



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

**Preliminary Post Election Statement**

**FOR IMMEDIATE RELEASE**

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**Executive Summary**

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

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

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

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

*Key Points*

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

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

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

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

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

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

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

**Statement of Preliminary Findings**

***LEGAL FRAMEWORK***

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

The DRC has ratified a number of international and regional treaties through which it has obliged itself to follow certain key human rights standards<sup>1</sup>: International Covenant on Civil and Political Rights,<sup>2</sup> International Convention on the Elimination of all Forms of Racial Discrimination,<sup>3</sup> International Convention on Economic, Social and Cultural Rights,<sup>4</sup> Convention on the Elimination of all Forms of Discrimination against Women,<sup>5</sup> Convention on the Political Rights of Women,<sup>6</sup> Convention on the Rights of the Child,<sup>7</sup> Vienna Convention on the Law of Treaties,<sup>8</sup> African Charter on Human and Peoples' Rights,<sup>9</sup> Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa,<sup>10</sup> African Convention on Preventing and Combating Corruption,<sup>11</sup> African Charter on Democracy, Election and Governance,<sup>12</sup> and the Southern African Development Community Protocol Against Corruption.<sup>13</sup>

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

<sup>2</sup> Acceded November 1, 1976. (ICCPR)

<sup>3</sup> Acceded April 21, 1976. (ICERD)

<sup>4</sup> Acceded November 1, 1976. (ICESCR)

<sup>5</sup> Ratified July 17, 1980. (CEDAW)

<sup>6</sup> Acceded October 12, 1977. (CPRW)

<sup>7</sup> Ratified September 27, 1990.

<sup>8</sup> Acceded, July 24, 1977.

<sup>9</sup> Signed September 9, 1999. (ACHPR)

<sup>10</sup> Signed December 5, 2003.

<sup>11</sup> Signed December 5, 2003.

<sup>12</sup> Signed June 29, 2008. (ACDEG)

<sup>13</sup> Signed August 14, 2001. (SADC Protocol)

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

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

An important constitutional modification to Article 71 changing the presidential election from a two-round voting system to a plurality voting system was passed on Jan. 25, 2011, by the Senate and National Assembly. Though the amendment was supported by the opposition in parliament, the change is considered to favor President Kabila, who received the largest proportion of votes in the presidential election of 2006. The law modifying the distribution of seats in the representative assemblies was promulgated on Aug. 17, 2011. Political parties in districts that lost seats questioned the integrity of the population figures, which were taken from a contested voter registry.

As in the 2006 elections, the Supreme Court of Justice is the only competent jurisdiction to settle electoral disputes. Under the 2005 constitution, the Supreme Court was to be dissolved and replaced by three distinct courts: the Cassation Court,<sup>14</sup> a State Council, and a Constitutional Court. Pending the establishment of these institutions, the Supreme Court assumes responsibility for civil, administrative, and electoral litigation, along with interpretation of the constitution.

On Oct. 13, 2011, seventeen new justices were appointed to the Supreme Court in anticipation of post-electoral litigation. The appointment of justices so close to election day can raise the impression of bias which can undermine the trust of voters and political parties in the independence of the court responsible for the resolution of electoral disputes. The union of magistrates contested the legality of the appointments of additional justices under the current law.

These new nominations were made after the review of cases in October related to candidate applications - legal challenges were submitted to the Supreme Court after at least one political party submitted candidate lists that exceeded the number of seats in some districts during the candidate registration process. The three judges sitting at the time of the disputes settled 84 decisions (56 were deemed inadmissible and ten were rejected on procedural grounds). Of the eighteen complaints considered on the merits, fourteen were upheld. The Carter Center continues to be concerned the Supreme Court has not released judgments from these 84 cases.<sup>15</sup>

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<sup>14</sup> A court of last resort with limited scope of review to determine a miscarriage of justice or certify a question of law based solely on points of law.

<sup>15</sup> On November 22, The Carter Center issued a public statement calling for the publication of complaints arising from legislative candidate nominations to enhance confidence of the public and political actors in their judicial system.

International standards of transparency require that judicial decisions are made public; the Congolese Supreme Court should make its decisions available for examination without delay.

