



## INTERIM REPORT

### THE CARTER CENTER INTERNATIONAL ELECTION OBSERVATION MISSION

#### Democratic Republic of the Congo

Jan. 26, 2024

#### *Overall Conclusions about the Post-Election Day Process*

After the Carter Center international election observation mission (IEOM) released its preliminary statement of findings and conclusions on Dec. 22, 2023, the core team of nine election experts and 24 long-term observers (LTOs) continued to observe ongoing electoral processes in 11 provinces, including extended voting, and the compilation and announcement of results.

The IEOM found that despite significant efforts to ensure that voters were not disenfranchised by operational difficulties that prevented numerous polling stations from opening on time, the *Commission Électorale Nationale Indépendante* (CENI) and other authorities did not always appear to be in full control of election day activities in some locations. This was reflected in the CENI's late decisions about the extension of election day activities, the lack of information about the number and locations of polling stations unable to open, reported instances of sabotage and violence perpetrated against CENI staff and equipment.<sup>1</sup> The Carter Center IEOM and citizen observation organizations also observed the sometimes disorganized nature of voting, counting, and tabulation processes, and initial delays in the tabulation of results at the compilation centers (Centres Locaux de Compilation des Résultats (CLCRs)).

The CENI took steps in the post-election period to address some of these issues, including establishing a commission of inquiry on Dec. 23 to investigate irregularities, in line with its legal authority. In a few cases, however, the CENI took important measures that were not foreseen in the legal framework. One such measure was the CENI's decision to base the provisional results on the consolidated electronic results rather than the manual tabulation of paper-based results provided for by the law. A second measure was the decision to disqualify 82 candidates based on allegations of fraud or other serious irregularities, although the legal basis of the decision has not been fully clarified.

The CENI announced provisional results for the presidential election on Dec. 31, within the legal deadline. The provisional results for the presidential election were published on its website by

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<sup>1</sup> CENI Communiqué 085/CENI/2023, Dec. 23, 2023.

polling station, an important and welcome step toward increasing transparency. Further detail about the presidential results, such as the total number of registered voters by polling station, would be desirable for complete transparency. In addition, further information should be made available about the results for approximately 15% of polling stations that according to the CENI have not yet been “centralized.”<sup>2</sup> On Jan. 9, 2024, the Constitutional Court validated the reelection of President Félix Tshisekedi, dismissing complaints by one opponent and one private citizen.

The CENI announced the provisional results for the National Assembly election on Jan. 13, a 10-day delay with respect to the electoral calendar. The CENI has published consolidated provisional results by constituency. The publication of the full results of the National Assembly elections by polling station, including number of registered voters, would be an important step to ensure the full transparency of the process.

Numerous political parties and candidates have alleged that irregularities marred the election process. Noting the CENI’s declared intention to investigate alleged irregularities, the Carter Center IEOM urges complainants to follow the established legal procedures for challenging results and urges courts to consider complaints fairly and independently. The IEOM also recommends that the CENI provide further information about the election day process to ensure transparency and build public confidence.

The provisional results for the National Assembly elections indicate the need for further reform measures to increase the representation of women at the national level. Women won 12.79% of the seats allocated thus far (61 of 477). This reflects an improvement over the 2018 election, in which women won 50 seats, but did not show significant progress toward equal representation of women, as foreseen in the constitution and under the DRC’s international commitments.

### ***Observation of Tabulation of Results***

From Dec. 20, 2023, to Jan. 12, 2024, Carter Center LTO teams in 11 provinces continued to assess the extent to which results compilation processes at the CLCRs, including tabulation, were implemented according to the procedures set out in the election law and application measures, including the transparency of the process. LTO teams made daily visits to 16 CLCRs to observe the process, of the 179 CLCRs nationwide.

Positively, Carter Center LTO teams were generally granted access to the CLCRs. Although the LTOs initially described the process of retrieval and centralization of materials at the local level as improvised, chaotic, and insufficiently secured, they reported that the process improved on successive days. Overall, the processes appeared cumbersome, and the work of the CLCRs was very slow.

By Jan. 12, the LTO teams reported that the 16 CLCRs visited had mostly finalized the retrieval and collation of envelopes from polling stations. However, tabulation and reconciliation of polling station results at the CLCR level was not conducted in accordance with the application measures of the election law. The application measures specify that tabulation should be done manually at the CLCR level. Tabulation was instead carried out centrally in the CENI headquarters in Kinshasa

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<sup>2</sup> CENI Communiqué 086/CENI/2023, Dec. 31, 2023.

only on the basis of electronic results from the electronic voting devices, and CLCRs were asked to provide evidence only if electronic results were not transmitted or if there was evidence of irregularities in the information that CENI headquarters had concerning a given polling station.

