 29, 2011, for the 2011-2013 electoral cycle was revised most recently on August 18, 2011, after adoption of the first annex to the electoral law.

In September the Audiovisual and Communication High Council (CSAC) replaced the High Media Authority (HAM) as the new media regulatory body. During the electoral period, CSAC is concerned with equal access to public media for all political parties and candidates. In the past two months Carter Center LTOs received reports from opposition party representatives in several provinces, notably Kinshasa, Kasai Occidental, Katanga, North Kivu, Oriental province, and Equateur, that these groups lack access to public TV and radio.

CSAC members were selected during the month of August and began work in September 2011. The organizational challenges faced by CSAC just two months before elections are significant. Its current office is on the 10th floor of state-owned TV station RTNC, closely tied to the majority party, which does not permit the level of independence envisioned under Article 2 of its governing statute.⁸ The CSAC released a directive on campaign conduct for parties and candidates two days after establishing its office.⁹ Political parties and other stakeholders have not commented on the content of the directive. There are questions concerning how CSAC will be able to enforce its directive to ensure campaign-related content on TV and radio does not include discriminatory or hateful rhetoric; it expects to establish a presence in each provincial capital to monitor the media during the electoral period.

The United Nations peacekeeping mission MONUC, the predecessor of MONUSCO, was responsible for coordinating the largest electoral support effort in history by providing technical and logistical assistance. The support of the international community is present in the 2011 elections, notably through the provision of some \$167 million towards the 2011-13 electoral cycle, however the Congolese people are taking the lead and bear the majority of costs associated with the election. MONUSCO has the role of supporting these elections, particularly in terms of logistics and deployment of election materials to primary and secondary hubs throughout the provinces.

⁷ Law creating CENI

⁸ Organic Law 10/001 (Jan. 10, 2011)

⁹ Directive du Conseil Supérieur de l'audiovisuel et de la communication No. CSAC/AP/0002/2011 (Sept. 28, 2011)



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Election Administration Observations*Voter Registration:*

In June and July of 2011, the CENI enrolled 32,024,640 voters across DRC. Though its observers were not present at voter registration centers in May and June of 2011, The Carter Center has followed the voter registration process closely. Compared to 2006, the voter registration period was longer in duration and in certain provinces the number of registration sites increased, both contributing to comprehensive registration of eligible voters. The voter registration list for 169 districts has not been published in full. Under Article 6 of the electoral law the list is to be published by September 28 at the latest, 30 days before the start of the electoral campaign period.

The CENI began publishing voter lists on its website on October 3. As of October 10, lists for districts in Bas-Congo, Kasai Occidental, Maniema are available. While it is the discretion of the CENI to choose how it publishes the September 28 voter list, CENI President Mulunda stated on September 27 that voter lists would be made available to the public at CENI offices across the country.¹⁰ Not one Carter Center observer team has found voter lists available yet for consultation at the CENI's provincial election commission offices. The CENI should follow through with President Mulunda's offer, as the CENI website - though a potentially useful tool for disseminating news and as a depository for information - is not always operational and many voters are unable to access and download documents from the internet.

The registration process was characterized by a low number of domestic observers from civil society and political party observers to monitor the process. Political party Union for Democracy and Social Progress (UDPS) has requested to do an audit of the server which holds voter registration information on the grounds that minors, foreigners, military, and other ineligible groups are enrolled. The CENI has said it cannot permit access to the server by opposition groups unless the majority party is present. PPRD refuses to participate in an audit on the grounds it does not consider UDPS concerns about voter list fraud or error to be genuine or credible, noting that UDPS was not present during the voter registration to provide to a basis for its claims. These positions create an impasse concerning party access to the server, contributing to tensions between the parties that have at times escalated to violence.

The Center is concerned that unresolved issues related to the voter register, notably a) the need to reassure political parties that adequate measures have been undertaken to "clean" the roll of multiple or error entries and b) the timely publication for public examination and challenge, could undermine the overall credibility of the voter register.¹¹

¹⁰ Under Article 6 of the Electoral Law, the CENI may "determine the method of publication." Article 8 of the Electoral Law requires the CENI to post the corresponding voter list at every polling station 30 days before the election, or October 28. Mulunda's statement was made at the Technical Committee Meeting, convened by the CENI.

¹¹ DRC is obliged by its commitments through the International Covenant on Civil and Political Rights, Article 25 (b): "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (b)" To vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the voter."



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Electoral Calendar:

The Carter Center has also observed departures from the CENI electoral calendar. Such delays are especially challenging in the context of the DRC. While there has been substantial investment in construction of roads and other infrastructure improvement since 2006, the current calendar for distribution of electoral materials presents a significant challenge for the CENI and MONUSCO.

In mid-September the CENI and MONUSCO began distributing initial shipments of electoral kits for the 62,000 polling stations throughout DRC (located at 16,000 voting centers in 13,000 locations compared to 50,000 polling stations total in 2006). The majority of CENI hubs and subhubs have received non-sensitive electoral material, including voting booths and training materials for polling workers. The distribution of ballot boxes is significantly delayed due to production challenges.

With six weeks to election day the time remaining is extremely compressed for CENI and its partners to ensure the design and printing of ballot papers, production and receipt of ballot boxes and other essential election materials and the timely distribution of all these election materials, as well as the finalization and publication of all procedures for polling, counting and tabulation, matched to the recruitment and training of polling station officials, and other related tasks. CENI should therefore, develop as soon as possible, contingency plans for a delay in the election date.¹² Should a delay be required, CENI should consult with presidential candidates, political parties and international partners to ensure that the reasons are clearly defined and a detailed plan and budget is presented to achieve a realistic date.

The majority of CENI teams have concluded their work in each province to identify polling locations and recruit election officials. Their recommendations have been submitted to CENI headquarters; locations of polling stations are still to be made public.

Registration of presidential candidates was finalized on September 26, with the publication of the final list - one day ahead of a revised calendar and 10 days behind the original date. Registration of legislative candidates was extended; a provisional list of legislative candidates was published on September 21; and a final list was published on its website on October 17. The majority of legislative candidates registered late in the process by submitting applications on September 10-11. Candidates appear to have delayed their submissions while negotiating party affiliations and the CENI was unprepared to process the large volume of candidates at once, despite this occurrence during legislative candidate registration in 2006. Carter Center observers monitoring the candidate application process in Kinshasa and Mbuji Mayi reported complete disorder at CENI candidate application processing centers (BRTCs). Across the country the CENI extended the registration processing period by 48 hours, through September 13, in order to ensure candidates in the queue were able to register. Carter Center observers in Kisangani observed that though the extended-registration process was not strictly managed, allowing some candidates to

¹² Temporary postponement of voting processes is permissible under international law, owing for example to public emergency, but only to the extent required by the circumstances and provided that the measures are not contrary to the State's other obligations under international law. The political effects of national considerations, notably the expiration of President Joseph Kabila's constitutional mandate on Dec. 6, 2011, must obviously also be taken into account along with managerial, financial, and operational considerations.



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

register out of order, the CENI staff were competent and professional, and working with very limited resources.

The large number of applications generated processing errors across candidate registration centers. A legal challenge against the CENI was submitted to the Supreme Court after at least one political party submitted candidate lists that exceeded the number of seats in some districts. The CENI is responsible for ensuring candidate registration conforms to electoral law, which limits the number of party candidates per district to the number of seats.¹³ There is no indication that CENI intentionally allowed departures from this requirement and instead it likely concerns limitations in resources of CENI to oversee over 18,000 candidate applications. As recently as September 23 the CENI anticipated a total 15,500 legislative candidate applications.¹⁴

This legal challenge against the CENI underscores a perception of many opposition parties who question the neutrality and independence of the CENI. The CENI met with parties on September 7 in Kinshasa to share information and address party concerns. The CENI cancelled a second planned meeting with parties scheduled for September 28, which has been not rescheduled to this date. This type of outreach, through the “*Forum des partis politiques*,” is needed on a regular basis to increase transparency in the work of CENI and improve relations with parties.

Voter Education:

It is a role of independent election commissions to undertake voter education activities.¹⁵ Article 5 (7) of CENI’s governing document says CENI is responsible for coordinating a civic education campaign by putting into place sensitization activities for voters. The CENI to this point has not implemented activities because of budget constraints. Congolese civil society groups are eager to contribute to voter education but have limited means to implement activities. Femmes solidaires pour la paix et le développement (FSPD), a network of 58 local organizations, lead voter education events in advance of the 2006 election with support from international organizations and the UN. These events targeted women, especially rural or illiterate women with limited access to information, in Kinshasa, the Kivus, and Bandundu. According to FSPD’s National President there is no project funding from donors for similar activities this year.

UNDP is producing civic education materials that will be distributed across the DRC and there are two important initiatives by international organizations IFES and EISA, however voter education remains an activity that has not benefited from substantial international support. The international community should direct funding to Congolese NGOs to ensure Congolese citizens understand the importance of the elections and their role in the process.

¹³ Article 22 of Law No. 03/11 (June 25, 2011)

¹⁴ CENI press conference, Sept. 23, 2011

¹⁵ International Covenant on Civil and Political Rights, Article 19 (2) (b): “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” United Nations, U.N. Human Rights Committee, General Comment 25 on “The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service,” para. 11: “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. (...) Voter education (...) campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community.”



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Transparency:

Since September 2 the CENI has held weekly press conferences at its headquarters in Kinshasa to share information and address questions. The CENI provincial office in Matadi may institute a weekly press conference as well, which would increase timely access to information for Congolese citizens and parties in the area. The CENI website is a potentially valuable instrument but it remains woefully out of date and incomplete. Although the majority of Congolese do not have internet access, CENI should nevertheless make the fullest possible use of this resource to make information available, manage informational demands made upon the commission.

Major Political Parties and Candidates

There are approximately 147 political parties in the DRC. Major political parties include: the Party for Reconciliation and Development (PPRD), led by President Joseph Kabila. The Congo Liberation Movement (MLC); Unified Lumumbist Party (PALU); Union of Mobutu Democrats (UDEMO); Union of Forces for Change (UFC); Union for Democracy and Social Progress (UDPS); and Union for the Congolese Nation (UNC).

Eleven presidential candidates are confirmed, including Etienne Tshisekedi with the UDPS - with considerable support in the Kasais - who initially boycotted the elections in 2006. Three presidential candidates from 2006 are candidates again in 2011, current president Joseph Kabila (running as an independent candidate), Francois Mobutu, and Oscar Kashala. Leon Kengo Wa Dondo is a candidate from UFC, and current president of the Senate. Vital Kamerhe served as a legislative member representing South Kivu with PPRD. In 2008 he was forced to resign as president of the National Assembly after questioning the presence of Rwandan troops without prior parliamentary approval. He later founded the UNC. Other candidates include Jean Djamba, Adam Bombole, Francois Nicephore Kakese, Antipas Nyamwisi, and Josue Kamama (the latter two are independent candidates). Opposition parties have not reached agreement on a single presidential candidate though this has been a priority for opposition parties and there have been several negotiations to this end.

There are 18,386 candidates contesting the 500-seat National Assembly. This number has doubled since 2006, from 9,709 legislative candidates. This rise in numbers can, in part, be attributed to the creation of 'satellite' parties, which are affiliated with larger parties. Under a proportional representation system satellite parties, in effect, increase the number of party members that may run in a particular district. Carter Center observers in Katanga province learned that political party *Peuple Pour la Paix et le Développement* (PPPD) is a satellite party of the PPRD, and the similarity in party acronyms likely contributed an excess number of PPRD legislative candidates registered to a district in Kisangani.