### ***ELECTION ADMINISTRATION***

An independent and impartial authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic process, and that other international obligations related to the democratic process can be met.<sup>16</sup>

CENI is the administrative organ in charge of overseeing presidential and legislative elections in the DRC. It was established in May 2010 by law though the constitution called for its creation to replace the CEI by 2008. CENI is an independent national organization mandated to: organize and manage electoral processes, manage voter registration processes, publish for public viewing a voter registry and disseminate the provisional election outcome.<sup>17</sup> CENI is comprised of members of the majority party (4) and opposition groups (3).<sup>18</sup> In Jan. 2011, these seven members, including Pastor Daniel Ngoy Mulunda as president, were selected. The electoral calendar released by CENI on April 29, 2011, for the 2011-2013 electoral cycle was revised most recently on Aug. 18, 2011, after adoption of annexes to the electoral law.<sup>19</sup>

CENI is comprised of ten provincial offices and Kinshasa and 169 districts (*antennes*). On Oct. 23, CENI announced new leadership for provincial CENI offices, which involved transfer of provincial CENI representatives (SEP) between provinces and creation of deputy positions. Staff movements were also made at the CENI antennes. LTOs observed that switching of SEP officers created disorganization and disrupted election preparations, by having to get a new leadership team up to speed. LTOs were told transfer of CENI staff was done at the demand of political parties amid accusations of partisanship.

The support of the international community was significant in the 2011 elections, notably through the provision of some \$167 million towards the 2011-13 electoral cycle, however the DRC government is responsible for the majority of costs associated with the elections, with a reported total of some \$900 million. The United Nations peacekeeping mission in the DRC (MONUSCO) had the role of supporting these elections, particularly in terms of logistics and deployment of election materials to primary and secondary hubs throughout the provinces, and selected territories.

CENI has taken some important measures to improve transparency in its work and to inform candidates, political parties, and the voting public on issues concerning the election. CENI has held periodic and weekly press conferences, and in late October CENI enhanced accessibility of information on its website by including full voter and legislative candidate lists by district. Concerted outreach to political parties through its Political Party Forums was modest however,

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<sup>16</sup> UNHRC , General Comment No. 25 para. 20.

<sup>17</sup> Loi no. 11/003 modifiant la Loi no. 06/006 (June 25, 2011), art. 2.

<sup>18</sup> Article 10, CENI Organic Law, July 2010

<sup>19</sup> *Calendrier des Election Générales et Provinciales 2011-2013 en RDC. "General and Provincial Election Calendar."* (June 15, 2011).

despite a tense and fluid political environment, and in comparison to CEI outreach to political parties in 2006. CENI only convened two political party forums, though other meetings with parties were held under the coordination of CENI and its partners in the international community. Regular party forums might have improved relations between CENI and opposition parties.

### *Electoral Calendar & Delivery of Election Materials*

CENI is charged with promulgating a calendar for key aspects of the electoral process though it has failed to comply with a number of important deadlines imposed by the electoral law. The publication of the list of voters by province and district 30 days before the campaign<sup>20</sup>, the display of voters lists 30 days before election day at each polling station,<sup>21</sup> the publication of the list and location of polling stations 30 days before election day,<sup>22</sup> the delivery of ballots 48 hours before the vote,<sup>23</sup> the convocation of the electorate 90 days before the expiration of the term of the current president,<sup>24</sup> were all done outside of the provisions of the electoral law.

As previously noted by The Carter Center, these departures from the electoral calendar also presented significant logistical challenges for CENI and MONUSCO as it compressed the time for acquisition and delivery of election materials throughout the DRC. These delays left CENI to confront a very strict time frame in which to ensure timely design and printing of ballot papers, production and receipt of ballot boxes and other key electoral materials.

The production and printing of electoral materials is one of the most crucial aspects of the electoral process leading up to its deployment to polling sites. Election kits that were ordered and shipped from China and Lebanon – which should have initially arrived by boat – ultimately arrived by airplane. This increased CENI’s projected delivery budget by \$7 million.

