THE
CARTER CENTER



Democratic Republic of the Congo 2018 Harmonized Presidential, Parliamentary and Provincial Elections

Expert Mission Report
The Carter Center

Table of Contents

Scope of Work 5

Executive Summary 5

Overview of Key Findings 9

Historical and Political Background 13
Political Environment after the 2011 Elections: State Institutions Weakened 13
Political Crisis and Impasse in the Electoral Process 13
The M23 Movement 13
Beginning of the National Consultations Initiated by Kabila 14
Birth of the Rally 14
The Opposition March 15
Kamwina Nsapu Rebellion in Kasai 15
Dialogue of the African Union City 16
Saint Sylvester Agreement 16
Death of Etienne Tshisekedi 16
Is this the End of the Kabila Era? 17
Political Landscape on the Eve of the Elections 17
Common Opposition Candidate 18
The FCC Candidate 18
Political Parties and Candidates' Agents 19

Carter Center Expert Mission for the 2018 DRC election: Assessment and Analysis of Key Electoral Issues 20

Legal Framework 20
DRC Constitution 21
International Obligations and Regional Treaties 21
National Legislation on Elections and its Regulations 22

Electoral System 24
First-Past-the-Post (FPTP) and Open List Proportional Representation 24

Electoral Constituencies 25
Administrative Criteria of Boundary Delimitation 25

Party and Candidate Registration 26
Candidate Nomination and Registration 27
Dispute Resolution on Candidate Registration 27
Jean Pierre Bemba and Moïse Katumbi 28
Women's Participation as Candidates 29

Election Administration 31
Legal Framework 31
Composition and Structure 32

Electoral Calendar 33
Registration of Voters and Establishment of the Electoral Roll 33
Voter Registration: Implementation Challenges 36
Dispute Resolution on Voter Registration 37
Budget 38
Procurement 38
Operations and Logistics 39
Distribution of Electoral Materials 39
CENI Consultation Framework-Political Parties 40
Election Observers 40

Electoral Technology 41
Voting Machines in DRC: A Preliminary Background 42
Description of the System 43
Legal Framework: Electronic Voting vs. Voting Machines 44
Training 45
The Position of Stakeholders 45
Assessment of International Guidelines 47

Participation of Persons with Disabilities (PWDs) in the Electoral Process 47

Election Campaign 48
International Obligations and Legal Framework 49
Freedom of Peaceful Assembly and Regulatory Framework on Campaign Meetings 49
Campaign Environment 50
Suspension of the Campaign 51
Campaign Restrictions Caused by Armed Conflict and Ethnic Disputes 51
Participation of LGBTI Groups 52
Party and Campaign Finance: Legal Framework 52
Use of State Resources 53

Media 54
Media Legal Framework in the DRC 54
General Overview of the Media in DRC 55
The Media Regulatory Body 56

Social Media 57
Legal Framework 57
Background of Social Media Use in DRC 58
Social Media Monitoring 59
The Campaign 59
Campaign Silence 60
Fake News and Misinformation 60
Overall Online Environment 61

Election Day 61
Analysis of Election Day Procedures 62
Violence on Election Day 63
CENI Communication on Election Day 63

"Election Day" in Beni and Butembo 64

Post-election Developments 64
Tabulation 64
Results Transmission System 65
Post-Election Day Period: Internet Access 67
Analysis of Provisional Results 67
Mechanisms for Election Dispute Resolution 69
Concerns About the Independence of the Constitutional Court 69
Legal Analysis of Constitutional Court Ruling on Presidential Petitions 71
Between Continuity and Change 72

Summary Assessment and Recommendations 73
Summary Assessment 73
Recommendations 74

Scope of Work

The Carter Center deployed a nine-member team of technical experts to the Democratic Republic of the Congo (DRC) from October 2018 – January 2019 to conduct an assessment of key aspects of the 2018 presidential, parliamentary, and provincial elections. While The Carter Center had planned to deploy a comprehensive election mission with a core team, long-term observers, and short-term observers, its activities were later scaled back to an expert assessment of the electoral process.

In the months leading up to the election, Congolese authorities repeatedly assured Carter Center representatives of their intent to invite the Center to observe the polls. In anticipation of receiving a formal invitation to observe, and as a first step in preparation for an observation mission, the Center organized a small technical team to travel to DRC; the Congolese government issued visas to the technical experts, and they started initial preparations in the DRC in November and December. Following the Nov. 8 launch of observer accreditation by the Independent National Electoral Commission (known by its French acronym, the CENI), electoral officials told the Center that its technical experts in the DRC could apply for accreditation and didn't need to wait for an official invitation. In addition, CENI officials assured the Center that there would be ample time for additional long-term and short-term observers to apply for observer accreditation before the close of accreditation in December. Based on these repeated assurances, the Center continued efforts to prepare for a full observation mission and made multiple requests to determine when an official invitation would be received.

While the Center's request for an observation invitation was pending, however, the government announced its decision not to accredit any American or European observer organizations. None of the technical experts who applied were granted accreditation, nor did the Center receive a formal letter of invitation. Because the CENI did not accredit the Carter Center's experts, its mission could only proceed in an informal fashion and was limited in size and scope to an election experts mission. It focused on several aspects of the electoral process, including the legal framework, candidate and voter registration, election administration, the campaign environment, traditional and social media, and electoral dispute resolution. Lacking accreditation, the mission did not assess election-day procedures or tabulation, nor were members of the mission able to interact with election officials and national authorities. In spite of these limitations, the Center's informal expert mission was able to meet with a wide range of domestic and international stakeholders over a period of three months and conduct an analysis of available data, including legal documents and reports from technical-assistance advisors, election observers, the media, and other relevant sources.

Executive Summary

On Dec. 30, 2018, the Congolese people voted in long-awaited presidential, parliamentary, and provincial elections. While the elections achieved the first relatively peaceful transition since the country's independence in the 1960s, the credibility of the results was gravely undermined by a lack of transparency in the tabulation of final results and questioned by independent citizen observer groups, whose tabulations differed substantially from the official results. As a result, the electoral process does not appear to have fulfilled the most basic tenet of democratic elections – to reflect the genuine will of the people. The recommendations in this report are intended to contribute to important deliberation and discussions among Congolese stakeholders about electoral reform.

In the view of The Carter Center, the integrity of the elections was further undermined by imposed limitations on who could run for office and on the ability of candidates to campaign freely, cancellation of the presidential polls in three regions, and an unduly short timeframe for lodging challenges to election results. Overall, it is unfortunate that the electoral process appears not to have satisfied the DRC's national and international commitments to safeguard citizens' civic and political rights.

The flawed electoral process, particularly in the management of election results data, poses significant challenges to the legitimacy of the DRC's elected officials. In the post-election period, there was speculation in the media about a deal between President Felix Tshisekedi and former president Joseph Kabila that gave the former the presidency and Kabila's Common Front for Congo (FCC) coalition the parliament.

Ultimately, the new government that was announced on Aug. 26 has a broad base of domestic and international support. President Tshisekedi has made it clear that he is committed to addressing the country's most critical political, economic, and social challenges, and to pursue electoral reform to improve future elections. It is important for President Tshisekedi and other key stakeholders to work together to strengthen future electoral processes and ensure protections for core human rights, including civil and political rights. Stakeholders should move quickly to advance electoral reforms, while the 2023 elections are still far on the horizon.

Scope of The Carter Center Experts Mission. In the months leading up to the election, Congolese authorities repeatedly assured Carter Center representatives of their intent to invite the Center to observe the polls. Based on these conversations, the Center prepared to deploy a full observation mission with a core team, long-term observers, and short-term observers. While the Center's request for an observation invitation was pending, however, the government announced its decision not to accredit any American or European observer organizations. None of the technical experts who applied were granted accreditation, nor did the Center receive a formal letter of invitation. As a result, The Carter Center scaled back its planned activities, and instead of deploying a full comprehensive international observer mission, sent only an informal election expert mission that was limited in size and scope. The team, composed of nine international technical experts, conducted a limited assessment of the electoral process. They met with a wide range of stakeholders and analyzed available information about several key aspects of the electoral process, focusing on the political/electoral dynamics, the legal framework, candidate and voter registration, election administration, campaign environment, traditional and social media, and dispute resolution. Lacking accreditation, the mission did not assess election-day procedures or tabulation, nor were members of the mission able to interact with election officials and national authorities.

Presidential Candidates. Twenty-one candidates, including one woman, competed in the presidential race. The registration process was marked by opposition leaders John Paul Bemba and Moïse Katumbi's unsuccessful attempts to participate in the process. In their absence, the race largely centered on three actors: ruling party candidate and former premier Emmanuel Shadary and opposition political leaders Felix Tshisekedi and Martin Fayulu. Leading up to election day, Fayulu, the joint candidate of the LAMUKA coalition, led opinion polls. Although Tshisekedi had confirmed his support for Fayulu as

the single opposition candidate, he reversed his position shortly thereafter and declared his intention to compete for the presidency separately, which led to concerns about splitting the opposition vote.

Campaign. The campaign period was marred by unwarranted restrictions on freedom of expression and assembly, exemplified by the governor of Kinshasa's imposition of a blanket ban on campaign activities and instances reported by the media of security agencies' disproportionate use of force, sometimes lethal, to disperse participants in meetings and rallies.

Election Administration. The CENI's decision to introduce electronic voting machines was controversial and contested by the opposition, as they were excluded from the decision-making process. Stakeholders raised concerns about the CENI's lack of capacity to address recommendations put forward by an audit conducted by the Organization of the Francophonie (OIF) in 2018 regarding the improvement of the voter register's reliability prior to the elections. The CENI postponed the Dec. 23 election for a week because of delays in the distribution of sensitive materials after a fire in a central storage facility in Kinshasa.

The CENI decided against holding presidential elections in Beni, Butembo, and Yumbi, and postponed the legislative and provincial polls in these areas, triggering protests by disenfranchised citizens. The decision cast doubt on the CENI's neutrality, as those areas were widely seen as opposition strongholds.

The CENI's management of voting operations was technically satisfactory despite the challenges entailed in implementing new technology. However, stakeholders raised serious concerns about the tallying procedures and whether the manual tallies required by law to certify the results were completed prior to the CENI's announcement of provisional results.

The CENI declared opposition leader Felix Tshisekedi the winner of the presidential election and announced that the ruling party's Common Front for Congo (FCC) coalition had received a majority in parliament. Despite calls by election observers for the CENI to publish results by polling station, no disaggregated results have been released as of the date of the drafting of this report.

The government's decision to shut down the internet nationwide for a 20-day period surrounding the announcement of final results was publicly perceived as an infringement on the Congolese people's right to freedom of expression.

Domestic Citizen Observers. Domestic citizen observers deployed some 60,000 observers to monitor the polls. The National Episcopal Conference of the Congo of the Catholic Church (CENCO) and its affiliated citizen observer group, the Justice and Peace Commission (JPC), conducted a statistically based parallel vote tabulation, deploying some 40,000 observers, with a minimum of one observer in each of the country's 21,699 polling centers. SYMOCEL deployed approximately 19,000 observers who covered 35 percent of polling stations.

In a statement published shortly after the polls, JPC said that its data revealed a clear winner in the presidential race, although the identity of the winner was not stated. In subsequent public statements, the JPC indicated that the CENI's preliminary results were incompatible with the data collected by its observers. International and Congolese media also published elections results that were allegedly leaked by opposition representatives within the CENI and which showed Martin Fayulu as the clear winner of the presidential race.

These allegations spurred significant public debate. Observer organizations, including the African Union (AU) and Southern Africa Development Community (SADC), which deployed observers to assess election-day procedures, and members of the international community called on the CENI to respect the will of the Congolese people. Amid calls for a public recount, opposition candidate Fayulu challenged the presidential results in court.

On Jan. 17, a consultative meeting in Addis Ababa headed by the chairperson of the AU and attended by a number of heads of state or their representatives from countries in the Southern African Development Community (SADC), the International Conference of the Great Lakes Region (ICGLR), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), East African Community (EAC), the African members of the U.N. Security Council and the AU troika concluded that "there were serious doubts on the conformity of the provisional results" and called the Congolese Constitutional Court to suspend the proclamation of the final results.[1]

The participants in the consultative meeting agreed to send a high-level delegation to the DRC led by the AU chairperson, Rwandese President Paul Kagame, and the AU Commission chairperson Moussa Faki Mahamat "with the view to reaching a consensus on a way out of the post-electoral crisis in the country."[2] Both the European Union and the International Organisation of *La Francophonie* released statements in support of the AU's high-level delegation efforts. U.N. Secretary-General Antonio Guterres released a statement that expressed his hope that "the CENI, the Constitutional Court, the Government, political parties and civil society will each live up to their responsibility in preserving stability and upholding democratic practices in the Democratic Republic of the Congo."[3]

The Constitutional Court conducted its review within the short timeline provided by the law and dismissed the challenges and validated the CENI's official results. Judged by international standards of best electoral practice, the short timeline for electoral dispute resolution was insufficient for parties and candidates to gather evidence and documentation for challenges and prevented an adequate review of alleged irregularities and illegalities.

Coupled with the widely divergent election results reported by domestic citizen observers and widespread speculation in the national media on a deal between Tshisekedi and Kabila, the lack of transparency in the CENI's tabulation and management of election results severely undermined the legitimacy of the final results.[4] Though the international community and regional observer groups made some efforts to encourage transparency and respect for the fundamental rights of the Congolese people to freely choose their elected officials, these efforts appear to have failed.

In the end, it appears that key international actors and national stakeholders decided to accept a critically flawed election process in order to ensure a peaceful transition of power from President Kabila to an opposition leader. However, the process casts a dark cloud on Tshisekedi's legitimacy and the integrity and quality of democracy in the Democratic Republic of the Congo. Further, the constraints placed on President Tshisekedi by the continued power wielded by former President Kabila and the FCC have planted the seeds for political conflict, both within the governing coalition and between the government and the opposition and increase the likelihood of instability and continued challenges in democratic governance in the country.

---

[1] The African Union Troika is composed of the outgoing, current and incoming AU chairpersons.

[2] African Union, *Communiqué of the High-Level Consultative Meeting of Heads of State and Government on the situation in the Democratic Republic of the Congo*, Jan. 17, 2019; https://au.int/en/pressreleases/20190117/communiqu%C3%A9-high-level-consultative-meeting-heads-state-and-government (retrieval date: Feb. 14, 2019).

[3] U.N. Secretary-General, *Statement attributable to the Spokesman for the Secretary-General on the elections in the Democratic Republic of the Congo [scroll down for French version]*, Jan. 9, 2019; https://www.un.org/sg/en/content/sg/statement/2019-01-09/statement-attributable-the-spokesman-for-the-secretary-general-the-elections-the-democratic-republic-of-the-congo-scroll-down-for-french-version (retrieval date: May 5, 2019).

[4] Voice of Congo, *Tensions entre FCC et CASH Felix Tshisekedi refuse de nommer Yuma comme premier ministre*, April 9, 2019 ; Radio Okapi, Actualite *RDC : Le FCC "regrette" les propos "militants" tenus par Tshisekedi aux Etats-Unis*, April 9, 2019, https://www.radiookapi.net/2019/04/09/actualite/revue-de-presse/actualitecd-rdc-le-fcc-regrette-les-propos-militants-tenus-par (retrieval date: May 5, 2019).

The Carter Center urges all parties to take prompt and effective steps to promote democratic institutions and practices in the DRC. To this effect, stakeholders should engage in an inclusive dialogue with a wide range of actors, political authorities, legislators, security forces, electoral partners, and civil society organizations to discuss and agree on substantive institutional, legal, and policy reforms that are necessary to create a conducive environment in the country for credible democratic elections. A wide range of critical issues should be tackled to ensure full respect for the constitution, democracy, and human rights, including the passage and implementation of laws that guarantee freedom of expression, freedom of the media, right to peaceful assembly and association, gender parity, and credible elections. The CENI should be thoroughly reformed to duly promote democracy, transparency, and inclusiveness in the electoral process.

Overview of Key Findings

Political Context: In advance of the 2018 elections, the political and security environment in the Democratic Republic of Congo was unstable. Stakeholders, including Kabila's political coalition, the so-called "Presidential Majority," the political opposition, and civil society representatives, signed an inclusive agreement at the end of 2016, the *Accord de la Saint Sylvestre*. The agreement set out a roadmap to resolve a crisis triggered by a standoff in the electoral process. Stakeholders agreed to harmonize presidential, legislative, and provincial elections, and, following many delays, the CENI published an electoral calendar in November 2017 that set election day for Dec. 23, 2018.

Legal Framework: The DRC has signed, ratified, or acceded to most major international or regional conventions that promote democratic, free and fair elections. The 2006 Constitution (modified in June 2011) contains provisions ensuring the respect of fundamental human rights and freedoms, with some restrictions. While the legal electoral framework is generally in line with international electoral standards and could serve as the basis to conduct genuine democratic elections, the existing timelines for electoral dispute mechanisms are inadequate to ensure an effective remedy.

Electoral System: The president is elected using a first-past-the-post (FPTP) system. The national assembly and the provincial elections use a mixed system consisting of FPTP for electoral districts of one seat, and an open-list proportional representation system for districts with two or more seats. While the law requires that provincial candidates and lists must garner three percent of votes per district to earn a seat allocation, candidates and lists running for the national assembly must exceed a threshold of one percent at the national level. This limits the prospects for emerging political parties and independent candidates to enter parliament. Legislative measures put in place in advance of the polls to broaden participation of regional political parties and independent candidates proved insufficient.

Boundary Delimitation: Electoral constituency boundaries are drawn according to the country's administrative divisions. The CENI first allocated an equal number of seats to each province according to an electoral coefficient obtained by dividing the number of registered voters in the country by the number of seats. However, the number of electoral constituencies within each province was determined based on its existing administrative divisions. This number varies vastly among provinces, resulting in wide disparities in the number of voters allocated to each national assembly constituency, ranging from a low of 27,228 voters to a high of 128,699 voters per seat. This practice disregards international standards for equality of the vote.

Party and Candidate Registration: Candidate registration for the elections took place in August 2018. Ministerial authorities established March 26, 2018, as the beginning of the registration period for political parties. This date did not comply with the legal requirement to publish the dates at least 12 months prior to the start of candidate registration.

Twenty-one candidates competed for the presidency in these elections; 15,355 and 19,640 candidates contested for seats in the legislative and provincial assemblies, respectively. A fourfold increase in

registration fees, which additionally applied to each candidate, rather than to an overall list, hindered the political participation of disadvantaged groups. Though the constitution guarantees equitable representation and parity in national, provincial, and local institutions, there were no effective measures to support equality between men and women. The percentage of female candidates remained significantly low, reportedly hovering just below 12 percent.

Election Administration: Although the electoral law mandates that the CENI implement elections impartially, opposition political parties perceived it as biased in favor of Kabila's Common Front for Congo (FCC) coalition. Because of the government's lack of political will to implement the electoral calendar, the CENI faced serious challenges in disbursing funding. As a result, the elections, which were originally planned for Nov. 27, 2016, were delayed for more than two years, until Dec. 30, 2018.

The CENI's voting and counting operations management was acceptable in light of the country's size, poor infrastructure, logistical incidents, and adoption of a new voting technology, all of which heightened political tension. The CENI did not respect the deadlines set in the electoral calendar on several occasions, lagging behind in the procurement and distribution of sensitive election materials and the conduct of the polls. Election day was delayed by one week in mid-December 2018 after a fire in a central warehouse in Kinshasa destroyed materials and voting machines.

Voter Registration: Voter registration in the DRC is mandatory, and the CENI is responsible for its implementation. International and domestic observers expressed concerns about the accuracy of the DRC voter register following the 2011 polls. Given the high potential for inaccuracies, the CENI opted to conduct a comprehensive overhaul of the voter registry, registering voters from June 2016 to January 2018 and increasing the number of registered voters by more than 8 million. While the electoral law mandates the participation of Congolese diaspora in the presidential election, they were excluded from voting in 2018. Parliament approved their exclusion because of the CENI's economic and logistical inability to organize elections abroad. Contrary to the law, the CENI did not make the final electoral list available to the public and political parties before the electoral campaign period. In May 2018, the Organization of the Francophonie (OIF) audited the revised register to assess its reliability and concluded that though "inclusive and exhaustive," it could still be improved. Citizen observer groups expressed disappointment that the CENI did not implement many of the OIF's recommendations ahead of the polls. Observer groups and media reported several irregularities and problems with voter lists on election day, including missing lists or missing voters in the lists.

Electoral Technology: Contrary to established good practices and public expectations, the CENI introduced electronic voting machines without broad consultation and political consensus.[5] This was arguably done to expeditiously address past problems related to the cost and practicality of the ballot papers. In the Carter Center's view, the procurement and development phases were not conducted with sufficient transparency or time to educate voters on their use. The CENI provided limited information on the technical demands and configuration of key components of the voting machines.

Opposition forces questioned the compliance of the voting machines with the electoral law, which prohibits electronic voting. Although the machines allowed each voter to select a candidate from a touch screen and print a paper copy of their selection, the machines' ability to count votes, tally, and transmit results data called into question the legality of their use. It remains unclear whether results data were, in fact, transmitted from the voting machines to the compilation centers, and to what extent any such digital results were used for tabulation purposes, prior to the receipt of paper copies. According to the electoral law, the latter should be used to certify results. Prominent members of the CENI were later sanctioned by the U.S. government for alleged irregularities in the procurement of the voting machines.

[5] Fridolin Ambongo RFI (2018, Nov. 8) (.

PWDs Participation in Electoral Process: The DRC acceded to the Convention on the Rights of Persons with Disabilities (CRPD) and its optional protocol in 2015, which aimed at promoting, protecting, and ensuring the dignity, equality under the law, human rights, and fundamental freedoms of persons with disabilities (PWDs). In conformity with the CRPD, the 2006 Constitution obligates the state to promote persons with disabilities' participation in national, provincial, and local institutions. The CENI reportedly recruited some PWDs to work as election officers and provided voter education to PWDs on the use of the voting machines in several regions. There is no official reliable data about people with disabilities in the country.

Election Campaign: The electoral campaigning period took place from Nov. 22 to Dec. 21, 2018, ending seven days before election day. The early end of the campaign period raised considerable controversy, as it contradicted the law, which states that campaigns should extend for 30 days and end 24 hours before election day. The CENI's requirement that candidates request authorization to hold campaign gatherings contradicted the constitution's provisions on freedom of assembly. Many of the local authorities' decisions restricting opposition candidates' movements and limiting their campaign activities were similarly contrary to the constitution and fueled political tension. Although the constitution allows political parties to receive public funding for the financing of their electoral campaigns, a law introduced in 2008 to implement this right has yet not taken effect.[6]

Media: The media landscape in the DRC is heavily polarized, and its resources unequally distributed across the country. Although there is pluralism in the private media, access to public media is unequal. The Higher Council for Audio-visual and Communication (CSAC) is responsible for guaranteeing candidates' equal access to airtime for campaigning on public media. According to Congolese observer reports, the Radio Télévision Nationale Congolaise (RTNC), the national broadcaster in the country and owner of public radio and TV channels, committed over 40 percent of its campaign airtime to FCC candidate Emmanuel Shadary and failed to grant all candidates equal access.[7] The CSAC could not enforce its decision to allocate equal airtime to all candidates. No sanctions were imposed on RTNC or other media for their coverage of the election. The minister of communication and media encroached on the functions of the CSAC by sanctioning RFI without referring the matter to the CSAC.

Social Media: Approximately 2.2 million people in the DRC, less than three percent of the population, use a form of social media. Fayulu and Shadary conducted digital campaigns using Facebook and Twitter platforms, including through paid advertising from their official accounts and their supporters' accounts. Despite Tshisekedi's large number of followers on social media, he appeared to rely primarily on conventional communication means to reach his supporters. Fake news and misinformation were spread through Facebook, Twitter, and YouTube, among others, at all key stages of the process. The authorities cut off internet access immediately following the election, breaching international standards on freedom of expression. This step, coupled with preceding events, reduced the credibility and transparency of the electoral process, hampered the activities of observers and media, and limited citizens' access to information.

Election day: Electoral operations fell short of international standards, depriving 1,359,000 voters of casting a ballot in the presidential race, because shortly before the polls, the CENI announced a postponement of the elections in the Beni, Butembo, and Yumbi constituencies. The cancellation was attributed to the Ebola outbreak, the presence of armed groups, and, in the case of Yumbi, ethnic violence. The CENI did not indicate any alternative plan to allow voters in the affected areas to exercise their right to vote, thus disenfranchising them. Despite the introduction of electronic voting machines, several technical hiccups and isolated cases of violence, national and international observer groups reported that polling procedures were conducted satisfactorily in most other areas across the country.

---

[6] Law 8/005- 2008.

[7] See SYMOCEL, *Rapport d'Observation de la Période Pré-électorale Synergie des Missions d'Observation Citoyenne des Elections*, Dec. 12, 2018, and SYMOCEL, *Rapport sur Campagne Electorale pour les Elections Présidentielle, Législatives et Provinciales*, Dec. 28, 2018.

Post-election Developments: The lack of transparency in the CENI's tabulation and results management processes, combined with the substantially different results indicated by domestic observers and other sources, gravely undermined the credibility of the official results.

The CENI announced preliminary results of the presidential and provincial elections on Jan. 10, four days after the anticipated deadline. Opposition parties alleged that election officials did not calculate the results based on manual paper tallies, as required by the election law, and relied instead on data transmitted electronically to the compilation centers. The CENI's failure to release polling station-level election results fueled speculation that it had altered the vote totals and contributed to a lack of legitimacy and election integrity. The international community called on stakeholders to respect the will of the Congolese voters. However, these efforts were quickly abandoned and failed to prevent the acceptance of an election that lacked credibility in favor of stability and a transition of power to an opposition leader.

Electoral Dispute Resolution: Petitioners do not enjoy the right to an effective remedy. Opposition candidate Fayulu challenged the presidential results in the Constitutional Court, alleging that the vote totals announced by the CENI did not correspond to those cast at the ballot box. The electoral law provides petitioners with three days to submit a challenge and requires the court to consider the evidence and issue a decision within two weeks. Given the size of the country and its poor communication network, these abbreviated deadlines do not provide sufficient time for complainants to gather evidence and prepare their petitions, nor for the courts to adequately assess any evidence presented.

Historical and Political Background

Political Environment after the 2011 Elections: State Institutions Weakened

The Carter Center and several other international observation missions highlighted many irregularities marring the November 2011 presidential and legislative elections. According to the Carter Center's final report, the electoral process was not credible and did not contribute to the strengthening of state institutions.[8] Kabila was sworn in as president-elect on Dec. 20, 2011. Opposition political leader Etienne Tshisekedi rejected the official results and proclaimed himself president from his home in Limete, where he had been placed under house arrest. More than 178 of the 425 registered political parties in the DRC were represented in the National Assembly. The ruling coalition was backed by most members of parliament (MPs), who formed the so-called "Presidential Majority" group. Tshisekedi's party, the Union for Democracy and Social Progress (UDPS), won 41 seats, and the Movement for the Liberation of the Congo (MLC) won 22 seats, a slight decline in both cases from 2006.

Political Crisis and Impasse in the Electoral Process

Following the 2011 elections, the DRC faced persistent political and security-related crises that divided the nation. Armed militia movements in North Kivu and the Kasai clashed with government security forces, destabilizing those regions. Elections, anticipated in 2016, were delayed, ostensibly due to the security environment. Furthermore, opposition forces alleged that the government lacked the political will to move forward. There was ongoing speculation that President Kabila would try to lift constitutional term limits for the presidency and run for a third term. President Kabila initiated national talks to address the political impasse; however, the dialogue was unsuccessful in producing a broad-based agreement until the end of 2016 when the St. Sylvester Agreement was signed.

The Movement of March 23 (M23)

The political and security environment in the DRC has remained unstable since 2011 as new politico-military movements emerged. In April 2012, a new movement called Movement of March 23 (M23) was founded in the province of North Kivu. General Bosco Ntaganda, who is currently in detention in The Hague, led the M23 movement, which included rebels from the National Congress for the Defense of the People (CNDP).[9] After relentless combat, the M23 managed to defeat the national army supported by United Nations peacekeepers and took control of the city of Goma.

As a result of pressure from the states of the subregion and from the U.N. Security Council's instruction that the U.N. Stabilization Mission in the Democratic Republic of the Congo (known by its French acronym, MONUSCO) carry out offensive operations against insurgent groups in collaboration with the Armed Forces of the Democratic Republic of the Congo (FARDC), the rebels withdrew from the city of Goma and were pushed back to the Ugandan border.[10] The offensive against the M23 rebels continued until Nov. 5, 2013, when the subversive group laid down its arms.