The infusion of additional candidates by the creation of new parties in this manner presented challenges to the candidate registration process. For example, in Kanaga there are 1,142 candidates for 42 seats, posing difficulties not only for ballot paper design and accommodating the ballot papers in the ballot box but also for voters to be able to distinguish among and select their preferred candidates. Ideally the ballot paper design should include not only the candidate name but also their photograph, party affiliation if any, and party logo, especially to assist illiterate voters. CENI will have to take ballot paper size into account for its training of polling



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officials so they can explain the ballot paper to voters, ensure that administrative procedures and even size of secure envelopes are proportional to the size and complexity of the ballots.

However the large number of candidates creates a dynamic and opportunity for more individuals to be engaged in the political process and involved in efforts to respond to the needs of Congolese voters and put forward creative solutions to address problems. The election law allows for parties or candidates to have witness per polling station (with one substitute), enabling an important aspect of international best practice.¹⁶ However, the very high number of candidates could pose logistical challenges for polling station officials to manage the number of people inside a crowded polling station. CENI should ensure adequate information is shared with parties and that election officials receive training on how to meet the double challenge of ensuring that voter rights are respected while handling the right of candidates to have observers present.

Campaign Environment and Assembly

Under Article 110 of the electoral law the candidate and party campaign period begins on October 28. However visible signs of campaigning such as banners and posters were observed in various provinces throughout DRC. It is not clear to electoral actors which institution (Supreme Court, other courts, CENI, CSAC) has responsibility for monitoring and enforcing infractions relating to early-campaigning. The police, under the instruction of the Ministry of Interior in Oriental Province, have recently removed campaign banners in Kisangani.

The CENI prepared a 2011 Code of Conduct, which has been signed by media organizations and all major political parties with the exception of UDPS. The party's justification for not signing is given on the grounds of the need for more transparency in the work of the CENI and the release of party members in jail.

Over the past few weeks there have been reports by opposition parties of limitations on the freedom to assemble by local authorities. Carter Center observers in Kinshasa and Bas-Congo were told by opposition party members in these areas that they were prevented from holding rallies in public stadiums, and that other parties have been able to organize similar events at the same locations. For the past four weeks UDPS members have been blocked by police before reaching the CENI headquarters in Gombe. At times police have used tear gas and fired shots in the air to disperse UDPS protesters. Congolese authorities have an obligation to apply laws consistently and respect obligations guaranteeing the right of parties to assemble in public places. Political parties also have the responsibility to notify authorities in the manner required under the law before holding public events.

Civil Society and Domestic Observers

Congolese civil society plays a crucial role in monitoring and supporting the electoral process. Carter Center observers have been told by civil society groups in their areas that these

¹⁶ Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections, Art. 7: "States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers."



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organizations lack resources to deploy observers.¹⁷ Congolese groups are receiving less financial support from international donors to undertake activities during this election period compared to 2006. Given the key role played by neutral and capable domestic groups in deterring fraud and bolstering confidence in results, there is an urgent need for international community to provide financial support to ensure the presence of Congolese civil society groups.

The Carter Center is supporting a network of domestic observers. The Center will train 300 long-term observers and 6,000 short-term observers to be deployed in all provinces. The Catholic Church will deploy 30,000 observers. As in the 2006 elections, the Réseau national de l'observation et la surveillance d'élections au Congo (RENOSEC), Cadre permanent des concentrations de la femme congolaise (CAFCCO), Réseau d'observation des Confessions Religieuses (ROC), Conseils nationaux de jeunesse (CNJ) are planning to observe the elections.

Women's Participation

Approximately half of registered Congolese voters are women. Congolese political parties however are characterized by low numbers female candidates and other party leadership roles. The only female presidential candidate's application was removed before confirmation of the final list of candidates. In 2006, four of 33 presidential candidates were women. Proportional representation systems are considered to benefit the inclusion of women into the legislative branch, however not more than 12% of legislative candidates in this election are women. There is no formal mechanism in place to improve the involvement and participation of women in politics, though consideration of gender is incorporated into various laws and institutional guidelines.

Media

The context for journalists in the DRC is one of self-censorship for reasons of personal safety and job security, especially for those working in public media. The late establishment of the media regulatory agency, the CSAC, is significant because its predecessor, the HAM, was not operational. Equal media access for candidates is called for under the electoral law and is a service to Congolese voters.¹⁸ Carter Center observers were told by opposition party representatives in Kananga that they lack the resources to pay for their messages to be carried on

¹⁷ International Covenant on Civil and Political Rights, Article 25 (a): "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives." U.N. Human Rights Committee, General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," para. 8: "Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association."

¹⁸ In addition to fundamental U.N. provisions for freedom of speech, everyone has the right of equal access to any service or resource intended for use by the public: U.N. International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5(f): "In compliance with the fundamental obligations laid out in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone...the right of access to any place or service intended for use by the general public." Further, AU, Declaration on Principles on Freedom of Expression in Africa, Art. 6: "The public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods."



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private stations, and that provisions for equal access to state media do not exist in practice. TCC observers Kananga were also told by civil society groups that 3 or 4 of the 10 radio stations in the area are considered politically biased in their program content.

Security Situation

The security situation in the west of the country remains calm, with fears the situation may escalate following the rise of political tensions and the persistence of land disputes. In eastern DRC, MONUSCO and Congolese national armed forces (FARDC) are engaged in military operations against armed groups that contribute to securing the region for the electoral period. Insecurity in the east has not compromised electoral preparations though this is a risk in the period leading up to the election concerning deployment of materials and ability for voters to move freely on election day. Election day security is guaranteed by the Congolese national police. The current security plan in place calls for two officers for each of the 62,000 polling stations. Questions remain whether there are sufficient numbers of officers to fulfill this role as well as funds to deploy officers to remote parts of the country.

Disputes between PPRD and UDPS in Kinshasa have resulted in violence and damage to party resources. On September 5 and 6, UDPS and PPRD exchanged reciprocal attacks in the Limite district of Kinshasa after Tshisekedi submitted his presidential candidate application to the CENI. PPRD party supporters set fire to the headquarters of UDPS, while UDPS party supporters attacked PPRD headquarters and vehicles. Station RLTV (a private station considered to favor the opposition in its programming) was set on fire during these events. These attacks reinforce the important role the CENI must play in diffusing tensions between parties. Reports in the media of youth mobilization, possibly armed, suggest that political parties are not competing in good faith in the electoral process and raise specter of increased election violence. To this end CENI should ensure there are formal dispute mechanisms available for parties to peacefully resolve disputes against each other to minimize threat to resort to violence.

Recommendations

The Carter Center encourages the Congolese people to take advantage of this opportunity to freely choose representatives in a secure and peaceful environment.

The Carter Center calls on the Congolese government:

- To direct necessary resources to the National Congolese Police guarantee the security of the electoral process, particularly during the deployment of sensitive electoral material, on election day throughout the 62,000 polling stations, and during the tabulation process;
- To provide the CENI with adequate financial means to accomplish its activities, especially under a tight electoral calendar;
- To improve the capacity of the Supreme Court; and
- To allocate funding to the CSAC for it to establish a separate office, independent of the RTNC.

The Carter Center strongly encourages the Independent National Electoral Commission:

- To maintain a permanent communication mechanism with parties as partners in the electoral process by re-instituting the Party Political Forum to meet on a regular basis;



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- To increase access and transparency concerning the National Transmission Center (CNT);
- To select suitable polling stations which allow members to conduct their work with sufficient space for voters, party witnesses, domestic and international observers;
- To finalize and publish all procedures for the polling stations and compilation centers to relevant actors, including CENI workers, political party witnesses, and observers;
- To dramatically increase voter education efforts, especially in rural parts of the country and other areas of most need;
- To recruit more women, as stipulated in Article 10 of the CENI's governing statute, especially to serve as polling station presidents;
- To facilitate accreditation of international and domestic observers and party witnesses; and
- To develop contingency plans should they become necessary in the event that an election date delay becomes necessary. Should a delay be required, CENI should consult with presidential candidates, political parties and international partners to ensure that the reasons are clearly defined and a detailed plan and budget is presented to achieve a realistic date.

The Carter Center reminds legislative candidates of their responsibility to develop a clear political platform that can be differentiated from other candidates, especially in the context of the large number of National Assembly candidates.

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2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

NEWS

THE
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ONE COPENHILL ATLANTA, GA 30307

FOR IMMEDIATE RELEASE

Nov. 22, 2011

**CONTACT: In Atlanta, Deborah Hakes 1 404 420 5124; In Kinshasa, Baya Kara
+243 812 407 659**

Former Zambia President Rupiah Banda to Lead Carter Center Delegation to DRC's Election

The Carter Center announced today that former Zambia President Rupiah Banda and Carter Center Vice President for Peace Programs Dr. John Stremlau will co-lead the Center's 70-person delegation representing 27 nations to observe the Democratic Republic of the Congo's Nov. 28 elections.

"The Carter Center encourages the Independent National Election Commission to continue its efforts in the timely deployment of sensitive election materials prior to the opening of polls," said President Banda. "It is CENI's responsibility to ensure that the operation of the polls respects regional and international commitments. The challenges encountered in the distribution of election materials thus far also underscore the importance of establishing clear procedures for collecting and collating polling station results."

President Banda and Dr. Stremlau will meet with key stakeholders including the Independent National Election Commission (CENI), political parties, independent candidates, civil society organizations, and the international community, and will observe polling, counting, and tabulation on election day.

Given that some election results may be disputed, the Center is concerned about the lack of transparency in the Supreme Court's handling of complaints arising from the candidate nominations. The publication of these decisions immediately after the complaints period would enhance the confidence of the public and political actors in their judicial system.

The Carter Center further encourages political parties, movements, and independent candidates to demonstrate their commitment to the ideals of democracy and appeal to their supporters to respect the rule of law and the code of conduct signed by 10 of the 11 presidential candidates.

The Carter Center's long-term observers have been deployed since August and are now joined by short-term observers to be briefed in Kinshasa and deployed ahead of election



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day. The Center is observing the DRC's election at the invitation of the CENI and the welcome of political parties.

The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and has been endorsed by 37 election observation groups. The Center assesses the electoral process based on the DRC's national legal framework and its obligations for democratic elections contained in regional and international agreements.

The Center's previous statements on the DRC election process may be found at www.cartercenter.org. The Center will release its preliminary findings on the DRC election shortly after the process concludes.

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NEWS

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ONE COPENHILL ATLANTA, GA 30307

**The Carter Center International Election Observation Mission
Democratic Republic of Congo, Presidential and Legislative Elections, Nov. 28, 2011**

Preliminary Post Election Statement

FOR IMMEDIATE RELEASE

Nov. 30, 2011

Contact: Baya Kara in Kinshasa +243 81 240 7659 or Deborah Hakes in Atlanta +1 404 420 5124

Executive Summary

The Carter Center welcomes the conduct of presidential and legislative elections in the Democratic Republic of Congo (DRC) on Nov. 28; voters participated in large numbers with few major incidents that disrupted the peaceful conduct of the polls. The results tabulation process is underway.

The large and peaceful turnout that the Congolese people have demonstrated reflects their continuing commitment to the pursuit of peace.

All candidates and voters should respect that will and allow the ballots to be counted without intimidation.

On election day, Carter Center observers visited nearly 300 polling stations across the 10 provinces and Kinshasa. The following preliminary remarks reflect some of the Center's initial observations and will be supplemented by additional reports as the results process is completed.

Key Points

- The Independent National Election Commission's (CENI) administration of the election was wrought with logistical and budgetary challenges.
- On multiple important election preparations, CENI operations deviated from the electoral calendar. The original candidate nomination period was extended; identification of polling stations was completed late; the voter lists were not posted at all polling stations as required by law by Oct. 28; and essential election materials, notably ballot papers, were delivered at the last minute.
- The international community, including the United Nations, the European Union, the United States, South Africa, Angola, and others, has provided crucial financial and material support to the government of the DRC.