The production of ballot boxes also created a major challenge for CENI due to complications in coordinating production with the first supplier it selected in South Africa. CENI had to eventually change suppliers, choosing a German supplier instead. Problems, however, arose again for CENI since the German supplier could not guarantee delivery of ballot boxes in time for the Nov. 28 elections. CENI was thus forced to change suppliers, this time using a Chinese supplier who was able to ensure delivery of the 186,000 ballot boxes. To accomplish this though, the Chinese supplier required the use of 16 air flights, at a cost to CENI of \$14 million. To ensure that electoral kits were delivered as quickly as possible, the Congolese government financed CENI’s budget increase through use of funds in its national transportation budget.

MONUSCO also provided important logistical support to CENI by delivering via airplane non essential election materials to Congolese voting sites. For its part, CENI was tasked with deploying materials that could be delivered using trucks. Though CENI had this plan in place, it

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<sup>20</sup> Electoral Law of March 9, 2006, Art.6

<sup>21</sup> Electoral Law of March 9, 2006, Art.8

<sup>22</sup> Electoral Law of March 9, 2006, Art.47

<sup>23</sup> Electoral Law of March 9, 2006, Art.56

<sup>24</sup> Electoral Law of March 9, 2006, Art.102

failed to produce a clear logistical plan for delivery of materials throughout the territories. This fact, in addition to its failure to analyze the logistical realities and complications of such delivery, reflected a lack of transparency on the part of CENI.

In regard to ballot production, once CENI certified the final presidential and legislative candidate lists, it contracted with 17 South African printers to print all the ballot papers. A sample voting ballot for the presidential race was quickly created. However, for the legislative race, 11 sample ballots were created. The legislative ballots created ranged in length from a one page ballot developed for the Yumbi district (with five seats and five candidates) to a 57-page ballot created for Tshangu in Kinshasa (with 1,500 candidates contesting 25 seats).

The printed ballots were large in size. This created yet another challenge for CENI that it had to address, since the size made the tasks of transporting, storing and delivering them to the voting stations very difficult. CENI thus called onto neighboring countries to aid in the transport of materials via helicopter: 5 helicopters were provided by Angola, 2 from the DRC armed forces, 4 from South Africa (in addition to 2 airplanes) and 6 helicopters were contracted from commercial operators.

Spurred by speculation leading up to election day that it would be logistically impossible for elections to take place across all of the DRC on Nov. 28, CENI held a press conference on Nov. 26 at which Pastor Ngoy Mulunda assured the public that all election materials would be delivered by midnight of Nov. 27, six hours before the opening of polls.

Nevertheless, on Nov. 26 and 27, Carter Center observers reported that there still remained polling sites that were missing both essential and non-essential material. In certain regions especially, where the infrastructure was very difficult for vehicles to traverse, polling materials were not received in advance of Nov. 28.

In reviewing the production and delivery of voting materials, it is clear that this represented a very large challenge for CENI. It seems then that many stakeholders in the DRC electoral process were legitimately concerned about CENI's ability to meet its deadline to deliver electoral materials across the entirety of the DRC in time for the Nov. 28 elections.

### *Selection and Training of Poll Workers*

Article 49 of the electoral law establishes the basic provision for composition of polling station personnel in each polling station. The Article notes that workers are selected from the list of registered voters at that particular station. Each polling station is staffed with a president, two intake officers, a secretary, and an additional intake officer. Article 51 notes that poll workers must declare an oath promising to uphold the electoral laws and protect the secrecy of the vote throughout the voting process.<sup>25</sup> The law also requires that each poll worker be able to read and write and receive training in poll working procedures.<sup>26</sup>

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<sup>25</sup> Article 51 also notes the CENI must provide the official version of the oath in each of the national languages.

<sup>26</sup> Electoral Code, Art. 50.

CENI organized its training of electoral workers via the cascade method of replication trainings: starting with eighteen Master Trainers; 196 National Electoral Trainers (FEN); 2,598 Provincial Electoral Trainers (FEP); 34,972 Heads of the voting centers; and ending with 349,225 members of the polling and counting stations (BVD) and 4,160 members of the local center for compilation of results (CLCR). The cascade approach is nimble and efficient but if not monitored closely (i.e. supervision of selected replication trainings by Master Trainers to ensure quality of instruction) and investments are not made in development and production two sets of manuals (for participants and one with instructor notes), the quality of this type of training can be compromised.