Talks between M23 leaders and the Kinshasa-based government started in January 2013. On Dec. 12, 2013, both parties signed a peace agreement in Kampala, marking the dissolution of the M23 politico-

[8] The Carter Center, Presidential and Legislative Elections in the Democratic Republic of Congo, Nov. 28, 2011. Final Report. pp. 4-8.
[9] CNDP was established by Laurent Nkunda in 2006.
[10] U.N. Security Council Resolution 2089, March 28, 2013.

military movement and defining the terms of demobilization, disarmament, reintegration and a draft amnesty law.[11]

National Consultations Initiated by Kabila

On Sept. 7, 2013, President Kabila opened national consultations with the goal of promoting national cohesion, which had been undermined by the electoral crisis in 2011 and the protracted conflict in Eastern Congo. Five working groups were created, which focused on good governance, the economy, disarmament and demobilization of armed groups, reconciliation, and decentralization. Unlike the opposition UDPS and the Union for the Congolese Nation (UNC), the MLC decided to participate in this forum. MLC's leader Jean-Pierre Bemba, then detained at The Hague, instructed MLC leaders to "say all truths in the face to the managers of public institutions," authorizing the party's participation from afar.[12] The MLC welcomed the introduction of security and intelligence sector reforms to the agenda. The UNC, however, saw these sessions as a mere gathering of Kabila's presidential majority coalition and its sympathizers. According to the UNC, the international community's involvement was needed, not only to hold a genuinely inclusive dialogue, but also to sensitize the population against any attempt to revise the constitution, particularly Article 220, which regulates the number and duration of presidential mandates. On Dec. 8, 2014, MLC senior officials, who claimed to act under the instructions of their leader, Jean-Pierre Bemba, read aloud a statement dismissing three members from the party. The three, including former Secretary-General Thomas Luhaka, thus served as ministers in the national cohesion government on an individual basis, without the support of the MLC party.

Birth of the Rally

The political and social forces pushing for change in the DRC sought to strengthen the opposition by creating the *Rassemblement*, or Rally of Political and Social Forces for Change in DRC (RASSOP), in June 2016.[13] Most opposition political parties joined the movement, with the exception of the MLC and the UNC. Etienne Tshisekedi was appointed chairman of the Committee of The Wise. Although Tshisekedi agreed to meet with Edem Kodjo, designated facilitator of the African Union, within the framework of the inclusive National Political Dialogue, the opposition leader vigorously objected to the participation of the *Rassemblement* in the talks taking place in the country because he considered Kodjo to be too close to Kabila and not a neutral actor.[14] On May 10, 2017, the national members of the movement created a parliamentary group that brought together those who opposed the government of Prime Minister Tshibala.[15]

---

[11] The amnesty law concerning insurrectionary acts, acts of war, and political offenses committed between Feb. 18, 2006, and Dec. 20, 2013, was promulgated on Feb. 11, 2014. It should be noted that the implementation of this law has been progressive. The first 50 beneficiaries were released on April 21, 2014, and the remaining in successive waves.

[12] Radio Okapi, *Concertations nationales: Jean-Pierre Bemba appelle les délégués du MLC « à dire toutes les vérités* », Sept. 7, 2013; https://www.radiookapi.net/actualite/2013/09/07/concertations-nationales-jean-pierre-bemba-appelle-les-delegues-du-mlc-dire-toutes-les-verites (retrieval date: Feb. 9, 2019).

[13] RASSOP, *Rapport final de la conférence des forces politiques et sociales acquises au changement en R.D.Congo*, June 10, 2016; https://rassop.org/rapport-final-de-la-conference-des-forces-politiques-et-sociales-acquises-au-changement-en-r-d-congo-reunies-du-08-au-09-juin-2016-a-genval-belgique/ (retrieval date: Feb. 9, 2019). The decision took place during a meeting held in Genval, on the outskirts of Brussels from June 8-9, 2016.

[14] https://fr.africanews.com/2016/05/25/rdc-tshisekedi-critique-edem-kodjo/. Presidential Ordinance 15/084 of Nov. 28, 2015, formed the basis for the political dialogue.

[15] According to MP Muhindo NZANGI of the MSR, his parliamentary group remained "the only one of the opposition in parliament because the other opponents have already joined the government, they are members of the government and, in view of the law on the political opposition, they are no longer members of the opposition."

The Opposition March

On Sept. 17, 2016, the CENI approached the Constitutional Court to indicate its inability to organize the presidential election by the legal deadline and to request an extension according to the constitution's provisions relating to the end of the mandate of the president of the republic.[16]

On Sept. 19 and 20, Congolese citizens marched in Kinshasa to demand that the CENI call the presidential election in accordance with the law. The march quickly turned into clashes; opposition demonstrators burned several party offices of the parliamentary majority and symbols of the state while demanding presidential elections under the slogan: "Kabila leave." Armed men set opposition parties' headquarters on fire, including those of UDPS, the Lumumbist Progressive Movement (MLP), the Engagement for Citizenship and Development Party (ECiDé), and the Innovative Forces for Union and Solidarity (FONUS). The minister of the interior reported 17 dead, while the opposition claimed 25.[17]

Kamwina Nsapu Rebellion in Kasai

Jean-Pierre Mpandi, chief of the Bajila Kasanga group (a clan of the Lulua tribe located about 75 km from Kananga, capital of the province of Kasai Central) and bearer of the title of Kamwina Nsapu, initiated conversations with provincial authorities to be officially recognized as the head of the chiefdom (*chef de groupement*).

Alex Kande, provincial governor at the time, agreed to approve Mpandi's confirmation as head chief on the condition that he join Kande's party, which was part of the parliamentary majority. Outraged, Mpandi refused and decided to no longer acknowledge the legitimacy of the provincial and national authorities. An investigation team later raided Mpandi's home, looking for weapons. Following the raid, Mpandi accused the team of profaning his powers as chief and attempting to rape his wife. On Aug. 12, 2016, Mpandi was killed during an operation by security forces. His remains were not buried according to customary rites, which triggered a violent reaction among his followers. They formed a militia group that systematically attacked state buildings and symbols, academic and faith-based institutions, and went as far as beheading police officers and intelligence agents. The government responded by instructing security forces to clamp down on the insurgency through heavy-handed operations.

On Dec. 10, 2018, the European Council extended for one year the restrictive measures against nine Congolese security service officials and two government members for serious violations of human rights in this affair. Those sanctioned including Lambert Mende, the deputy prime minister, and Ramazani Shadary, a presidential candidate and the former minister of the interior and security. These sanctions were initially adopted on Dec. 12, 2016, and May 29, 2017, in response to "the obstruction of the electoral process and the related human rights violations in the DRC."[18] The EU sanctions, still in place as of the drafting of this report, include a travel ban and the freezing of assets.

[16] The CENI justified its request to the Constitutional Court because of the lack of financial resources to organize the elections.
[17] Radio Okapi, *Violences à Kinshasa: Evariste Boshab annonce un bilan provisoire de 17 morts*, Sept. 19, 2016; https://www.radiookapi.net/2016/09/19/actualite/societe/violences-kinshasa-evariste-boshab-annonce-un-bilan-provisoire-de-17.
[18] Council of the European Union, *Democratic Republic of the Congo: Council extends sanctions for one year, Dec. 10, 2018*, https://www.consilium.europa.eu/en/press/press-releases/2018/12/10/drc-council-extends-sanctions-for-one-year/ (retrieval date: May 5, 2019).

Dialogue of the African Union City

Under the auspices of the African Union, facilitator Edem Kodjo kicked off a national policy dialogue called the "Dialogue of the African Union City" on Sept. 1, 2016.[19] The dialogue, intended to be inclusive and comprehensive, brought together political and social forces in the DRC, including representatives of the parliamentary majority, the political opposition, members of civil society, and Congolese personalities to address the organization of peaceful, credible, and transparent elections. Vital Kamerhe led the opposition; however, most MLC and the UDPS members refused to participate in the dialogue. On Oct. 18, 2016, the participating parties signed an agreement to delay elections until April 2018 and to form a government of national unity. A month after this agreement was signed, President Kabila appointed Samy Badiganda, former president of the UDPS parliamentary group, as the prime minister. Most of the opposition – with the exception of the UNC, led by Vital Kamerhe, and a few opposition members of parliament from the UDPS and the MLC – did not back the new government.

The Saint Sylvester Agreement

In the face of the country's persistent political and security crises, Catholic bishops have often played a leading role as mediators to promote peace. In an effort to break the political deadlock and expand the dialogues to be genuinely inclusive, the Inter-Diocesan Centre of the National Episcopal Conference of Congo (CENCO) summoned electoral stakeholders to participate in talks in Kinshasa. On one side of the dialogue were those who had attended and signed the agreement of Oct. 18, 2016, including Kabila's presidential majority, some members of the political opposition, the republican opposition, and members of civil society. On the other side of the dialogue were the members of a political and civil society movement called the Front for the Respect of the Constitution, and civil society actors that did not sign the Political Agreement of the City of the African Union.[20]

Although previous efforts to bring the parties together had failed, participants signed an agreement on Dec. 31, 2016, called the *Accord de la Saint Sylvestre*, establishing that presidential, legislative, and provincial elections should be organized no later than December 2017. The agreement provided that the National Council of Follow-up of the Agreement and the Electoral Process (known by its French acronym, the CNSA), together with the CENI and the government, would make an assessment of pending milestones to be accomplished and the time required to organize elections.[21]

Death of Etienne Tshisekedi

Less than two months after the signing of the St. Sylvester agreement, opposition leader Etienne Tshisekedi died in Brussels from a pulmonary embolism. His son, Felix, deputy secretary-general of the UDPS since 2016, was appointed president of the *Rassemblement* in March 2017.[22] Etienne Tshisekedi's

[19] The dialogue was convened by Presidential Order 15/084issued on Nov. 28, 2015.

[20] The republican opposition is the platform comprising the party delegates supporting Leon Kengo Wa Dondo, former president of the Senate. Claiming its "republican" character, it has been part of all successive governments. The Front for the Respect of the Constitution is a platform gathering the political parties and civil society organizations that backed the Movement for the Liberation of the Congo (MLC) in its endeavor to prevent a revision of the constitution, particularly regarding its non-derogable provisions.

[21] The National Council of Follow-up of the Agreement (CNSA) is the organ envisaged by the Agreement of the New Year's Eve to follow up its recommendations. In particular, the CNSA was to take part, within the framework of a tripartite government/CENI/CNSA, in the discussions to evaluate the reasons justifying any decision postponing the date of the elections. Under the terms of the agreement, the chairmanship of the CNSA was to revert to the chairman of the Committee of Wise Persons of the rally, Etienne Tshisekedi. Following the death of the latter and the splitting of the rally into two branches, this position was eventually entrusted to Joseph Olenghankoy, who belonged to the dissident branch known as the *Rassemblement* Kasa-Vubu.

[22] Elected national deputy in 2011, Felix Tshisekedi never sat in the assembly, following the instructions of his father and political leader.

body remained in Brussels despite the efforts of his family and political party to repatriate his remains to the DRC. Following his father's death, Felix Tshisekedi struggled to maintain unity among the opposition around his leadership in Kinshasa. As a result, the *Rassemblement* weakened and senior UDPS cadres defected, mostly to the parliamentary majority.

Kabila and the Constitution

In light of the CENI's failure to organize elections within the DRC's constitutional timeframe, in May 2016, the parliamentary majority requested the Constitutional Court's interpretation of Article 70 of the constitution to evaluate the term limits of Kabila's mandate. Article 70 states that "at the end of his mandate, the DRC president stays in his functions until the effective installation of a newly elected president." The court advised that to abide by the principle of continuity of the state, the incumbent would continue to fulfill his duties until a new president was elected.[23] While continuing to reiterate his intention to abide by the constitution, Kabila remained silent about his plans to run for re-election, fueling speculation that he intended to try to run again. As internal and external pressure mounted, the parliament passed a law granting benefits to former heads of state and heads of parliament to protect them from prosecution for economic crimes, crimes against humanity, and war crimes.[24] The constitution remains unchanged.

Political Landscape on the Eve of the Elections

Superficially, there appeared to be an improvement in the political competitiveness of political parties in the DRC, as the number of registered parties surged from 426 in 2011 to 599 in the lead-up to the 2018 elections.[25] Apart from the PPRD, most political parties have a regional and /or ethnic component.[26]The increase in parties suggests that it became easier to form a political party in the DRC. However, the new parties' impact on the political landscape remained peripheral.

Although the National Assembly boasted 188 political parties in 2011, only 16 political parties held more than five seats. Sixteen were occupied by independent deputies, and 172 parties were represented by less than five members of parliament.

To date, there are 77 coalitions in the DRC.[27] Many opposition groups joined Kabila's presidential majority grouping in parliament (already composed of 11 political groups), enabling Kabila to create and lead the Common Front for Congo (FCC) coalition. According to some observers, the FCC encompasses more than 70 political groupings from either Kabila's presidential majority grouping or "republican" opposition groups. On July 1, 2018, the political party leaders in the government and those who had endorsed the African Union City Agreement signed the founding charter of the FCC.

While the ruling party and its allies came together in the months before the election, the opposition remained deeply divided following Etienne Tshisekedi's death. The *Rassemblement* tried to survive with Felix Tshisekedi and Pierre Lumbi's co-chairmanship; however, several leaders left to create their own coalitions. Moise Katumbi created a platform in South Africa, *Together for Change*, to compete for the presidency of the republic, and the UNC created a coalition called the Alternative for the Republic. Vital Kamerhe and the MLC remained independent.

---

[23] Constitutional Court, Decision of May 11, 2016, on the interpretation of Article 70 (al.2) of the DRC constitution.
[24] Law 18/021 of July 26, 2018.
[25] List of authorized political parties in DRC published by the Official Gazette on April 30, 2018.
[26] The PPRD belongs to the presidential majority and has 62 seats in parliament, forming the largest bloc.
[27]A list of political coalitions, as well as the composition of their political parties, were published in the official journal on April 30, 2018.

Common Opposition Candidate

Over time, several of the DRC's main opposition leaders decided that the Kabila government could not be defeated unless they joined forces to support a single presidential candidate. Seven political leaders – Jean-Pierre Bemba Gombo, Martin Fayulu Madid, Vital Kamerhe, Moise Katumbi Chapwe, Freddy Matungulu Mbuyamu, Adolphe Muzito, and Felix Tshisekedi – initiated conversations to find a compromise and put forward a single challenger to run against the FCC candidate. Opposition meetings were held in Kinshasa, Brussels, Johannesburg, and Pretoria to identify a common strategy going into the December 2018 elections. Various polls published by the Bureau d'Études de Recherches, et de Consulting International (BERCI) and Le Groupe d'Etude sur le Congo (GEC) projected Felix Tshisekedi ahead of Vital Kamerhe and Emmanuel Shadary in the presidential race.[28]

After a multi-day conference held in Geneva on Nov. 11, 2018, the seven leading Congolese opposition politicians signed an agreement to form a political coalition named "Lamuka" with the stated purpose of supporting a common presidential candidate. The coalition demanded that the CENI take certain steps in advance of the polls, including withdrawing the use of the electronic voting machines, cleaning the electoral rolls, and easing political tensions to enable free, transparent, inclusive, credible, and peaceful elections. The participants agreed to back Martin Fayulu as their common candidate for the December 2018 presidential election.[29]

Fayulu's nomination was somewhat unanticipated. Although Fayulu had served as president of his party since 2011 and was actively engaged in several civil society initiatives, he was less well known than other potential choices. His party held just three seats in parliament. As the MP elected from Kinshasa, he gave up his seat in the lower chamber several months before the polls because he felt his term in office had already reached an end. Fayulu also served as the coordinator for the Forces for Change (*Forces Acquises au Changement*, FAC), a political platform that brings together about 20 parties, as well as "Save the DRC," a sociopolitical group created on Nov. 18, 2013. Fayulu also led the "*Dynamique de l'Opposition Politique Congolaise*."

Rank-and-file supporters from the UDPS and UNC opposed Fayulu's nomination. UDPS supporters engaged in violent protests in Limete, the party's headquarters. Some threatened to burn down the party's building if Felix Tshisekedi did not withdraw from the Lamuka coalition agreement. UNC supporters reacted similarly, engaging in violence at the *Stade des Martyrs* in Kinshasa. Kamerhe and Tshisekedi yielded to the pressure of their bases and retreated from the Geneva agreement less than 24 hours after signing it. After that, Tshisekedi and Kamerhe met in Nairobi and agreed to create a new coalition, *Heading Towards Change* (*Cap pour le Changement* (CACH). Felix Tshisekedi was nominated for president under the CACH coalition banner.

The FCC Candidate

In his position as head of state and FCC leader, Joseph Kabila suggested that each of the parties in the coalition put forward four candidates as possible successors.[30] This initiative proved to be superficial,

---

[28] A survey conducted in September 2018 by the Bureau of Studies and Research and International Consulting (BERCI) and the Study Group on Congo (GEC) of New York University was published on Oct. 30, citing Felix Tshisekedi in the lead with 36 percent of the vote, ahead of Kamerhe's 17 percent and Shadary's 16 percent.

[29] Lamuka means "wake up" in Lingala, a national language in DRC. See also *Accord de Coalition Politique des Forces de l'Opposition Lamuka » en vue des elections du 23 decembre 2018*; https://storage.googleapis.com/kofiannanfoundation.org/2018/11/7ef6e569-accord-de-coalition-politique-des-forces-de-lopposition-lamuka.pdf (retrieval date: May 5, 2019).

[30] DIA, *Kabila veut quatre noms pour la candidature commune du FCC, mais en poche il a son candidat*, July 30 2018; http://www.diacenco.com/kabila-veut-quatre-noms-pour-la-candidature-commune-du-fcc-mais-en-poche-il-a-son-candidat/ (retrieval date: May 5, 2019).

however, as Kabila ultimately kept the power to make the decision. Kabila chose Emmanuel Ramazani Shadary, permanent secretary of the PPRD, to run for president on the FCC ticket. The selection was controversial, as Shadary was under EU sanctions and his candidacy was perceived as defiant to the international community.

On election day, the Congolese public channel broadcasted Kabila's vote, accompanied by his wife, son, and daughter, a first-time voter, projecting an image of an outgoing president and a family man. In his media appearances, Kabila reaffirmed the DRC's decision to organize its elections without MONUSCO's technical assistance or the international community's financial support, saying that the country had to maintain its dignity and sovereignty. When referring to international observation from the European Union and United States, he said, "These countries prepare their reports even before election day, so why should we invite them?"[31]

Political Party and Candidate Agents

Under the electoral law, each political party or group and each independent candidate has the right to appoint an agent and a substitute to monitor the electoral process.[32] Agents can be present at all operations of voting, counting, and tallying. At the end of ballot counting, party agents at the polling station can sign and receive copies of the voting operations form, the tabulation form, and the results sheet.[33]

Party agent training appeared to be a challenge for political parties. The parties lack organizational and financial resources to support this crucial aspect of the electoral process. International organizations conducted several programs to support party agent training. For instance, the *Konrad-Adenauer-Stiftung* (KAS) Foundation and the Westminster Foundation for Democracy (WFD) collaborated to organize a three-day training-of-trainers course for approximately 50 participants in Kinshasa, funded by the European Union. The goal was to train 200 agents per province using a cascade training method. The National Democratic Institute (NDI) also implemented training activities for party agents. Unfortunately, political parties recruited their agents late, leaving them without adequate time to receive training. Political party and candidate agents play an important role in monitoring and securing the vote, and The Carter Center encourages political parties to dedicate more efforts to their recruitment.

2018 Elections: Mandate of the Expert Mission

The Carter Center initiated discussions with the CENI in early 2018, well in advance of the December 2018 elections, to express its interest in fielding an international observation mission. In anticipation of receiving a formal invitation to observe, and as a first step in preparation for an observation mission, The Carter Center deployed a nine-member team of technical experts. Although the issuance of entry visas to the DRC delayed the arrival of some of the experts, the full team was in place by late November 2018.

Based on repeated assurances that an invitation to observe would be forthcoming, the Center continued efforts to prepare for a full observation mission. Although the Center made multiple requests to determine the status of its observer invitation, no progress was made in the months and days leading up to the election. Following the Nov. 8 launch of observer accreditation, CENI officials told the Center that its technical experts in the DRC could apply for accreditation without waiting for an official invitation. In addition, CENI officials assured the Center that there would be ample time for

---

[31]Joseph Kabila, Le Soir (Dec. 1, 2018) https://7sur7.cd/rdcj-kabila-sur-labsence-dobservateurs-internationaux-pourquoi-devrait-on-les-inviter-je-considere-que-ces-pays-ont-deja-prepare-leur-rapport-avant-meme-le-jour-du-vote-le-soir.

[32]Article 38 of the electoral law.

[33]Article 72 of Decision 001BIS/CENI/BUR/18.

additional long-term and short-term observers to apply for observer accreditation before the close of accreditation in December.

Despite promising signals given to the Center's inquiries over several months, in November 2018, DRC officials publicly questioned whether the presence of international observers, particularly from the United States and the European Union, were necessary. The government ultimately announced its decision not to accredit any American or European observer organizations. None of the technical experts who applied were granted accreditation, nor did the Center receive a formal letter of invitation.

Because the CENI did not accredit the Carter Center's experts, its mission could proceed only in an informal fashion and was limited in size and scope. Lacking accreditation, the mission did not assess election-day procedures or tabulation, nor were members of the mission able to interact with election officials and national authorities. In spite of these limitations, the Center's informal expert mission was able to meet with a wide range of domestic and international stakeholders over a three-month period and was able to conduct an analysis of available data, including legal documents and reports from technical assistance advisors, election observers, the media, and other relevant sources. The absence of accreditation from the CENI limited the team's access to election officials and official documentation. Nonetheless, the experts accessed information through reliable primary and secondary sources to assess several key aspects of the electoral process, including the legal framework, candidate and voter registration, election administration, the campaign environment, traditional and social media, and electoral dispute resolution.

Carter Center Expert Mission for the 2018 DRC Election: Assessment and Analysis of Key Electoral Issues

The following section presents the in-depth assessment and analysis of the Carter Center's expert mission to the Democratic Republic of the Congo. The report is structured by thematic constituent parts of the election process. Within each section, the report first presents the international standard or obligation to which the DRC has committed itself through public international law and treaty bodies, and then presents an in-depth analysis of the issue and the application of the legal standard or obligation and its implementation during the electoral process. Each section concludes with an overall assessment of the thematic issue and, if applicable, recommendations for consideration in future electoral cycles.

Legal Framework

A sound legal framework is essential to the administration of democratic elections and to ensuring that a country upholds its international obligations. States must provide reasonable political space to guarantee the fundamental human rights of their citizens. The legal framework includes constitutional provisions, national laws, regulations, and procedures regarding the electoral process.[34] The DRC's legal framework, including the constitution and electoral law, is generally in line with international election standards, and provides the basis to protect fundamental political and electoral rights. The Congolese government has signed, ratified, or acceded to most regional and international agreements that promote democratic elections and good governance. While the DRC's legal framework is generally in line with international election standards, its implementation is problematic. Many laws are not adequately enforced, and, in some instances, the regulatory framework to implement the legal provisions is missing (*e.g.* campaign finance). In other cases, there is a need to harmonize the country's constitutional principles with the regulatory framework (*e.g.* constitutional provisions on gender parity or freedom of assembly).

[34] The Carter Center & Office of the United Nations High Commissioner for Human Rights, Human Rights and Election Standards: A Plan of Action, December 2017, p. 6, para. 18.

DRC Constitution

The preamble of the 2006 Congolese constitution reaffirms the country's adherence and commitment to the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the U.N. Convention on the Rights of the Child, the U.N. Convention on the Elimination of all Forms of Discrimination Against Women, and other international instruments for the protection and promotion of human rights.[35] The constitution provides for the exercise of civil and political liberties for all Congolese, and specifically commits to the goal of equal representation of men and women in the institutions of the country.

The constitution adopts the principle of separation of powers between the executive, the legislative, and the judiciary branches. The executive branch consists of the Congolese president's office and the government.[36] The president is elected by simple majority via direct universal suffrage for five years, renewable once.[37] The president nominates the prime minister and the government from the party that obtains the majority in the National Assembly.

The legislative branch is bicameral. The National Assembly consists of 500 deputies. Members of Parliament (MPs) are elected for five-year renewable mandates via direct universal suffrage. The law determines the number of national deputies, as well as their eligibility criteria and conditions for their election[38]. The second chamber is the Senate, which represents the provinces and is made up of at least 108 senators, plus the living former president(s).[39] They are elected via indirect universal suffrage by the provincial deputies and have a mandate of five years, renewable indefinitely.

The judicial branch has five organs: the superior magistrate council, responsible for ensuring the independence of the judiciary branch; the judiciary civil jurisdiction; the administrative jurisdiction; the military jurisdiction; and the Constitutional Court.[40]

International Obligations and Regional Treaties

The DRC has signed, ratified, or acceded to most major international or regional conventions that promote democratic elections. According to the constitution, lawfully concluded international and regional treaties and agreements have superiority over national laws.[41] Thus, human rights obligations guaranteed in those international treaties and agreements have the same status as constitutional rights. In practice, this means that the constitution and national legislation must be in consonance with the provisions of all international and regional treaties and agreements. The DRC is also obliged by its constitution to respect the provisions of a treaty or an agreement it has concluded as long as other state parties are enforcing it.[42] This is the case of the African Charter on Democracy, Elections, and

[35] The 2006 Constitution was adopted by the National Assembly in May 2005 and approved by popular referendum in December 2005. The Supreme Court of Justice, acting in place of the Constitutional Court, which had not yet been inaugurated, upheld these results in February 2006, and President Kabila promulgated the constitution into law on Feb. 18, 2006. Also called the "Constitution of the Third Republic," the constitution was amended in 2011.
[36] According to Article 90 of the 2006 Constitution, the government consists of the prime minister, ministers, deputy ministers, and, if necessary, deputy prime ministers, ministers of state and delegated ministers. The prime minister serves as the head of government.
[37] Article 71 of the constitution.
[38] Article 101 of the constitution.
[39] Article 100 of the constitution.
[40] See articles 152, 153, 154, 156, 157 of the constitution.
[41] Article 215 of the constitution states, "The international treaties and agreements, regularly concluded, have, on their publication, an authority superior to that of the laws, under reserve for each treaty and agreement, of its the application by the other party."
[42] Ibid.

Governance, which entered into force in 2012. The charter was signed by DRC in 2008; however, its ratification is pending.

Table 1: International and regional conventions or agreements signed, ratified, or acceded to by the Democratic Republic of the Congo

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights (acceded on Nov. 1, 1976)
- International Convention on the Elimination of All Form of Racial Discrimination (acceded on April 24, 1976)
- International Convention on Economic, Social, and Cultural Rights (acceded on Nov. 1, 1976)
- Convention on the Political Rights of Women (acceded on Oct. 12, 1977)
- Vienna Convention on the Law of Treaties (acceded on July 24, 1977)
- Convention on the Elimination of All Forms of Discrimination Against Women (ratified on July 17, 1980)
- African Charter on Human and People Rights (ratified on July 20, 1987)
- Convention on the Rights of Children (ratified on Sept. 27, 1990)
- SADC Protocol against Corruption (signed on Aug. 14, 2001)
- African Convention on Preventing and Combating Corruption (signed on Dec. 5, 2003)
- Southern African Development Community Treaty (SADC) (acceded to in February 2004)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (ratified on June 9, 2008)
- African Charter on Democracy, Elections and Governance (signed on June 29, 2008, ratification pending)

National Legislation on Elections and its Implementing Regulations

In the DRC, the national legislation on elections and its implementing regulations consist of various laws organizing the electoral process, political parties, and the courts that handle electoral dispute resolution. In June 2018, the official journal published a useful two-volume compilation of the main laws applicable to the electoral process.[43]Additionally, the penal code applies to some electoral offenses. As this report examines in detail in subsequent sections, the electoral legal framework, particularly the parts that concern CENI's independence and dispute-resolution procedures, should be reviewed and clarified.

Table 2: Electoral laws and regulation for the DRC elections

- Decree-law 196 of Jan. 29, 1999, on public demonstrations and meetings
- Law 04/002 of March 15, 2004, on the organization and functioning of political parties
- Law 04/028 of Dec. 24, 2004 on the identification and registration of electors in DRC as modified and completed by law 16/007 of June 29, 2016
- Law 06/006 of March 9, 2006, on the organization of presidential, legislative, provincial, urban, municipal, and local elections as modified by Law 11/003 of June 25, 2011, by Law 15/001 of February 2015 and by Law 17/013 of Dec. 24, 2017
- Law 08/005 of June 10, 2008, on public financing of political parties
- Organic Law 08/016 of Oct. 7, 2008, on the composition, organization, and functioning of the decentralized territorial entities and their relations between the state and provinces

[43] DRC Official Journal, special number 7 (Tome 1 & 2), June 2018.