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- The official campaign period was largely peaceful and competitive, though marred by deaths and arrests when police responded to demonstrations.
- It is noteworthy that half of the registered voters in Congo are women, though they were not among the presidential candidates and composed only 10 percent of legislative candidates.
- The Center also commends CENI for being established as an independent administrative organ that oversaw an election with more than 32 million registered voters, 11 presidential candidates, and more than 18,000 legislative candidates. On election day, a majority of polling stations observed had the necessary materials and CENI is to be congratulated for the final push to ensure that the polls could open on Nov. 28. However, essential materials, most importantly ballot papers and voter lists were absent in a significant number of cases.
- The appropriate polling station workers were present in most places visited. Observers reported a range of irregularities in voting procedures, notably failures to check voters hands for ink or to apply it properly after voting, which is an important safeguard against multiple voting.
- Many voters struggled to find their names on posted lists at voting centers and would have benefited from more CENI assistance.
- Some poll workers were unsure of procedures for handling voters with voter cards but who were not on the voter list despite a last minute CENI decision to allow such individuals to vote.
- Candidate witnesses and domestic observers were well-represented in nearly all polling stations visited.
- With the results compilation process underway, official voter turnout is unknown but it was evident to observers that large numbers of Congolese voters were determined to exercise their fundamental political rights and participate in democratic elections. Despite the many obstacles facing the conduct of these elections, the voters have exhibited an extraordinary commitment to peace and democracy.
- CENI's civic and voter education efforts were inadequate to prepare voters to thoroughly understand the overall process, relying instead of international and domestic non-governmental organizations.
- The government established a media monitoring body, the Superior Council of Audiovisual Communications (CSAC), but only one month before the start of the campaign, leaving it with too little time to become a fully effective institution. Despite some significant decisions, CSAC's late establishment may have compromised its legal duty to verify that all candidates had equitable media access.
- Constitutional amendments in January 2011 changed the election system from a two-round voting system to a plurality-based system and reforms were introduced to the electoral law in August. A code of conduct to govern candidate activity during the elections was developed but unfortunately one of the presidential candidates failed to sign.
- The Carter Center observed the closing and counting process and will remain deployed for the compilation of results. Advance preparation of the compilation centers, including such basic needs as lighting, furniture, and computers, has been inadequate and CENI must intensify its efforts to ensure that the voice of the Congolese people is respected, recorded, and communicated in a manner that is secure and transparent.



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- The publication of election results by polling station as required by the electoral law will be the single best means to ensure that the elections reflect the will of the people.
- Electoral dispute resolution mechanisms in both CENI and the court system lack wide accessibility to citizens and are perceived by many Congolese to be partial. Nevertheless Congolese should make use of all avenues of appeal in the event that they have complaints about any aspect of the electoral process.
- Candidates and voters alike should remain calm and await CENI's announcement of official preliminary results due by Dec. 6.

Background: The Carter Center election observation mission has been in the DRC since Aug. 17, 2011, following an invitation from CENI. The mission was led by former President of Zambia Rupiah Bwezani Banda and Vice President of Carter Center Peace Programs Dr. John Stremlau and is composed of 70 observers from 27 countries.

The Center thanks CENI and all those Congolese who have welcomed Carter Center observers and given their time to meet with them.

The Center's observation mission in the DRC is conducted in accordance with international standards for elections, and the observation mission was conducted in accordance with the Declaration of Principles for International Election Observation and the Code of Conduct for International Observers that was adopted at the United Nations in 2005 and has been endorsed by 37 observation groups.

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**The Carter Center International Election Observation Mission
Democratic Republic of Congo, Presidential and Legislative Elections, Nov. 28, 2011**

Statement of Preliminary Findings

LEGAL FRAMEWORK

A sound legal framework is essential to effective administration of genuine democratic elections. The legal framework includes the rules found in the domestic laws of the country that regulate how all aspects of the electoral process will unfold. The legal framework should be consistent with the state's human rights obligations.

The DRC has ratified a number of international and regional treaties through which it has obliged itself to follow certain key human rights standards¹: International Covenant on Civil and Political Rights,² International Convention on the Elimination of all Forms of Racial Discrimination,³ International Convention on Economic, Social and Cultural Rights,⁴ Convention on the Elimination of all Forms of Discrimination against Women,⁵ Convention on the Political Rights of Women,⁶ Convention on the Rights of the Child,⁷ Vienna Convention on the Law of Treaties,⁸ African Charter on Human and Peoples' Rights,⁹ Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa,¹⁰ African Convention on Preventing and Combating Corruption,¹¹ African Charter on Democracy, Election and Governance,¹² and the Southern African Development Community Protocol Against Corruption.¹³

¹ Article 215 of the Congolese Constitution importantly notes that international treaties and covenants that the DRC signs or ratifies are superior to any national laws, barring any formal reservations the DRC may have expressed.

² Acceded Nov. 1, 1976 (ICCPR)

³ Acceded April 21, 1976 (ICERD)

⁴ Acceded Nov. 1, 1976 (ICESCR)

⁵ Ratified July 17, 1980 (CEDAW)

⁶ Acceded Oct. 12, 1977 (CPRW)

⁷ Ratified Sept. 27, 1990

⁸ Acceded, July 24, 1977

⁹ Signed Sept. 9, 1999 (ACHPR)

¹⁰ Signed Dec. 5, 2003

¹¹ Signed Dec. 5, 2003

¹² Signed June 29, 2008 (ACDEG)

¹³ Signed Aug. 14, 2001 (SADC Protocol)



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The Center assesses election activities in the DRC against its national legal framework and its obligations for democratic elections contained in regional and international agreements to determine the extent to which the DRC met its obligations. International standards establish criteria for evaluating the quality of elections. Standards allow the use of objective criteria to analyze strengths and weaknesses of an electoral process and offer an impartial analysis. Committing to these standards is the result of a voluntary process of a sovereign state that has chosen to give its citizens guarantees that electoral competition will be organized according to rules which will guarantee the objectivity of the legitimacy of their representatives.

The constitution, electoral law, and legislation concerning allocation of parliamentary seats are the core elements of a state's electoral framework.

An important constitutional modification to Article 71 changing the presidential election from a two-round voting system to a plurality voting system was passed on Jan. 25, 2011, by the Senate and National Assembly. Though the amendment was supported by the opposition in parliament, the change is considered to favor President Kabila, who received the largest proportion of votes in the presidential election of 2006. The law modifying the distribution of seats in the representative assemblies was promulgated on Aug. 17, 2011. Political parties in districts that lost seats questioned the integrity of the population figures, which were taken from a contested voter registry.

As in the 2006 elections, the Supreme Court of Justice is the only competent jurisdiction to settle electoral disputes. Under the 2005 constitution, the Supreme Court was to be dissolved and replaced by three distinct courts: the Cassation Court,¹⁴ a State Council, and a Constitutional Court. Pending the establishment of these institutions, the Supreme Court assumes responsibility for civil, administrative, and electoral litigation, along with interpretation of the constitution.

On Oct. 13, 2011, seventeen new justices were appointed to the Supreme Court in anticipation of post-electoral litigation. The appointment of justices so close to election day can raise the impression of bias which can undermine the trust of voters and political parties in the independence of the court responsible for the resolution of electoral disputes. The union of magistrates contested the legality of the appointments of additional justices under the current law.

These new nominations were made after the review of cases in October related to candidate applications - legal challenges were submitted to the Supreme Court after at least one political party submitted candidate lists that exceeded the number of seats in some districts during the candidate registration process. The three judges sitting at the time of the disputes settled 84 decisions (56 were deemed inadmissible and ten were rejected on procedural grounds). Of the eighteen complaints considered on the merits, fourteen were upheld. The Carter Center continues to be concerned the Supreme Court has not released judgments from these 84 cases.¹⁵

¹⁴ A court of last resort with limited scope of review to determine a miscarriage of justice or certify a question of law based solely on points of law.

¹⁵ On Nov. 22, The Carter Center issued a public statement calling for the publication of complaints arising from legislative candidate nominations to enhance confidence of the public and political actors in their judicial system.



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International standards of transparency require that judicial decisions are made public; the Congolese Supreme Court should make its decisions available for examination without delay.

ELECTION ADMINISTRATION

An independent and impartial authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic process, and that other international obligations related to the democratic process can be met.¹⁶

CENI is the administrative organ in charge of overseeing presidential and legislative elections in the DRC. It was established in May 2010 by law though the constitution called for its creation to replace the CEI by 2008. CENI is an independent national organization mandated to: organize and manage electoral processes, manage voter registration processes, publish for public viewing a voter registry and disseminate the provisional election outcome.¹⁷ CENI is comprised of members of the majority party (4) and opposition groups (3).¹⁸ In Jan. 2011, these seven members, including Pastor Daniel Ngoy Mulunda as president, were selected. The electoral calendar released by CENI on April 29, 2011, for the 2011-2013 electoral cycle was revised most recently on Aug. 18, 2011, after adoption of annexes to the electoral law.¹⁹

CENI is comprised of ten provincial offices and Kinshasa and 169 districts (*antennes*). On Oct. 23, CENI announced new leadership for provincial CENI offices, which involved transfer of provincial CENI representatives (SEP) between provinces and creation of deputy positions. Staff movements were also made at the CENI antennes. LTOs observed that switching of SEP officers created disorganization and disrupted election preparations, by having to get a new leadership team up to speed. LTOs were told transfer of CENI staff was done at the demand of political parties amid accusations of partisanship.

The support of the international community was significant in the 2011 elections, notably through the provision of some \$167 million towards the 2011-13 electoral cycle, however the DRC government is responsible for the majority of costs associated with the elections, with a reported total of some \$900 million. The United Nations peacekeeping mission in the DRC (MONUSCO) had the role of supporting these elections, particularly in terms of logistics and deployment of election materials to primary and secondary hubs throughout the provinces, and selected territories.

CENI has taken some important measures to improve transparency in its work and to inform candidates, political parties, and the voting public on issues concerning the election. CENI has held periodic and weekly press conferences, and in late October CENI enhanced accessibility of information on its website by including full voter and legislative candidate lists by district. Concerted outreach to political parties through its Political Party Forums was modest however,

¹⁶ UNHRC, General Comment 25 para. 20

¹⁷ Loi no. 11/003 modifiant la Loi no. 06/006 (June 25, 2011), Art. 2

¹⁸ Art. 10, CENI Organic Law, July 2010

¹⁹ *Calendrier des Election Générales et Provinciales 2011-2013 en RDC. "General and Provincial Election Calendar."* (June 15, 2011)



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despite a tense and fluid political environment, and in comparison to CEI outreach to political parties in 2006. CENI only convened two political party forums, though other meetings with parties were held under the coordination of CENI and its partners in the international community. Regular party forums might have improved relations between CENI and opposition parties.

Electoral Calendar & Delivery of Election Materials

CENI is charged with promulgating a calendar for key aspects of the electoral process though it has failed to comply with a number of important deadlines imposed by the electoral law. The publication of the list of voters by province and district 30 days before the campaign²⁰, the display of voters lists 30 days before election day at each polling station,²¹ the publication of the list and location of polling stations 30 days before election day,²² the delivery of ballots 48 hours before the vote,²³ the convocation of the electorate 90 days before the expiration of the term of the current president,²⁴ were all done outside of the provisions of the electoral law.