The planned nation-wide six-day training by the CENI agents of FEN trainers was delayed four days until Oct. 31, due to the late arrival of lead trainers from Kinshasa. Carter Center observers noted variations in format, quality, and organization of trainings of CENI agents they attended. LTOs in Matadi observing a FEP training there noted a lack of necessary training material present and not all participants received booklets listing election day procedures. Across the DRC the training was reduced to four or five days.

The planned five-day training for members of the BVDs and CLCRs took place in most provinces Nov. 24-26. The trainings attended by LTOs in Kisangani were only of half-day duration due to the limited availability of meeting space. The majority of Center observers noted that training of polling station workers appeared to unfold smoothly without great complication. In a few trainings observers noted that there was a shortage of training materials.

On Nov. 25, three days before the elections, CENI announced in a press release that citizens with a voter card whose name does not appear on the voter list would be allowed to vote in the nearest voting site of the same constituency. Though the measure announced by the CENI affirms and furthers the right to vote - it contradicts Article 6 of the electoral law which prescribes that, 'the quality of being a voter is recognized by being recorded in the voters lists and holding a voter registration card issued by the Independent National Electoral Commission.' It may also weaken safeguards in place to prevent multiple voting or that ineligible voters (active duty military, police) who managed to obtain a voter ID card may not vote. Carter Center observers noted that many poll workers were unaware of the late decision to implement this procedure so application of the list of omitted voters was inconsistent – resulting in some voters who were able to vote and others in the same situation who were prevented.

### *Establishment of Polling Stations*

CENI staff from Kinshasa went to each province to select locations of polling stations. With 6 million additional voters this election had 63,865 polling stations, compared to 58,000 in 2006. A cartography for each province dated Oct. 31 listing voting centers was released by the CENI between Nov. 7-8, allowing parties to finally organize deployment of agents (which submit applications for a particular BVD). It appears that identification of these BVDs<sup>27</sup> was derived from 2006 research and was out of date. Use of outdated information resulted in errors in the cartography which the CENI did not correct quickly, giving rise to opposition questions of the validity of polling stations and claims of false or “ghost” polling stations.

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<sup>27</sup> There were 11,611 voting sites and 16,548 voting centers.

## *Candidate Registration*

As noted in a previous Carter Center report, the candidate registration process in early September was disorganized due to the volume of last minute applicants.<sup>28</sup> Applications submitted to the office responsible for processing candidate applications (BRTC) were reviewed for eligibility by a legal clerk. In some cases, there was a lack of verification of eligibility or monitoring of resignation of non-elected public officials. In meetings with observers in South Kivu, Congo Liberation Movement (MLC) members alleged that People's Party for Reconstruction and Development (PPRD) legislative candidates holding local office were successfully registered despite not showing proof resignation or request for temporary leave (which would interrupt salary and access to public resources). It is alleged the current mayor of Bukavu was confirmed as a legislative candidate despite not submitting either letter. Under Article 10 (5) and (6) of the electoral law, candidates who do not submit such a letter are ineligible to register. There were also concerns that CENI did not monitor resignation of individuals who submitted a resignation letter with the application.

## ***VOTER REGISTRATION***

Voter registration is recognized as important means to ensure the right to vote, and should be made available to the broadest pool of citizens possible to ensure universal and equal suffrage are protected as required by DRC's international commitments.<sup>29</sup> Voter registration includes all aspects of the electoral process related to the registration of voters.

In June and July of 2011, CENI enrolled 32,024,640 voters across DRC. Few domestic observers from civil society or witnesses from political parties observed the voter registration. Subsequently, opposition parties, in particular the Union for Democracy and Social Progress (UDPS), requested CENI allow them to conduct an audit of the voter registration server after allegations of minors, foreigners, members of the military and other ineligible groups were able to register.<sup>30</sup> Despite elaboration of terms of reference for an audit, CENI and UDPS were ultimately unable to agree on the number of party witnesses permitted to be present in order for the audit to go forward.

CENI does not have a legal obligation to allow parties to conduct an audit of the voter register database. However accommodating (reasonable) requests concerning access to the server by political parties could have improved openness in the work of CENI, and may have more instilled voter and political party confidence in the electoral process, thereby minimizing the

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<sup>28</sup> According to CENI, 14,000 of the over 18,000 applicants applied in the last day or two before the Sept. 11 deadline.

<sup>29</sup> United Nations Human Rights Committee, General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service", para. 11; UN, International Covenant on Civil and Political Rights, art. 25(b).