- Organic Law 11/001 of Jan. 10, 2011, on the composition, attribution, and functioning of the Superior Council for the Audio-visual and Communication
- Organic Law 13/011- B of April 11, 2013, on the organization, jurisdiction, and functioning of the judiciary order courts
- Organic Law 13/012 of April 19, 2013, amending and completing Organic Law 10/013 of July 28, 2010, on the organization and functioning of the CENI
- Organic Law 13/026 of Oct. 15, 2013, on the organization and functioning of the Constitutional Court
- Decision 026 BIS/BUR/CENI/16 of July 13, 2016, related to applicable measures of Law 04/028 of Dec. 24, 2004, on the identification and registration of electors in DRC as modified and completed by Law 16/007 of June 29, 2016
- Organic Law 16/027 of Oct. 15, 2016 on the organization, jurisdiction, and functioning of the administrative order courts
- Decision 001 BIS/CENI/BUR/18 of Feb. 19, 2018, on applicable measures of Law 06/006 of March 9, 2006, on the organization of presidential, legislative, provincial, urban, municipal, and locals' elections as modified by Law 11/003 of June 25, 2011, by Law 15/001 of February 2015 and by Law 17/013 of Dec. 24, 2017
- Program Law 15/004 of Feb. 28, 2015. determining the installation modalities of the new provinces
- Law 18/005 of May 8, 2018, on the adoption of the seats allocation by electoral constituency for legislative, provincial, municipal, and local elections
- Law 18/007 of June 27, 2018, amending and completing Law 04/028 of Dec. 24, 2004, on the identification and registration of electors in DRC as modified and completed by Law 16/007 of June 29, 2016

In addition to the 2006 Constitution, the amended electoral law of 2006 consolidates all matters concerning elections, including the registration of electors and candidates, electoral rolls, electoral campaigns, voting operations, the casting and counting of votes, the provisional results of polls, electoral dispute resolution, and electoral offenses.[44]

The Congolese constitution and other electoral norms in force provide a solid basis for the conduct of genuine democratic elections. However, the effective implementation of this legal framework is insufficient. Several legal provisions remain vague, rendering their interpretation and application difficult. Some provisions are contradictory or incompatible and so cannot be applied simultaneously. For instance, the constitutional provision on gender parity is not compatible with the electoral law. Although the DRC has signed the African Charter on Democracy, Elections, and Governance, it has not ratified it, creating ambiguity regarding its enforcement in the DRC.[45] Other legal stipulations contain gaps, particularly concerning the lack of application measures needed to effectively implement the laws, including, for example, the lack of a regulatory framework governing campaign financing for political parties and the lack of adequate timelines to allow for effective remedy of electoral disputes. In sum, there is a need to conduct a broad assessment of the legal framework in order to clarify and improve certain provisions, harmonize others, and fill a number of gaps.

[44] Law 06/006 of March 9, 2006, as amended and completed in 2011, in 2015, and in 2017.

[45] According to Article 215 of the 2011 Constitution, "international treaties and agreements, regularly concluded, have, on their publication, an authority superior to that of the laws, under reserve for each treaty and agreement, of its the application by the other party." The ACDEG entered into force in February 2012 after ratification by 15 states and should be therefore incorporated into Congolese law.

Electoral System

International election standards do not proscribe which electoral system is preferable in the conduct of genuine elections. While each country has sovereignty to decide which electoral system best fits its political and social structure, any electoral system should enforce universal and equal suffrage in genuine periodic elections that freely express the will of the electors.[46] The electoral system should be established within the legal framework, and the means of translating votes into mandates should be clear prior to the election.[47]

The DRC electoral system lacks the necessary measures to meet the requirements for universal and equal suffrage. Giving consideration to the variables of the electoral system, such as the magnitude of votes necessary to win a seat on a district level, will enhance the ability of the system to justly translate the votes cast into seats. Future polls should respect the country's constitutional timeframe for the holding of periodic elections.

Presidential Elections

The president is elected directly by simple majority. This system is widely used for presidential elections around the world. But this system can result in a high number of wasted votes. For instance, according to the provisional results announced by CENI, the winner of the presidential race got approximately 7 million votes, representing 38 percent of valid votes cast and only 18 percent of the total number of registered voters.

Legislative and Provincial Elections

The DRC adopted a mixed electoral system in 2011 consisting of both first-past-the-post (FPTP) majority system and open-list proportional representation to elect the national and provincial legislatures in order to facilitate the formation of a solid majority in those bodies. The law provides for a simple majority FPTP system for electoral constituencies with only one seat and a proportional representation (PR) system with open-list preference for constituencies of two or more seats.[48]

The CENI allocated seats for each legislative and provincial assembly body before finalizing the electoral roll. Additionally, the National Assembly adopted Law 18/005 of May 8, 2018, on the allocation of seats by electoral constituency for legislative, provincial, and municipal elections.

International practice suggests that list proportional systems often produce greater proportionality and inclusiveness in constituencies with a higher number of seats.[49] Most constituencies in DRC have fewer than 10 seats. Hence, the system would be more proportional if the magnitude of constituencies was larger in terms of number of seats. To avoid a proliferation of parties in the national and provincial legislatures, Congolese law requires that provincial candidates and lists must reach three percent of votes per province to qualify for a seat, and candidates and lists running for the National Assembly must exceed a threshold of one percent at the national level. These thresholds limit the opportunity for smaller

---

[46] UN HRC, General Comment 25, para. 21.

[47] Democracy Reporting International and The Carter Center, Strengthening International Law to Support Democratic Governance and Genuine Elections; https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/strengthening-international-law-to-support-democratic-governance-elections.pdf (retrieval data: Feb. 9, 2019).

[48] See articles 118, 119, 145 and 146 of the electoral law - Law 06/006 of March 9, 2006, on the organization of presidential, legislative, provincial, urban, municipal, and locals' elections as modified by Law 11/003 of June 25, 2011, by Law15/001 of February 2015, and by Law 17/013 of Dec. 24, 2017.

[49] ACE Project, Proportional representation related issues; https://aceproject.org/ace-en/topics/es/esd/esd02/esd02e/esd02e01 (retrieval date: Feb. 9, 2019).

political parties and independent candidates to compete for parliamentary seats. A corrective measure was introduced ahead of the 2018 elections to allow candidates who obtained 50 percent of the votes in a constituency to qualify for an exemption from the one percent national threshold. Despite this measure, the law is still insufficient to accommodate regional political parties and independent candidates and hinders one's right to be elected to public office.

Electoral Constituencies

Constituency boundaries should be drawn according to transparent procedures based on clear and justifiable criteria such as population size and administrative boundaries. Each vote should be of equal weight, and any variances between the number of voters in different constitutions should be small. Effective oversight mechanisms should also be established to give effect to rights.[50]

In the DRC, constituency boundaries are drawn according to administrative divisions. The number of seats in each constituency is allocated by the CENI based on an electoral coefficient established by the electoral law. The number of seats allocated to the National Assembly and provincial constituencies does not adequately meet the obligations of equal suffrage, as there are large variances in the number of voters required to obtain a seat in the National Assembly. The allocation of seats should be revisited to ensure a more even distribution of registered voters across constituencies.

Administrative Criteria of Boundary Delimitation

The electoral boundaries in the DRC are derived from the administrative division of the territory as organized by decree of the prime minister. The interior minister in charge of the administrative limits of the country defines the boundaries of each territorial entity, *i.e.* the cities, towns, and municipalities within each province. The 2006 Constitution defined 26 provinces; however, only 11 were functional until 2015, when the government authorized the subdivision of certain provinces. Although this administrative structure was approved in the constitution, critics regarded the change as another sign that the regime was attempting to cling to power. Introducing new subdivisions created many financial and logistical challenges, which in turn jeopardized the government's ability to finance the scheduled elections. In light of these changes, the CENI had to modify the electoral calendar to organize elections for governors in the new provinces and re-demarcate the electoral constituency boundaries for the National Assembly and provincial elections.

For the presidential election, the whole country constitutes a single electoral constituency. For National Assembly and provincial elections, the territory, the town, and the association of municipalities in Kinshasa are the constituencies.[51] For the National Assembly elections, there are 181 electoral constituencies and 500 seats. The number of seats is assigned evenly across the 26 provinces and is calculated using an electoral coefficient obtained from the number of registered voters in the country divided by the number of seats.[52] Seats are further allocated based on the number of constituencies within each province. In the provincial elections, there are 201 electoral constituencies and 715 elected provincial legislators. The number of seats assigned to each provincial electoral constituency is also based on an electoral coefficient.[53]

---

[50] UN HRC, General Comment 25, para. 21.
[51] Articles 100, 115 and 143 of the electoral law. Territory refers to an administrative unit within the province. Each town has its own constituency – except Kinshasa, which has a special arrangement.
[52] There is an error in Article 115 of the constitution. Instead of "total number of electors in the province," it refers to "total number of inhabitants."
[53] There is an error in Article 146. Instead of "total number of electors in the province," it referred to "total number of inhabitants."

The formula used to determine the number of voters in the provinces and constituencies resulted in a uniform allocation of voters in the provinces, but palpable disparities in the constituencies, inconsistent with international standards. The average number of voters per seat in the national elections was 80,743. However, when seats were allocated by law in May 2018, the Inongoville constituency in Mai-Ndombe province had the lowest number of voters per seat in the country (27,228 voters), while the Lomela constituency in Nord-Ubangi had the highest with 128,699 registered voters.[54]

Conclusion

The Carter Center urges legislators to review the electoral law through an inclusive process to ensure that electoral thresholds do not impose unreasonable constraints on candidates' right to stand. Careful consideration should also be given as to whether the current electoral system requires reform. Even though the choice of the electoral system is part of every country's sovereignty, there are best practices in the world that would address shortfalls in any given electoral system, such as considering other types of systems for the presidential race to limit wasted votes, and enlarging the magnitude of the districts when using a proportional representation system in order to facilitate greater proportionality.

Steps should be taken to ensure that in forthcoming elections each vote is of equal weight and that variances in the number of voters in different constituencies are reasonable. International best practice suggests that percentage limits could be specified in the election law. The Carter Center encourages the parliament to consider amending the electoral law to include a reasonable deviation limit ahead of the CENI's next boundary delimitation process. The electoral law and the law on seat allocation per constituency should be reviewed to ensure each vote is of equal weight and variances in the number of voters in different constitutions are reasonable through an inclusive process. In this regard, the demarcation of electoral constituency boundaries should not be constrained by administrative division criteria. For instance, electoral constituencies could be divided or merged across administrative boundaries within each province in order to limit the disparity in the ratio of voters per seat in each electoral constituency.

Candidate Registration

States must protect the right and opportunity of every citizen to be elected; the right may only be subjected to objective and reasonable restrictions.[55] Efforts should be made to encourage the participation of underrepresented groups and effective measures taken to promote equality between men and women. In this regard, registration fees should not be overly restrictive.[56] International standards for party and candidate registration also require clear and specific registration deadlines. Candidates should only be excluded after adjudication by a court.[57]

Candidate registration procedures and their implementation fail to respect the DRC's international and national commitments to facilitate an inclusive and representative field of contestants. A fourfold increase in fees for political parties and independent candidates, and additional fees imposed on each candidate, rather than the overall party lists, placed a heavy burden that resulted in the disenfranchisement of otherwise qualified potential candidates who could not afford to pay high registration fees. In relation to previous electoral processes, there were no effective measures to support equality between men and women, and women candidates were far outnumbered by their male counterparts, thus failing to meet the state's constitutional obligations to ensure the equitable representation of women in national, provincial, and local institutions. Some potential candidates for the highest office were excluded from the political process on contested grounds, undermining their civil

[54] Law 18/005 of May 8, 2018 on allocation of seats per constituency for the legislative, provincial, municipal and local elections.
[55] SADC, Principles and Guidelines Governing Democratic Elections, 2015, para. 417.
[56] ICCPR, articles 2 and 3; CEDAW Articles 4 and 7; UNHCR, General Comment 25, para. 20,
[57] ICCPR, Article 25; ACHPR, Article 13.

and political rights. The Carter Center strongly urges the CENI to consider the appropriate level of fees to facilitate broad participation in the elections by people of all means while disincentivizing frivolous candidatures. The Center also encourages electoral stakeholders, including the parliament, to consider the introduction of measures to encourage the candidacies of women. All qualified candidates should be allowed to run for public office without restriction or political bias.

Candidate Nomination and Registration

Candidate registration took place in August 2018. A ministerial decision released on March 26, 2018, authorizing political parties to register for the elections did not comply with the electoral law to publish the dates at least 12 months prior to the start of candidate registration.[58] Seventy-one political parties or coalitions of parties and several hundred independent candidates were authorized to run for seats across the country; 15,355 and 19,640 candidates contested for seats in the legislative and provincial assemblies, respectively. Twenty-one candidates, including one woman, ran for president.

The CENI organized candidate registration at each provincial secretariat for the national and provincial legislatives by setting up a reception and treatment office for candidatures (*Bureaux de réception et de traitementdes Candidatures*, or BRTC) where candidates could enroll. The CENI handled the presidential registration process at its headquarters in Kinshasa.

The electoral law stipulates registration requirements for presidential, legislative, and provincial candidates, including payment of a non-reimbursable registration fee.[59] Under the revised electoral law, this amount increased fourfold, a significant increase from the 2006 and 2011 requirements.[60] In addition, for the first time, each individual candidate on the list was required to pay a fee, rather than paying a fee that encompassed the entire list. These high fees severely impacted the right to stand for disadvantaged groups such as women, youths, persons with disabilities, and other marginalized communities and are inconsistent with international obligations.[61]

Challenges to Candidate Registration

The 2006 electoral law provides that candidates, political parties or coalition of parties, and representatives of candidates for presidential, national legislative, and provincial elections are entitled to challenge the CENI's provisional list of candidates before the courts. Candidates had five working days to lodge their complaints, and the courts had 10 days to deliberate and transmit rulings to the CENI prior to the posting of the final list of candidates for each election.

Challenges to the provisional registration of presidential and national legislative candidates are lodged at the Constitutional Court, while the administrative appeal court (CAA) resolves complaints from provincial candidates.[62] The decisions of the courts are final and not subject to appeal.

A total of 200 petitions related to the National Assembly were filed before the Constitutional Court; 56 challenges were successful, and the others dismissed. Following the resolution of these challenges, the CENI published a final list of 15,355 candidates for 500 seats in 181 electoral districts. There were 217

[58] Article 12 of the electoral law.
[59] For the presidential and legislative elections, the fee was 1.6 million CDF or US$1,000. (articles 104 and 121); and for provincial elections, the registration fee was 1millionCDF, or US$600 (Article 149).
[60] For instance, the fee per parliamentary candidate list was 110,000 CDF in 2006 and 250,000 CDF in 2011, both with an estimated exchange value at that time of US$250. In 2018, each parliamentary candidate was required to pay 11.6 million CDF, or approximately US$1,000.
[61] For instance, Eve Bazaiba, general secretary of the MLC, told our team that she was unable to run in the presidential election because of a lack of financial resources. See also SADC, Principles and Guidelines Governing Democratic Elections, 2015, para. 417.
[62] Article 27 and 27 bis of the electoral law.

challenges to the CENI's provisional list of candidates for the provincial elections. Ten petitions were successful, and 200 were dismissed. The CENI published a final list of provincial candidates comprising 19,640 candidates for 715 seats in 201 electoral constituencies.[63]

Of the 25 candidates who initially registered for the presidential race, the CENI rejected six, all of whom lodged complaints before the Constitutional Court. The court instructed the CENI to add two of the petitioners to the final list of 21 candidates.

Jean Pierre Bemba and Moïse Katumbi

High-profile political leaders tried to register as candidates for president and were excluded from the race, including Jean Pierre Bemba and Moïse Katumbi. In Bemba's case, the CENI and the Constitutional Court made a broad interpretation of the Congolese Penal Code, assimilating the offense of suborning witnesses with the offense of corruption. His exclusion, as well as the exclusion of other prominent politicians such as former prime minister Adolphe Muzito, caused considerable controversy, as supporters of the candidates argued that the CENI's decisions and the subsequent Constitutional Court rulings were based on tenuous legal arguments. In another highly contested move, Katumbi was prevented from entering the country to register as candidate because of his alleged loss of Congolese nationality.

On Aug. 2, 2018, Bemba registered as a presidential candidate to represent the MLC. The CENI disqualified his registration based on Article 10 of the electoral law, which prevents individuals charged with corruption from registering as candidates. The CENI cited his conviction by the International Criminal Court (ICC) for witness tampering as the basis for its decision, which Bemba challenged in the Constitutional Court.

The Constitutional Court held a public hearing about his case on Aug. 31, 2018. Bemba's lawyers argued that, since the case is under appeal to another ICC chamber, the conviction of their client was not irrevocable and so could not be considered disqualifying. In addition, they argued that the alleged infraction (bribery/witness tampering) was not a corruption charge as defined by criminal law in the DRC. The public prosecutor argued that bribery constituted a form of corruption and requested the court to confirm Bemba's ineligibility.

On Sept. 4, the Constitutional Court ruled that the CENI was right to conclude that Bemba was ineligible to run for the presidency by virtue of Article 10 of the electoral law that identifies corruption as one of the reasons for ineligibility. While the Congolese criminal code distinguishes between the offense of corruption and the offense of suborning witnesses, the ICC found Bemba guilty only of the latter. However, because Article 70.1 (c) of the Rome Statute defines the offense of suborning witnesses as "*corruptly influencing a witness*," the Constitutional Court considered Bemba had been found guilty of a corruption charge by the ICC. This interpretation was highly controversial and questioned by many legal analysts.[64] The secretary-general of Bemba's MLC party told reporters that the court's ruling was "irregular" and "arbitrary," and criticized the lack of neutrality in public and administrative institutions.[65]

---

[63] CENI, Communique de Presse, No. 23/CENI-RDC/18 ; Digital Congo, *Elections du 23 décembre : la CENI livre quelques données chiffrées*, Nov. 23, 2018; https://digitalcongo.net/Article/5bf7efb1f95d87000454b8ae/ (retrieval date: Feb. 10, 2019).

[64] Congo Independent, *Affaire Bemba vs. Céni, la Cour Constitutionnelle a Assassiné et le Droit Pénal et la Justice en RDC*, Sept. 4, 2018 ; (retrieval date: Feb. 10, 2019).

[65] Bloomberg, *Congo's Top Court Bars Opposition Leader Bemba From Election, Sept. 4, 2018*; https://www.bloomberg.com/news/articles/2018-09-04/congo-court-bars-opposition-leader-bemba-from-presidential-vote (retrieval date: May 20, 2019).

Another high-profile case involved political leader Moïse Katumbi, who was prevented from returning to the country and registering as a candidate. In May 2016, Katumbi was formally charged after five of his security personnel were arrested for alleged mercenary activities. He had previously been summoned by a Lubumbashi prosecutor regarding a real estate dispute. While awaiting trial in the two cases, Katumbi fell gravely ill and was authorized by judicial authorities to leave the country for medical reasons, His departure was approved on the condition that he return to the country to face justice on multiple charges once he recovered.

Katumbi was sentenced in absentia on the real estate case to three years in prison by a peace tribunal in Lubumbashi. Although Katumbi appealed the conviction from abroad, he lost the case. It is widely alleged that the charges were politically motivated retribution for his voluntary separation from the ruling party to pursue a presidential bid at the end of Kabila's second mandate.

According to the Saint Sylvester Agreement, all parties (with the exception of Kabila's Presidential Majority Coalition), gave CENCO a mandate to conduct good offices in order to examine the cases of political prisoners. By virtue of the agreement, political prisoners were to be released by the end of 2016 and their proceedings before the courts halted to de-escalate the tense political environment. The National Council of Follow-up of the Agreement and the Electoral Process (CNSA) mediated with the government and Kabila's presidential majority grouping to ensure that some prisoners' charges were lifted. Although CENCO investigated Katumbi's case and concluded that charges against him were not justified, the authorities refused to drop them.

On Aug. 3, 2018, Katumbi tried to return to the DRC through the Zambian border, but the Congolese border patrol prohibited him from re-entering the country.[66]National authorities stressed that he would have to serve his prison sentence upon his return. The government also claimed that Katumbi was no longer a Congolese citizen, alleging that he had obtained Italian nationality in 2000. Katumbi's spokesperson denied these allegations. [67] Dual citizenship is not allowed under the Congolese constitution.[68] These actions deprived Katumbi of his political and civil right to stand as a candidate for public office, as he was not able to register as a candidate in person, as required.

Katumbi's and Bemba's cases were widely viewed as evidence of the government's determination to exclude prominent opponents from contesting the elections. The Constitutional Court's silence on defining corruption in the Bemba case represents a missed opportunity to provide clarity on the scope of the definition for future cases. The Carter Center strongly encourages the review and reform of the regulations surrounding candidate registration and their application to ensure that all qualified candidates are able to exercise their right to stand as a candidate in future polls.

Women's Participation as Candidates

Article 14 of the constitution highlights the DRC's commitment to achieving gender parity in all national, provincial, and local institutions in consonance with its obligation under the International Covenant on Civil and Political Rights to undertake to ensure the equal rights of men and women to enjoy all civil and political rights (Article 3). As a signatory to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the state is also required to take all appropriate measures in all fields to ensure the full development and advancement of women (Article 3) and is urged to ensure that women, "on equal terms with men," are afforded "the right to participate in the formulation

---

[66] Jeune Afrique, *RDC : Moïse Katumbi tente d'entrer dans le pays par la Zambie,* August 3, 2018 ; (retrieval date: May 20, 2018).
[67] RFI, *RDC: son ancienne nationalité italienne, l'épine dans le pied de Katumbi*, March 23, 2018; http://www.rfi.fr/afrique/20180323-rdc-nationalite-italienne-katumbi (retrieval date: Feb. 3, 2019).
[68] According to Chapter 2, Art. 10, "Congolese nationality is one and exclusive. It may not be held together with another nationality."

of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government" (Article 7).

Despite the 2015 adoption of a law that strongly encourages women candidacies, efforts to attain gender parity remain elusive.[69] The DRC's constitutional provisions on gender parity were not effectively implemented. Although the 2006 electoral law established a gender parity ratio for candidate lists, non-compliance with this provision did not render party lists inadmissible. Following a modification of Article 13 (ii) of the electoral law in December 2017, the law no longer requires parity, only that consideration be given to female representation in each list. Again, the lack of inclusion of women in party lists does not provide a legal reason for rejecting it.

Though Congolese women constitute about 50 percent of the population, only 71 out of the 602 registered political parties are led by women.[70] To date, the CENI has not published statistics on the number of female candidates who contested the harmonized elections. According to data provided by CAFCO (*Cadre Permanent de Concertation de la Femme Congolaise*), women represented 1,794 of 15,355 registered legislative candidacies, or 11.68 percent, and 2,313 of 19,640 provincial applicants, or 11.77 percent. Fifty-two women attained seats in parliament.

The CENI, through its national and international partners, including the National Democratic Institute, U.N. Women, and MONUSCO, conducted training to enhance the capacity of women candidates. The trainings were intended to familiarize women candidates with the electoral code and legal instruments on their rights to run for office, as well as with available electoral dispute-resolution procedures. The women's group known as *Groupe WhatsApp Camp RSLF aux elections* (WhatsApp Group Camp RSLF to the elections), established by a member of the organization known as *Rien Sans les Femmes* (Nothing without Women), also served as a platform for discussions and counseling to encourage women candidates to participate in the electoral process. The only female presidential candidate, Marie-José Ifoku, praised the training sessions and urged partners to engage earlier to promote greater and more effective participation of women in the electoral process. Ikoku and other stakeholders also expressed concern about the negative effect the surge in registration fees had on women and other economically disadvantaged groups.

Conclusion

The CENI and the Constitutional Court failed to ensure respect for the DRC's international and national commitment to protect the right to stand for public office. The drastic increase in fees for political parties and independent candidates placed a heavy burden on otherwise qualified potential candidates, disenfranchising them. The Carter Center strongly urges the CENI to consider lowering fees to facilitate broad participation in the elections from people of all means. National authorities, the CENI, and the Constitutional Court's rulings prohibited prominent potential candidates for the country's highest office from exercising their civil and political rights. Effective measures must be taken to ensure the neutrality and impartiality of these critical institutions so as to facilitate the broad participation of all qualified candidates without political bias.

The state also failed to introduce effective measures to translate women's constitutional rights for equitable representation in public institutions into practice. The Center encourages electoral stakeholders, including parliament, to consider the introduction of measures to increase women's representation, either through quotas or the introduction of zippered lists, which alternate between male and female candidates. Regrettably, there are few reliable public statistics on the participation of women

[69]Law 15/013.

[70] According to World Bank Data, the female population in DRC was 50.11 percent of the overall population in 2017. See https://data.worldbank.org/indicator/sp.pop.totl.fe.zs (retrieval date: Feb. 5 2019).

in the elections as voters, polling officials, or candidates. The CENI should endeavor to track and publicize these statistics, so as to improve their representation and participation in the process.

Election Administration

According to international human rights standards, "an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws…."[71] The management of democratic elections requires that election administration bodies carry out their duties in a professional and impartial manner, independent from political interests and perceived to do so by stakeholders.[72] Election management bodies should follow fundamental guiding principles to ensure the integrity of the electoral process, including the principles of independence, impartiality, integrity, transparency, efficiency, professionalism, and service-mindedness.[73]

Although the CENI managed to conduct technically acceptable elections from an operational perspective, it faced many challenges because of the complexity of the electoral spectrum in the Democratic Republic of Congo. These core challenges included organizing three combined elections in one day, registering large numbers of voters and candidates, applying different electoral systems for the legislative and provincial elections, managing the high political tensions that accompanied the 2018 elections, and coping with poor infrastructure and the political decision to conduct elections with minimal to no international support.

While the CENI managed many of these operational challenges effectively, it failed to convince opposition political parties and the public that the elections provided an equal playing field, and suffered from a lack of trust. These dynamics were aggravated by the CENI's failure to conduct open and periodic communication with political parties, the exclusion of prominent political actors from running for office, the manner in which it introduced the use of electronic voting machines, the non-publication of the final voter registry, and the inadequate handling and distribution of materials.

Legal Framework

The Constitution establishes the CENI, together with the Higher Council for Audiovisual and Communication (*Conseil Supérieur de l'Audiovisuel et de la Communication*, or CSAC), as an institution to support democracy.[74] The 2010 electoral law, modified in 2013, describes the electoral body's composition, structure, mandate, and functioning.[75]

According to the law, the CENI is a public, permanent, and neutral body with legal personality. It enjoys administrative and financial autonomy, with its own staff and budget. In carrying out its mission, the CENI enjoys independence from other institutions, though it benefits from collaboration. The CENI's mission is to "organize free, democratic and transparent elections in complete independence, neutrality and impartiality."[76]

---

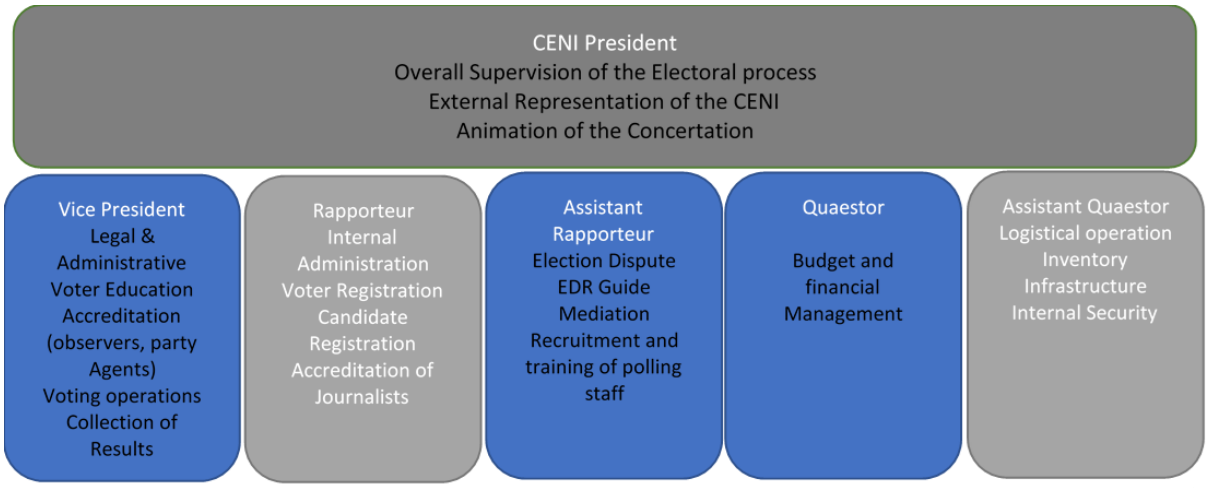
[71] UN HRC, General Comment 25, para. 20.
[72] SADC, Principles and Guidelines Governing Democratic Elections, 2015, paras. 4.1.9, 5.1.4. and 5.1.5.
[73] International IDEA, Electoral Management Design Handbook, 2014, p. 21.
[74]Articles 211-212 of the constitution.
[75]Law 13/012 dated April 19, 2013, modifies and completes the July 28, 2010 Law 10/013, which describes the electoral body's composition, structure, mandate, and functioning.
[76] Article 9 of Law 13/012 dated April 19, 2013, modifies and completes the July 28, 2010, Law 10/013, which describes the electoral body's composition, structure, mandate and functioning.