As previously noted by The Carter Center, these departures from the electoral calendar also presented significant logistical challenges for CENI and MONUSCO as it compressed the time for acquisition and delivery of election materials throughout the DRC. These delays left CENI to confront a very strict time frame in which to ensure timely design and printing of ballot papers, production and receipt of ballot boxes and other key electoral materials.

The production and printing of electoral materials is one of the most crucial aspects of the electoral process leading up to its deployment to polling sites. Election kits that were ordered and shipped from China and Lebanon – which should have initially arrived by boat – ultimately arrived by airplane. This increased CENI's projected delivery budget by \$7 million.

The production of ballot boxes also created a major challenge for CENI due to complications in coordinating production with the first supplier it selected in South Africa. CENI had to eventually change suppliers, choosing a German supplier instead. Problems, however, arose again for CENI since the German supplier could not guarantee delivery of ballot boxes in time for the Nov. 28 elections. CENI was thus forced to change suppliers, this time using a Chinese supplier who was able to ensure delivery of the 186,000 ballot boxes. To accomplish this though, the Chinese supplier required the use of 16 air flights, at a cost to CENI of \$14 million. To ensure that electoral kits were delivered as quickly as possible, the Congolese government financed CENI's budget increase through use of funds in its national transportation budget.

MONUSCO also provided important logistical support to CENI by delivering via airplane non essential election materials to Congolese voting sites. For its part, CENI was tasked with deploying materials that could be delivered using trucks. Though CENI had this plan in place, it

²⁰ Electoral Law of March 9, 2006, Art. 6

²¹ Electoral Law of March 9, 2006, Art. 8

²² Electoral Law of March 9, 2006, Art. 47

²³ Electoral Law of March 9, 2006, Art. 56

²⁴ Electoral Law of March 9, 2006, Art. 102



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failed to produce a clear logistical plan for delivery of materials throughout the territories. This fact, in addition to its failure to analyze the logistical realities and complications of such delivery, reflected a lack of transparency on the part of CENI.

In regard to ballot production, once CENI certified the final presidential and legislative candidate lists, it contracted with 17 South African printers to print all the ballot papers. A sample voting ballot for the presidential race was quickly created. However, for the legislative race, 11 sample ballots were created. The legislative ballots created ranged in length from a one page ballot developed for the Yumbi district (with five seats and five candidates) to a 57-page ballot created for Tshangu in Kinshasa (with 1,500 candidates contesting 25 seats).

The printed ballots were large in size. This created yet another challenge for CENI that it had to address, since the size made the tasks of transporting, storing and delivering them to the voting stations very difficult. CENI thus called onto neighboring countries to aid in the transport of materials via helicopter: 5 helicopters were provided by Angola, 2 from the DRC armed forces, 4 from South Africa (in addition to 2 airplanes) and 6 helicopters were contracted from commercial operators.

Spurred by speculation leading up to election day that it would be logistically impossible for elections to take place across all of the DRC on Nov. 28, CENI held a press conference on Nov. 26 at which Pastor Ngoy Mulunda assured the public that all election materials would be delivered by midnight of Nov. 27, six hours before the opening of polls.

Nevertheless, on Nov. 26 and 27, Carter Center observers reported that there still remained polling sites that were missing both essential and non-essential material. In certain regions especially, where the infrastructure was very difficult for vehicles to traverse, polling materials were not received in advance of Nov. 28.

In reviewing the production and delivery of voting materials, it is clear that this represented a very large challenge for CENI. It seems then that many stakeholders in the DRC electoral process were legitimately concerned about CENI's ability to meet its deadline to deliver electoral materials across the entirety of the DRC in time for the Nov. 28 elections.

Selection and Training of Poll Workers

Article 49 of the electoral law establishes the basic provision for composition of polling station personnel in each polling station. The Article notes that workers are selected from the list of registered voters at that particular station. Each polling station is staffed with a president, two intake officers, a secretary, and an additional intake officer. Article 51 notes that poll workers must declare an oath promising to uphold the electoral laws and protect the secrecy of the vote throughout the voting process.²⁵ The law also requires that each poll worker be able to read and write and receive training in poll working procedures.²⁶

²⁵ Art. 51 also notes the CENI must provide the official version of the oath in each of the national languages.

²⁶ Electoral Code, Art. 50



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CENI organized its training of electoral workers via the cascade method of replication trainings: starting with eighteen Master Trainers; 196 National Electoral Trainers (FEN); 2,598 Provincial Electoral Trainers (FEP); 34,972 Heads of the voting centers; and ending with 349,225 members of the polling and counting stations (BVD) and 4,160 members of the local center for compilation of results (CLCR). The cascade approach is nimble and efficient but if not monitored closely (i.e. supervision of selected replication trainings by Master Trainers to ensure quality of instruction) and investments are not made in development and production two sets of manuals (for participants and one with instructor notes), the quality of this type of training can be compromised.

The planned nation-wide six-day training by the CENI agents of FEN trainers was delayed four days until Oct. 31, due to the late arrival of lead trainers from Kinshasa. Carter Center observers noted variations in format, quality, and organization of trainings of CENI agents they attended. LTOs in Matadi observing a FEP training there noted a lack of necessary training material present and not all participants received booklets listing election day procedures. Across the DRC the training was reduced to four or five days.

The planned five-day training for members of the BVDs and CLCRs took place in most provinces Nov. 24-26. The trainings attended by LTOs in Kisangani were only of half-day duration due to the limited availability of meeting space. The majority of Center observers noted that training of polling station workers appeared to unfold smoothly without great complication. In a few trainings observers noted that there was a shortage of training materials.

On Nov. 25, three days before the elections, CENI announced in a press release that citizens with a voter card whose name does not appear on the voter list would be allowed to vote in the nearest voting site of the same constituency. Though the measure announced by the CENI affirms and furthers the right to vote - it contradicts Article 6 of the electoral law which prescribes that, ‘the quality of being a voter is recognized by being recorded in the voters lists and holding a voter registration card issued by the Independent National Electoral Commission.’ It may also weaken safeguards in place to prevent multiple voting or that ineligible voters (active duty military, police) who managed to obtain a voter ID card may not vote. Carter Center observers noted that many poll workers were unaware of the late decision to implement this procedure so application of the list of omitted voters was inconsistent – resulting in some voters who were able to vote and others in the same situation who were prevented.

Establishment of Polling Stations

CENI staff from Kinshasa went to each province to select locations of polling stations. With 6 million additional voters this election had 63,865 polling stations, compared to 58,000 in 2006. A cartography for each province dated Oct. 31 listing voting centers was released by the CENI between Nov. 7-8, allowing parties to finally organize deployment of agents (which submit applications for a particular BVD). It appears that identification of these BVDs²⁷ was derived from 2006 research and was out of date. Use of outdated information resulted in errors in the cartography which the CENI did not correct quickly, giving rise to opposition questions of the validity of polling stations and claims of false or “ghost” polling stations.

²⁷ There were 11,611 voting sites and 16,548 voting centers.



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Candidate Registration

As noted in a previous Carter Center report, the candidate registration process in early September was disorganized due to the volume of last minute applicants.²⁸ Applications submitted to the office responsible for processing candidate applications (BRTC) were reviewed for eligibility by a legal clerk. In some cases, there was a lack of verification of eligibility or monitoring of resignation of non-elected public officials. In meetings with observers in South Kivu, Congo Liberation Movement (MLC) members alleged that People's Party for Reconstruction and Development (PPRD) legislative candidates holding local office were successfully registered despite not showing proof resignation or request for temporary leave (which would interrupt salary and access to public resources). It is alleged the current mayor of Bukavu was confirmed as a legislative candidate despite not submitting either letter. Under Article 10 (5) and (6) of the electoral law, candidates who do not submit such a letter are ineligible to register. There were also concerns that CENI did not monitor resignation of individuals who submitted a resignation letter with the application.

VOTER REGISTRATION

Voter registration is recognized as important means to ensure the right to vote, and should be made available to the broadest pool of citizens possible to ensure universal and equal suffrage are protected as required by DRC's international commitments.²⁹ Voter registration includes all aspects of the electoral process related to the registration of voters.

In June and July of 2011, CENI enrolled 32,024,640 voters across DRC. Few domestic observers from civil society or witnesses from political parties observed the voter registration. Subsequently, opposition parties, in particular the Union for Democracy and Social Progress (UDPS), requested CENI allow them to conduct an audit of the voter registration server after allegations of minors, foreigners, members of the military and other ineligible groups were able to register.³⁰ Despite elaboration of terms of reference for an audit, CENI and UDPS were ultimately unable to agree on the number of party witnesses permitted to be present in order for the audit to go forward.

CENI does not have a legal obligation to allow parties to conduct an audit of the voter register database. However accommodating (reasonable) requests concerning access to the server by political parties could have improved openness in the work of CENI, and may have more instilled voter and political party confidence in the electoral process, thereby minimizing the

²⁸ According to CENI, 14,000 of the over 18,000 applicants applied in the last day or two before the Sept. 11 deadline.

²⁹ United Nations Human Rights Committee, General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," para. 11; U.N., International Covenant on Civil and Political Rights, Art. 25(b)

³⁰ Center observers noted that in Maniema that they had heard allegations from an Italian NGO that minors had been seen with voter registration cards. In Bas-Congo, the Direction Générale de Migration (DGM) in Matadi confirmed isolated cases of Angolans who were able to register and receive voter cards. Allegations were also made but not authenticated that Ugandan nationals had registered in Beni and that Rwandan nationals had registered to vote, with members of the Democratic Liberation Forces of Rwanda (FDLR) registering to vote in Goma and other regions.



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likelihood of allegations of fraud or actual instances of fraud that might occur during the election.

Article 6 of the electoral law requires CENI to publish the voter list within 30 days of the election campaign period start, or Sept. 28.³¹ As noted in a prior Center report, CENI began publishing voter lists on its website Oct. 3. Under Article 8, CENI is required to post the voter list outside each BVD 30 days before the election. Since Oct. 28, Carter Center observers have conducted periodic visits to polling stations to verify voter list postings. The majority of polling stations visited by observers throughout the DRC in the period between Oct. 28 and Nov. 26 did not have voters lists. In some cases CENI officials justified the delay to protect lists from being torn down or tampered with by persons in the area. Though this may indeed be a valid concern, CENI has an obligation under both its national³² and international commitments to post the list for voters to view in advance of election day. In doing so, citizens' right to vote is protected as they have the opportunity to discover if their name is missing from the registered voter list. Additionally, citizens who view the list can notify CENI officials of names on the list for persons who are known to be ineligible to vote or who are known to be deceased. Other delays in postings were caused by delays in delivery of voter lists sent from Kinshasa (local offices were unable to print lists posted on the CENI website). This delay or non-posting of voter lists contributed to confusion on election day for voters who did not know in advance the precise location of their polling station and that their name appears on the voter list. Observers reported that less than half of the 375 polling stations visited on Nov. 26 did not have voter lists posted.

Time frames for publications and displays are designed to strengthen the confidence of voters and political parties who can appreciate the quality of the registration process and know the composition of their potential electorate. Delays in the release of voters lists, as well as the location of voting sites decreases the positive effects of these transparency measures.

VOTER EDUCATION

Voter education efforts are necessary to ensure an informed electorate is able to effectively exercise their right to vote.³³ These efforts include voter education and voter information provided by the state, political parties or civil society to ensure public awareness of the process, rather than broader civic education efforts.

Article 9(7) of the CENI's mandate require it engage in civic education campaigns to sensitize voters to the electoral process, in both French and other national languages. This responsibility is in line with the DRC's major international commitments.³⁴

Official education efforts began in September and Carter Center observers reported CENI shortcomings in direct coordination or indirect support of education initiatives. CENI used radio and community TV to disseminate relevant electoral information (calendar dates). CENI

³¹ CENI may "determine the method of publication" of the voters' list. Under the same law, the electoral list must be published at every polling station 30 days prior to the election.