Because the CENI did not undertake tabulation procedures according to the law, it was not conducted in a transparent manner in full view of party agents and observers. Changes to the tabulation procedures provided in the law and its application measures concerning CLCRs should have been communicated to stakeholders, and safeguards introduced to ensure transparency.<sup>3</sup>

### ***Announcement and Publication of Presidential Results***

In an effort to enhance transparency, the CENI began to display partial results for the presidential election on screens at the National Results *Bosolo* Center (media center) in Kinshasa starting Dec. 22. The CENI indicated the percentage of “processed” polling station results for each constituency displayed as results became available.

On Dec. 31 the CENI announced the provisional results of the presidential elections, based on results from 64,196 polling stations out of the total 75,478 polling stations (85%). The CENI indicated that incumbent president Félix Tshisekedi had obtained 13,215,366 votes (73.34% of the total valid votes). The closest challenger was Moïse Katumbi, with 3,258,538 votes (18.08%). The CENI announced that the nationwide turnout was 43.23%, based on the data received. However, the results and turnout information remained partial, as the CENI had only “centralized” 85% of polling station results. The full results have not yet been published.

Although the announcement of provisional results for the presidential election took place within the legal deadline, the results were not based on tabulation at the CLCR level as required by the election law (Article 69 to 71). As mentioned above, the CLCRs were supposed to produce tabulated results forms and related protocols based on verification of discrepancies between manual forms and the electronic results. Tabulated results at CLCR level were to be signed by the CLCR members and by the party agents before transmission to the CENI. However, the provisional results were instead tabulated from the results received from the electronic voting devices. The CENI president justified this approach by referencing Article 67bis of the election law, which allows the CENI to use all measures to ensure “a rapid and secure transmission of election results … to guarantee the integrity of the process.”

The Constitutional Court received two appeal applications related to the presidential election provisional results announcement. Theodore Ngoy, candidate for president, lodged an appeal for the annulment of the provisional results on the grounds that numerous irregularities marred the entire process, including the establishment of the CENI, the availability and publication of voter lists, the illegibility of voter cards, security arrangements for presidential candidates, the extension of voting days beyond Dec. 20, the possession of electronic voting devices by unauthorized

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<sup>3</sup> The accurate counting and tabulation of votes plays an indispensable role in ensuring the electoral process is genuinely democratic and reflects the will of the voters. International obligations require that the process of counting, vote tabulation, and announcement of results be fair, impartial, and transparent. (U.N., Universal Declaration of Human Rights, art. 21; U.N., International Covenant on Civil and Political Rights (ICCPR), art. 25(b); U.N. Human Rights Committee, General Comment 25, para. 20).

persons, irregular votes cast in favor of candidate Tshisekedi, the publication of provisional results although the CLCRs had not finished compiling the results, and other grounds. The court rejected the appeal for insufficient evidence.<sup>4</sup>

The court declared Tshisekedi definitively elected with 73.47% of the votes, an increase from the CENI's provisional results of 73.34%. This slight increase occurred because the court applied the CENI's cancellation of parliamentary and provincial results in the constituencies of Yakoma and Masimanimba (see below) to the presidential election. As a result, the official turnout also decreased, from 43.23% to 42.65%.

### ***Disqualification of Candidates***

Further to the establishment of a commission of inquiry into the disruption of election day processes, the CENI issued a decision on Jan. 5, 2024, annulling the votes cast in legislative, provincial, and communal elections for 82 candidates, citing serious irregularities.<sup>5</sup> The CENI also canceled the national assembly and provincial elections in the constituencies of Masimanimba in Kwilu province and Yakoma in Nord-Ubangui province.<sup>6</sup> In total, the CENI canceled the votes of 82 candidates in 32 constituencies across the country (15 provinces), in addition to all the other candidates in the Masimanimba and Yakoma constituencies. The cancellations included several high-profile candidates.

The CENI also indicated that investigations were ongoing regarding three additional constituencies: Budjala (Sud-Ubangui), Bomongo (Equateur), and Makanza (Equateur). The ad hoc committee of the CENI continues to receive complaints of vandalism, illegal detention of electronic voting devices and violence perpetrated against voters and CENI staff. On Jan. 13, the CENI reinstated two of the 82 candidates.