Electoral Management Body Composition and Structure

The CENI comprises 13 members and is supported by a bureau, a plenary committee, national and provincial executive committees, and by local offices in each electoral district. Its members are selected by political parties with parliamentary representation and by civil society groups, and ratified by the National Assembly. Six CENI members, including two women, are selected by the ruling party, and four, including a woman, are selected by the opposition. Three members, chosen by religious denominations, women's rights organizations, and civic and electoral education organizations, represent civil society.

The law provides that CENI members should be independent figures with proven competence, moral integrity, probity, and intellectual honesty. International interpretative human rights sources suggest that "basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures."[77] In this regard, The Carter Center encourages legislators to review the law regulating the CENI and to introduce objective and reasonable criteria and processes for the appointment, promotion, suspension, and dismissal of the body's members in order to strengthen its independence and impartiality.

The plenary assembly, which conducts planning, orientation, decision-making, evaluation, and control, includes all 13 of its members. The bureau is the executive and coordination body of the CENI. It ensures the execution of the decisions of the plenary assembly. The bureau ensures compliance with the electoral and referendum laws by politico-administrative authorities, political parties, candidates, witnesses, voters, as well as national and international journalists and observers. The CENI's bureau is composed of six members: a president (from civil society); a vice president (from the majority); a rapporteur (from the political opposition); an assistant rapporteur, a treasury officer (quaestor)from the majority, and an assistant treasury officer from the political opposition.[78]



STRUCTURE OF THE BUREAU OF CENI

The distribution of tasks for each member is detailed in law, which assigns the most sensitive steps of the electoral process to representatives of the ruling party or coalition, including voting operations, collection of results, recruitment and training of polling staff, dispute resolution, accreditation of observers and political party agents, and budget and financial management. Opposition representatives

[77] UNHRC, General Comment 25, para. 24.
[78] Law 13/012, Article 24 bis.

are mainly responsible for internal administrative tasks as well as the voter registration phase, candidate registration, and accreditation of journalists.[79]

Political party-based appointments often suggest that commission members are serving as political party agents and at the same time as officers managing the electoral processes. This selection process is an accepted international model and does not necessarily undermine a body's impartiality or the credibility of the process if there is an appropriate system of checks and balances in place through which members monitor each other's performance to ensure impartiality.[80] The nomination of the civil society representatives, from whom the president of the CENI is chosen, is not clarified in the law and left to the National Assembly. Hence, the political majority in parliament usually plays a decisive role in the selection of the president of CENI, who is mandated to ensure the checks and balances in the CENI. According to a public opinion survey conducted by BERCI Foundation and Groupe D'étude sur le Congo, most citizens perceive the CENI as a partisan institution that abides and implements the instructions of the ruling party instead of acting as an independent body managing the elections in a transparent and unbiased manner.[81]

Electoral Calendar

The CENI published an electoral calendar on Nov. 5, 2017, and announced presidential, national, and provincial elections for Dec. 23, 2018, along with senatorial, gubernatorial, and local elections between 2019 and 2020. The schedule resembled a road map rather than a detailed electoral calendar, as it failed to outline important aspects related to the adoption of a new voting method, *i.e.* the electronic voting machines, and omitted necessary aspects such as the procurement and distribution of electoral materials.

The CENI failed to respect the deadlines set in the calendar on several occasions, lagging behind in the procurement and distribution of sensitive election materials. Polling station forms and results forms were printed in South Africa and arrived in Kinshasa on Dec. 16, after approximately a month's delay. A fire in a warehouse in central Kinshasa, which destroyed sensitive voting materials and electronic voting machines that were to be deployed in the capital, further impacted the electoral calendar, causing the CENI to postpone the election by a week. Officials failed to incorporate lessons learned in the 2011 electoral process, including about the challenges in the deployment of sensitive materials, when formulating the 2018 electoral calendar.

Voter Registration

The right to universal suffrage is recognized by international treaties and is subject to objective and reasonable restrictions, such as a citizenship requirement and a minimum age limit. A voter registry is one commonly accepted way to protect one's right to vote. Voter registration should promote broad participation, and there should be no barriers for eligible voters. The state must take effective measures to facilitate voter registration for all persons entitled to vote, including marginalized groups, minorities, people with disabilities, internally displaced people (IDPs), and refugees. To this end, unnecessary technical barriers to participation need to be removed and an effective remedy must be available for any

[79] The distribution of tasks for each member of the bureau of the CENI is detailed in Article 25 of the Organic Law 13/012, modifying and completing Organic Law 10/013 on the organization and working procedures of the Independent National Electoral Commission, and in Article 3 of Decision 001BIS/CENI/BUR/18.
[80] International IDEA, Electoral Management Design Handbook, 2014, p. 110.
[81] BERCI Foundation, Groupe d'etude sue le Congo, Rapport No.5- October 2018: 64 percent of respondents expressed a lack of confidence in the CENI's capability of holding impartial and free elections.

violations of citizens' rights during the voter registration process, including inaccuracies or omissions in the register.[82]

International and Congolese citizen observers expressed concerns about the accuracy of the DRC voter register in 2011. Given the scale of potential inaccuracies, additions, and omissions, the CENI opted to conduct a comprehensive overhaul of the voter registry. Starting in June 2016, it conducted an active voter registration for some 18 months, increasing the number of registered voters by more than 8 million to include more than 40 million registered voters. Although the procedures allowed potential voters flexibility in the documents required to register, stakeholders expressed concern to the Carter Center that IDPs faced serious obstacles registering and that the CENI's management of the voter list lacked transparency. The CENI did not publish the final voter list and informed stakeholders that the provisional list had been finalized just four days before the elections. Although an external audit of the revised registry was conducted, the CENI was not able to address the shortcomings in advance of the polls. Citizen observers' concerns about the accuracy of the final voter registry further undermined the electorate's confidence in its reliability. Several irregularities and problems with voter lists were reported on election day, including missing lists and lists that were missing voters.[83] Further measures should be taken in advance of the next electoral cycle to address these concerns so as to provide the most comprehensive and inclusive base possible for the polls.

Voter Registration: Legal Framework

According to Article 5 of the constitution, suffrage is universal. It is mandatory for all Congolese people who are 18 or above to register for the elections at the identification center set up in their community unless their registration is prohibited by law.[84] Article 7 of the electoral law mentions four groups of individuals who cannot participate in the polls on election day: those with a medically proven mental disability, those deprived of their civil and political rights by a final judicial decision, those not included in the voter register, and all members of the armed forces and Congolese national police. The latter provision unduly disenfranchises many Congolese and contravenes the Revised SADC Principles and Guidelines Governing Democratic Elections.[85]

The CENI organizes identification and registration of voters.[86] To this end, the CENI adopted two core regulations concerning the identification and registration of voters.[87] The law governing voter identification and registration provides eligible voters with several options to confirm their identity. Given the DRC's lack of a robust system of national identification, the law specifies several documents that can be used to confirm one's identity, including a valid student card or voter cards from 2010-11.[88] Both documents are problematic as proof of eligibility because of a lack of safeguards.[89] If an individual

---

[82] UNHRC, General Comment 25, paras. 4, 10, 11 and 13; SADC, Principles and Guidelines Governing Democratic Elections, 2015, paras. 4.1.1, 4.1.7 and 5.1.8.

[83] *https://afrique.lalibre.be/29980/rdc-elections-deja-des-desordres-des-le-matin/, https://www.jeuneafrique.com/696927/politique/elections-en-rdc-a-kinshasa-le-vote-a-debute-dans-le-calme-malgre-des-retards/, https://observers.france24.com/fr/20181231-election-presidentielle-rdc-congo-images-amateur-temoignages*

[84] Article 4 of Law 18/007.

[85] SADC, Principles and guidelines governing democratic elections, 2015, para. 4.1.7.

[86] Article 3 of Law 18/007 of June 27, 2018, amending and completing Law 04/028 of Dec. 24, 2004, on the identification and registration of electors in DRC as modified and completed by Law 16/007 of June 29, 2016.

[87] Decision 026 BIS/BUR/CENI/16 of July 13, 2016, concerning applicable measures of Law 04/028 of Dec. 24, 2004, on the identification and registration of electors in DRC as modified and completed by Law 16/007 of June 29, 2016; Decision 001 BIS/CENI/BUR/18 of Feb. 19, 2018, on applicable measures of Law 06/006 of March 9, 2006, on the organization of presidential, legislative, provincial, urban, municipal and local elections as modified by Law 11/003 of June 25, 2011, by Law 15/001 of Feb. 12, 2015, and by Law 17/013 of Dec. 24, 2017.

[88] Articles 9 and 10 of Law 18/007.

[89] OIF, Voter Register Audit, Final Report, May 2018. The following reasons were cited: the lack of security of certain identification cards considered as proof of eligibility, in particular student identification cards and the

lacks a valid identification document for registration, three reliable citizens who are registered voters at the same identification center can offer witness testimony in writing to confirm a person's identity if the chief in the area where the identification center is located agrees.[90]

In this electoral process, the law aimed to include the Congolese diaspora in the voter roll to facilitate their participation in the presidential election.[91] But the difficulty involved in registering voters abroad, combined with a lack of funding and time constraints, led the CENI to request an exemption from this provision. Parliament passed an amendment of the law in June 2018 to allow the CENI to exclude the Congolese diaspora from the 2018 polls.[92]

The 2016 law on voters' identification and registration introduced amended procedures to resolve disputes regarding voter registration. The intention was to improve the right to an effective remedy to citizens earlier in the registration process, after the publication of voter lists. Voters could file a claim to correct errors in names and physical addresses, among other things, as well to eliminate voters wrongly enrolled. The deadline to seek redress from the president of an identification center was seven calendar days from the posting of the daily list of voters enrolled at that particular center. Another seven calendar days were provided for the president to make an educated decision.[93]

If voters were still dissatisfied, they had three working days to file an appeal with the administrative tribunal, which had two more days to resolve the matter. If the matter was still not resolved, voters could appeal to the administrative appeal court with the same deadlines. The law stipulates that if the appropriate administrative court is not functional, an ordinary High Court (*Tribunal de Grande Instance)* would have jurisdiction.[94] These deadlines do not give adequate time for complainants to prepare challenges or for judges to duly examine them.

In addition to this procedure, another provision in the electoral law addresses dispute resolution following the posting of provisional electoral lists. Voters have 30 day in which to lodge a complaint regarding errors in their name and/or address with a CENI agent following the publication of the provisional electoral list.[95] However, the law does not specify deadlines obliging the CENI to post provisional electoral lists. Contravening international best practices, the CENI decided against including a deadline in the 2018 electoral calendar, and instead included a period of time within which the provisional and final voter lists would be posted.[96]

Compounding this concern, the law allows the CENI to make the list available at its local offices only and to invite voters there to consult and verify their names on the list. In most cases, the CENI offices were far away from voters' registration/identification center and residence. Because of logistical difficulties, the CENI published its provisional list in September 2018 at the CENI offices. As a sign of the potential difficulty facing voters to lodge a complaint, the CENI did not receive a single challenge during the 30-day post-publication period. In the absence of any complaints, the provisional electoral list automatically became the definitive electoral list. The CENI failed to publish the final electoral list

integration of temporary provisions into the law that allowed those possessing a voter card from 2010-2011 to re-register automatically, without taking into account the problems posed by specific cases in previous polls.

[90] Article 10 of Law 18/007.

[91] Ibid, para. 4.1.8; The Carter Center, Presidential and Legislative Elections in the Democratic Republic of the Congo, Nov. 28, 2011.

[92] Article 5 of Law 18/007.

[93] See articles 40-44, Law 18/007.

[94] Article 55 of Law 18/007.

[95] Article 6 of the electoral law.

[96] According to line 19 of the electoral calendar, Nov. 2017: "printing, deployment and posting of provisional and definitive electoral list from May 27 to Dec. 7, 2018 (195 days)."

as required by the law.[97] The electoral register was neither published on CENI's website nor posted in the CENI's local offices 15 days before the polling day, as stipulated by the electoral law. The CENI made a public reference for the first time to the publication of the definitive electoral list when it postponed the elections in four constituencies on Dec. 26.[98]

Voter Registration: Implementation Challenges

International election observation missions in 2011 recommended a revision of the voter register. In 2014, the CENI contacted the Organization for the Francophonie (OIF) to conduct an evaluation of the voter register. The study identified some 450,000 double entries and 1.6 million deceased voters who had yet to be removed from the register.[99] The OIF estimated that an additional 7 to 8.5 million first-time voters should have been included in the register.

In addition to these issues, the CENI acknowledged that revisions were needed to consider several developments since the last elections, including the demarcation of constituency boundaries based on new administrative boundaries (from 11 to 26 provinces); changes in voters' addresses; misuse of stolen registration kits from 2011 to produce voter cards for people who were not in the register; the enrollment of Congolese residing abroad, refugees, IDPs, former security officers, and other individuals omitted in the previous voter registry; and the removal of members of the police and armed forces.

Given the scale of the concerns, the CENI contemplated conducting either a partial or a full revision of the register. The latter entailed conducting a new registration exercise. Neither option allowed the CENI to hold the elections within the proscribed constitutional timeframe.[100]

In the end, the CENI opted to conduct a comprehensive overhaul of the voter registry. It launched a call for tender to purchase new registration kits and conducted an active voter registration from June 2016 – January 2018. Through these efforts, the CENI increased the number of registered voters by more than 8 million voters, from 32,024,640 in 2011 to 40,287,387 voters in the final registry.

In May 2018, the OIF deployed a second audit mission to assess the reliability of the revised register. The audit concluded that the revised register was inclusive and exhaustive but could still be improved. For instance, the audit found that 16.6 percent of enrolled individuals (7.7 million) were registered without a fingerprint on record, while 6 percent had between one and nine fingerprints taken. According to the implementation measures of the election law, the president of a registration center may allow eligible voters without hands, with amputated or injured fingers, with unreadable fingerprints or any other relevant disabilities to register without capturing their fingerprints for the sake of inclusiveness. According to the law, the president of any given center is required to indicate the conditions preventing the voter from submitting a fingerprint. However, the data-entry software used for registration lacked a comment box that would allow them to do so.[101]

The audit also stressed that the number of complaints about the daily postings of voter lists at the registration centers was low, allegedly because of the lack of voter information about the potential for review. It also highlighted the weak participation of observers and party agents in the registration

---

[97] According to Article 8 of the electoral law, the CENI should publish the final voter registry 30 days before the start of electoral campaign.
[98] Decision 43BIS/CENI/BUR/18 on Oct. 22, 2018, pertains to the publication of the definitive electoral list. Decision 55 addresses the postponement of the elections in the four regions.
[99] OIF, Voter Register Audit Report, 2015.
[100] See CEPPS, Support to DRC Elections Assessment Report Assessment 2016, July 18, 2016; http://www.ifes.org/sites/default/files/CEPPS_DRC_Assessment_Report_English.pdf (retrieval date: Feb. 9, 2019).
[101] OIF, Voter Register Audit, Final Report, May 2018.

operations. Furthermore, as during the 2006 and 2011 registration drives, provisional lists of registered voters were posted on a daily basis at registration centers but were not displayed there again after the lists were centralized and checked for duplicates. The posting of provisional lists occurred only at the local CENI management offices, which were frequently located some distance from the site where voters had registered. Thus, many voters were not able to verify whether their names were included in the registry in their registration/identification center. According to the CENI, financial constraints prevented the reopening and staffing of registration centers to display the final voter lists.[102]

The OIF's second audit also revealed the CENI's inability to implement the constitutional provisions to exclude army and police personnel from the registry because the government did not transmit a list of active personnel to the CENI.[103]

In their observation reports, domestic observers expressed disappointment that the CENI did not address the shortcomings identified by the OIF regarding the reliability of the revised register ahead of the election.[104] Observer groups and media reported several irregularities and problems with voter lists on election day. According to the citizen observer group Symocel, voters were allowed to cast a ballot without their voter card and/or verifying their name in the voter list in 17 percent of the polling stations where it observed, while JPC/ CENCO reported that the identity of voters was not verified by polling staff in 8.59 percent of polling stations where it observed.[105]

Voter Registration: Assessment and Lessons Learned

Despite critical efforts by the CENI to update the electoral list increasing the number of registered voters by more than 8 million, the 2018 OIF audit revealed a number of irregularities, such as 7.7 million individuals registered without a fingerprint on record or the inclusion of army and police personnel. Furthermore, domestic observer groups highlighted that the CENI failed to address a number of recommendations put forward by the audit team in order to improve the reliability of the revised voter register. In addition to these concerns, stakeholders criticized the CENI for its breach of the legal requirement to publish and publicize the final electoral list. Serious doubts about the reliability of the voter list further undermined the electorate's confidence in the CENI's capacity to conduct credible elections.

In order to support the CENI's efforts to produce a reliable voter register in the next electoral cycle, there is a need to provide additional support for the National Office for the Identification of the Population to update the census. Other recommendations that could help improve the reliability of the voter register include efforts to address the concerns raised by the OIF's 2018 audit. For instance, a student card or a voter card from previous electoral exercises should not be considered a valid proof of eligibility because of the lack of safeguards surrounding these documents. In addition, time limits for dispute resolution concerning challenges to the electoral roll should be extended. Members of the armed forces and Congolese national police should be allowed to register, bringing the DRC in line with regional standards and into conformity with the SADC Principles and Guidelines Governing Democratic

---

[102] See CEPPS, Assessment of Electoral Preparations in the Democratic Republic of the Congo (DRC). Feb. 28 – March 9, 2018;
https://www.ifes.org/sites/default/files/cepps_drc_2018_electoral_preparation_assessment_final_external.pdf (retrieval date: Feb. 9, 2019).

[103] As highlighted by the Congo Research Group, in recent years the EU supported biometric identification of police and armed forces in order to facilitate the payments of security forces. See Groupe d'Étude sur le Congo, *RDC : les élections de tous les dangers. Note 2 : Imbroglios techniques*, November 2018.

[104] MOE-SYMOCEL, *Déclaration Préliminaire Elections du 30 decembre 2018*; JPC/CENCO *Rapport d'observation électorale sur l'inscription des électeurs en République Démocratique du Congo Synthèse et recommandations Du 28 août 2016 au 02 novembre 2017.*

[105] MOE-SYMOCEL, *Déclaration Préliminaire Elections du 30 decembre 2018*; MOE JPC/CENCO, *Rapport Préliminaire de la Mission d'Observation Electorale*, January 2019.

Elections. The CENI should also conduct proper planning and allocate sufficient resources to ensure inclusion of the Congolese diaspora in the electoral roll as provided by the electoral law.

CENI Budget and Procurement

According to the law governing the CENI, it "enjoys administrative and financial autonomy" and has its own budget in the form of a grant, which can be supplemented by external inputs.[106] The Ministry of Finance disburses the CENI's budget based on an agreed-upon schedule between the CENI and the government. According to the official minutes of the inter-institutional meeting that took place on Oct. 19, 2018, the CENI's president declared that there were no major delays in the disbursement plan.

The CENI's electoral budget of US$1,332,621,709.50 is not annual but a multi-annual budget dispersed over three years – in 2016, 2017, and 2018 – and divided as follows:

1. Revision of the electoral list: US$400,821,569
2. First phase of elections (presidential, legislatives, and provincial elections): US$526,840,895
3. Second phase of elections (municipal and local elections): US$377,810,267
4. In-direct elections and others: US$27,148,979.[107]

While these details were released publicly, it appears that the CENI failed to manage its budget in a transparent way and did little to provide information to the public or key stakeholders.

Procurement

The 2018 Congolese governmental budget allocated US$432,642,693 for the conduct of the combined elections that took place on Dec. 30, 2018. According to internal CENI documents received by Jeune Afrique, the allocated budget covered most of the necessary components of the elections.[108] The largest single budgetary expense was the acquisition of electronic voting machines, which cost approximately US$158 million. The budget included US$12.2 million for contingencies in case of unforeseen expenses. The costs associated with the one-week delay of the elections and the fire in the warehouse may have exceeded the allocated contingency funds.

Local regulations foresee normal public procurement procedures, but they also recognize special cases (Article 17 / Law 10/010), among which two exceptions deserve attention: urgent matters (Article 42 § 4) and special markets (Article 42 § 5).[109] Special markets deal, among other areas, with strategic state interests (Article 44). According to CENI President Corneille Nangaa, the level of urgency called for an exceptional but legal procedure for the procurement of election materials, including the electronic voting machines. The process was reportedly validated by the prime minister.[110] Nangaa hinted that such a procedure could fit within the strategic state interests.[111] Stakeholders found these arguments to be unpersuasive. Both ordinary and special procurement should include crucial steps that were unfortunately missing in the procurement of the voting equipment. Neither initial needs assessments nor

[106] Art. 6 of Law 13/012 dated April 19, 2013.
[107] Point de presse du président de la CENI, dated Feb. 22, 2017,
[108] Jeune Afrique, Exclusif – Machines à voter, parapluies, véhicules… Les détails du budget électoral en RDC, Dec. 21, 2018 ; , retrieval date: April 29, 2019).
[109] Urgent cases would need the authorization of the unit in charge of the procurement control (Article 41). Special markets require a decision from the prime minister (Article 45). According to Lesfauries and Enguehard, the decree was still in preparation in December 2018. See Valentin Lesfauries and Chantal Enguehard, *L'introduction de machines à voter en République Démocratique du Congo*, 2018, p. 7.
[110] Pierre Boisselet, *RDC: comment les machines à voter des Sud-Coréens ont séduit Corneille Nangaa*, Jeune Afrique, March 15, 2018, pp. 33-34.
[111] ZoomEco, *RDC: CENI réceptionne les 8 premières machines à voter!*, Jan. 9, 2018.

predetermined technical specifications for products to be purchased were made publicly available. The elections were delayed for two years, which should have allowed adequate time to conduct a standard public procurement process. Likewise, the purchase of election-related materials should be considered a normal procedure with no additional concerns.[112]

Following the elections, in March 2019, the U.S. Department of the Treasury sanctioned three senior officials of the CENI – Corneille Nangaa, CENI president, Norbert Basengezi Katintima, CENI vice president, and Katintima's son, a high-level senior CENI advisor – citing "persistent corruption…to obstruct or delay preparations for credible and inclusive elections."[113] The press release detailing the sanctions cited several instances of alleged embezzlement and misappropriation of CENI operational funds for personal gain.. They were accused of inflating the contract for the electronic voting machines by as much as $100 million "with the intent to use surplus funds for personal enrichment, bribes, and campaign costs to fund the election campaign of Kabila's candidate."[114]

Distribution of Electoral Materials

The CENI used a multi-channel approach to distribute electoral materials, including voting machines, polling-stations kits, and polling booths to the polling sites. Results forms and polling-station forms used to record operational details were distributed separately. The CENI's distribution plan from its headquarters to the 75,563 polling stations consisted of three stages involving 15 regional hubs, 236 training sites, and 21,699 polling centers. Polling-station and results forms were printed and distributed much later than originally planned. In the future, the CENI should adopt effective contingency and security plans to increase its ability to respond effectively to unforeseen incidents such as the attacks that took place on the regional and central warehouses.

Operations and Logistics

When using electronic voting equipment, election officials should conduct audits and external certifications to foster trust and cooperation among stakeholders. No information is available as to whether these exercises were conducted. It is regrettable that the election calendar did not include information on voting machines. The CENI could have used the calendar and public deadlines to clarify procedures and address substantive aspects regarding its use. Although the CENI president said that voting machines had been certified by the Westminster Foundation for Democracy, the latter's report explicitly denies it.[115]

All electronic components should be set up in advance of the polls, including the machines, USB keys, SD, and SIM cards. Typically, the USB key contains the candidate database, the SD card contains the operational system as well as the voting application, and the SIM card enables the machine to transmit information remotely. Electronic voting machines also normally have internal memory capacity. Because of their technological nature, voting machines, USB keys, and SD cards are susceptible to manipulation. Their use should be rigorously protected in a transparent way. While only a limited number of people should be granted access to these components, the operation itself should be monitored by external experts through independent means.

---

[112] See Musangana, 2018, p. 81; Lesfauries, 2018, p. 7.
[113] U.S. Department of the Treasury, *Treasury Sanctions Congolese Officials Responsible for Undermining DRC Elections*, March 21, 2019; https://home.treasury.gov/news/press-releases/sm633 (capture date: April 29, 2019).
[114] Ibid.
[115] See L'Agence Plurielle IDJ, *Emission Questions/Réponses du Président Corneille Nangaa*, from 47:59 to 49:50; https://www.youtube.com/watch?v=f-jA_Zgzc9Q (retrieval date: Feb. 10, 2019); Westminster Foundation for Democracy, Voting Machine Review Democratic Republic of Congo, 2018), p. 17.

Despite their relative importance and the potential for tampering with the process, it is unclear whether any attention was paid to the configuration of the USB sticks and SD cards, which took place a few days ahead of the elections in Kinshasa. The CENI was not proactive in opening up this process to external evaluation, and election observers and political parties did not seem aware of the importance of such tasks either. The deployment of voting machines received greater supervision; however, public information on their chain of custody and relevant security measures was also limited.

Consultative Framework with Political Parties

There are no regulations that govern a consultative framework between the CENI and the other electoral stakeholders, including political parties. During the 2018 electoral process, consultative meetings with political parties were scarce and held only for extraordinary circumstances.[116] In general terms, it seems that the CENI failed to gain the parties' trust.

The electoral management body could have benefited from holding certain major events to foster dialogue and involve political parties in the organization of the elections. The Carter Center recommends institutionalizing the consultative framework to help build a more collaborative atmosphere among the various stakeholders engaged in the electoral process. Political parties have the right to be informed and consulted on all details of the organization of elections. Regular consultative meetings would help dispel misunderstandings caused by a lack of information and dialogue.

Election Observers

While articles 42 and 44 of the electoral law provide domestic and international observers with access to all electoral operations, the CENI decided to provide accreditation only to national and African regional organizations, and restricted observation to certain aspects of the process. Accredited observers were only allowed to assess voting and counting operations in the polling stations and at the local results compilation centers (CLCR).[117] As noted above, after having suggested for many months that The Carter Center would be invited to observe the elections, government authorities reversed course in late November 2018 and began publicly questioning whether the presence of "Western" organizations, including the European Union and The Carter Center, were necessary to ensure the transparency of the process. In the end, neither the EU nor The Carter Center were invited to observe.

According to the vice president of the CENI, more than 270,000 domestic observers were accredited.[118] The two main networks of citizen observers, the Permanent Committee of the National Episcopal Conference together with Justice and Peace Congo (JPC/CENCO) and the Synergy of Citizen Election Observation Missions (SYMOCEL), accredited 40,850 and 18,500 observers, respectively. Approximately 170 international observers were also granted accreditation. Five separate observation missions were deployed by regional organizations: the Southern African Development Community (SADC), the African Union (AU), the Economic Community of Central African States (ECCAS), International Conference of the Great Lakes Region (ICGLR) jointly with the Forum of Parliamentary

---

[116] On Aug. 20, the CENI held a meeting with political parties at the People's Palace about the electoral preparations, the revision of the electoral register, and prospects for publication of the electoral calendar. This meeting was attended by 110 party and coalition leaders and 410 party representatives. On May 26, 2017, the CENI met political party agents in preparation for the start of the voter identification and registration in the city of Kinshasa. Following the warehouse fire, the CENI's president convened a meeting with a few presidential candidates to inform them about the challenges hampering the timely holding of elections and the need for postponement.

[117] CENI, press conference 30/CENI-RDC/18, Nov. 7, 2018.

[118] ZoomEco, *RDC : 700 000 témoins, 270 000 observateurs et 1 575 journalistes accrédités pour les élections* ,Dec. 24, 2018; https://zoom-eco.net/a-la-une/rdc-700-000-temoins-270-000-observateurs-et-1-575-journalistes-accredites-pour-les-elections/ (retrieval date: Feb. 10, 2019).

Members States of the Great Lakes Region (FP-ICGLR), and the Electoral Commissions Forum of the SADC (ECF-SADC).[119]

Conclusion

The CENI faced extraordinary challenges in administering the elections. While it succeeded in managing many technical components, it failed to gain the trust of political actors and electoral stakeholders across the spectrum. The Carter Center encourages legislators to review the law regulating the CENI and to introduce objective and reasonable criteria and processes for the appointment, promotion, suspension, and dismissal of the body's members in order to strengthen its independence and impartiality. An appropriate system of checks and balances should be introduced to help ensure the body's impartiality and the credibility of the process. If the current system of appointing members based on their political or civil society affiliations is maintained, consideration should be given to an even distribution of tasks regarding the sensitive steps of the electoral process to facilitate a neutral implementation of the process. Once constituted, the CENI should make efforts to reach out to all political stakeholders and to facilitate an open and transparent exchange of information, so as to engender their confidence in the process.