³² Electoral Code, Art. 8. "In each polling station, the electoral list must be posted 30 days prior to voting day."

³³ ICCPR, Art. 25; United Nations Human Rights Committee, General Comment 25, para. 11

³⁴ ICCPR, Art. 19(2)(b)



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primarily noted that it lacked sufficient funds to institute robust voter education campaigns and activities throughout the DRC.³⁵

CENI instead emphasized its expectation that Congolese civil society groups would largely undertake education initiatives to prepare voters for the upcoming election. Some observers reported a general sentiment from local CENI officials that CENI was not responsible for implementing voter education activities.

International actors supported voter and civic education. For example, Search for Common Ground produced television and radio announcements to educate voters. IFES provided small grants to NGOs across the DRC through its Voter Opinion and Involvement Through Civic Education (VOICE) project. The United Nations Development Programme produced civic education materials that were distributed via its Electoral Cycle Support Program (PACE).

For distribution of voter education supplies in CENI offices to local NGOs, observers noted CENI did not appear to have a system in place to screen NGO recipients in advance of distribution of a limited amount of sensitization materials. This lack of screening was problematic because many civil society groups lacked the necessary funds to implement educational initiatives. It is not clear that CENI materials reached those groups who could have capably led such activities.

The Center notes overall that CENI has largely failed to meet its international, regional and national obligations to institute proper voter education efforts throughout the DRC well in advance of election day. Efforts that have been made have been made primarily by international organizations that may not have targeted citizen populations adequately enough. Additional voter education efforts have been made by partisan organizations, thus emphasizing the need for CENI to institute and apply stronger voter education efforts.

CANDIDATES, PARTIES AND THE CAMPAIGN ENVIRONMENT

Equitable treatment of candidates and parties during an election as well as the maintenance of an open and transparent campaign environment are important to protecting the integrity of the democratic election process.³⁶ This wide-ranging constituent part includes campaign finance, the registration of candidates and political parties, and other aspects of the electoral process associated with campaigns and/or candidates and political parties.

Chapter IV of the DRC electoral law governs the conduct of campaign activities during elections. The Carter Center welcomes the establishment of a code of conduct as recommended in the African Charter on Democracy, Elections and Governance and the establishment of a mediation committee with the aim of “*helping to the peaceful resolution of conflicts and incidents between electoral parties.*”³⁷

³⁵ CENI budget for voter education is approximately \$2 million.

³⁶ African Charter on Human and People’s Rights, Arts. 2 and 13(1); U.N. ICCPR, Art. 25(b); International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5(c)

³⁷ “Code de Bonne Conduite” of political parties, political groups, and candidates for the presidential and legislative elections in DRC, Art. 29



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The early campaign period was characterized by a low level of political campaigning of both legislative and presidential candidates. Two of the 11 presidential candidates (Etienne Tshisekedi and Oscar Kashala) were outside of the DRC for half of the campaign period. Observers reported in some places campaigning was not visible until the last few days of the campaign. Legislative candidates have given several explanations to observers, including: they were waiting on party materials in order to begin campaigning; logistical constraints delayed deployment of campaign materials to the interior of the country; they had limited funds to campaign and saved their resources for the last week of the campaign period; and/or they did not wish to spend their own funds on their election campaign. Observers observed more activity in provincial capitals and principle cities than in remote areas. In the remote parts of provinces, some parties appeared to receive little or no support from their national office.

Observers reported that the campaign events that took place seemed to be scheduled with little organization or advance notice - major political parties were not able to provide an itinerary of scheduled events for the campaign period. When campaign itineraries were given, it was common for the events to not go forward. Observers reported that of all of the parties and candidates, PPRD/Majority Party (MP) and incumbent President Joseph Kabila were the most visible on billboards, banners, and motorized caravans. Similarly MP-affiliated candidates reportedly had good access to TV and radio stations – consistent with this, MP candidates had greater presence in media programming and campaign ads.

Opposition groups, UDPS in particular, allege that local authorities interfered with rallies and other campaign events. With few exceptions (Kinshasa, Mbuji Mayi) Carter Center observers did not report first-hand observations of authorities violating assembly rights of parties.

There was no visible response by UDPS supporters to their presidential candidate, Etienne Tshisekedi's call to action of Nov. 6, 2011, to secure the release of 34 party members in jail (his speech was seen by many as an incitement to violence).

PARTICIPATION OF WOMEN

Women enjoy the same fundamental right as men to participate in the public affairs of their state, including voting in elections and participating in other aspects of the electoral process.³⁸ International law recognizes that women should be able to vote in elections on equal terms with men, without discrimination.³⁹ Furthermore, states are encouraged to take special, temporary measures to achieve *de facto* equality for women,⁴⁰ including the use of quotas to equalize women's participation in the political affairs of their country.⁴¹

³⁸ African Charter on Human and Peoples' Rights, Art. 13(1); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art. 9(1); ICCPR, Art. 25(b)

³⁹ Convention on the Political Rights of Women, Art. 1

⁴⁰ African Charter on Democracy, Elections and Governance, Art. 29(3); ECOWAS, Protocol, Art. 40; CEDAW Arts. 3, 4, and 7

⁴¹ EISA, SADC, p. 10; CEDAW Committee, General Recommendation No. 5, paras. 15, 28, and 33



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Both the DRC constitution and the electoral law make include language that upholds the DRC's international obligations. The preamble of the constitution notes that the Congolese people reaffirm their commitment to uphold a number of its international commitments, including the United Nations Convention the Rights of Children and Women, "particularly in regard to equal representation between men and women in positions of responsibility within governmental institutions."⁴² Article 14 pledges the promotion of equality between men and women within the civil, political, economical, social and cultural realms to take measures to combat all public and private forms of violence against women. The electoral law promotes women's rights as well noting in a number of articles that political parties, poll station leaders, and national and provincial bodies should make note of the gender make up of their members.⁴³

Approximately half of registered Congolese votes are women and during the 2006 presidential elections, more women reportedly voted than men. In spite of these registration statistics, a low number of female candidates ran for any political office during this election. The Carter Center regrets that no party has nominated a woman to stand for the presidential election (in 2006 there were four female candidates). It is also regrettable that the percentage of women candidates in the legislative elections decreased from 12 percent in 2006 to 10 percent in 2011. With this low rate, and the lack of binding measures to promote the role of women in politics, the DRC has not met the SADC declaration target of 30 percent representation of women in parliament.

International and regional commitments of the DRC encourage the government and political leaders to implement procedures that promote more participation of women in politics.⁴⁴ The Carter Center encourages government and legislative leaders to put in place more formal mechanisms that encourage such gender parity. This would require educating the public and seeking solutions to obstacles that block many women for running for public office. Many female-focused domestic NGOs institute some efforts but more systematically implemented efforts are needed. Though CENI did engage in some gender sensitization efforts during the registration period, more strategically tailored gender education efforts – to men and women alike – may also help to dispel beliefs shared with some observers that women are not suited for public office.

THE MEDIA

The media play an indispensable role during democratic elections by educating voters and political parties about major issues, thus giving them access to information so they can make an informed decision.⁴⁵ This constituent part includes not only issues related to the rights of journalists, but also to the overall media environment, media coverage, and the ability of political contestants to equitably access the media. Both public and private media are considered, with the understanding that the rights and responsibilities of each will differ.

⁴² DRC Constitution, Preamble. The Preamble also notes a commitment to uphold the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

⁴³ Electoral Code, Arts. 13, 50, 230, and 234. Note, however, that Article 13 notes that the failure of a political party to have equal representation of men and women on their membership list will not be cause for invalidation of the list.

⁴⁴ CEDAW, Art. 3,4,7; African Charter on Democracy, Elections, and Governance Art. 29(3)

⁴⁵ ICCPR, Art. 19(2); United Nations Convention Against Corruption, Arts. 10(a) and 13(b)



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Article 33 of the electoral law gives competence to the Superior Council of Audiovisual Communications (CSAC) to oversee activities of the media in regard to the electoral environment.⁴⁶ CSAC was formally established Oct. 11, 2011, just one month prior to the start of the electoral campaign. It is charged with ensuring in part that the DRC meets its international obligation to provide equal airtime to candidates within the realm of public media. The same article vests CSAC with authority to enlist the aid of appropriate authorities as needed to enforce this principle of equality. CSAC is tasked with providing public notice of what the conditions of media access will be during the electoral campaign period. Based on Article 35, CSAC may deny media airtime to candidates if they feel the media presented would be injurious, defamatory, or in grave violation of the Congolese constitution or other laws. If CSAC takes such action, the candidates denied media access have four days to lodge an appeal with the State Council.

Since the start of the electoral campaign, CSAC has sanctioned 30 acts of media violations against various print journalists and television stations. The most notable sanction CSAC administered was against Lisanga Radio and Television (RLTV). CSAC blocked its signal for seven days for conducting a telephone interview with presidential candidate Etienne Tshisekedi that both criticized the ruling party and incited acts of violence. Though CSAC administered these sanctions, it has also been accused by many as being pro-PPRD and not enforcing its regulations in an impartial manner. This is exemplified somewhat by CSAC's failure to sanction the PPRD for posting presidential campaign posters in public buildings, one of which was most notably located at the Congolese National Radio and Television (RTNC) building which serves as CSAC headquarters.

Observers who spoke with political parties in Kivu also expressed concern about unequal access to the media and limits on freedom of expression. For instance during the initial days of the electoral campaign, Center observers reported that some print journalists were arrested for writing critically about the ruling party, PPRD. There have been numerous other reports as well of radio stations or television signals being shut down when it aired persons speaking against the ruling party.⁴⁷ This may contribute to a culture of self-censure by journalists for reasons related to job security and safety.

Throughout the campaign, observers noted that the wealthier PPRD and the MP-affiliated parties appeared to have the best means to media access, as the parties have been more visible in television and radio mediums. Opposition and independent party candidates complained about limited access to public media and that access to the private media is not a viable option as it costs too much for them to purchase air time. Many private media stations are also owned by politicians with ties to the ruling PPRD party. Observers also reported that several radio stations permitted incumbent President Kabila to campaign in advance of Oct. 28. By contrast, Radio Okapi, the MONUSCO-run radio station has worked to train journalists on objectivity and professionalism in reporting campaign news.

⁴⁶ CSAC replaced the *Haute Autorité des Médias* (HAM), on Aug. 19 as the official media regulatory body.

⁴⁷ In Mbuji Mayi, observers learned from MONUSCO that one station was shut down for two weeks after opposition party members insulted the governor of Kasai Oriental and the PPRD, the political party he supports.



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The Center encourages CSAC, as the media regulatory body to better uphold its obligation to ensure equal access to political candidates during electoral periods. CSAC should also exercise the powers of Article 35 in its regulatory law to deny or remove media access to certain candidates whose messages harm the integrity of the electoral process. CENI should monitor persons who are appointed to serve on CSAC to ensure they have no major political affiliations or commitments that would deter them from being impartial in carrying out duties. Though the realities of a difficult infrastructure in the DRC may render it difficult to ensure radio and television access is available across the country, CENI may consider strategizing methods to ensuring more Congolese citizens are aware of key events and campaigns related to the elections so they can make the most informed decision when they vote.

ELECTION DAY

The opening of polls was generally reported by Carter Center observers as calm and well ordered, however, more than 50 percent of the polling stations observed opened after 7:00 a.m.

Most of the essential material reached the polling stations before the opening. In nine percent of the cases, polling stations opened with some missing ballot papers. It was reported later on that in 53 percent of the cases, ballot papers were not in sufficient quantity to accommodate all the voters.