The Carter Center IEOM continues to assess the decisions by the CENI to invalidate candidate results and to readmit candidates. According to the election law and the CENI organic law, the electoral judge has the authority to annul elections partially or totally, specifying the consequences to be drawn from these annulments. The CENI's role is to investigate irregularities and provide the electoral judge with all the information in its possession so that it is sufficiently informed in the exercise of its powers of confirmation, rectification, partial or total annulment of the provisional results, and proclamation of the final results.<sup>7</sup> The CENI has not clearly explained the basis of its authority to annul results of candidates partially or totally.

### ***Announcement of Provisional National Assembly Results***

On Jan. 13, the CENI announced the provisional results of the National Assembly.<sup>8</sup> As in the presidential election, these results were based on the electronic results received from the electronic

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<sup>4</sup> The second appeal was lodged by a private citizen on similar grounds and was deemed inadmissible.

<sup>5</sup> CENI Communiqué 002/CENI/2024. No information has been provided about the number of polling stations and polling centers annulled.

<sup>6</sup> The CENI did not annul the corresponding results for the presidential election in these areas, although they were subsequently annulled by the Constitutional Court.

<sup>7</sup> Respectively Articles 74 and 75 of the election law and Article 33 of the CENI organic law

<sup>8</sup> CENI Decision 002/CENI/AP/2024, as per CENI Communiqué 004/CENI/2024.

voting devices, rather than the manual tabulation at the CLCR level provided for by the legal framework. The total number of ballots cast was 18,813,469. The total number of votes “canceled and sanctioned” was 748,079, and there were 88,839 blank ballots.<sup>9</sup> Thus, the total number of valid votes was 17,976,551.<sup>10</sup>

The law establishes that only those parties or political groupings receiving at least 1% of the total number of valid votes are considered in the distribution of National Assembly seats. In total, 44 parties or political groupings met the 1% threshold (179,765 votes). The most voted party was Tshisekedi’s UDPS with 1.6 million votes — 9.2% of the valid votes — which resulted in 69 seats.

On Jan. 17, the CENI published the full list of candidates elected for each National Assembly constituency and the number of votes attributed to all contesting candidates in each constituency.<sup>11</sup> Thus, candidates had the ability to verify within the legal deadline whether the copies of results forms received by their party agents matched the tabulated results presented by the CENI.

The provisional results show little progress in the representation of women and other vulnerable groups. The number of women elected (61 out of 477 seats) increased slightly since 2018; the percentage of women elected to the National Assembly (12.79%) remains far from the goal of equality foreseen in the Constitution and in DRC’s international commitments.<sup>12</sup> In addition, it appears that no indigenous candidates were elected to the National Assembly.

### ***Way Forward***

The Carter Center IEOM encourages the CENI to publish information regarding the constituencies in which investigations into irregularities continue and to provide full transparency concerning all irregularities that took place on Dec. 20 and afterward. In this regard, the Carter Center IEOM recommends that the CENI do the following:

- Publish the number of eligible voters contained in the final voter list.
- Publish the number of registered voters per polling station and per constituency — and the turnout — for all levels of elections.
- Publish the number and code of polling stations/centers that did not open on Dec. 20 and for subsequent days of voting, as well as the number and code of polling stations that did not open at all, and the reasons for not opening.
- Publish a full list of polling stations where irregularities were identified and descriptions of the nature of the irregularities, as well as measures adopted by the CENI.
- Transmit the results of its investigations to the electoral judges within the legal deadlines.

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<sup>9</sup> Blank votes are not considered valid, despite being included as a voting option in the electronic voting devices.

<sup>10</sup> These figures do not include the constituencies of Budjala, Bomongo and Makanza, as these results have not yet been announced.

<sup>11</sup> CENI, <https://www.ceni.cd/depeches/2024/01/17/liste-globale-des-elus-la-deputation-nationale>, as published on Jan. 17, 2024.

<sup>12</sup> According to international standards, women should enjoy equal rights to men (U.N. ICCPR, Article 3). Where necessary, states should take temporary special measures to achieve *de facto* equality for women (Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 3).

- Address the timing of the conduct of elections in the two constituencies where elections were canceled.

The Carter Center will continue to follow the resolution of election disputes in the courts and assess the degree to which complaints and appeals are dealt with fairly and independently.<sup>13</sup>

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<sup>13</sup> International standards relevant to electoral dispute resolution indicate that a competent and unbiased tribunal should be in charge of resolving electoral conflicts to ensure citizens' rights to a fair and public hearing (U.N. ICCPR, art. 14(1)).