The CENI missed several important deadlines and failed to set others. Officials should incorporate lessons learned in the 2011 and 2018 electoral processes, including about challenges in the deployment of sensitive materials, when formulating future electoral calendars to enable the body to meet all deadlines and milestones effectively. These considerations are especially important in public procurement, which should be conducted transparently and in line with national laws and regulations. In the future, the CENI should consider splitting the delivery of supplies and materials by voting location rather than type of material to help ensure that each polling station has the necessary materials to operate on election day. Likewise, the CENI should consider increased security measures to protect sensitive materials and the electoral process from unnecessary and costly delays. This is particularly important in a heated electoral environment. Contingency planning would help the CENI respond quickly and effectively to unanticipated disruptions.

The Carter Center encourages the CENI to review and reform its financial management policies as soon as possible to be in accordance with the principles of transparency, efficiency, integrity, and sustainability. Steps should be taken to provide the public with greater information about its budgeting and procurement processes, including publishing its budget on its official website and conducting procurement according to normal public regulations. These steps would facilitate public oversight of its financial management and help bolster public confidence in its operations.

The CENI did not grant observers full access to the electoral process. Constraining the scope of observation to certain organizations and to the final stages of electoral operations diminished the credibility and transparency of the electoral process. Accreditation criteria should be clearly and evenly applied to all, regardless of origin, so as not to give the perception of "cherry-picking" observer groups. An open, transparent, and inclusive accreditation process would lend greater credibility to the overall conduct of the polls.

Electoral Technology

While the same international obligations apply to both traditional paper-based and electronic voting systems, the use of new voting technologies poses certain specific challenges related to the secrecy and equality of votes, among other aspects. Moreover, as noted by OSCE, new voting technologies "are often implemented in a manner that makes direct physical observation of some important procedures

[119] Le Monde, En RDC, l'immense défi des observateurs électoraux, Dec. 19, 2019, https://www.lemonde.fr/afrique/Article/2018/12/19/en-rdc-l-immense-defi-des-observateurs-electoraux_5399927_3212.html (retrieval date: Feb. 10, 2019).

difficult. An additional complication is that (these technologies) may not be widely understood by the typical observer."[120] The introduction and use of technologies should fulfil general international obligations by customizing all procedures to this particular context.[121]

As detailed in the following paragraphs, The Carter Center team of experts assessed that the CENI failed to abide by several international principles relevant to the introduction of electronic-voting technology, as the process of adoption of the new voting technology was neither inclusive nor accepted by the political parties of the opposition. In addition, the CENI was not transparent in aspects related to the adoption and functionality of the new voting technology. An ambiguous legal framework governing the use of such voting technology further complicated the situation, as detailed below.[122]

The electoral code, regulations, and procedures should be reviewed and adapted to take into account that electronic voting machines cannot be observed through traditional means. Compliance with international standards, such as those involving the secrecy of the vote or the overall integrity of the elections, should be assessed with different tools. In particular, the CENI should adopt transparent and auditable procedures, such as opening the machine's programming and tabulation procedures to external evaluation and conducting checks to bolster their integrity. In terms of legality, the system used could be described as an electronic voting mechanism, and, thus, could be at odds with Congolese regulations prohibiting the use of electronic voting in the 2018 election. Though the electronic voting machines appeared to function well on election day, the freedom of voters and the secrecy of the vote suffered from weak and incomplete voter education programs on how to use them.

Introduction of Electronic Voting Machines in the DRC

Local and international stakeholders identified several concerns during previous presidential and legislative elections. The sheer number of candidates running for office made it difficult to design clear and effective ballots.[123] The tallying of results at compilation centers raised important concerns, and CENI officials said that a new system could provide more reliable outcomes.[124] The financial burdens of the overall process also constituted a serious problem.[125]

The CENI began to look for appropriate technical solutions. It eventually signed an agreement with the Association of World Electoral Bodies (A-WEB), a South Korea-based entity that enhances technical cooperation among electoral administration bodies, to strengthen the CENI's capacity and to develop an electronic voting and data transmission system.[126]

The use of electronic voting machines, however, became a highly controversial topic. Main opposition parties feared that electronic voting machines would facilitate electoral fraud, which would be difficult to detect because of the digital "black box" nature of the process. Stakeholders expressed a variety of

---

[120] *Handbook for the Observation of New Voting Technologies*, Warsaw: OSCE/ODIHR, 2013, p. 1.
[121] Ibid.
[122] The Carter Center, Handbook on Observing Electronic Voting, 2nd edition, 2012, p. 11.
[123] *Discours de Son Excellence Monsieur le Président de la CENI, Atelier d'Evaluation du Processus Électoral Gouvernement-CNSA-CENI*, July 5, 2018, p. 11; https://www.ceni.cd/assets/bundles/documents/publications-et-interventions/publications-et-interventions_1531404780.pdf (retrieval date: Feb. 10, 2019). See also The Carter Center, Presidential and Legislative Elections in the Democratic Republic of the Congo, Nov. 28, 2011, Final Report. p. 51-52; European Union Election Observation Mission, Final Report, 2011, p. 40.
[124] *Discours de Son Excellence Monsieur le Président de la CENI, Atelier d'Evaluation du Processus Électoral Gouvernement-CNSA-CENI*, July 5, 2018, p. 11; https://www.ceni.cd/assets/bundles/documents/publications-et-interventions/publications-et-interventions_1531404780.pdf (retrieval date: Feb. 10, 2019). See also The Carter Center, Presidential and Legislative Elections in the Democratic Republic of the Congo, Nov. 28, 2011, Final Report. p. 51-52 and 55-59; European Union Election Observation Mission, Final Report 2011, p. 40, 42-43.
[125] *Accord Politique Global et Inclusif du Centre Interdiocésain de Kinshasa*, Dec. 31, 2016, §IV.4.
[126] CENI, Annual Report June 2015 – Mai 2016, p. 36.

concerns, including the legal compliance of the system; the functionality of the machines, which ranged from mere ballot printing to digitally tallying and transmitting results; the manner in which machines could be monitored by stakeholders; and the digital literacy of Congolese voters.[127] Despite these concerns, all contestants eventually accepted the use of the electronic voting machines prior to the elections after it became clear that the CENI was intent on using them and that continuing to oppose the machines could lead to additional delays.

Description of the System

The voting machines procured by the CENI for use in the 2018 elections were manufactured by Miru Systems Co., a South Korean company specializing in electoral technologies. The CENI deployed one voting machine per polling station. Each voter was given a ballot paper to insert into the machine and then selected their preferred candidates for presidential, parliamentary, and provincial races on the touch screen. Voters made their selection by pressing on the candidate's picture or tapping the number allocated to that candidate. Depending on the number of candidates in a constituency, some voters were obliged to scroll through several screens to view the entire list of options for a given race. After selecting a candidate, the voter could either approve the selection from a pop-up box or go back to the previous step and modify their selection. Voters could also cast a blank vote. After completing these steps for each race, the machine presented a final summary of the candidates and ejected the printed ballot showing the voter's selections. Voters then cast their vote in a single ballot box.

After the closing of the polling station, officials separated and sorted the ballots for each race for the count.[128]Although election officials signed and enclosed a copy of the electronic tally for submission to the compilation centers, polling officials were required to conduct a manual count of the paper ballots. If there were discrepancies between the electronic and manual counts, the tally of the paper ballots was considered the official result, which was entered on the polling-station results form. Although the voting machines were technically capable of transmitting results of electronic tallies via cell phone networks or satellite modems in out-of-coverage areas, CENI officials indicated that such functionality was not used.[129]

According to the application measures of the electoral law, in case of discrepancies between manual and electronic tallies, the "deliberation teams" at the compilation center level were instructed to investigate and clarify conflicting results, drawing on the forms submitted by polling staff after conducting a paper count of the ballots, the list of voters who cast a ballot, the results issued from the voting machines, and/or, in certain cases, a recount of the ballot papers.[130] While party agents were allowed to observe the procedures of deliberation teams, they could not take an active role in the review process. Once material errors were addressed and discrepancies clarified, the deliberation team issued a new results form, which was duly signed by its team members. The Carter Center strongly encourages the CENI to review the deliberation procedures to ensure that party agents present at the compilation centers have an opportunity to take an active role in the review process regarding conflicting results and to act as witnesses in any revisions, signing revised results forms.

---

[127] The Geneva accord, for instance, refused voting machines (Article 4 § 3). See also Congo Research Group, The Electronic Controversy in the Congo, 2018; The Sentry, Electronic Voting Technology DRC: Security Vulnerabilities and Déjà Vu, 2018. https://twitter.com/JTAtv5monde/status/1076943430180319232/ (interview with Symocell/minute 01:55); https://actualite.cd/2018/09/18/machine-voter-la-cenco-demande-plus-douverture-de-la-part-de-la-ceni (quote from CENCO/18.09.18;https://www.mediacongo.net/article-actualite-45157_controverse_autour_de_la_machine_a_voter_le_comptage_manuel_pour_sauver_le_cycle_electoral.html (quote from CENCO / 03.12.18).

[128] Ballot papers were perforated, so that officials could separate and sort the ballots for each individual race.

[129] Actualite, *Nangaa : «On aurait accepté le principe de transmission par la machine à voter, on aurait tous les résultats aujourd'hui»*, Jan. 7, 2019; https://actualite.cd/2019/01/07/nangaa-aurait-accepte-le-principe-de-transmission-par-la-machine-voter-aurait-tous-les (retrieval date: Feb. 10, 2019).

[130] Art. 78 / CENI Decision 001BIS

Legal Framework: Electronic Voting vs. Voting Machines

Congolese law recognizes electronic means for casting votes under certain conditions. According to the constitution, the law should regulate the electoral process, and the CENI is responsible for managing voting and counting operations.[131] The electoral law empowers the CENI, if electronic voting is used, to determine the details of its implementation.[132]

Some voting technologies make it difficult to differentiate between traditional and electronic voting systems. While the electoral law envisages electronic voting as an option, a contingent provision prohibited its use during the 2018 elections.[133] Based on this provision, some stakeholders argued that the introduction of the voting machines was illegal because it implied the use of an electronic voting system.[134] The CENI argued that the system did not qualify as an electronic voting system since voters would cast paper ballots and electoral officials would count those votes manually. According to the CENI, the machine only facilitated the preliminary voting steps, i.e. filling out and printing the ballot paper.[135] The CENI issued regulations in February 2018 that were similar to those issued in previous elections but included details regarding the working procedures for use of the voting machines.[136] The regulation was challenged in court and rejected.[137]

By their very nature, electronic voting systems require procedural steps that stakeholders cannot observe using traditional methods. Given the use of technology, specialized experts are needed. In addition, measures such as audits and certifications of the data and electronic voting platforms can help assess the integrity of electronic voting systems. If no such compensatory measures exist, voting operations are opaque to citizens, a situation often referred to as the "black box effect" of electronic voting.[138]

On its face, the Congolese voting system appears open and transparent. The voter inserts a ballot in the machine, selects the candidate(s) of their choice and receives a printed ballot paper reflecting their decision(s). The voter can double-check whether the vote was printed as intended. However, the use of the electronic voting machines in the DRC entailed several procedural steps that are difficult to assess by traditional observation methods, such as the randomization of electronic records or the content of digitalized barcodes (QR codes) printed on each ballot.[139] Moreover, the regulations allow election

---

[131] Articles 122.2 and 211, respectively.
[132] Article 55.
[133] Article 28 allows electronic voting, but Article 237 prohibits its use in the 2018 elections. In 2017, the parliament rejected a proposition that intended to remove the latter.
[134] See, for instance, Moïse Musangana, *Qu'est-ce que le vote électronique? Qu'est-ce que la machine à voter?CENI: un choix hypothétique et peu rassuran*t, 2018; Alain-Joseph Lomandja, *Enjeux, défis et risques du vote (semi-) électronique*, DESC-Wondo, 2017; Didier Nkingu, *RDC: les machines à voter adoptées illégalement*, Interview with*La Libre Afrique*, May 2, 2018.
[135] See, for instance, CENI on Facebook, Nov. 6, 2018.
[136] The extent to which the CENI can determine the implementation of electronic voting and relevant details is also controversial because the constitution assigns the task of establishing the electoral system (Article 122.2) to the parliament.
[137] Decision 001BIS/CENI/BUR/18. In August 2018, it was challenged at the Constitutional Court (R. Const. 759). The court rejected the complaint.
[138] See Section Background, Draft Guidelines on Observing Electronic Voting, 5th Meeting on the Implementation of the Declaration of Principles for International Electoral Observation, 2010; also The Carter Center, Handbook on Observing Electronic Voting, 2nd edition, p. 1.; OSCE Handbook on NVT: Handbook for the Observation of New Voting Technologies, Warsaw: OSCE/ODIHR, 2013, p. 1.
[139] If the data recorded by the electronic voting machines - for example, the record of votes cast - is not duly randomized, one could review the chronological database and link the votes to the sequence of voters who cast their ballots. The secrecy of the vote would no longer be protected. Article 78 / CENI Decision 001BIS. The so-called QR (Quick Response) codes are square marks that were printed on the ballot papers. The information can be retrieved with a QR reader. The ballots that voters received contained two QR codes, which were intended to help in the delivery of election materials by denoting certain geographical locations. Theoretically, such codes

officials at compilation centers to use results issued from voting machines as one possible source material to resolve any discrepancies between electronic and manual tallies.[140]

Collectively, these procedures could potentially jeopardize both the secrecy of the ballot and the integrity of the results. Their actual impact cannot be assessed without specialists with information technology (IT) expertise who have access to parts of the IT systems. For instance, if there are concerns that electronic records were not duly randomized, an audit would be needed to provide conclusive evidence. Similarly, QR codes could also contain inappropriate content; a computer-based analysis would be needed to confirm such a hypothesis. And, because of a lack of information, independent analysts were not able to assess whether deliberation teams at compilation centers relied on electronic results rather than manual tallies.

Given these aspects of the electronic system, it could be categorized as an electronic voting platform (i.e., not just a ballot printer), raising legal questions about its compliance with current regulations prohibiting electronic voting. To increase transparency and public confidence in the systems, reforms should be introduced in the regulations to provide for independent technical audits to assess key aspects of the hardware and software deployed.

Training

Staff trained to use voting machines included polling station staff, chiefs of polling centers, technical operators at polling centers (TCV), officers in charge of digital data at the compilation centers, and technical staff at the at the National Data Center (CNT). Cascade training was conducted for all staff deployed at polling centers and polling stations. An initial seminar was delivered by Miru Systems Co. for the technical polling center operators and subsequent waves of cascade training were assumed by local trainers. The CENI produced a handbook devoted to voting machines to facilitate the training.

Stakeholder Views

The CENI organized meetings to present the voting machines to electoral stakeholders.[141] They encompassed, among others, political parties, scholars, civil society organizations, including electoral observers and international organizations. However, such institutional efforts were insufficient to create a consensus among stakeholders about the need for such voting machines. Instead, many players were strongly opposed to the introduction of the voting machines and highlighted a range of challenges concerning legal compliance or technical feasibility.

Broader transparency and inclusiveness were also lacking, including for strategic steps, such as the training of the technical operators at the polling centers and the configuration of USB sticks and SD cards. There is no indication that stakeholders were invited to monitor how the materials were configured. Rather than facilitating access, the CENI indicated that the law foresees neither IT experts from political parties nor any electoral observation at the training centers.[142] While the electoral law is silent in this regard, Article 44 indicates that observers should have free access to everywhere electoral

---

could contain additional information, visible only with a QR reader, that could allow a ballot to be traced to specific voters, impairing ballot secrecy. Other technical problems may exist (e.g., biased screen layouts, usability issues resulting in assisted voting or shutdowns), but such incidents can be observed without computer expertise, which excludes them from the notion of electronic voting.

[140] Article 78 / CENI Decision 001BIS.

[141] Article 67 of the electoral law asks the CENI to enhance transparency and share information with stakeholders on electronic voting.

[142] CENI, *Réponse de la CENI aux 45 questions de l'UDPS autour de la machine à vote*, July 22, 2018; https://www.ceni.cd/Articles/reponse-de-la-ceni-aux-45-questions-de-l-udps-autour-de-la-machine-a-voter (retrieval date: Feb. 10, 2019).

operations are conducted. The CENI's interpretation of the law to effectively exclude certain activities prior to election day from the legal notion of "electoral operations" is questionable.

Stakeholders' understanding of the legal and technical requirements of the voting machines was weak, likely due to their limited familiarity with such technology. For instance, they did not monitor the configuration of these items before they were deployed. The UDPS party, however, sent questions about the voting machines to the CENI, which replied with useful information.[143] Similarly, presidential candidates Yves Mpunga and Alain-Daniel Shekomba directed some questions to the CENI.

Digital literacy was crucial for voting operations. The CENI conducted several voter-education activities, focusing efforts on reaching vulnerable groups, such as pygmies and albinos, and targeted women's associations in a nod to disparities in gender.[144] Such efforts need to be strengthened and broadened in light of concerns about assisted voting procedures that were flagged on election day.[145]

Regional organizations that were accredited to observe the electoral process highlighted the important logistical efforts made to implement new voting technologies.[146] They also called for improved voter-education programs, training seminars, larger consultations with stakeholders, and efficient institutional communication strategies. Such measures would allow a better understanding of the challenges involved in the use of voting machines and would facilitate greater consensus.

The main domestic citizen observation groups also noted many of these problems. In addition, CENCO asked the CENI to only use data coming from manual tallies for the declaration of results.[147] Among other aspects, SYMOCEL highlighted that a large majority of the compilation centers it visited had not posted the relevant results.[148]

Conclusion

Although electronic voting in the DRC was introduced to address problems identified in 2011, its implementation failed to incorporate key computer-based tools, such as appropriate external monitoring through audits and certifications. In addition, the process lacked relevant modifications in the electoral law, and the CENI did not ensure adequate outreach to key stakeholders about the system.

On a positive note, the use of electronic voting machines allowed election officials to double-check manual tallies against electronic results, which might have discouraged tampering and allowed officials to more easily identify potential fraud. However, electronic voting machines can be tampered with and their results altered, which underscores the need to provide additional mechanisms to facilitate independent review and verifications. While the machines facilitated a more voter-friendly presentation of candidates and ballots as compared to the ballots used in previous elections, voter education regarding their use proved insufficient.

---

[143] UDPS, *45 Questions de l'UDPS a la CENI au sujet de la machine à voter*, 2018, https://laprosperiteonline.net/wp-content/uploads/2018/03/QUESTIONS.pdf (retrieval date : Feb. 10, 2019).
[144] CENI, *Le peuple autochtone ''Pygmée'' adopte la machine à voter à Oshwe*, May 22, 2018; https://www.ceni.cd/Articles/le-peuple-autochtone-pygmee-adopte-la-machine-a-voter-a-oshwe (retrieval date: Feb. 10, 2019);See CENI Facebook posts from Nov. 13 and 14, Oct. 18, and Nov. 8, 2018.
[145] CENCO-JPC interviewed 84,930 voters who were assisted, and18.3% of them could not back a statement highlighting that their choice had been freely made (*CENCO-JPC Rapport intermédiaire*, January 15 2019, p. 8). Moreover, unfamiliarity with voting machines explained up to 81.46% of cases involving assisted voting (*CENCO-JPC Declaration préliminaire*, January 2019, p. 22).
[146] Ibid.
[147] *Rapport intermédiaire*, JPC/CENCO, January 2019, p. 12.
[148] *Point de Presse de la MOE SYMOCEL surl'observation de l'évolution de la compilation des resultats dans les centres locaux de compilation des résultats (CLCR)*, Jan. 8, 2019, p. 3.

The introduction of the voting machines was highly contentious, and the CENI did not take adequate steps to assuage stakeholder concerns. Moreover, given how the voting machines affected voting procedures and how they were used during tabulation, there are reasonable doubts about whether the use of the machines was legal under existing law. If the Congolese opt to use the voting machines in future polls, legislators and the CENI should review and revise relevant laws and regulations and make adjustments as appropriate to bring their use into alignment with the legal framework.

Assessment of International Guidelines

Good international practices suggest that information about the possible introduction of electronic voting systems should be made available to the public well in advance. The CENI did not ensure adequate time and information about the systems. In addition, it appears to have failed to promote transparent procedures and to implement appropriate external certifications, making it difficult for stakeholders to overcome concerns about the introduction of the electronic voting machines. If electronic voting machines are retained for future elections, CENI officials should introduce safeguards, including public audits and certifications of the equipment and data, to help ensure the integrity of the electoral process. The Center urges the CENI to develop procedures and regulations governing the access of political parties and external actors to the technical processes to increase transparency and to provide additional oversight and accountability. Coupled with increased voter and public outreach, these steps could help bolster public confidence in voting machines.

Persons with Disabilities' Participation in the Electoral Process

The state should guarantee persons with disabilities (PWDs) political rights and full participation in public life. In this regard, PWDs have an equal right to participate in the electoral process. Many obstacles prevent PWDs from enjoying their political and electoral rights fully in the DRC. However, in recent years, the state has taken several positive steps toward this goal.

Since 2015, the DRC has made small but meaningful steps to improve access for persons living with disabilities. The DRC established in 2010 a national disability policy, the so-called National Program for the Integration and Rehabilitation of Handicapped People (PNIR/PH). In 2015, the DRC acceded to the Convention on the Rights of Persons with Disabilities (CRPD) and its optional protocol, which aim to promote, protect, and ensure the dignity, equality under the law, human rights, and fundamental freedoms of persons with disabilities. In conformity with the CRPD, Article 49 of the DRC constitution stipulates that the state has the duty to promote the presence of PWDs in national, provincial, and local institutions. While the numbers are presumed to be large, there is no official reliable data on the types of disability that exist in the DRC and no statistics on the number of PWDs.

To ensure that PWDs benefit from their legal rights, civil society organizations were created under the coordination of the National Federation of Associations of People Living with a Disability in Congo (FENAPHACO), an umbrella group of 226 associations working for the defense, promotion, and protection of the rights of the disabled in the DRC. The situation of PWDs in the DRC is described by many stakeholders as deplorable because of a lack of institutional support, poor sanitation, insufficient health assistance, and widespread stigmatization, made worse by deeply rooted prejudices. Women with disabilities face double discrimination, and they are often excluded from decision-making and development initiatives.

According to MONUSCO electoral officers, the CENI recruited PWDs, mostly male, to work as agents at the polling stations and local results compilation centers. The CENI also provided voter education for the visually and hearing impaired on the use of the voting machines in several parts of the DRC. Stakeholders reported that the rate of participation in the electoral process was not encouraging thanks to low literacy rates among PWDs and an inadequate distribution of information on recruitment and training.

Conclusion

The DRC's recent efforts to improve the ability of PWDs to exercise their political and electoral rights are positive. The DRC has adopted most of the international legal standards with respect to PDWs in Article 49 of its constitution. Despite enhanced public and private initiatives launched since 2012 to promote the presence of people with disabilities in national, provincial, and local institutions, the PWD community continues to face serious challenges. The Carter Center encourages Congolese authorities to partner with private and international organizations in the DRC to provide additional support to PWDs. Inter-electoral initiatives to increase the economic and educational opportunities for PWDs will foster greater political awareness and provide the basis for their participation in future elections as voters, election officials, and candidates.

Election Campaign

All political parties and candidates should enjoy equal opportunities to campaign freely without unreasonable restrictions. Freedom of expression and the right to peaceful assembly are particularly important during the campaign period. Candidates should enjoy freedom of movement and be able to hold peaceful meetings and demonstrations to disseminate their ideas and display their campaign messages and political material. Any restrictions on campaign activities should be nondiscriminatory and subject to prompt judicial review. State institutions, including security forces, must act in a nonpartisan manner. If use of state resources and public funding is permitted, access should be provided to all contestants on equal basis.[149]

The International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR) are part of the applicable legislation in the DRC.[150] Article 215 of the constitution stipulates that international treaties and agreements have higher authority than national laws. Drawing on its international obligations and constitutional principles, the Congolese state should ensure peoples' rights to participate in public affairs and to exercise freedom of expression, association, and assembly.

In the DRC, protections for political and civil rights during the election campaign fell short of national and international standards. Political parties and candidates did not enjoy equal opportunities to campaign, and some opposition candidates faced unreasonable restrictions that limited their fundamental rights to freedom of expression, peaceful assembly, and freedom of movement. Kinshasa's governor's decision to suspend all campaign activities in the city of Kinshasa indefinitely during the last week of campaigning was a clear violation of the election law, which allows candidates to campaign until 24 hours ahead of the election day.[151] Effective remedy was not provided by the courts to uphold candidates' campaign rights under articles 28 and 29 of the electoral law. Media reports about the use of excessive force by police to disperse unauthorized, spontaneous gatherings to welcome candidates at airports or on their way to meeting venues in Kinshasa or Lubumbashi, among other locations, indicated a serious violation of citizens' rights. Citizen observers reported that the legal ban on the use of state

[149] ICCPR, Article 21; UNHRC General Comment 25, paras. 19 and 25; ACHPR, articles 9, 10 & 11; SADC, Principles and Guidelines Governing Democratic Elections, 2015, para. 4.1.2.

[150] Article 21 of the ICCPR states, "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." Along the same lines, Article 11 of the ACHPR states, "Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others."

[151] Law 06/006 March 9, 2006 regarding the organization of presidential, legislative, provincial, urban, municipal and local elections, as modified by Law 11/003 of June 25, 2001, Law 15/001 of Feb. 12, 2015 and Law 17/013 of Dec. 24, 2017, articles 28, 29.

resources for campaigning purposes was violated in a substantial number of campaign activities.[152] The government's failure to implement constitutional provisions to support contestants' campaign activities with public funds was detrimental to the promotion of a level playing field.

Legal Framework

The electoral law lays out conditions under which the electoral campaign should take place in the country.[153] The rules concern the duration of the campaign for presidential, legislative, and provincial elections; rights and freedom of candidates to organize meetings or other activities related to their campaign; equal treatment in all media; and equal access to public media with the supervision of the Higher Council for Audio-visual and Communication (CSAC). Article 9 of Organic Law 13/12 (2013) on the CENI's organization and working procedures states that, among its powers, the CENI must ensure the proper conduct of election and referendum campaigns.

Freedom of Peaceful Assembly and Regulatory Framework on Campaign Meetings

The constitution guarantees the right of candidates and political parties to hold peaceful meetings and demonstrations. According to the electoral law, campaign gatherings are regulated by the decree law, which states that demonstrations and public meetings are subject to a regime of prior notification and that prior authorization can be mandated by the authorities.[154] The continued imposition of the requirement to seek authorization for public events and meetings contravenes Article 26 of the constitution, which imposes an obligation on organizers only to inform the competent authority in writing about demonstrations on public roads or in open air.

In November 2013, opposition MP Delly Sesanga Hipung submitted to the National Assembly a draft law to establish measures to regulate the right of freedom to hold public demonstrations in order to replace the 1999 decree law. The so-called Sesanga law was adopted by the assembly and the senate in October 2015. However, the law was not promulgated by President Kabila, who sent it back to the parliament for reconsideration in 2018.[155] The National Assembly has not re-examined the draft to date. According to Amnesty International, the legislation proposes invalidating a notification if demonstration organizers do not meet certain stipulated conditions and imposes a heavy fine or a six-month prison sentence if these administrative provisions are violated.[156] The draft legislation gives authorities the right to impose restrictions on the time and place of the meeting without establishing clear criteria in conformity with international norms for doing so and stipulates that meetings will not be held unless an agreement is reached about its proposed date and time.[157] It is regrettable that the proposed law would perpetuate the current practice of prior authorization, which contravenes the Congolese constitution and international norms on freedom of assembly.[158] The Carter Center recommends review and reform of the law governing public meetings and demonstrations so that is more closely aligned with the state's international and constitutional obligations.

---

[152] SYMOCEL, Rapport sur la Campagne Electorale pour les Elections Presidentielle, Legislatives et Provinciales du Decembre 30, 2018, Dec. 28, 2018.
[153] Chapter 4 of the electoral law in its Articles 28-36 deals with electoral campaign rules.
[154] Law 196 of 1999.
[155] Voice of Afrique, *Kabila promet une loi pour "recadrer les manifestations" en RDC*, Jan. 26, 2018. https://www.voaafrique.com/a/kabila-promet-une-loi-pou-recadrer-les-manifestations-en-rdc/4227018.html, (retrieval date: May 23, 2019).
[156] The stipulations, found in Article 10, include the name, address, phone number of organizers, venue or itinerary, object, and duration of the gathering, among others.
[157] Articles 13 and 14, respectively.
[158] Amnesty International, Legal Analysis of DRC Legislation on the Right to Freedom of Peaceful Assembly (2018).

Campaign Environment

During the election campaign, authorities made several highly contested decisions restricting opposition candidates' movements and declined to authorize campaign activities at the time and venue of the candidates' choosing. These decisions fueled tension among supporters and security forces. In Kinshasa, Governor Kimbuta's decision to suspend campaigning in Kinshasa on Dec.19 over security concerns contravened constitutional provisions on freedom of assembly and election law stipulations on campaign freedom. CENI regulations designed to implement the law regulating campaign meetings and rallies allow administrative authorities, in agreement with the organizers, to modify the planned itineraries for campaign meetings and rallies, and postpone or cancel the date of a given meeting for reasons of security or public order.[159] The law and accompanying regulations do not allow for the indefinite suspension of all campaign activities. Furthermore, according to international best practices, blanket bans should be avoided because these are likely to be disproportionate to the situation and often do not consider the individual circumstances of the assemblies involved.[160]

National and international observer groups reported that the campaign was generally peaceful. However, human rights monitors cited the use of systemic violence by the government against the opposition as well as obstacles faced by FCC activists to campaign in many communities, including attacks against its activists and destruction of property.[161] These events were widely reported in the media. Security forces reportedly killed at least 10 people and wounded many using live ammunition at gatherings and rallies during the official campaign period, which kicked off on Nov. 22.