No electoral propaganda was reported near polling stations and voters lists were displayed outside in 80 percent of the cases. All polling station staff were reported present at the time of opening and political party witnesses were represented in 96 percent of polling stations visited. PPRD and UDPS were the most represented with 60 and 80 percent of the polling stations covered. Other parties observed an average of 30 percent of the polling stations visited. In 88 percent of the cases, domestic observers were present at the time of opening. In some polling centers, the large presence of witnesses led to disturbances and several cases of violence. In general, the confusion prevailing in many of the BVDs generated tensions that polling station staff were unable to control. Security personnel was reportedly present in 96 percent of cases, however, the number of personnel affected to polling centers appeared to be insufficient.

With the modifications of electoral cartography and the absence of efficient communication of polling stations locations, it was reported that a significant number of people reported difficulty finding their polling stations. No system was in place on election day to assist disoriented voters and polling station staff proved unable to do so. Although a special procedure was put in place by CENI on Nov. 25 to allow voters to vote in their voting site if their name was not on the voters list, the information was not applied evenly by polling station presidents.

Apart from the management of these "omitted voters", procedures were generally respected. In the majority of cases ballot boxes were properly sealed, ballot papers were counted before polls, and empty ballot boxes were presented to all presents. Of serious concern, ballot papers were missing in 20 percent of the polling stations visited while ballot boxes, PVs and voters lists were missing in less than 10 percent of the cases.



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Poor presence of security and disorganization of CENI agents in polling centers led to crowd violence in some instances. For example, in several Kinshasa locations, large crowds of UDPS supporters shouted pro-Tshisekedi slogans inside voting centers, violating the prohibition on campaign activity and possibly intimidating voters and election officials. In several cases, poll workers who were allegedly tempering with ballot papers were threatened with violence. In Kananga a local observer was molested when found in possession of marked ballot paper she was given as a proof of ballot marking. The actual (and alleged) circulation of ballot papers worsened an already volatile climate in some places.

Women were members of polling staff in 70% of the polling stations. While it is promising that 30 percent of the polling station presidents were women, improvements remain necessary to reach gender equality.

The overall evaluation of the polling process by Carter Center observers found that procedures were generally respected in 35 percent of stations visited. They reported that 49 percent of polling stations visited showed minor problems unlikely to affect the results. The level of disorganization prevailing in some polling stations led our observers give a poor evaluation in 16 percent of cases.

The results process is ongoing and Carter Center observers remain deployed to monitor the tabulation process.

ELECTORAL DISPUTE RESOLUTION

State practice notes that effective dispute mechanisms are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.⁴⁸ The resolution of disputes is relevant throughout the entire electoral cycle, and includes any mechanism established to hear and adjudicate election related disputes. This right is fundamental to ensuring all other human rights of citizens may be fulfilled.

According to the Congolese Bar Association, there are few legal remedies within the DRC available for breaches of electoral law. The Supreme Court is tasked with handling electoral disputes that reach its chambers. However, many have questioned its efficacy, noting that the location of the court in Kinshasa makes it difficult to reach from most regions in the Congo.⁴⁹ Observers were also told that many citizens avoid the court system since they believe judges are not impartial in their work and may be swayed by political interests instead of justice. Due to the political influence of ruling party members, many lawyers are also often reluctant to take cases that would oppose the PPRD for fear of some negative repercussion, political or otherwise.

CENI's capacity to address adequately electoral disputes was often questioned throughout the campaign. CENI does have a person in charge of responding to inquiries from political parties and stakeholders regarding the electoral law and the constitution. Nevertheless, CENI is limited in its enforcement power as it may issue verbal warnings for legal infractions but has no legal authority.

⁴⁸ Art. 40, the SSRC Rules and Regulations on Polling, Sorting, Counting and Declaration of Results

⁴⁹ The MLC party feels there should be a constitutional court in place to handle this matter.



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The National Mediation Committee was established late in the electoral process; prominent religious leaders were named on Nov. 18, 2011. Designation of mediators was done without consultation with political parties and it appears parties were unaware of the mechanism and it could not play an effective role. As a result, the election period saw a number of disputes arise due to the lack of dispute resolution capacity in the DRC.⁵⁰ As a demonstration of pressing need for such a mechanism, in Goma a mediation committee for electoral conflicts was established and had its first meeting on Nov. 7 to resolve complaints filed with CENI concerning campaign conduct and activities. Complaints of minors implicated in party campaign activities were addressed. This committee appears to be at the initiative of Goma political parties and the CENI SEP.

Based on findings of Center observers, it appears that the electoral dispute resolution mechanisms in both the CENI and at the national level lack wide accessibility to citizens and are perceived to be partial. The underdeveloped system does not seem to sufficiently protect citizens' fundamental right to adjudicative remedy for alleged violations of their rights. Citizens' awareness of the DRC's inadequate dispute resolution mechanisms is believed to have contributed some to the many street protests and violence that have permeated this election; many voters are frustrated and feel they have no other alternative but to protest in order to have their voice heard.⁵¹ The Center would thus recommend the CENI devote effort to putting in place a more robust dispute resolution system in advance of upcoming provincial and local elections so that it can uphold its international and regional obligations to provide redress for the violation of fundamental rights related to the electoral process.

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A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers in developing nations to increase crop production. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide.

⁵⁰ Observers learned of complaints filed by the UDPS to the CENI later in the campaign. These included allegations that: voter's cards were purchased, that the PPRD engaged in illegal early campaigning activity, and that mobile phones were given out in exchange for votes; that the PPRD gave motorcycles to employees in governmental departments. The UDPS also complained that the CENI violated Art. 8 of the Election Code concerning the required posting of the voter's list at BVDs.

⁵¹ Perhaps related to this, opposition parties typically incited disputes by denouncing each step of the electoral process to undermine the election credibility.



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FOR IMMEDIATE RELEASE

Dec. 10, 2011

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Carter Center: DRC Presidential Election Results Lack Credibility

The Carter Center finds the provisional presidential election results announced by the Independent National Election Commission (CENI) on Dec. 9 in the Democratic Republic of the Congo to lack credibility. CENI results point to the re-election of incumbent President Joseph Kabila with 49 percent of the vote followed by Etienne Tshisekedi with 32 percent and Vital Kamerhe with 7.7 percent. Voter turnout was 58 percent.

Carter Center observers reported that the quality and integrity of the vote tabulation process has varied across the country, ranging from the proper application of procedures to serious irregularities, including the loss of nearly 2,000 polling station results in Kinshasa. Based on the detailed results released by CENI, it is also evident that multiple locations, notably several Katanga province constituencies, reported impossibly high rates of 99 to 100 percent voter turnout with all, or nearly all, votes going to incumbent President Joseph Kabila. These and other observations point to mismanagement of the results process and compromise the integrity of the presidential election. Candidates and parties have a limited time to submit any complaints to the Supreme Court, and tabulation for the legislative elections is ongoing.

The problems observed in the tabulation and announced results are compounded by inadequate access for observers at multiple compilation centers around the country and no official access to the national results center in Kinshasa. The Carter Center is therefore unable to provide independent verification of the accuracy of the overall results or the degree to which they reflect the will of the Congolese people.

Challenges in the results process were further evident in the CENI delays in announcing the results first for two days after the original date of Dec. 6 and then a second one-day delay to Dec. 9. Presidential candidates and the Congolese people are to be commended for waiting peacefully for the announcement of results, and the Center encourages all actors to maintain the same level of responsibility. It is also the responsibility of Congolese political actors and institutions to conduct their own examination of the election results and identify political solutions. The Carter Center is ready to assist in these processes if requested and appropriate.

The Carter Center maintained 26 teams of international, impartial observers deployed in Kinshasa and the 10 provinces for the counting and tabulation. This assessment is based on direct observation during visits to 25 local results compilation centers (CLCRs) where tabulation of results was conducted and a preliminary examination of the published results.



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The Tabulation Process

The electoral law¹ provides that immediately after counting, results forms are signed by all members of the polling station and witnesses, a copy of the results form is given to witnesses,² a copy of the results form is posted outside the polling station, and results forms and other election materials (ballot boxes, counted and unused ballots) are sent to the 169 CLCR. All materials are supposed to be collected and transported securely to the CLCR.

Heads of polling centers were responsible for collecting and delivering all polling station material from their polling center including four sets of envelopes containing results by polling centers; one each for the CLCR, the national board of CENI, the provincial executive secretary of CENI (SEP), and the Supreme Court. Upon arrival at the CLCR, heads of polling centers present themselves to a reception desk to sign over all of their election materials. If all material was accounted for, the heads of polling centers were released of responsibility and sent home.

Upon reception, the results envelope for the CLCR is sent to the collation desk, while the others are sent to archiving for later transmission to their final recipients. The results documents then pass through four desks where they are checked for consistency, the data entered on computers and compiled for transmission to the SEP and ultimately posted in front of the CLCR. At one stage, inconsistent documents may be reconstructed the basis of the counting form and polling station activity log by a team of three CENI members. After the compilation of results from all the constituencies under its responsibility, CLCRs transmit them to the SEP who consolidate for the province and send these to the CENI for publication of preliminary results.³

General Findings

Soon after election day, unofficial results started to circulate online and via SMS. Additional threatening messages were sent to members of domestic and international election observation missions. On Dec. 3, the minister of interior ordered the suspension of the emission and reception of SMS justified by the reportedly massive distribution of anonymous messages of intimidation, death threats, and calls for violence. This measure is an excessive attempt to deny freedom of expression; the authors of such messages could have been identified through regular channels of investigation.

Other heavy handed responses were applied to media. The Superior Council of Audio Visual Communication suspended two broadcast networks without an official decision and one newspaper close to the opposition. In Mbuji Mayi, police closed broadcaster RLTV without cause.

In comparison to the 2006 elections, the counting and tabulation procedures remained similar in their complexity which could have contributed to the uneven application across CLCRs and created opportunities for manipulation of results. As was the case five years ago, the logistical challenges of collecting, securing, and recording the results caused major difficulties for which CENI showed an insufficient level of preparation. CENI staff from voting centers and CLCRs were required to work extremely long hours for days at a time, often without adequate shelter, food, or water in trying and crowded physical conditions.

In most of the cases observed, CLCRs were properly secured by police (military in some cases), however, in 15 percent of the cases their behavior could have influenced or intimidated CLCR personnel. In 15 percent of CLCRs observed, the reception and handling of sensitive election

¹ Electoral Law, Arts. 68 and 69

² Electoral Law, Art. 68

³ Electoral Law, Arts. 70 and 71



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material did not follow the established procedures. Candidate witnesses were present in almost 90 percent of the cases but their physical position in the CLCR and access to information varied, disabling some from following all steps of compilation.

Where problems with results paperwork necessitated a recount of ballot papers, witnesses were present in only a slim majority of cases observed. Archiving was reported to be disorganized in 25 percent of the cases and the results envelopes bound for the SEP, CENI, and the Supreme Court did not leave the CLCRs before the end of tabulation. Equipment to transmit electronic record of scanned individual polling station results forms to SEP and CENI was present in 73 percent of the cases but observers could not always confirm if they were functional or in consistent use.

In many instances, heads of voting centers waited outside CLCRs for several hours and sometimes days with no organized provision of shelter, food, or water. Bulky items (mainly used and non used ballot papers and ballot boxes) were stockpiled outside of CLCRs, most of the time without care or protection from the weather. Even more importantly, bags of ballot papers and the envelopes containing results forms and other polling station paperwork were opened by heads of voting centers outside before they were officially received. After reception, the working conditions and storage provisions of CLCR varied. In some instances, bags of ballot papers were piled wherever floor space allowed, or spilled to the floor where they were stepped on by personnel because of lack of space. In more spacious centers, material was either stored in warehouses and piled in a more ordered manner or left outside, covered by tents and tarpaulins. Where a lack of organization in the storage of sensitive material prevailed, it was nearly impossible for CENI personnel to recover misplaced material.