Despite human rights treaties prohibiting the arbitrary deprivation of life, security forces did not always respect the rights of citizen to assemble. Security forces violated the basic principles on the use of force and firearms by law enforcement officials while policing both pre-approved and spontaneous assemblies.[162] On Dec. 11, 2018, police used tear gas, canons of hot water, and firearms to disperse a crowd gathered to meet Lamuka coalition's presidential candidate Martin Fayulu in Lubumbashi. At least two people were shot dead and 43 injured, 15 of which suffered from firearm injuries.[163] The next day, the military used live ammunition to disperse Lamuka militants waiting to welcome Fayulu in Kalemie, and, as a result, a woman was killed and nine wounded. A 16-year-old UDPS activist also was shot dead by a police officer in Mjuji-Mayi amidst clashes between security forces and UDPS campaigners waiting for Felix Tshisekedi. On Dec. 18, the military killed a woman and injured several demonstrators protesting the arrival of Emmanuel Shadary in Tshikapa. In a retaliatory attack, PPRD offices were pillaged and an FCC campaign meeting in Tshikapa was cancelled because of insecurity.[164]

---

[159] Circular 002 of June 29, 2006, provides implementing regulations for Decree Law 196, which governs public meetings and demonstrations.

[160] ACHPR, Guidelines on Freedom of Association and Assembly in Africa; http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf (retrieval date: Feb. 16, 2019).

[161] Freedom House, Electoral conflicts report during the Nov. 23 – Dec. 27 (campaign period), 2018.

[162] See ICCPR, Article 6 and ACHPR, Article 4 on prohibition to arbitrary deprivation of life. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27 to Sept. 7, 1990), "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life" (Article 9). The use of force should always be a last resort and whenever used must be proportionate and aim to preserve human life. See also UNGA A/72/178, Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, July 20, 2017.

[163] According to data released by *the Association Congolaise pour l'Accès à la Justice*. See Actualite, *Présidentielle en RDC : Deux partisans de Fayulu tués par "balles réelles" à Lubumbashi , 43 blessés* (ACAJ), Dec. 11, 2018; https://actualite.cd/2018/12/11/presidentielle-en-rdc-deux-partisans-de-fayulu-tues-par-balles-reelles-lubumbashi-43 (retrieval date: Dec. 13, 2018).

[164] HRW, August 2018, *DR Congo : Opposition under Assault*, https://www.hrw.org/news/2018/08/28/dr-congo-opposition-under-assault

Suspension of the Campaign

Following the decision to postpone the elections from Dec. 23 to Dec. 30, the CENI announced that Dec. 21 would be the last day of the campaign period. This closure was based on Article 28 of the electoral law, which provides that "the electoral campaign is open 30 days maximum before the date of the poll and ends twenty-four hours before that date." This implies that campaign activities should not be conducted for more than one month. However, the same provision specifies that the election campaign should end 24 hours before the election. The applicable legal provisions are silent as to the fate of the election campaign in case of electoral delays. Because the CENI could not simultaneously fulfill both of these stipulations, it decided against extending the campaign period past 30 days. The closure of the campaign seven days before the new election date raised considerable controversy. The main opposition leaders said that the decision was unlawful and that the election campaign should have been extended to coincide with the new electoral date.[165] In the absence of an interpretation of this provision by the judiciary, CENI officials commented in the media that legislators limited the duration of the campaign to 30 days to provide a break in political activity before polling, while other electoral stakeholders said that they believed legislators wished to avoid a long slack period between the end of the campaign and election day. Parliament should clarify Article 28 of the election law to ensure that such controversy is avoided in future elections.

Political parties largely respected the CENI's decision to suspend the election. According to media reports, candidates did not hold meetings or campaign assemblies after Dec. 21. However, campaigning continued on social media until election day.

The suspension of polls in Beni, Butembo, and Yumbi triggered protests in Beni, Goma, and Butembo. The police and army used teargas and fired shots to disperse youth, injuring several people. The Lamuka coalition called for a day of *villemorte*, or general strike, on Dec. 28 across the DRC. While the call was not widely followed in Kinshasa, daily activities in eastern towns generally came to a halt. An Ebola treatment center was vandalized in Beni, and U.N. peacekeepers intervened to protect the patients. Demonstrations also took place and were repressed by security forces in the Majengo and Katindo areas of Goma, Butembo, Yumbi, Katindo, and Campus du Lac.[166]

Campaign Restrictions due to Armed Conflict and Ethnic Disputes

Insecurity was a core campaign issue, particularly in eastern areas. The ruling coalition and opposition presidential candidates accused one another of supporting the militias and not doing enough to protect civilians. Insecurity and armed activity had a direct impact on the campaign environment in some areas where militias operated. For instance, Maï-Maï Malaïka combatants from Mandevu did not allow parliamentary and provincial candidates to campaign in Nonda and Kasenga (Maniema Province). On Dec. 3, clashes between FARDC and Maï-Maï combatants in Mboko, Fizi, and Uvira (South Kivu) caused widespread panic.[167] In areas of Lubero, civil society sources reported that many candidates could not access their constituencies to conduct campaign activities because armed groups partially

---

[165] Depeche, *[RDC-Elections] CACH décide de continuer la campagne électorale jusqu'au 28 décembre, Dec. 21, 2018* http://www.depeche.cd/rdc-elections-cach-decide-de-continuer-la-campagne-electorale-jusquau-28-decembre/ (retrieval date: May 20, 2019), Actualité, *RDC-Caricature : Le CNSA, Cach et Lamuka pour la poursuite de la campagne*, Dec. 22, 2019; https://actualite.cd/2018/12/22/rdc-caricature-le-cnsa-cach-et-lamuka-pour-la-poursuite-de-la-campagne (retrieval date: May 20, 2019).

[166] Actualite.cd Goma: manifestations anti-report des élections à Béni, Butembo et Yumbi réprimées aussi à Katindo et au campus du Lac: Dec. 27, 2018 *https://actualite.cd/2018/12/27/goma-manifestations-anti-report-des-elections-beni-butembo-et-yumbi-reprimees-aussi* (retrieval date : Nov. 22, 2019)

[167] Radio Okapi, *Sud-Kivu: la campagne électorale perturbée par de violents combats à Uvira,* Dec. 3, 2018; https://www.radiookapi.net/2018/12/03/actualite/securite/la-campagne-electorale-perturbee-par-de-violents-combats-uvira (retrieval date: Feb. 10, 2019).

occupied the area.[168] Coinciding with Martin Fayulu's rally in Butembo, the Allied Democratic Forces rebel group killed 18 people in Paid, a neighborhood of Beni, and Mangolikene village on Dec. 6 and 7.[169] On Dec. 12, CACH candidate Felix Tshisekedi cancelled his campaign trip to Butembo because the campaign team received military intelligence about a possible ambush by the Maï-Maï militia. Armed police officers refused to provide an escort because of security concerns. Vital Kamerhe accused the Lamuka coalition of mobilizing the Maï-Maï militias to create chaos.[170]Hundreds were killed in inter-communal clashes between the Banunu and the Batende ethnic groups in Yumbi in Mai-Ndombe province. Violence broke out Dec. 16 and 17 after the burial of a Banunu customary chief who lived in Kinshasa. Thereafter, thousands crossed the river Congo seeking refuge in neighboring Congo-Brazzaville.[171] [172]

Participation of LGBTIQ Groups

The Congolese constitution guarantees that all human beings are equal in dignity and rights. There is no law criminalizing homosexuality in the DRC. Human rights organizations and civil society groups denounce discrimination against lesbian, gay, bisexual, transgender, intersex, and queer people (LGBTIQ) and other human rights violations because of one's sexual orientation or gender identity, including detention and criminal charges under Article 176 of the penal code, which criminalizes public activities that violate public decency. The DRC has not promulgated any specific law to protect LGBTIQ groups from violations of their rights.[173]

The mission discussed LGBTIQ rights with a wide range of civil society stakeholders. According to interlocutors, there is no open participation of LGBTQI groups in party politics. Stakeholders stressed that social taboos on the LGBTIQ community are still prevalent. The Center recommends that the DRC consider legislation to explicitly protect and promote the political rights of LGBTIQ groups to encourage their open participation in political life.

Party and Campaign Finance: Legal Framework

The government failed to implement legal requirements to fund political parties for their regular activities and to provide campaign financing for political parties and candidates. According to Article 6 of the constitution, political parties are eligible to receive public funding. This support is regulated by a

---

[168] Radio Okapi, *RDC : l'insécurité complique la campagne électorale à Lubero*, Dec. 5, 2018; https://www.radiookapi.net/2018/12/05/actualite/politique/rdc-linsecurite-complique-la-campagne-electorale-lubero (retrieval date: Feb. 10, 2019).
[169] Congo Actuel, *Beni : encore des morts dans des attaques attribuées aux ADF*, Dec. 11, 2018; http://www.congoactuel.com/beni-encore-des-morts-dans-des-attaques-attribuees-aux-adf/ (retrieval date: Feb. 10, 2019).
[170] News Network Agency, *RDC:Tshisekedi annule l'étape Butembo suite à une attaque de « Mai-Mai » programmée*, Dec. 12, 2018; http://newsnetwork.cd/2018/12/12/rdc-tshisekedi-annule-letape-butembo-suite-a-une-attaque-de-mai-mai-programmee/ (retrieval date: Feb. 10, 2019).
[171] France 24, *Hundreds killed in Yumbi, DR Congo: 'People were finished off with machetes'* https://observers.france24.com/en/20190121-hundreds-killed-yumbi-congo-massacre (retrieval date: Nov. 22, 2019).
[172] UN News: *DR Congo: 'New waves of violence' likely, UN warns, unless State acts to prevent intercommunal reprisals*, https://news.un.org/en/story/2019/03/1034511 (retrieval date: Nov. 22, 2019).
[173] Mouvement pour la promotion du respect et égalité des droits et santé (MOPREDS) et al., Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC) Submitted for consideration at the 121st Session of the Human Rights Committee, October 2017; https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/COD/INT_CCPR_CSS_COD_29078_E.pdf (retrieval date: Feb. 10, 2019).

law promulgated in 2008 that had to come into force after the 2012 election.[174] Funding for both party organizational purposes and campaign activities was supposed to be allocated and transferred to parties by an inter-institutional commission. However, to date, this commission has not been constituted, and the application measures for effective implementation of the law has not been issued.[175] As a result, political parties do not receive public funding.

Most political parties in the DRC lack a regular source of income that could help them consolidate their structure.[176] According to the law, parties are entitled to receive an annual contribution from the state for organizational purposes. The contribution is supposed to be proportional to the number of seats obtained by the parties in the deliberative assemblies and should total between 0.5 percent and 1 percent of the state's yearly revenues. The law also specifies the state's contribution towards campaign funding. This should be included in the budget law of the year following the electoral process and should be equal to 2 percent of the state's yearly revenues. Thus, the law envisaged that electoral campaigns were to be funded by the state after the conclusion of the process.[177] Nonetheless, the 2019 budget law, promulgated by outgoing President Kabila on Dec. 13, did not include any allocation to fund political parties.

The Carter Center urges Congolese authorities to fulfill the rights enshrined in the Congolese constitution and legal framework regarding political parties and campaign finance. Public financing of political parties would help establish a level playing field among political parties and candidates contesting for public office. To this end, The Carter Center encourages the legislators to review the legal framework on political parties and campaign finance and ensure its effective implementation. In addition, the law regulating funding of political parties should be harmonized with the electoral law and the law on women's rights and parity. The latter stipulates that any political party that does not include female candidates in its lists is ineligible for public funding. [178]

Use of State Resources

Article 36 of the election law bans the use of state assets – including finances and personnel, state companies, offices, and public bodies – for campaigning purposes. The penalty for violating this law is the removal of the candidacy or the nullification of the list of candidates involved. Campaign reports by domestic observers highlighted several instances in which the Common Front for Congo (FCC) used state resources for campaign activities.[179] Stakeholders said that the line separating the state and the FCC coalition was blurry. The FCC was created by a council of ministers, and on Aug. 8, the minister of communication announced on a live national television broadcast that Emmanuel Ramazani Shadary would be the coalition's candidate.[180] Several ministers were involved in managerial positions in the FCC campaign team, which included more than 500 members, according to media sources.[181] Prime Minister Bruno Tshibala was appointed speaker of the campaign. Most ministers were given a coordination role in the campaign in an area related to their ministry. For instance, the campaign security

---

[174] Article 25 Law 04/002 (2004) on organization and working procedures of political parties stipulates that political parties can benefit from state funding, and its regulation is covered under Law 08/005 – 2008.
[175] The Carter Center, Presidential and Legislative Elections in the Democratic Republic of the Congo, Nov. 28, 2011, Final Report.
[176] Radio Okapi, *RDC: la problématique du financement public des partis politiques*, April 3, 2018 https://www.radiookapi.net/2018/04/03/emissions/droits-et-devoirs/rdc-la-problematique-du-financement-public-des-partis (retrieval date: May 22, 2019).
[177] Article 8, 08/005 – 2008.
[178] Law 15/013 of 2015 on women's rights and parity
[179] SYMOCEL observers reported that in 30.55% of campaign meetings observed, state resources were used. See SYMOCEL, Rapport sur la Campagne Electorale pour les Elections Presidentielle, Legislatives et Provinciales du Decembre 30, 2018, Dec. 28, 2018.
[180] Groupe d'Étude sur le Congo, *RDC: les élections de tous les dangers. Note 3: La crédibilité des élections en question*, December 2018.
[181] Telle Report, April 2018, *DRC: Majority unveils Emmanuel Shadary's campaign team,*

team was led by the interior and defense ministers; the minister of communication led the FCC communications team; and the minister of transport was in charge of organizing transportation for campaign teams. Significantly, the minister of infrastructure, Thomas Luhaka, was responsible for a team to "follow actions with a visible impact."[182] During the campaign period, he inaugurated several public infrastructures.[183]

Conclusion

Despite strong legal protections for political and civil rights in the constitution, Congolese authorities failed to uphold these obligations during the election campaign. Political parties and candidates faced unreasonable restrictions that limited their fundamental rights to freedom of expression, peaceful assembly, and freedom of movement. The decision to suspend campaign activities in Kinshasa during the last week of campaigning violated the election law, and effective legal remedies were not provided. As noted above, various media reported instances where it appears that police committed serious violations of human rights and used excessive force to disperse unauthorized meetings linked to political activities. Such actions should be prevented in the future.

A number of factors influenced the establishment of a level playing field for all political parties and candidates, including violations of the legal ban on the use of state resources for campaigning and the government's failure to provide public campaign financing to parties. Looking forward, the Center urges the enforcement of campaign laws, including the use of sanctions to punish campaign-finance violations to provide equal opportunities for all political parties and candidates to compete evenly. The Center further urges legislators to review and reform the law governing demonstrations and public meetings. The continued imposition of a requirement to seek authorization for public events and meetings contravenes Article 26 of the constitution and should be revised to allow organizers to inform the competent authorities in writing, rather than requiring that they seek permission to hold demonstrations, rallies, and other public campaign events.

Communications and Media

Media Legal Framework in the DRC

Freedom of expression and freedom of the press are fundamental human rights and a cornerstone of democracy.[184] SADC member states commit themselves "to promote necessary conditions to foster transparency, freedom of the media; access to information by all citizens; and equal opportunities for all candidates and political parties to use the state media."[185] Other regional instruments in Africa include the Declaration of Principles on Freedom of Expression in Africa, and the SADC Protocol on Culture, Information, and Sport, particularly Chapter 20 on freedom of media. While freedom of expression can be limited under international law under certain circumstances, the decision by Congolese authorities to cut off internet access for 20 days following the elections undermined the

[182] Le Maximum, *Front Commun pour le Congo: Shadary, fin prêt pour la bataille électorale*, Nov. 6, 2018; Jeune Afrique, *Présidentielle en RDC : le camp au pouvoir dévoile son équipe de campagne*, Nov. 3, 2018.
[183] Inauguration of a new bridge along the road Gemena-Zongo (province of Sud-Ubangi) on Dec. 2, posted by Thomas Luhaka in his Facebook page. Inauguration of the road between Kikwit and Thsikapa on Dec. 6, see Jambo News Channel, *Thomas Luhakainaugure la nouvelle route Kikwit Tshikapa images*, http://jambonewschannel.com/thomas-luhaka-inaugure-la-nouvelle-route-kikwit-tshikapa-images/ (retrieval date: Feb. 10, 2019).
[184] UDHR, Article 19; ACHPR, Article 9; SADC, Principles and Guidelines Governing Democratic Elections, 2015, paras. 4.1.6 and 5.1.10.
[185] SADC, Principles and Guidelines Governing Democratic Elections, 2015, paras. 4.1.6.

country's international commitments and citizens' rights of access to information regarding issues of public importance.[186]

The media play a critical role in the framework of the electoral process. Journalists work to inform citizens and raise awareness about the electoral process to help citizens make an informed choice. Media should also serve as "an impartial and open forum for public debate and discussion, and provide candidates and parties with an equitable podium for their campaigns."[187] This implies that journalists have the right to enjoy freedom of expression and press and, at the same time, should abide by the core principles of their profession, such as accuracy, fairness, balance, and impartiality, among others.[188]

The DRC has endeavored to guarantee freedom of expression and press by incorporating in its legislation various international and regional standards, including the Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), and the African Charter of Human and People Rights (Article 9). The constitution embodied those obligations through articles 23 and 24. The legal framework on media is provided by Law 96-002 of June 22, 1996, which paves the way for the liberalization of mass media in DRC and lays out the regulatory framework in which media operate in the country. The law guarantees in principle freedom of expression through articles 8, 9, 11, and 13 and makes it the responsibility of the state to ensure the right to information. Unfortunately, the same law contains restrictive provisions that thwart press freedom.[189] On these grounds, journalists can be arrested for claims of defamation and calumny of public figures, including publishing material that offends the president, among others.[190] There are reports of seizure of journalists' working equipment, administrative or judicial pressure, and economic coercion.[191]

General Overview of the Media in DRC

The DRC possesses a rich media landscape and boasts strong international and constitutional commitments to protecting freedom of expression and the press. A survey conducted in the 26 Congolese provinces by the consulting and research firm Target S.A.R.L. shows that more Congolese people listen to the radio (72 percent) than watch television (48 percent), access the internet (24 percent), or read newspapers (1 percent).[192] Although the DRC's media landscape is robust, its coverage is distributed unequally across the territory. There are more than 300 radio stations and 130 television channels across the country. Of these, only two have national coverage – *Radio Télévision Nationale Congolaise* (RNTC) and Radio Okapi.[193] The remaining have coverage in at least two provinces or have provincial coverage only. According to various journalists working in the DRC, the multiplicity of media in the country demonstrates the desire of Congolese people to express themselves, which is not always possible in national media. According to Reporters without Borders, in August and September 2018, the management of the national broadcasting company (RTNC) dismissed three staff members

---

[186] See, for instance, the African Union Declaration on Internet Governance adopted by the AU Summit held in Kigali in January 2018.

[187] UNDP, Media and Elections - A Guide for Electoral Practitioners, 2014, p. 11.

[188] UNDP, Media and Elections - A Guide for Electoral Practitioners, 2014.

[189] Articles 28, 29, 73 and 75 of Law 96-002 of June 22, 1996. A recent case involved the arrest of Peter Tiani, director of the newspaper ''Le Vrai Journal,'' See Actualite, *RDC : Le journaliste Peter Tiani en liberté provisoire*, Dec. 15, 2018; https://actualite.cd/2018/12/15/rdc-le-journaliste-peter-tiani-en-liberte-provisoire (retrieval date: Feb. 10, 2019).

[190] Section 77 of the Press Freedom Act 96-002 of 1996. According to sections 76 and 77 of the Press Freedom Act, the punishment for offending the president should be handled under sections 22 and 23 of the Penal Code.

[191] Journaliste en Danger, *Rapport 2018 sur l'Etat de la Liberté de la Presse et d'Expression en RD Congo*, Nov. 2018, page 9.

[192] Target Research & Consulting, Audience des medias en RDC *(édition 2018)*, May 9, 2018; https://www.target-sarl.cd/fr/content/audience-des-medias-en-rdc-edition-2018 (retrieval date: Feb. 10, 2019).

[193] Target Research & Consulting, Audience des MEDIA en RDC, March 2017, page 9.

who produced footage showing the president of the National Liberation Front of Congo, Elie Kapend, giving an ultimatum to President Kabila to leave power in five days at a public gathering.[194]

In a 2018 report on the status of freedom of press and opinion, a local civil society organization, *Journalistes en Danger* (JED), documented 121 cases of abuse of freedom of press: 15 journalists were detained for 48 hours, 38 people were detained for more than 48 hours, and 19 people were tortured.[195] The DRC ranks 154 out of 180 countries in the Reporters Without Borders 2019 rankings on freedom of press.[196] The Carter Center team met several local journalists who reported that they exercise self-censorship to avoid arrest, intimidation, and harassment.[197]

Various legal initiatives attempted to reverse this situation. Civil society organizations have lobbied for the creation of a legal environment more conducive to the work of journalists. A draft bill on freedom of the press from June 2015, which has not yet been passed by the National Assembly, foresees the decriminalization of press offenses such as defamation or contempt toward the head of state. The draft bill on access to information, which was passed by the Senate, has been pending before the National Assembly since 2015. In addition, a law on core principles applicable to audiovisual communication, which should enable actual pluralism in the treatment of information within the media, was passed by the two houses in 2011 but has not yet been promulgated by the head of state, despite the fact that pursuant Article 136 of the constitution, laws passed by the two houses should be promulgated by the head of state with 15 days of their passage.

The Role of the Higher Council for Audiovisual and Communication in the Election Campaign

The Higher Council for Audiovisual and Communication (CSAC) is an institution established by Article 212 of the constitution and Law 11/001 of Jan. 10, 2011. Its mission is to "guarantee and ensure freedom of press and protection of press, and all means of mass communication within the scope of the law…fair access of political parties, association and citizens to official means of information and communication…''.[198] The 2011 law defines media as: "the set of mass communication platforms, including radio and/or television stations and/or television channels as well as print and electronic media outlets whose purpose is the collection, processing and dissemination of information or ideas."[199] It prohibits diffusion through the media of tribal, ethnic, racial, or religious hate, as well as incitement to violence and xenophobia.

A CSAC directive of March 2, 2015, (updated by a Nov. 23 decision), regulates the electoral campaign "through the media and other means of mass communication on the national territory." Importantly, the law distinguishes between media and "other means of mass communication," which indicates that social media is covered by this regulation. Online media is specifically covered in Chapter IV. Article 57 states that candidates can create websites as part of their election propaganda, information about which should be communicated to the CSAC. If the sites are interactive, the candidates must ensure that content placed by their "followers" is controlled and respects morals, human dignity, private life, and the security of the state. Social media – for example candidates' official Facebook pages – could be considered an interactive website and thus subject to this article.

---

[194] Reporters sans Frontières, *RDC: RSF et JED demandent la réintégration de trois journalistes après leur licenciement abusif*, Sept. 17, 2018; https://rsf.org/fr/actualites/rdc-rsf-et-jed-demandent-la-reintegration-de-trois-journalistes-apres-leur-licenciement-abusif (retrieval date: Feb. 10, 2019).
[195] Journaliste en Danger, *Rapport 2018 sur l'Etat de la Liberté de la Presse et d'Expression en RD Congo*, Novembre 2018, page 15.
[196] https://rsf.org/en/ranking.
[197] Journaliste en Danger, *Rapport 2018 sur l'Etat de la Liberté de la Presse et d'Expression en RD Congo*, Novembre 2018, page 9.
[198] Article 212 of the constitution.
[199] Law 11/001 of Jan. 10, 2011. Article 4.

After consultation with the CENI and before the elections, the CSAC amended its directive on electoral campaigns through media by its decisions of Nov. 23, 2018, "in view of making sure that the principle of fairness and equity that should organize the media are respected."[200] This late issuance of the CSAC decision violated the electoral law, which requires that regulations be published one month in advance of the electoral campaign.[201]

Election observation groups and press experts stressed in their meetings with The Carter Center that the media coverage of the campaign was not fair and that media coverage of the campaign by national public media sources was weighted heavily in favor of the ruling party. According to the media monitoring conducted by the SYMOCEL observer group during the pre-election period, public audiovisual media committed 83 percent of their airtime to political actors belonging to Kabila's presidential majority grouping and over 40 percent of their airtime to the FCC presidential candidate, Emmanuel Shadary, during the campaign period.[202] In this regard, media authorities, including the CSAC, failed to uphold the principles of fairness and equal coverage in the media during the campaign period. These shortcomings were attributed to the body's lack of financial resources and lack of independence from the government.

According to the chairperson of the CSAC, Tito Ndombi, the body was not able to fulfill its mandate because of a lack of resources. Ndombi underlined that the CSAC did not receive sufficient funds from the government.[203] The CSAC conducted media monitoring throughout the campaign process at the central and provincial levels with support provided by an international partner.[204] Media analysts and journalists told The Carter Center that, in addition to its lack of resources, a key constraint on the CSAC is its lack of independence to act efficiently as a regulatory body. The CSAC remained silent despite blatant breaches of the basic principles of fairness and equality that are supposed to guide the media during the campaign. The minister of communication and media encroached on the functions of the CSAC by suspending RFI and CCTV in early January for breaching the code of conduct of the media in the framework of the campaign.[205] For future elections, the Center urges the DRC government, the National Assembly, and other actors to work toward creating a legal and security environment consistent with its international obligations, and one which is more conducive to strong and independent media.

Social Media

Legal Framework

International standards relevant to social media relate to freedom of expression, political participation, internet governance, and internet regulation. The ICCPR's Article 19 protects freedom of expression, while General Comment 34 of the U.N. Human Rights Committee confirms that means of expression "include all forms of audio-visual as well as electronic and internet-based modes of expression."[206] The African Union's 2018 Declaration on Internet Governance and Development of Africa's Digital

---

[200] Decision CSAC/AP/013 of Nov. 23, 2018, on applicable measures of the directive CSAC/AP/002/2015 of March 5, 2015 related to the electoral campaign.
[201] Article 33 of the electoral law.
[202] See SYMOCEL, *Rapport d'Observation de la Période Pré-électorale Synergie des Missions d'Observation Citoyenne des Elections*, Dec. 12, 2018, and SYMOCEL, *Rapport sur Campagne Electorale pour les Elections Présidentielle, Législatives et Provinciales*, Dec. 28, 2018.
[203] Interview with Tito Ndombi on Jan. 15, 2018.
[204] The *Osservatorio di Pavia (*OdP) is a media analysis and research institute based in Italy.
[205] Congo Actuel, *Après internet, les fréquences de la RFI et de CCTV rétablies*, Jan. 21, 2019, http://www.congoactuel.com/apres-internet-les-frequences-de-la-rfi-et-de-cctv-retablies/ (retrievaldate:Feb. 5, 2019).
[206] UNHRC, General Comment 34, Article 19: Freedoms of opinion and expression, para. 12.

Economy emphasizes that the rights of freedom of expression and access to information "must be upheld online as well as offline."[207]

While freedom of expression can be limited, ICCPR Article 19 states that any such restrictions must be provided for in law and meet the tests of necessity and proportionality. The Human Rights Council, in its Resolution 32/13, condemned "unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and calls on all States to refrain from and cease such measures," while a 2011 report of the U.N. special rapporteur on freedom of expression expressed concern at "the emerging trend of timed (or just in-time) blocking to prevent users from accessing or disseminating information at key political moments, such as elections…."[208]

ICCPR Article 25 covers the right to political participation, and General Comment 25 of the U.N. Human Rights Committee states that "the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint." Particularly relevant for social media, including private communication platforms such as WhatsApp, as well as Facebook, Messenger, and Twitter direct messaging, is the concept of free communication between citizens. General Comment 25 states that "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."[209] Social media, including messaging platforms, is an increasingly important way that citizens organize themselves.

In the past, the government of DRC has shut down or reduced access to digital communications during elections and other significant political events. The government once again shut down communications immediately after election day across the country. In a Jan. 7, 2019, press release, the U.N. special rapporteur on freedom of expression said the decision by the Congolese authorities was not only contrary to international standards on freedom of expression but also infringed upon people's access to information and basic services,.[210] While public order can be a justification for limitations of freedom of expression, a blanket shutdown of internet services does not seem to meet the proportionality test set out in the ICCPR. Moreover, the restrictions, which were carried out by internet and telecoms providers in response to directives from the Post and Telecommunications Regulatory Authority (ARPTC), undermined the Congolese citizens' rights during a period of particularly acute public interest.

Social Media Use in DRC

Internet penetration in the Democratic Republic of Congo was estimated at six percent in January 2018, or roughly 5.13 million people, of which 2.2 million are active social media users.[211] About 36.6 million (44 percent of the population) use mobile phones. Some 91 percent of internet traffic occurs on mobile phones, with 20 percent of mobile connections on 3G or 4G. Most social media users are on Facebook,

---

[207] African Union Assembly, Assembly/AU/Dec.3 (2018), declaration on internet governance and development of Africa's digital economy, Jan. 29, 2018.

[208] U.N. Human Rights Council, A/HRC/17/27, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, May 16, 2011.

[209] UNHRC, General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service, para. 8.

[210] David Kaye, special rapporteur on the promotion and protection of the right to freedom of opinion and expression, United Nations Human Rights Office of the High Commissioner, *UN expert urges DRC to restore internet services*, Jan. 7, 2019.

[211] According to We Are Social and Hootsuite's Global Digital Report 2018; https://wearesocial.com/blog/2018/01/global-digital-report-2018 (retrieval date: Feb. 10, 2019). The report uses data from a range of sources including social media providers.

while WhatsApp is the most popular messaging app. About 32 percent of Facebook profiles in the DRC are female, and 68 percent are male.

It is important to keep the role of social media in the DRC in perspective. The low internet penetration and the concentration of access in the capital can give a distorted picture of social media's influence. Furthermore, many diaspora media and activists are active on social media, and it is often difficult to distinguish between those active within and outside the country, as users do not always declare their location in their account profiles.

Nevertheless, internet usage in DRC has risen 66 percent in a year, a trend that is likely to continue. Information disseminated on social media can also feed into wider discussions and information-sharing via traditional forms of communication. Social media messaging services such as WhatsApp, which have better encryption and privacy than SMS messaging, are also important tools for activists in sharing information and mobilizing supporters.

While online activity and social media are hard to regulate given that accounts are often managed from abroad, there are several relevant laws and regulations. Freedom of expression and freedom of information are guaranteed in articles 23 and 24 of the constitution, under the condition of respect for the law, public order, and good morals.

Social Media Monitoring

The Carter Center expert mission began monitoring social media, including Facebook and Twitter, on Dec. 18, 2018. The Center monitored the daily activity of the pages and official accounts of the three main presidential candidates on these outlets, as well as the main parties and movements supporting them, and the two most prominent excluded candidates.[212] This covered the campaign period (retroactively), the campaign silence period until election day, and the period between the elections and the announcement of results. The Center also monitored the CENI's social media accounts. In addition, the Center conducted qualitative analysis of the overall social media environment, including instances of fake news, misinformation, hate speech, and violent discourse. WhatsApp is recognized as being an important social media tool, particularly for mobilizing voters. However, because of WhatsApp's closed nature, it was not possible to monitor activity on WhatsApp systematically.

The Campaign on Social Media

Candidates posted a mix of photos and videos of campaign events, campaign materials, comments on developments in the electoral process, and links to relevant news stories. The largest level of Facebook activity noted during the campaign was by the pro-Fayulu movement, the Democratic March (*Marche Democratique*), which made 708 posts, generating nearly 55,000 comments and more than 900,000 reactions, far outstripping the other accounts monitored.[213] Its top posts were links to specially created single-page websites that allow visitors to share their support through social media.[214] Overall, the Democratic March conducted a highly sophisticated online campaign.

---

[212] Most of the candidates' and parties' social media accounts were not verified accounts and were generally identified as being their "official" accounts by the number of followers and content. However, one candidate appeared to have more than one official account (Shadary), and there were many unofficial accounts in support of each candidate.

[213] Democratic March (*Marche Democratique*) is not registered as an official party. Its website is registered in the U.S., and it is unclear from its website who is part of it: www.marchedemocratique.com (retrieval date: Feb. 10, 2018).

[214] https://www.votezintelligent.com, https://www.jesoutiensmartin.com/ (retrieval date: Dec. 20, 2018).

Similarly, on Twitter, the pro-Fayulu Coalition Lemaku was the most active account followed, although its number of followers was relatively modest, approximately12,500, compared with 325,000 for Martin Fayulu, who was also quite active on Twitter. The most active pro-Shadary Facebook account monitored (@Shadary13) made 464 posts, generating more than 10,000 comments and 35,000 reactions.[215] Despite the large followings on his social media accounts, Felix Tshisekedi did not campaign actively on social media, only occasionally speaking out against the Kabila regime and action taken to obstruct campaigning by opposition candidates.

Paid advertising on Facebook was noted on the accounts of Fayulu, Shadary, Democratic March, and also some smaller supporter sites and the page of the Interior Minister Richard Muyej Mangez, who ran for the legislatives. This mostly took the form of campaign materials or favorable media appearances. No Twitter advertising was noted.

Campaign Silence on Social Media

After the campaign officially ended, opposition candidates avoided posting overt campaign posts, either staying silent or limiting their posts to comments on developments. The paid advertising on the official page of Martin Fayulu also stopped after the end of the campaign period. However, the Democratic March and the two main Shadary pages continued to disseminate paid advertising. This appears to indicate that Fayulu was being careful to stick to the letter of the law regarding his own official page, leaving it to his proxies and supporters to continue the campaign in the interim period. Carter Center social media monitors found that both the verified Shadary account and another account attributed to Shadary seemed to have continued to use paid Facebook advertising to target voters.[216] As paid advertising can be bought by any Facebook page and used to target users in specific countries or in specific demographics, it is almost impossible to regulate in practice.[217]

Fake News and Misinformation

Almost every major development was accompanied by some form of fake news on WhatsApp, Twitter, or Facebook, targeting both sides of the political divide. Fake news was frequently shared by journalists and civil society organizations, often apparently inadvertently, which demonstrates the challenges for ordinary citizens to verify the authenticity of posts.

Examples include a fake opinion poll purportedly by *Jeune Afrique*; a fake diplomatic cable from the EU ambassador listing concerns about the organization of the elections, following his expulsion from the country; real photos of protests and scenes of violence being used out of context, particularly in relation to North Kivu; fake posts purporting to be from CENI President Corneille Nangaa; fake news announcements of further postponements or the cancellation of elections; false announcements of arrests of individuals for tampering with election materials; false outcomes of the SADC pre-election mediation between candidates; and false announcements of results. Accounts that appeared to be based outside of the DRC were also active in spreading fake news. As in electoral processes elsewhere, the purpose of the fake news and misinformation seems to have been to confuse, disrupt, and discourage participation.

---

[215] Facebook statistics were compiled using Netvizz.

[216] The @emmanuelramazanishadary13 was the only Facebook account that had been verified with a blue tick. Another Shadary account that appeared to be equally "official" had more followers, possibly because it had the shorter handle @shadary13.

[217] On Nov. 29, several digital media outlets released GEC/BRCI opinion polls in breach of Article 2 of Directive CSAC/AP/001/2015 (2015), which bans the dissemination of opinion polls 48 hours before election day. These opinion polls were shared widely through social media.

Overall Online Environment

The Carter Center monitored the overall online atmosphere by regularly checking the social media accounts of journalists, civil society, activists, politicians, and other influencers, as well as by following relevant hashtags. Online discourse became increasingly tense after the week-long postponement of the elections. Key themes included concerns over the use of electronic voting machines and the possible electronic transmission of results, threats of protests if the elections were further postponed, and complaints about the CENI's decision to postpone the elections in three provinces until March 2019.[218] In this tense climate, some instances of hate speech and incitement to violence were identified by users, although not by any candidates.

During the 20-day internet suspension, the social media traffic of the accounts monitored by the Center dropped dramatically. (For example, the most-followed Facebook account monitored, the Democratic March, saw a drop from tens of thousands of daily interactions to a few thousand). While commentary, especially on Twitter, continued, most originated from accounts based abroad and from journalists within DRC who had access to satellite connections or signals from neighboring Brazzaville. Some paid advertising from politically aligned accounts continued during this period, including from Democratic March (pro-Fayulu) and CongoActu24 (pro-Shadary), presenting claims and counter-claims of the results. Interestingly, the countries targeted by advertising were expanded to include the Republic of Congo, Belgium, and France, among others, suggesting efforts to sway international and diaspora opinion. The online presence of U.S.-based lobbyists was also noted.[219]

Conclusion

There are a number of disturbing social media trends that could increase as accessibility grows within the country. The government should refrain from using disproportionate measures such as blanket internet shutdowns or blocking of entire social media platforms to tackle public-order concerns related to social media. Such actions infringe on freedom of expression and have significant wider social and economic impacts. Authorities should join in international calls for social media companies to take more responsibility for the dissemination of fake news and disinformation, particularly during election periods, while also calling for social media companies to be transparent about the criteria they use in "takedowns" of such accounts or misinformation. The government should also consider reforming the Penal Code to remove the crimes of insult against public authorities that excessively limit freedom of speech both online and offline.

Election Day

A key component of democratic elections is administering an effective process for the casting, counting, and recording of votes. The right to vote should not be restricted in any way, and arrangements for voting should provide equal opportunities for all voters to exercise their rights. Voting procedures should be conducted in an efficient and transparent way, with accredited election observers and party agents able to observe all aspects of polling. Authorities should take effective measures to remove any obstacles to freedom of movement that prevent eligible voters from exercising their right to vote and to ensure they can freely express their will without undue coercion.[220]

Voting operations fell short of international standards. The CENI's effective cancellation of presidential elections in Beni, Butembo, and Yumbi prevented eligible voters in the affected areas from exercising

[218] A *TV5 Monde* report on the topic was widely shared on social media.
[219] For example, @DRCElectionInfo, an account managed by DCI Group AZ, L.L.C. for Akin Gump Straus Hauer and Feld LLP on behalf of Katumbi and Fayulu, and PamojaUSA, LLC on behalf of Felix Tshisekedi, http://www.pamojausa.org (retrieval date: Feb. 10, 2019).
[220] UNHRC, General Comment 25, paras. 12, 19, and 20.

their right to elect their president, and no efforts were made to provide eligible voters an alternative to exercise this right.

Given the small size of the mission and its non-accredited status, the Center's team was not able to directly analyze voting and counting procedures. The mission did not have access to polling stations nor polling officials. In spite of these constraints, the Center's expert mission was able to conduct a limited direct assessment of key aspects of the process, relying on interactions with stakeholders, experts, and media analysts, together with analysis of key source documents, media reports, and the reports and findings of other national and international observers.

Analysis of Election Day Procedures

According to national observation missions, most polling stations managed to complete opening procedures without major problems.[221] Several delays were reported because of missing essential material from polling stations, including voter lists and voting machines or their components. In general terms, this is a positive achievement, given the complexity of the overall system. However, voting machines faced important usability problems that resulted in many reported instances of queues and assisted voting. Assisted voting could provide an opportunity for political party agents to exercise undue influence on voters, jeopardizing the secrecy of the vote. While the CENI was aware of this risk and undertook voter-education activities, these efforts were insufficient given the timeframe and the magnitude of the project. The layout of polling stations, and particularly the position of voting booths, was also reported as a breach of secrecy. These issues should have been addressed during the training of polling staff.

It was widely reported that voters faced difficulties in locating their polling stations and names in a given polling station.[222] In voter lists posted at the entrance of polling stations, voters were organized in alphabetical order by surname. However, the font was reportedly small and difficult to read. Observers noted interruptions of the voting process caused by mechanical problems with the voting machines. According to Symocel, in 18 percent of these cases, the disruption lasted more than 30 minutes and, in 5.8 percent, more than one hour.[223] The CENI did not provide any information about whether any polling stations were unable to resume voting. The polls generally closed on time, although allowances were made for those that opened late or where polling was interrupted by technical challenges.

The use of electronic voting machines impeded the observation of voting operations in some polling stations. In addition, the use of voting machines raised concerns about the secrecy of the ballot. The electronic record of votes, as well as the "quick response" or QR codes, which identified ballots by province and also served to prevent forgery, could, if a sequential order was used, link the content of a ballot to a given voter.[224] Similarly, analysts pointed out that the software could be designed, on purpose or by mistake, to not record votes as intended, to the benefit of specific candidates, regardless of what was shown in the screen or in the printout.

---

[221] MOE SYMOCEL, *Déclaration Préliminaire Elections du 30 Decembre 2018*, Jan. 3, 2019, p. 7; MOE JPC/CENCO, *Rapport Préliminaire de la Mission d'Observation Electorale*, Jan. 2019, power point presentation, slide 16.

[222] La Libre Afrique, *RDC/Elections: des désordres dès le matin et une tension croissante*, Dec. 30, 2018, https://afrique.lalibre.be/29980/rdc-elections-deja-des-desordres-des-le-matin/ (retrieval date: Feb. 10, 2019); France 24, *La présidentielle en RD Congo racontée en images par les Congolais*, Dec. 31, 2018 ; https://observers.france24.com/fr/20181231-election-presidentielle-rdc-congo-images-amateur-temoignages (retrieval date: Feb. 10, 2019).

[223] See MOE SYMOCEL, Déclaration Préliminaire, p. 8 and MOE JPC/CENCO, *Rapport Préliminaire*, PPT presentation, p. 19.

[224] A QR code is a machine-readable, two-dimensional optical label that is used to transmit information.

Additional concerns were raised about the ballot-counting process and the potential impact of using the electronic voting machines in the tabulation of results. The law requires polling-station officials to tally the paper ballots, and to use these figures to complete the results forms, rather than using any electronic tally. However, polling-station officials were instructed to include the electronic tally along with the materials that were transferred to the local results-compilation center (CLRC). In case of any discrepancies, both sets of numbers could be reviewed at the CLRC, and officials were allowed to revise the official results based on the electronic tally.

Both of the large national observer networks, Symocel and CENCO-JPC, reported mismatches between the manual and electronic tallies. CENCO/JPC reported discrepancies in 7.1 percent of polling stations it observed, and Symocel reported mismatches in 11 percent of polling stations observed. However, neither organization provided information about the scale of the discrepancies, and as a result, it is difficult to assess the scale of these issues or their impact on the tabulation of results.[225] Symocel additionally noted that 6 percent of the results sheets filled out at the polling-station level were completed on the basis of electronic results, in breach of the law.[226]A post-election audit could have been conducted to assess the magnitude of such incidents and their impact.

For future elections, the Center strongly encourages the CENI to introduce public certifications and audits to review the integrity of the electronic voting machines and bolster public confidence in their use. These measures are particularly important if the law continues to allow election officials to give preference to the electronic tally of the votes at the local compilation-center level.

Election Day Environment

International and national observer missions and the media reported that election day was generally peaceful in Kinshasa and across the country. However, serious incidents were reported in conflict-prone areas (Kasai-Occidental and the Kivus), as well as in Bandundu and Kinshasa.[227] A Human Rights Watch report, issued on Jan. 5, 2019, detailed several instances of violence: In Lwebo, six militia men from Kamwina Nsapu attacked a polling station. Police and army officers repelled the attack, and there was one casualty in the militia. In Mulo, a grenade exploded at a polling station, injuring one person. In Inongo, several polling stations and voting machines were destroyed by a group of people who were reportedly angry that voting machines only printed Shadary's choice in the ballot paper. Polling stations were also pillaged and voting machines destroyed by a group of voters who were desperately waiting for voter lists be dispatched to their polling stations in Kingabwa (Limete Commune) in Kinshasa. The CENI eventually replaced election materials there, and polling was extended. In Walungu territory in South Kivu, a police officer killed two people and injured two others after opening fire at a polling station. Voters killed the officer, and voting was suspended.[228]

CENI Communication on Election Day

The CENI was conspicuously silent during a great part of election day and published no information about the problems reported with voter lists or other areas of concern. During election day, CENI President Corneille Nangaa appeared on TV visiting a voter center in Kinshasa where voting had started

---

[225] MOE JPC/CENCO *Rapport Préliminaire*, PPT presentation, p. 29; MOE SYMOCEL, Déclaration Préliminaire, p. 8.
[226] MOE SYMOCEL, *Déclaration Préliminaire*, p. 9.
[227] Human Rights Watch, *RD Congo: Les élections ont été entachées de violences et de restrictions du droit de vote*, Jan. 5, 2019, https://www.hrw.org/fr/news/2019/01/05/rd-congo-les-elections-ont-ete-entachees-de-violences-et-de-restrictions-du-droit-de (retrieval date: May 20, 2019).
[228] Actualites.cd *Elections-2 morts à Walungu : Nangaa parle d'un technicien et d'un policier lynchés par la foule* https://actualite.cd/2018/12/30/elections-2-morts-walungu-nangaa-parle-dun-technicien-et-dun-policier-lynches-par-la

late. Around 9 p.m., Nangaa gave an interview on the public TV channel RTNC. He gave a positive account of the election, praising the CENI and its organizational capacity, despite logistical challenges. He stressed that the electoral cycle was not yet over and that there were other elections to prepare. The lack of a formal response from the CENI to incidents that were reported throughout election day fueled frustration among voters and fed rumors spread by political parties. Looking forward, the Center encourages the CENI to establish a media center to provide regular reports to the press and the general public on elections day operations.

"Election Day" in Beni, Butembo, and Yumbi

The CENI issued a decision on Dec. 26, 2018, to postpone the polls in four constituencies (Beni district, Beni town, Butembo in the North Kivu province, and Yumbi in Maï-Ndombe province) until March 2019.[229]This meant that the electors from those districts were not able to participate in the election of the new president, effectively excluding them from the electoral process for president. Polls for the legislative and provincial races were held several months later on March 31, 2019. The CENI attributed its decision to the persistence of the Ebola epidemic in those areas of the North Kivu, the presence of armed groups that were disrupting security in the region, and terrorism. In the case of Yumbi, the CENI also cited recent altercations between the region's ethnic groups. The CENI's decision reduced the number of electors for the presidential election by almost 1,247,600, or roughly 3.1 percent of the voter roll. These areas are widely seen as opposition strongholds, which cast doubt on the neutrality of the decision to postpone the polls.

On Dec. 28, 2018, presidential candidate Théodore Ngoyi filed an application before the Constitutional Court contesting the constitutionality of the CENI's decision to postpone the presidential vote in these areas. The petition alleged that the decision violated the constitutional rights and freedoms of the voters in these areas and asked the court to annul the CENI's decision as a matter of urgency. The normal judicial process for such matters takes a month, and there is no provision that compels the court to sit and rule promptly unless urgency is declared by the government. The government made no such declaration, and, as a result, the case was not heard before election. The judicial system envisages certain mechanisms for effective remedies that could have been pursued in this instance to ensure that all electoral stakeholders were treated fairly if the CENI's actions or inactions were found to harm the electoral process.[230]

Following demonstrations against the cancellation of the presidential elections and the postponement of legislative and local polls until March 2019 in three opposition strongholds, i.e., Beni town and territory, Butembo and Yumbi city, youth in Beni town organized manual voting in five improvised voting centers on election day. In the morning, they set up symbolic polls in two stadiums located in Malepe and Mulekera communes. The organizers printed ballot papers, and many people cast their vote after presenting their voter cards. In Malepe, police and army officers shot in the air to disperse the crowd, but the "unofficial voting" continued. In Butembo, youth organized similar activities.

Post-election Developments

Tabulation

International and regional treaties state that access to information should be guaranteed throughout the electoral process. As such, procedures for tabulation should be clearly established in advance of election

[229] CENI Decision 55.

[230]Article 150 of the constitution affirms that "the judiciary power is the guarantee of individual liberties and fundamental rights of citizens." Organic Law 16/027 on organization of the jurisdictions of administrative order provides for extraordinary measures to expediate judicial review of cases.

day. According to internationally recognized best practices, a key method to ensure transparency in elections is for the election management bodies to make detailed results broken down to the polling-station level publicly available, displayed at all levels and on the internet.[231] The election management body must ensure that candidates and their representatives, as well as citizen and international observers, can observe all phases of the tabulation process. The legal framework should protect the right to effective remedy before a competent court and provide clear guidance on the grounds for petitions and appeals as well as partial or full recounts or invalidation of results.[232]

The CENI did not release clear information on the tabulation procedures and the results-transmission systems. It failed to complete the tabulation procedures in a transparent and observable way. This lack of transparency undermined stakeholders' confidence in the credibility of the results that were announced by the election management body and later confirmed by the Constitutional Court. Given the country's size and the logistical challenges, this lack of transparency inhibited the ability of potential petitioners to gather the necessary evidence to challenge the results within the short legal deadlines.

The electoral law details the counting and tabulation procedures that the members of the polling station should undertake from the minute the voting stops until the results are declared by the CENI.[233] The counting and tabulation start at the level of the polling station. Next, the results are consolidated at the 179 local results-compilation centers (CLCRs), which are present in every constituency. Finally, results are sent to the national level.

The law permits political party agents and observers to be present at the CLCRs, with some restrictions.[234] While observer groups were granted access to the CLCRs, observers noted instances in which they were not able to locate some of the CLCRs at first, because the CENI failed to communicate and publish the locations of the CLCRs, and some venues were modified. The law also requires the CENI to publicize results at all levels: polling stations, CLCRs, and finally by the CENI.[235] According to citizen observer reports, in most cases, polling-station results were posted outside polling stations, but tabulated consolidated results were not posted outside the CLCRs. Interlocutors reported that the activities at the CLCR level were interrupted when the CENI announced provisional national results, and the processing of results at the CLCRs was not resumed afterwards. Despite calls by citizen and international observers for the CENI to publish results by polling station, it failed to publish disaggregated data at the national level. As of the finalization of this report in November 2019, no disaggregated data has been published to support the official electoral results announced and confirmed by the Constitutional Court.

Results-Transmission System

The results-transmission system was controversial because the introduction of electronic voting, which introduced a second method to transmit results, was not accepted by all stakeholders. A hesitant CENI strategy, an ambiguous legal framework, and a weak general awareness of the practical implications of electronic voting undermined its effective implementation.

---

[231] Electoral Institute for Sustainable Democracy in Africa and Electoral Commission Forum of SADC Countries. Principles for Election Management, Monitoring, and Observation in the SADC Region. Johannesburg: Electoral Institute of Southern Africa (2003) European Union. (2008). Handbook for European Union Election Observation, Second Edition. European Commission, p. 86; OSCE Office of Democratic Institutions and Human Rights. (2001). Existing Commitments for Democratic Elections in OSCE Participating States. Warsaw: Organization for Security and Co-operation in Europe.

[232] UNHRC, General Comment 25, paras. 19 and 20; SADC, Principles and Guidelines Governing Democratic Elections, 2015, para. 5.1.4.

[233] Articles 62 through 72 of the electoral law.

[234] Article 78 of Decision 001 BIS/CENI/BUR/18.

[235] Article 68, para. 1; Article 70, para. 3; Article 71, paras. 3 and 4 of Decision 001 BIS/CENI/BUR/18.

There were three options for the transmission of electronic results: remote transmission using voting machines, physical transmission of electronic results recorded on USB sticks, and physical transmission of the electronic results sheet printed by the voting machine. Legal provisions foresee a remote transmission from polling stations, but the extent to which this occurred remains uncertain because of the CENI's lack of effective communication. Thus, data transmission from voting machines was not totally excluded.[236]

The Westminster Foundation for Democracy said that a voting machine's external communication and access to the internet should be disabled "until required."[237] The CENI confirmed its approach using the very same terms. A few days ahead of the elections, this issue again gained prominence thanks to a media report alleging that machines would be used for data transmission.[238] CENI President Corneille Nangaa addressed such claims with mixed messages at the time.[239]He later denied that there had been data transmission from polling stations on election day, although the evidence reported suggests differently.[240]The CENI should adopt a transparent and consistent communication about how these procedures are handled to facilitate a better understanding among stakeholders and enhance the overall credibility of the process.

In addition to the possible transmission of results by the internet, polling officials were instructed to send the USB sticks, which recorded the results of the electronic tally from each machine directly, to the local CLCR compilation centers. Data retrieved from the USB sticks were intended to be used to double-check the manual tallies. These figures came directly from voting machines' internal records; observers and/or party agents only had an opportunity to review paper printouts from the machines. In this regard, two issues deserve attention. According to SYMOCEL, results from 16 percent of the CLCRs which reported results were not based on manual tallies.[241] Hence, digital results may have been used for tabulation purposes in those centers (see Article 78 of CENI Decision 001BIS). This underscores the need to gain a much clearer understanding about whether electronic results or manual tallies were used for tabulation purposes. If the decision is made to retain the voting machines, observers should be better capacitated to understand how electronic tallies are handled and transmitted.[242]As underlined above, appropriate measures should be in place to enhance transparency and openness through audits and external certifications.

---

[236] L'Agence Plurielle IDJ, *Emission Questions/Réponses du Président Corneille Nangaa* from 48:51 to 49:33; https://www.youtube.com/watch?v=f-jA_Zgzc9Q (retrieval date: Feb. 10, 2019). Article 69 of Decision 001BIS.

[237] Westminster Foundation for Democracy, Voting Machine Review Democratic Republic of Congo, 2018, p. 17.

[238] TV5 Monde, *Présidentielle en RDC : les machines à voter peuvent-elles transmettre les résultats?*, Dec. 25, 2018; https://information.tv5monde.com/afrique/presidentielle-en-rdc-les-machines-voter-peuvent-elles-transmettre-les-resultats-277062 (retrieval date: Feb. 10, 2019).

[239] TV5 Monde, RDC : Interview du président de la CENI, Corneille Nangaa, Dec. 24, 2018; https://www.youtube.com/watch?v=aju6xw23hOQ; TV5 Monde, *Présidentielle en RDC: explications du président de la Ceni sur les machines à vote*, Dec. 24, 2018; https://www.youtube.com/watch?v=XJnLcwSQKTc (retrieval date: Feb. 10, 2019).

[240] Actualite, *Nangaa: "On aurait accepté le principe de transmission par la machine à voter, on aurait tous les résultats aujourd'hui,"* Jan. 7, 2019; https://actualite.cd/2019/01/07/nangaa-aurait-accepte-le-principe-de-transmission-par-la-machine-voter-aurait-tous-les (retrieval date: Feb. 10, 2019).

[241] MOE SYMOCEL, *Point de presse sur l'observation de l'évolution de la compilation des résultats dans les centres locaux de compilation de résultats*, Jan. 8, 2019, p. 2.

[242] Allegedly leaked electronic results provided evidence against the CENI's own announcement on the presidential race. Electronic results are a double-edge sword because they can be tampered with and presented against manual tallies, but they can also dissuade traditional frauds with ballot papers and thus provide a more reliable counting.
See RFI, *Elections en RDC: où se trouve la vérité des urnes?*, Jan. 15, 2019; http://www.rfi.fr/afrique/20190115-elections-rdc-trouve-verite-urnes (retrieval date: Feb. 10, 2019).

Overall, doubts persist regarding the CENI's data source for the announced provisional results. From a legal perspective, such figures should come from results sheets produced at the local CLCR centers after comparing the manual and electronic results (Article 78 of CENI Decision 001BIS). But the official declaration of provincial results took place before the CLCRs had finished their tasks.[243] The CENI should duly clarify these facts and doubts and provide evidence that the figures issued by the voting machines were not misused by releasing results per polling station, as was done in 2011. This would mitigate such speculations.[244] On a similar note, the CENI could have improved the transparency, reliability, and credibility of the results-management process if the CLCRs had posted their results as provided by the law. This was not the case in 92 percent of the CLCRs, based on data provided by citizen observers on Jan. 8.[245]

Internet Access

As soon as polling stations had finished counting, photos of results forms, both manual and electronic, were circulated on social media along with claims about the results of the election. Early on the day after election day, local journalists reported on Twitter that they were having trouble accessing Twitter and WhatsApp and were able to do this only via VPN connections. Reports followed that the authorities had instructed telecommunications companies to limit the distribution of images and videos via social networks, ostensibly to stem the distribution of unofficial and fake election results. Shortly afterward, the internet was completely cut off throughout the country and was only available via satellite connection or, reportedly, through signals from Brazzaville. Such action reduced the credibility and transparency of the election process and hampered the work of election officers and observers in the midst of tallying election results at the local results-compilation centers. The work of media outlets was also severely disrupted.

Analysis of Provisional Results

According to the preliminary statements released by national and international observation missions starting on Jan. 2, 2019, the voting process was generally well-conducted despite some isolated cases of violence. On Jan. 3, the largest observer group, the JPC/CENCO, which had more than 40,000 observers covering all polling centers, released its preliminary statement. JPC's statement said that, according to the data in its possession, there was a clear winner of the presidential race. The organization did not mention the name of the alleged winner but called on the CENI to publish the results of the elections with full respect for the truth and justice.[246]

Citing logistical constraints in retrieving sensitive information from the polling stations and sending it to the CLCRs and then to CENI headquarters in Kinshasa, the CENI delayed its anticipated announcement of provisional provincial and presidential results until very early in the morning of Jan. 10.[247]According to the CENI, turnout was 47.56 percent on the provincial level, and the FCC with its various platforms garnered the most seats.