In multiple observed CLCR (e.g. Boma, Matadi, Bandundu, Mweka, and others) Carter Center observers found tabulation processes that they rated fair or good in 60 percent of cases. The overall assessment of other locations varied, with 40 percent rated poor based on an overall assessment of the application of procedures.

Tabulated Results Lack Credibility

The tabulation process in Kinshasa and Lubumbashi proved to be especially problematic. The lack of preparation evident in these two major cities resulted in serious irregularities and produced a tabulation process that lacks credibility. The generalized deficiencies described above prevailed in the extreme in both locations. Sensitive materials arrived by various means of transport, both official and private, were handled haphazardly, sometimes with bags and results envelopes opened, were stockpiled outside with insufficient or no protection from the elements (after a rain storm results forms were found hanging on sticks to dry), heads of polling centers were observed opening sealed envelopes with results forms and completing or altering paperwork in breach of procedure. Coupled with the general disorganization of these centers, a significant number of polling station results were lost. In Kinshasa, nearly 2,000 polling station results have been lost (representing as many as 350,000 voters) and hence will never be tallied. Another 1,000 polling station results have been lost elsewhere in the country (representing 500,000 voters).

Also in Kinshasa, the uneven application of procedures led to heated debates on how to treat the unsigned results forms, often leading to partisan interpretation of procedures. In some instances, contested documents were said to have been transferred to the Supreme Court which at this stage remains impossible to confirm. CLCR staff sometimes appeared to be poorly trained with some staff reporting that colleagues had received no training. Furthermore, ineffective communication of procedural decisions made while the tabulation was ongoing resulted in important decisions being applied unequally, raising additional possibilities of manipulation of results, as neither CENI staff nor witnesses and observers could verify correct procedures.



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Physical and information access for observers and witnesses was inadequate and varied from day to day and among CENI staff at different CLCR stations resulting in a lack of transparency of the process. In some instances, senior CENI officials directly obstructed observation by Carter Center observers. For example, in Lubumbashi, Carter Center observers witnessed the president of a CLCR instructing his staff during their training not to give out any information to the observers. Similar instructions were given to CENI staff during tabulation in Kinshasa.

According to the electoral law, each CLCR is to send its compiled result form to the SEP, who in turn sends compiled results for the province to CENI in Kinshasa for the announcement of a national result. It appears that only the compiled CLCR result forms have been sent to CENI, although the commission should receive its own envelope with an original copy of the polling station results. No comparison of physical results forms for verification of CLCR compilation at the national level could be observed and therefore assessed by the Center. Although formally requested from CENI, no official access was granted to Carter Center observer (or any others) to the national results center (CNT).⁴ Thus, data transmission and management have been conducted in a nontransparent manner, eliminating a possible, and important, avenue to build confidence in the final election results, if observers and witnesses had been able to verify the handling of compiled results (CENI's organizing law contains a general transparency provision, the spirit of which should apply throughout the entire electoral process, even if specific arrangements are not specified in the electoral law).⁵

The provisional results announced by CENI reveal multiple results that lack credibility. In Katanga province, two CLCR results are especially notable. The Mulemba Nkulu CLCR reports 99.46 percent voter turnout with 100 percent of votes, or 266,886 for Joseph Kabila, and fewer than 0.5 percent blank or null votes. All polling stations reported. Kabongo CLCR records similar high voter turnout with 227,885 votes for Kabila and only three votes for other candidates. A total of eight CLCR in Katanga report voter participation above 80 percent, far above the national average of 58 percent, and vote shares of 89 percent or higher for Kabila.

Although the specific mechanism through which such vote totals may have been generated is unclear, numerous conditions cited in previous Carter Center reports may have been enabling factors, notably concerns about the credibility of the voter register and the potential multiple voting through abuse of the derogation votes and list of omitted voters, or through manipulation of vote totals at polling station or various stages of the tabulation. Thorough analysis with the records of domestic observers and candidate witnesses could yield more information.

Review of locations with similar high percentage votes for Etienne Tshisekedi does not reveal the same coincidence of perfect collection of polling station results and extremely high voter turnout. Notably, although Tshisekedi scored very well in much of Kasai Occidental, 11 of 12 CLCR reported voter turnout below the national average, and in nine CLCR returns from Kasai Oriental where he received 90 percent or more of the vote, the rate of results collection and voter turnout were within reasonable variation of national rates.

This assessment does not propose that the final order of candidates is necessarily different than announced by CENI, only that the results process is not credible. However, further analysis of preliminary results could reveal other important patterns and variations suggestive of a vote counting and tabulation that lacked uniform application to all Congolese voters. Additional analysis will be provided in future Carter Center reports.

⁴ A CENI national results center for data compiled at CLCR and transmitted by SEPs

⁵ Organic Law for Organization and Function of Independent National Election Commission, July 28, 2010



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Background: The Carter Center international election observation mission has been in the DRC since Aug. 17, 2011, following an invitation from CENI. The mission was led by former President of Zambia Rupiah Bwezani Banda and Vice President of Carter Center Peace Programs Dr. John Stremlau, and is composed of 70 observers from 27 countries.

The Center thanks CENI and all those Congolese who have welcomed Carter Center observers and given their time to meet with them.

The Center's observation mission in the DRC is conducted in accordance with international standards for elections, and the observation mission was conducted in accordance with the Declaration of Principles for International Election Observation and the Code of Conduct for International Observers that was adopted at the United Nations in 2005 and has been endorsed by 37 observation groups.

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FOR IMMEDIATE RELEASE

Feb. 23, 2012

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Carter Center: Democratic Republic of the Congo Legislative Election Results Compromised

The Carter Center finds that as with the Nov. 28, 2011, presidential election in the Democratic Republic of the Congo (DRC), the integrity of the national assembly results has been compromised. It is difficult, and given the circumstances and amount of time that has passed, perhaps impossible, for the Independent National Election Commission (CENI) or any other body to reconstruct fully the results in the hopes of producing a faithful record of the will of the people. CENI has announced it will conduct an “after action review” of the electoral process, and the Center hopes that this self-assessment will produce a clear and detailed analysis of what worked in these elections and what did not, with special focus on the results process. More, however, needs to be done.

DRC faces a political dilemma. By definition, a contested election result lacks the confidence of many, and perhaps a majority of the people. Moreover, the institutions designed to safeguard that integrity, notably CENI and the Supreme Court, are not viewed by many Congolese as independent and trustworthy. In such strained and compromised circumstances, it is only through inclusive political dialogue, a thorough review of the electoral administration, and the use of legal means that the people of Congo will be able to claim their rights.¹ To this end, The Carter Center recommends an evaluation and in-depth examination of the entire electoral process, with the participation of all political party actors, and including transparent reviews of polling station-level results and other key electoral information. Such an evaluation is crucial to determine the will of the Congolese people and enabling potential legal challenges to be pursued through the judicial system. In addition, such a review is essential to prepare for future elections, including provincial and local elections due to take place during 2012-13. If political dialogue and an inclusive assessment of the electoral process are successful, potential outcomes could be a decision to re-run some, or all of the elections, or some other form of political accommodation to establish a legitimate governing authority.

Summary of key concerns of The Carter Center international election observation mission:

- general absence of transparency in CENI communication about election operations;

¹ The DRC has ratified a number of international and regional treaties through which it has obliged itself to follow certain key human rights standards. Art. 215 of the Congolese Constitution importantly notes that international treaties and covenants that the DRC signs or ratifies are superior to any national laws, barring any formal reservations the DRC may have expressed.



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- poor access to information on CENI arrangements for delivery, receipt, and processing of polling station results and ballot papers at tabulation centers;
- insufficient engagement by the CENI with political parties and presidential candidates;
- violations of peaceful assembly rights during the campaign and post-election periods and inappropriate use of force by Congolese police and other security forces to disperse gatherings;
- absence of observer access to CENI national results center;
- multiple delays in the two-month long tabulation of legislative results;
- failure of CENI to publish polling station results for the legislative election (in contrast to positive step to do so for the presidential election);
- inadequate level of accountability for those responsible for the loss of polling station results in Kinshasa and other provinces; and,
- the non-publication of judicial decisions by the Supreme Court.

During its six-month presence, the Carter Center's international election observation mission deployed long and short-term observers throughout the 11 provinces to observe the preparation and conduct of the presidential and legislative elections in the DRC on Nov. 28, 2011. The Center observed election preparations, including candidate nomination and the campaign period, along with voting and tabulation of results. This statement focuses on events since the Center's previous public statement of Dec. 10, 2011. Following the departure of the Center's long-term observers in mid-December, members of the core team followed electoral developments and returned to Kinshasa in January 2012 to be present for the conclusion of tabulation of legislative results.

DRC faced significant challenges in the overall organization of the elections and in meeting a constitutional deadline of Dec. 6, 2011. The late establishment of the CENI and a divisive and partisan political context created additional pressures on the successful organization of elections. Despite many missed deadlines in the electoral calendar, CENI met the overall constitutional deadline and ensured respect of periodic elections. With a few exceptions, the election process was peacefully conducted. However, voting and the tabulation process were marred by serious irregularities, undermining the credibility of the presidential and legislative results announced by the CENI.

The pressure to hold elections on Nov. 28 to respect the constitutional deadline may have contributed to the flawed polling station map and compressed period for the recruitment and training of poll workers. However, the lack of engagement with political parties and the refusal to allow parties access to the central server reflects insufficient political will on the part of the CENI to hold transparent and credible elections.² The lack of transparency shown by the CENI merits reflection on the commission's political

² "An electoral body, however styled, ... must ... act with ... a maximum of transparency, where appropriate consulting in a meaningful way with interested parties before decisions are taken on important matters and being prepared to give reasons for such decisions." *Commonwealth Secretariat, Commonwealth Secretariat Good Commonwealth Electoral Practice: a Working Document, para. 9*



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composition and its capacity to be independent and credible for the next round of elections.³

Tabulation

The poor management and disorganization of the local results tabulation centers (CLCRs) during the tabulation of presidential results contributed to the loss of at least 3,500 polling station results (affecting 1.2 million potential votes), including some 2,000 in Kinshasa. Highly implausible results were reported from four districts in Katanga province, which recorded between 99-100 percent of the vote for incumbent President Joseph Kabila, with rates of voter participation of almost 100 percent. A further 10 districts had 95 percent of the vote for Kabila, garnering some 1.8 million of his 8.8 million votes overall. These districts also reported a rate of null or blank ballots well below the national average; yet even those small totals were greater than the number of valid votes recorded for all 10 of the other presidential candidates combined. These facts, coupled with the fact that CENI signed off and accepted these results, followed by the Supreme Court, undermine the credibility of not only these particular results but erode the integrity of the overall administration of the tabulation.

The tabulation of legislative results was affected by the same management and disorganization problems as the presidential results since all arrived at tabulation centers at the same time and under the same condition. In the face of heightened public and political scrutiny, CENI suspended operations after a number of cases of fraud were reported by party agents and political parties, and dispatched newly-appointed CLCR supervisors when operations resumed. Despite this additional safeguard, the legislative results announced by the CENI lack credibility and have been challenged by many candidates and parties, who have filed complaints against the CENI. Similar irregularities during presidential ballot tabulation were reported to have occurred during the legislative tabulation. The 3,500 missing polling station results affected both presidential and legislative elections and no measure was taken to identify those responsible for this loss.⁴ CENI suspended tabulation on Dec. 21 in an effort to address problems but began to release provisional partial results in several increments beginning Dec. 28. On Feb. 1, 2012, two weeks behind schedule, CENI announced the last tranche of available results.⁵

Senior members of the CENI who supervised legislative tabulation were responsible for resolving disagreements in procedures within their CLCR and authorizing a recount of ballots when necessary. It is not clear to the Center if any recounts were conducted nor on what legal authority CENI would have implemented recounts. Some supervisors also

³ “An independent and impartial authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic process, and that other international obligations related to the democratic process can be met.” *UNHRC, General Comment 25, para. 20*

⁴ “... Take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security.” *SADC, Principles and Guidelines Governing Democratic Elections, para. 7.6*

⁵ “There should be immediate release of official election results on completion of counting.” *SADC PF, Norms and Standards for Elections in the SADC Region, para. 11.ii*



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called for cancellation of tabulated results for their CLCR. This was the case for seven CLCRs: Kiri in Bandundu, Demba in Kasai Occidental, Ikela in Equateur, Kole and Lomela in Kasai Oriental, Masisi in North Kivu, and Punia in Maniema. Congolese electoral law does not recognize a challenge of results by the CENI and only the Supreme Court can nullify results.⁶ CENI's proposed cancellation of results from these seven districts is evidence of serious problems (but not publicly disclosed) during voting operations and/or tabulation, of which the Center hopes the Supreme Court will be mindful when reviewing any legal challenges submitted by candidates in other districts.

Absence of Polling Station Results

In contrast to the publication of polling station results for the presidential election, CENI has not done so for the legislative results, further eroding transparency in the results process and eliminating an important means for candidates and voters to verify the credibility of tabulation.⁷ Even though CENI claims to have installed scanning equipment in all 169 CLCRs for election staff to scan and send each polling station tally to a results center at CENI, it is apparent that this means of verification was at best imperfectly executed. The Carter Center recommends the CENI publish legislative results by polling station in order to provide the public the opportunity to review official tallies from individual polling stations.

Derogation/List of Omitted Voters

Some 3.2 million of the overall 18 million votes, nearly 18 percent, were cast through derogation voting – voters casting a ballot at a location other than where they are registered. This high number of such votes reflects the many problems with CENI's management of the voter register. While derogation voting has the potential to increase voter access to the polls, it is also open to abuse by multiple or non-registered voters, especially when, as observed by the Center, other controls such as inking of a voter's finger after voting are not used comprehensively.

At the polling station level, copies of results forms received by The Carter Center from legislative candidates exemplify this practice. For example, in the province of Bandundu's Popokabaka district, a polling station in the village of Imwela recorded 294 voters on the derogation list and zero on the list of registered voters. Another in the village of Kabama recorded 168 voters on the derogation list and 98 on the list of registered voters and in a third, the village of Mutsanga recorded 390 voters on the derogation list and 61 on the list of registered voters.

Results Analysis

The legislative results announced by the CENI constitute a National Assembly of 98 political parties for 500 seats. This large number of parties reflects a fragmented political scene. Forty-five parties are represented in the assembly by a single member of

⁶ The Supreme Court is the competent body until creation of a constitutional court.

⁷ "When the counting process is completed the results should immediately be announced and posted at the counting station." *EISA and Electoral Commission Forum of SADC Countries, Principles for Election Management, Monitoring, and Observation in the SADC Region*, p. 26



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parliament and more than 74 parties have fewer than five seats. The 10 parties with the largest representation are PPRD, UDPS, PPPD, MSR, MLC, PALU, UNC, ARC, AFDC, ECT, RRC, and MIP. Independents obtained a total of 16 seats.

This divided National Assembly composition clearly advantages President Joseph Kabila and his coalition of parties. His PPRD party alone was elected in 61 seats, and some 340 members of parliament of 500 total are members of his ruling coalition, while opposition parties are divided among their 110 representatives. Presidential candidate Etienne Tshisekedi's party, UDPS, has the second most seats with 41, reflecting a strong regional base, 25 were elected in the two Kasai provinces, while third place presidential candidate Vital Kamerhe's UNC came third with 17 seats, 10 from the two Kivu provinces.

A closer reading of the legislative election results reported by district raises questions about the credibility of the results process. First, compared to the near total domination of presidential results for incumbent Joseph Kabila in Katanga province, those same districts reveal a striking diversity in the choice of voters for legislative candidates. In all cases, the parties of presidential candidates who implausibly scored zero are reported to have hundreds and in some cases thousands of votes for their legislative candidates in these otherwise Kabila strongholds. In this sense, even if the legislative results reflect a more faithful effort to record voter preferences, they still raise questions about the integrity of the tabulation of presidential results.

Other abnormalities are revealed in a district comparison of presidential and legislative results, as, for example, in the comparison of the number of voters for each election and the number of annulled ballots. For instance, in the Walikale district in North Kivu, 28,810 more voters for the presidential election were recorded than for the legislative election while an additional 4,926 were recorded in Malemba Nkula in Katanga. The discrepancy in the rate of invalid ballots is also noteworthy as in the case of Tshangu district of Kinshasa where the rate reached 10 percent in the legislative poll, while the presidential ballot yielded just 3.6 percent. This difference is possibly reflective of the enormous complexity of a legislative ballot with 1,575 candidates for 15 seats. However, Kinshasa, notable as an area of Tshisekedi support stands in contrast to Kabila's vote bank in Katanga that recorded the lowest rates of invalid ballots in both presidential (2.7 percent) and legislative elections (5.6 percent). Other patterns are evident in the district results but more thorough analysis is impossible unless CENI releases polling station results.

Opposition Boycott

After the announcement of presidential results on Dec. 9, 2011, UDPS leader Etienne Tshisekedi refused to accept the results and proclaimed himself president on Dec. 23 at his residence. Since his proclamation, Tshisekedi has been under de facto house arrest with his home surrounded by police even though there has been no decision from the Ministry of Interior authorizing a house arrest.⁸

⁸ "Every individual shall have the right to liberty and to the security of the person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained." *AU, African Charter on Human and Peoples' Rights, Art. 6.*



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Mr. Tshisekedi has also refused to recognize the legislative results. Though he is the leader of the party, Tshisekedi's position, through his unilateral proclamation, calls for an annulment of the legislative results and a boycott by his party's 41 elected members of the National Assembly, may come into conflict with the overall UDPS party agenda. If the boycott is upheld, his political ideas will not be heard in the national assembly without UDPS party representation, thereby silencing the largest opposition party. At the inaugural Feb. 16 National Assembly session, the sole UDPS member present, Timothy Nkisi Kombo, was designated as provisional national assembly president. However, UDPS expelled Nkisi after the session for violating the party's boycott.

The Supreme Court

Under Article 75, the court system holds real power to rectify legislative results in cases of clerical error.

The deadline for appeals for presidential election results is two days after the announcing of provisional results (Article 73 of the electoral law) and the deadline of processing is seven days after submission of a complaint (Article 74 of the electoral law). The Supreme Court received only one challenge for the presidential election, from Vital Kamerhe, and set Dec. 15 to rule on his complaint.⁹ The final decision by the Supreme Court rejected all of the complainant's arguments and confirmed the victory of Joseph Kabila. The Carter Center regrets the Court's decision has still not been published.

Challenges of legislative election results are governed by the same rules of procedure and the same obligations as those of presidential challenges. It is defined by articles 73 and 76 of the electoral law. The only difference is that the deadline for processing complaints is eight days after the announcement of provisional presidential results and two months after the legislative results.

The Supreme Court has received a 507 important challenges from legislative candidates. The court published on Feb 15, one day before the first seating of the national assembly, a list of legal challenges involving 72 deputies.

The Supreme Court must conduct an exhaustive review of the complaints submitted and demonstrate its determination to take all necessary measures to arrive at correct results that accurately reflect the will of the people, including nullification and re-run of elections if necessary.¹⁰

⁹ "Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, law, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal." *AU, African Charter on Human and Peoples' Rights, Art. 7.*

¹⁰ State practice notes that effective dispute mechanisms are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process. *The SSRC Rules and Regulations on Polling, Sorting, Counting and Declaration of Results, Art. 40.*



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Civil Society

Congolese civil society organizations deployed non-partisan observers in large numbers on election day.

The Episcopal Commission for Peace and Justice (CEJP)/National Episcopal Conference of the DRC (CENCO) was the most visible on the ground with 30,000 observers. On Jan. 11, CENCO published a declaration outlining many faults in the electoral process and describing a chaotic environment. CENCO has declared that the electoral process was marred by serious irregularities that undermine the credibility of the published results and has called on the CENI leadership to resign if it does not address the problems they identified. CENCO also appealed to its supporters and the general public not to use violence to express their discontent with the election results. A proposed public demonstration by the church on Feb. 16 was obstructed by police with several arrests. In a separate statement, the Center has denounced these moves as unnecessary restriction of fundamental freedoms of assembly and expression.

Other prominent domestic observer networks who have published their assessments include RENOSEC and CAFCO.

The Carter Center supports Congolese civil society in its civic activism and encourages it to continue, despite challenges, in its efforts to find truth and build democratic institutions by using civic and democratic methods. The Center supports civil society initiatives aimed to achieve democracy through peaceful and legal means.

Conclusion

The Carter Center commends the Congolese people for mobilizing to vote on election day despite the many difficulties in locating polling stations. The Center reiterates its conviction in the capacity of the people to consolidate democracy through strong, elected institutions to represent them and protect their interests.

The Carter Center will publish a final report of its observations during the electoral process as well as recommendations for the next round of elections. The Center thanks all of the actors in the electoral process for taking the time to meet with and provide information to observers. The Center will continue to monitor developments in the DRC and will contribute at any opportunity to bring added value to the reinforcement of democratic institutions.

Background: The Carter Center international election observation mission began on Aug. 17, 2011, following an invitation from CENI. The mission was led by former President of Zambia Rupiah Bwezani Banda and Carter Center Vice President for Peace Programs Dr. John Stremlau, and is composed of 70 observers from 27 countries.

The Center's observation mission in the DRC is conducted in accordance with international standards for elections, and the observation mission was conducted in accordance with the Declaration of Principles for International Election Observation and



2011 ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

the Code of Conduct for International Observers that was adopted at the United Nations in 2005 and has been endorsed by 37 observation groups.

The Carter Center also supported the training of some 6,000 domestic observers deployed with CEJP/CENCO.

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"Waging Peace. Fighting Disease. Building Hope."

A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers in developing nations to increase crop production. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide.

THE CARTER CENTER AT A GLANCE

Overview: The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A nongovernmental organization, the Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production.

Accomplishments: The Center has observed more than 85 elections in 34 countries; helped farmers double or triple grain production in 15 African countries; worked to prevent and resolve civil and international conflicts worldwide; intervened to prevent unnecessary diseases in Latin America and Africa; and strived to diminish the stigma against mental illnesses.

Budget: \$96.0 million 2011–2012 operating budget.

Donations: The Center is a 501(c)(3) charitable organization, financed by private donations from individuals, foundations, corporations, and international development assistance agencies. Contributions by U.S. citizens and companies are tax-deductible as allowed by law.

Facilities: The nondenominational Cecil B. Day Chapel and other facilities are available for weddings, corporate retreats and meetings, and other special events. For information, (404) 420-5112.

Location: In a 35-acre park, about 1.5 miles east of downtown Atlanta. The Jimmy Carter Library and Museum, which adjoins the Center, is owned and operated by the National Archives and Records Administration and is open to the public. (404) 865-7101.

Staff: 160 employees, based primarily in Atlanta.



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THE
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