---

[243] The CENI noted that there were manual and electronic sources of information whose figures fully matched and that provisional provincial results came from electronic data (ex.: Decision 002/CENI/[BUR]/19 of Jan. 9, 2019, on provincial results for Kinshasa). The full text of the decision for the presidential race is not available yet.
[244] European Union Election Observation Mission, Final Report, 2011, p. 44.
[245] MOE SYMOCEL, *Point de presse sur l'observation de l'évolution de la compilation des résultats dans les centres locaux de compilation de résultats*, Jan. 8, 2019, p. 3.
[246] CENCO, *Déclaration Préliminaire de la CENCO*, Jan. 3, 2019.
[247] The announcement of results occurred four days after the date stipulated in the revised electoral calendar contained in CENI decision N°56 of Dec. 26, 2018.The CENI announced Felix Tshisekedi as the winner of the presidential election followed by Martin Fayulu and Emmanuel Shadary in third position. Felix Tshisekedi won with 38.57% (7,051,013 votes) followed by Martin Fayulu with 34.83% (6,366,732 votes) and Emmanuel Shadary came third with 23.84% (4,357,459 votes).

Key national and international stakeholders viewed the provisional presidential results with deep skepticism. CENCO declared in a statement that the results published by the CENI a few hours earlier did not correspond to the data collected by its observation mission from polling stations and vote counts.[248] This information received wide media coverage and was followed by calls from the international community and observer organizations for the CENI to release polling data to the polling-station level so that the results could be independently confirmed.

On Jan. 17, a consultative meeting in Addis Ababa headed by the chairperson of the AU and attended by a number of heads of state or their representatives from countries in the SADC, the ICGLR, ECCAS, ECOWAS, IGAD, EAC, the African members of the U.N. Security Council and the AU troika of outgoing, current, and incoming AU chairpersons concluded that "there were serious doubts on the conformity of the provisional results" and called on the Congolese Constitutional Court to suspend the proclamation of the final results.

The participants in the consultative meeting agreed to send a high-level delegation to the DRC led by the AU chairperson, Rwanda President Paul Kagame, and the AU Commission chairperson, Moussa Faki Mahamat, "with the view to reaching a consensus on a way out of the post-electoral crisis in the country."[249]Both the European Union and the International Organisation of *La Francophonie* released statements in support of AU's high-level delegation efforts. U.N. Secretary-General Antonio Guterres released a statement that cited his hope that this electoral process would be completed according to the Congolese people's will and the juridical and constitutional rules of the country.

On Jan. 12, National Assembly results were announced by the CENI, 13 days before the date established in the revised calendar. According to unofficial data, the PPRD came in first with 52 seats and the AFDC-A (the coalition led by Modeste Bahati, who was not elected) won 41 seats.[250] UDPS/Tshisekedi won 31 seats, most of them in Kasai, and the MLC won 18 seats. The Opposition Dynamics (DO) of Martin Fayulu obtained eight seats. In total, there were 50 women elected, a small percentage in a 500-seat National Assembly but a slight increase over the 48 women elected in the previous legislature.[251]

In all, the CENI's results indicated that the FCC and its aligned coalitions won a majority in the National Assembly with more than 350 seats, while the opposition coalitions and political parties obtained at least 100 seats. Kabila's sister and brother, as well as most leading figures of the presidential majority, were re-elected, with some exceptions, such as Modeste Bahati who had aspired to run as FCC's presidential candidate. For the opposition, MLC Secretary-General Eve Bazaïba, former Prime Minister Adolf Muzito, Vital Kamerhe, and Martin Fayulu were re-elected.

Media speculation about an agreement between Kabila and Tshisekedi became official on March 6, 2019, through a common public statement released by the FCC and CACH that acknowledged that the FCC had won a majority in parliament and gave the FCC the right to propose the prime minister.[252] On

---

[248] CENCO, *Déclaration de la CENCO a l'issue de sa mission d'observation électorale*, Jan. 10, 2019 ; http://cenco.org/declaration-de-la-cenco-a-lissue-de-sa-mission-dobservation-electorale/ (retrieval date: Feb. 14, 2019).

[249] African Union, *Communiqué of the High-Level Consultative Meeting of Heads of State and Government on the situation in the Democratic Republic of the Congo*, Jan. 17, 2019; https://au.int/en/pressreleases/20190117/communiqu%C3%A9-high-level-consultative-meeting-heads-state-and-government (retrieval date: Feb. 14, 2019).

[250] AFDC-A coalition put forward the highest number of legislative candidates (494 candidates out of 500 seats).

[251] Eventually, the number of female MPs became 52 because four women in the reserve list replaced male MPs who left their parliamentary positions.

[252] Congo Vox, *Elections en RDC : Que Cache Les Accords entre Joseph Kabila et Felix Tshisekedi — le Plus Faible Maillon, le Moins Expérimenté et le Moins Eduqué de L'Opposition*, Jan. 10, 2019; http://www.congovox.com/elections-en-rdc-que-cache-les-accords-entre-joseph-kabila-et-felix-tshisekedi-%E2%80%94-le-plus-faible (Retrieval date: May 23, 2019). *Communique Conjoint FCC-CACH*, March 6, 2019.

May 20, 2019, President Tshisekedi appointed professor Sylvestre Ilunga Ilukamba on the recommendation of former President Kabila.

Electoral Dispute Resolution Framework

Effective, clear, and fair procedures for electoral dispute resolution are an essential component of an electoral process.[253] Timely and effective resolution of disputes is critical to ensure the right to a fair and public hearing, along with the right to an effective remedy. Effective dispute-resolution mechanisms ensure that the principle of equality before the law is taken into account and the will of the people is respected during an election process.[254]

A number of reforms were carried out ahead of the elections to try to strengthen the dispute-resolution mechanisms. Training for judges helped enhance their capacity to deal with cases. However, concerns remain about the independence of the judiciary, and particularly the selection process for members of the Constitutional Court.

The landscape of judicial power has changed since the 2011 general elections. The Supreme Court of Justice was split into three courts:

- The Constitutional Court, which has jurisdiction on all matters of the constitution and, among other, presidential and legislative elections.
- The State Council, which is the highest administrative court, which rules on appeals of the administrative appeal courts (CAA) and the administrative tribunal (TA). The CAA is responsible for the provincial elections.
- The Cassation Court, which is the highest court for civil matters.

Considering the new administrative divisions of the DRC, and the increase from 11 to 26 provinces, the authorities had to create 27 administrative appeal courts and 15 additional appeal courts. The new CAAs, which are the competent jurisdiction at the provincial level for election matters, were not yet established during the process of candidate registration. Therefore, the original courts of appeal adjudicated disputes about candidate registration for the provincial legislative elections.[255]

Some magistrates said there was a need for training on electoral dispute resolution for the CENI and the government. The International Organization of *La Francophonie* (OIF), in cooperation with the UNDP Project on Electoral Assistance in Congo (PACEC) and the American Bar Association, organized seminars at the national level and in individual regions at the request of the CENI and the minister of justice in order to build the capacities of magistrates, lawyers, and clerks on the electoral dispute-resolution mechanisms.

Role and Composition of the Constitutional Court

The organic law on the organization and working procedures of the Constitutional Court was promulgated in October 2013. It is composed of nine members. The founding judges were elected on July 7, 2014, by presidential ordinance. As outlined in Article 158 of the constitution, three judges each were nominated by the president, the parliament, and the Superior Council of Magistrates. Since then,

---

[253] ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Article 2 (I); United Nations Human Rights Committee, General Comment 32, para. 27.
[254] UDHR, Article 21; ACHPR, Article 7.
[255] Radio Okapi, *Contentieux électoraux en RDC : les cours d'appel fonctionneront selon l'ancienne configuration des provinces*, July 11, 2018; https://www.radiookapi.net/2018/07/11/actualite/justice/contentieux-electoraux-en-rdc-les-cours-dappel-fonctionneront-selon (retrieval date: Feb. 9, 2019).

four have been replaced for various reasons, including the fact that one judge passed away in office and two stepped down. A third was elected to the State Council of Magistrates.[256]The judges were quickly replaced, two of the replacements were selected by the parliament, one by the president, and one by the Superior Council of Magistrates. The new individuals took the oath on July 4, 2018. According to the constitution, the mandate of the members of the court is nine years. The court is renewed by a third every three years. A drawing of lots will be made to decide the order of replacements. Hence, one judge nominated by the president, one by the parliament, and one by the Superior Council of Magistrates should be replaced on a rolling basis every three years. However, this procedure has not yet been implemented. Both the National Assembly and the Superior Council of Magistrate were controlled by members of Kabila's presidential majority grouping when the new appointments were made. According to media sources, all nine of the Constitutional Court judges are close to incumbent president Joseph Kabila.[257] These dynamics raise concerns about the independence and impartially of the Constitutional Court, which has jurisdiction for litigation related to the provisional presidential and legislative results.

Mechanisms for Election Dispute Resolution of Results

The electoral law defines the requirements to introduce a challenge to presidential and legislative results before the Constitutional Court, and an organic law defines the organization and working procedures of the court.[258] The Constitutional Court has jurisdiction for litigation related to the provisional results of the presidential election. In spite of the difficult logistical hurdles involved, candidates have only two working days to file a petition against the decision on the provisional results.[259] In the absence of petitions lodged within this deadline, the court declares the provisional results final. Should petition(s) be filed, the court has seven days to issue a ruling and release results. These time limits are too short to allow time to gather required evidence and thus severely restrict the ability of candidates to prepare their petitions. For a country the size of the DRC, it seems impossible for candidates to be able to file substantive evidence within two days. It is also questionable whether the time allocated to the court is enough to process the evidence and adjudicate within the legal deadline.

The same concern regarding the provision of an effective remedy to legal challenges applies to the legislative and provincial elections. The time limit for challenging the provisional results of legislative elections before the Constitutional Court is eight days after announcement. In constituencies where no petition is filed within the eight-day time limit, the court confirms the CENI's provisional results. If petitions are filed, the Constitutional Court has two months to rule on results. The administrative appeal court (CAA) has jurisdiction over provisional provincial results, and the time limit to file a petition also is eight days from the announcement by the CENI. The CAA confirms provisional results as final if there is no petition before the time limit elapses. Otherwise, the court has two months to rule on results.

---

[256] Kalonda Kele died on April 8, 2018; Banyaku Luape and Esambo Kangashe resigned the next day, officially for personal reasons but allegedly because of pressure after they disagreed with the court's interpretation of the constitution on the end of Kabila's second term; Vunduawete Pemako left the court because he was elected president of the state council.

[257] Afriwave, *RDC: La Cour Constitutionnelle à nouveau complet*, May 23, 2018; https://www.afriwave.com/2018/05/23/rdc-la-cour-constitutionnelle-a-nouveau-complet/; Radio Okapi, *Polycarpe Mungulu désigné juge de la Cour constitutionnelle*, June 21, 2018; https://www.radiookapi.net/2018/06/21/actualite/en-bref/polycarpe-mungulu-designe-juge-de-la-cour-constitutionnelle; VOA, *Kabila nomme un proche à la Cour constitutionnelle en* RDC, May 15, 2018; https://www.voaafrique.com/a/rdc-kabila-nomme-un-proche-à-la-cour-constitutionelle/4394336.html; Le Congo Libéré, *Comment Joseph Kabila va manipuler la Cour constitutionnelle pour briguer un troisième mandat en RDC*, May 19, 2018; https://congolibere.com/comment-joseph-kabila-va-manipuler-la-cour-constitutionnelle-pour-briguer-un-troisieme-mandat-en-rdc (retrieval dates: Feb. 9, 2019).

[258] Articles 73-76 bis of the electoral law; Article 81 of Organic Law 13/026 of Oct. 15, 2013, on the organization and working procedures of the constitutional court.

[259]Article 72 of the electoral law.

The law contemplates a recount only as a last resort, if a petitioner submits strong evidence of rigging.[260] As noted above, the existing timelines for electoral dispute mechanisms are inadequate to ensure an effective remedy because the plaintiff does not have enough time to gather evidence to support a comprehensive petition and the court doesn't have enough time to examine and resolve the case.[261]The Carter Center strongly urges the parliament to consider revising deadlines for challenging election results to ensure that the right of effective remedy of complainants is protected.

Legal Analysis of Constitutional Court Ruling on Presidential Petitions

Two candidates challenged the results to the Constitutional Court on Jan. 12, 2019: Martin Fayulu, on behalf of the Dynamique de l'Opposition Politique Congolaise" (DO), and independent presidential candidate Mgoy Ilunga Nsenga.

The Dynamique de l'Opposition Politique Congolaise lodged two petitions based substantially on the same grounds:

1. The CENI violated articles 70, 70 bis and 71 of electoral law by announcing provisional presidential results without waiting for the end of the compilation and aggregation of the results at the local results compilation centers.
2. The CENI did not consider the posted results at the polling stations after the counting, in breach of articles 68 and 69 of the electoral law.
3. The CENI disenfranchised voters from the four constituencies of Beni town and territory, Butembo in North Kivu, and Yumbi in Maï-Ndombé.

The independent candidate argued against the decision to exclude voters of these four constituencies as contrary to articles 5,13, and 211 of the constitution and Article 100 of the electoral law.[262]

A public hearing of the merits of the cases took place on Jan. 15 at the court. It was attended by lawyers from the contesting parties, the UDPS party of Tshisekedi, the general prosecutor, and experts from the CENI. The general prosecutor aligned himself with the arguments put forward by UDPS lawyers and CENI representatives. He requested the court reject the motion of the Dynamique de l'Opposition Politique Congolaise, arguing: (1) that Martin Fayulu was not qualified to give mandate to the lawyers on behalf of the Dynamique de l'Opposition Politique Congolaise, and (2) that Fayulu made contradictory requests to the court (annulment of the results, counting and rectification of the results, and suspension of the final proclamation of the results pending the election in Beni town and territory, Butembo, and Yumbi). The court also examined the petition from the independent candidate in the same public hearing. The prosecutor requested the petition be dismissed, arguing that the petitioner did not have standing in the case.

On Jan.19, the court adopted the ruling, saying:

1. Against the opinion of the public prosecutor, the CENI, and the UDPS, the court admitted Fayulu's challenge. However, the court found that it was unfounded because of its general and imprecise nature, while the court had received from CENI complete and accurate documentation concerning results.
2. The court declared the second of Fayulu's petitions unsubstantiated because of the absence of proof.
3. The court declared the third argument groundless, firstly because the CENI made its decision about postponing the elections in Beni, Butembo, and Yumbi because of a case of force majeure.

[260]Article 76 of the electoral law.
[261] UDHR, Article21; ACHPR, Article 7.
[262] Case 55 of Dec. 26, 2018.

Secondly, the court deemed that it could not examine the legality of this decision because its jurisdiction on the resolution of disputes of results was limited to assessing whether the results reflected the "sincerity of the vote," i.e., that they were duly verified and reflected the will of the people.

4. The court declared that the challenge submitted by the independent candidate was not admissible because of duplication and the lack of the candidate's legitimate interest in bringing legal action. The candidate had already lodged a petition on the same subject at a different chamber of the Constitutional Court, it said. And the court found that candidate Mgoyhad no interest in challenging the results because the low number of votes he obtained in the presidential election meant the court's ruling would have no impact on his chance of winning.

Given the size of the country, it is practically impossible for petitioners to gather and submit key evidence before the court within the two-day deadline granted by the law after the proclamation of provisional results. Furthermore, according to the electoral law, when submitting the petition, the complainant must attach to the petition an inventory of all documents provided as evidence.

Ruling on a technicality, the court disregarded the evidence submitted by the complainant, Martin Fayulu, during the hearing because it had not been listed in the inventory. As a result, the court considered the results from the CENI as genuine without confronting evidence submitted by the complainant during the hearing. In this regard, it does not appear that the Constitutional Court examined whether the results were credible because it did not examine all evidence that was submitted by the complainant.

Conclusions and Recommendations on Dispute Resolution

The process leading to the appointment of Constitutional Court judges calls into question the independence and impartiality of the court and should be reviewed so as to ensure that the selection of judges is free from potential biases. The mandated timeframes for the resolution of electoral disputes is insufficient for potential petitioners to gather supporting evidence and file a legal challenge to contest the results of an election and for the Constitutional Court to review the evidence submitted and adjudicate cases comprehensively.

Between Continuity and Change

After a shutdown of 20 days, the internet was turned back on an hour ahead of the Constitutional Court session that validated the provisional results and proclaimed Felix Tshisekedi as the fifth president of the DRC. Martin Fayulu accused the Constitutional Court and the CENI of falsifying the results and called on the international community to not recognize Tshisekedi as the new president. Later, Fayulu called for the organization of new elections within six months.

For its part, the African Union Commission "took note" of the results in a communiqué released on Jan. 20, stating that the high-level delegation of AU heads of state that was meant to visit Kinshasa would be postponed to a later date. Thereafter, the SADC chairperson and Namibian president, Hage G. Geingob, and other presidents of SADC member states congratulated Felix Tshisekedi. Given the lack of any other reliable sources confirming or denying the provisional results announced by the CENI, the international community could have delayed endorsement of these results while urging the CENI to release the results of the elections per polling station as it is stipulated in the law.

On Jan. 24, Tshisekedi was sworn in as the new president of the DRC in front of a crowd of supporters and distinguished guests, including Kenyan President Uhuru Kenyatta as well as African vice-presidents and ministers. During the 32nd African Union Summit held in Addis Ababa on Feb. 10-11, Egyptian President Abdelfateh al-Sisi took up the chairmanship of the African Union, replacing Rwandan President Paul Kagame, while Felix Tshisekedi was elected as the second vice-chairman. Undoubtedly, Tshisekedi's AU appointment represents a strong regional endorsement for the new DRC president.

For the first time in the history of the DRC, power was transferred peacefully. Though Felix Tshisekedi was announced as the head of the state, the political parties associated with the outgoing president Kabila retain most seats in the legislative and provincial assemblies and control the election of the next prime minister. The new president inherits a very difficult socioeconomic situation, particularly at a time when the price of cobalt is at its lowest and the security situation remains fragile in different parts of the country, with recurrent attacks in North and South Kivu. Furthermore, President Tshisekedi faces high expectations for change from an impoverished and frustrated population. Time will tell if the new president will succeed in overcoming the challenges that lay ahead. For now, he has to manage leadership disputes within his UDPS party as well as the relationship between its own coalition, CACH (UDPS-UNC), and Kabila's coalition, the FCC, to try to implement his policies.

Summary Assessment and Recommendations

Summary Assessment

The general elections held in the DRC on Dec. 30, 2018, fell short of international standards. While the electoral legal framework is broadly consistent with standards, the DRC's laws and regulations were not consistently implemented according to procedure by the competent bodies involved in the electoral process. Further, these institutions lacked sufficient technical autonomy to carry out their tasks without political interference.

The CENI made a number of contentious decisions that undermined the democratic rights of the Congolese people, including the effective cancellation of the presidential vote in Beni, Butembo, and Beni and ending campaigning on Dec. 21. The CSAC ultimately did not act to ensure fair coverage of the campaign in private media and equal treatment in public media. Campaign freedom was also thwarted by decisions by local authorities to ban campaign activities, which mainly affected opposition political parties. The decision of the governor of Kinshasa to ban all campaign activities in the capital for an indefinite period of time violated the constitution. The courts did not provide effective remedy to protect fundamental rights and freedoms.

As noted above, the lack of transparency in the results-management process severely undermined the credibility of the provisional results announced by the CENI. To date, the electoral commission has not released disaggregated election results that would enable observers and the public to verify whether the results posted at the polling-station level were the same ones used to tabulate the results.

In short, given the lack of transparency in the tabulation and results-management process, as well as the extent of fundamental rights' violations outlined in this report, the results of the Dec. 30 elections lack credibility and cannot be characterized as reflecting the genuine will of the Congolese people, at least until the CENI provides detailed polling-station level results that can be cross-checked against the data gathered by Congolese observers and others.

The Carter Center encourages the Congolese people and all stakeholders to continue their quest for democracy, peace, and development. Prompt and effective steps should be taken to promote the strengthening of democratic institutions and practices in the DRC. To this effect, stakeholders should engage in an inclusive dialogue with a wide range of actors, political authorities, legislators, security forces, electoral partners, and civil society organizations about the substantive institutional, legal, and policy reforms that are critical to creating a conducive environment to conduct credible democratic elections. A wide range of critical issues should be tackled to ensure full respect for the constitution, democracy, and human rights, including strengthening laws that guarantee freedom of expression, freedom of the media, right to peaceful assembly and association, gender parity, and credible elections. The CENI should be thoroughly reformed to duly promote democracy, transparency, and inclusiveness in the electoral process.

Hereunder, the Center puts forward a number of recommendations based on our analysis with a view of supporting these ongoing efforts towards electoral reform and democracy.

Recommendations

To the Government and Legislators:

On Legal Framework

1. Review the legal framework through an inclusive process in order to clarify, modify, harmonize, or complete legal provisions in force to enable its effective implementation.

On Electoral Systems:

2. Review the choice of electoral system used for the presidential election to ensure that the highest number of valid votes are effective in determining the presidential outcome. For example, setting a minimum threshold of votes to win or alternative voting systems could be considered;
3. Through an inclusive process, review the electoral law to increase participation of regional and smaller political parties and ensure that thresholds do not impose unreasonable constraints on candidates' ability to compete.
4. Introduce measures to increase women's representation, either through quotas or the introduction of zippered proportional representation lists, which alternate between male and female candidates.

On Constituency Boundaries

5. The demarcation of electoral constituencies boundaries should not be constrained by administrative division criteria. Review the formula to determine the number of voters to ensure an even distribution of registered voters across constituencies; consider dividing or merging constituencies across administrative boundaries within each province.

On Registration of Voters

6. Support the National Office for the Identification of the Population (*Office National d'Identification de la population*) in producing an accurate and updated version of the census population to, in turn, produce a reliable voter registry. Extend the time frame to file disputes to the voter roll.
7. Review Article 10 of Law16/007 16/007 to improve the reliability of voter registry. For example, documents such as a student card or a voter card from previous electoral exercises should not be considered a valid proof of identity.
8. Allow members of the armed forces and the national police to register in the electoral roll and vote.

On Registration of Political Parties, Coalitions and Independent Candidates

9. Modify Article 12 of the Election Law of Registration of parties and coalitions to enable parties that were registered within 12 months of Election Day to register their candidates during the CENI's registration period.
10. Adjust candidate registration fees so that they are reasonable and consistent with average income in the country. In addition, consider introducing other methods, such as citizens' endorsement, to prove the seriousness of candidacies.
11. Implement constitutional provisions on gender parity to support equality between men and women, ensuring equitable representation of women in national, provincial, and local institutions during the elections.

12. Harmonize Article 165, para. 2. and Article 27 of the Electoral Law and Article 48.4 of Law16/027 on Organization of the Jurisdictions of Administrative Order regarding dispute resolution on candidate registration.

On CENI's Regulatory Framework

13. Review the organic law on the organization and functioning of the CENI and introduce reasonable criteria for the appointment, promotion, suspension, and dismissal of the body's members in order to strengthen its independence and impartiality. Introduce an appropriate system of checks and balances to help ensure the body's impartiality and credibility. Implement the recommendations put forward in the 2018 audit with enough time to enable a smooth implementation of the next elections.
14. Reconsider the allocation of tasks to members of the bureau of the CENI and establish an effective mechanism of checks and balances.

On People with Disabilities and Marginalized Communities

15. Allow flexibility and take the necessary steps to guarantee IDPs' successful enrollment in the voter register.
16. Make polling places accessible to voters with disabilities. To this effect, strengthen provisions in the electoral law and harmonize them with the CENI's decision on applicable measures of the electoral law. Keep data about participation of people with disabilities as voters, polling staff, and candidates and an accurate record of the proportion of PWDs participating in the overall election process.
17. Adopt legislation that protects and promotes the participation of LGBTQI's community in political life.

On the Campaign

18. Enhance training of security officers on their role in providing law and order, particularly during peaceful demonstrations, using the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
19. Apply measures laid out in Law 08/005 regarding public funding and ensure that funds are included in the national budget and provided to political parties.
20. Enforce campaign laws, including the use of sanctions to punish campaign-finance violations, to provide equal opportunities for all political parties and candidates to compete evenly.
21. Strengthen The National Commission of Human Rights (CNDH-RDC) to ensure that it has adequate human and material resources to fulfill its human rights monitoring mandate.
22. Review and reform the law governing public meetings and demonstrations so that it fulfills the state's international and constitutional obligations and allows candidates to freely hold campaign gatherings.

On Traditional and Social Media

23. The DRC government, National Assembly, and other electoral stakeholders should create a legal and security environment conducive to independent media, consistent with the DRC's international obligations. Authorities should not use disproportionate measures such as blanket internet shutdowns or blocking of social media platforms to address concerns about public order. Where genuine public order concerns exist around issues such as the dissemination of unofficial or inaccurate results, seek alternative measures, such as increased communication and transparency on the part of the authorities. Electoral stakeholders should call for social media companies to operate with maximum transparency about the criteria they use in determining "takedowns" of accounts and misinformation.

24. To enforce laws that safeguard voters' access to information and media, and candidates' freedom of expression during, and after the elections, including access to the internet at all times; A consultative framework including CSAC, CENI, Interior Ministry, Telecommunications Ministry, National Commission of Human Rights, political parties and CSOs should be established and consulted before measures are taken to shut down or block social media.
25. The government should provide CSAC with sufficient resources to conduct its work; the CSAC should enforce its decision to allocate equal airtime to all candidates.

On Dispute Resolution of Election Results

26. Expand timelines to file disputes of presidential, legislative, and provincial results. The law should provide sufficient time for complainants to collect supporting evidence and prepare their petitions. Correspondingly, the law should also provide sufficient time to magistrates to examine evidence submitted by the petitioners prior to adjudicating the case.
27. Clarify and harmonize the Constitutional Court's and the State Council's mandates concerning electoral dispute resolution to avoid conflict of competence.

On Voting Machines and E-Voting

28. Introduce reforms to provide for independent technical audits that could assess key aspects of specific e-voting features, including, but not limited to, the randomization of electronic records, the content of digitalized barcodes printed on each ballot, and the use of USB keys and SD cards.

To the CENI:

29. Create a more detailed and event-oriented electoral calendar.
30. Review operational plans and voter-education programs to adapt to the new voting technology and consult with electoral stakeholders and reach consensus with major political actors on all major election-related decisions.
31. Strengthen national information and communication plans to enhance transparency and awareness. Implement regular consultative meetings with political parties and other relevant stakeholders and regularly inform the public through press conferences and website updates in order to mitigate potential conflicts and address rumors and fake news.
32. Make financial management and procurement procedures transparent through the adoption and implementation of a sound regulatory framework.
33. Apply standard criteria for accrediting election observers, regardless of origin, so as not to give the perception of "cherry-picking" observer groups. An open, transparent, and inclusive accreditation process would lend greater credibility to the overall conduct of the polls, and observers and agents should be given full access to all stages of the electoral process.
34. Establish adequate operational and security procedures for all segments of the distribution and retrieval of election materials to ensure the integrity of the electoral process.
35. Introduce public certifications periodically to review the integrity of the electronic voting machines to bolster public trust in their use.
36. If electronic voting is used in forthcoming elections as currently stipulated by the election law, adapt the law's application measures accordingly and give consideration to technical problems with the voting machines.
37. Clarify and implement the legal framework regarding all aspects of the electoral process, including procedures on tabulation, results transmission, and announcement, ensuring the inclusion of party agents in deliberation procedures.
38. Publish electoral results by polling station within a relatively short period of time following the elections and well before the deadline for parties and candidates to file election challenges.
39. Avoid the disenfranchisement of voters; develop alternative plans to ensure voters cast their ballots on election day.

40. Maintain records on the participation rates of female candidates, voters, and CENI staff, and share that data with electoral stakeholders.
41. Equally redistribute responsibility for sensitive and administrative tasks among CENI members; currently, the most sensitive steps of the electoral process are managed by representatives of the ruling party/coalition, while opposition representatives are mainly responsible for internal administrative tasks.
42. Adopt effective contingency and security plans to increase the commission's ability to respond effectively to unforeseen incidents, such as the attacks that took place on the regional and central warehouses.

To Civil Society Organizations:

43. Given the low voter turnout, civil society organizations (and CENI) should intensify work in the field of civic and voter education.
44. Domestic observation groups: Adapt observation methodology to respond to the introduction of the new voting technology, especially if future elections continue to include components of e-voting and electronic results transmission.
45. Domestic observation groups: Increase coordination across organizations to cover the largest possible number of polling stations on election day.

To Political Parties:

46. Review party structures and procedures to support the full participation of women, persons with disabilities, and other marginalized groups in political processes and decision-making.
47. Intensify efforts to plan and commit adequate resources to the recruitment and training of party agents.
48. Take key steps to promote democratic institutions and practices in the DRC, and engage in an inclusive dialogue to agree on a number substantive institutional, legal, and policy reforms.