<sup>30</sup> Center observers noted that in Maniema that they had heard allegations from an Italian NGO that minors had been seen with voter registration cards. In Bas-Congo, the Direction Générale de Migration (DGM) in Matadi confirmed isolated cases of Angolan who were able to register and receive voter cards. Allegations were also made, but not authenticated that Ugandan nationals had registered in Beni and that Rwandan nationals had registered to vote, with members of the Democratic Liberation Forces of Rwanda (FDLR) registering to vote in Goma and other regions.

likelihood of allegations of fraud or actual instances of fraud that might occur during the election.

Article 6 of the electoral law requires CENI to publish the voter list within 30 days of the election campaign period start, or Sept. 28.<sup>31</sup> As noted in a prior Center report, CENI began publishing voter lists on its website Oct. 3. Under Article 8, CENI is required to post the voter list outside each BVD 30 days before the election. Since Oct. 28, Carter Center observers have conducted periodic visits to polling stations to verify voter list postings. The majority of polling stations visited by observers throughout the DRC in the period between Oct. 28 and Nov. 26 did not have voters lists. In some cases CENI officials justified the delay to protect lists from being torn down or tampered with by persons in the area. Though this may indeed be a valid concern, CENI has an obligation under both its national<sup>32</sup> and international commitments to post the list for voters to view in advance of election day. In doing so, citizens' right to vote is protected as they have the opportunity to discover if their name is missing from the registered voter list. Additionally, citizens who view the list can notify CENI officials of names on the list for persons who are known to be ineligible to vote or who are known to be deceased. Other delays in postings were caused by delays in delivery of voter lists sent from Kinshasa (local offices were unable to print lists posted on the CENI website). This delay or non-posting of voter lists contributed to confusion on election day for voters who did not know in advance the precise location of their polling station and that their name appears on the voter list. Observers reported that less than half of the 375 polling stations visited on Nov. 26 did not have voter lists posted.

Time frames for publications and displays are designed to strengthen the confidence of voters and political parties who can appreciate the quality of the registration process and know the composition of their potential electorate. Delays in the release of voters lists, as well as the location of voting sites decreases the positive effects of these transparency measures.

### ***VOTER EDUCATION***

Voter education efforts are necessary to ensure an informed electorate is able to effectively exercise their right to vote.<sup>33</sup> These efforts include voter education and voter information provided by the state, political parties or civil society to ensure public awareness of the process, rather than broader civic education efforts.

Article 9(7) of the CENI's mandate require it engage in civic education campaigns to sensitize voters to the electoral process, in both French and other national languages. This responsibility is in line with the DRC's major international commitments.<sup>34</sup>

Official education efforts began in September and Carter Center observers reported CENI shortcomings in direct coordination or indirect support of education initiatives. CENI used radio and community TV to disseminate relevant electoral information (calendar dates). CENI

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<sup>31</sup> CENI may 'determine the method of publication' of the voters list. Under the same law, the electoral list must be published at every polling station 30 days prior to the election.

<sup>32</sup> Electoral Code, art. 8. "In each polling station, the electoral list must be posted 30 days prior to voting day."

<sup>33</sup> ICCPR, art. 25; United Nations Human Rights Committee, General Comment 25, paragraph 11.

<sup>34</sup> ICCPR, art. 19(2)(b).

primarily noted that it lacked sufficient funds to institute robust voter education campaigns and activities throughout the DRC.<sup>35</sup>

CENI instead emphasized its expectation that Congolese civil society groups would largely undertake education initiatives to prepare voters for the upcoming election. Some observers reported a general sentiment from local CENI officials that CENI was not responsible for implementing voter education activities.

International actors supported voter and civic education. For example, Search for Common Ground produced television and radio announcements to educate voters. IFES provided small grants to NGOs across the DRC through its Voter Opinion and Involvement Through Civic Education (VOICE) project. The United Nation Development Programme produced civic education materials that were distributed via its Electoral Cycle Support Program (PACE).

For distribution of voter education supplies in CENI offices to local NGOs, observers noted CENI did not appear to have a system in place to screen NGO recipients in advance of distribution of a limited amount of sensitization materials. This lack of screening was problematic because many civil society groups lacked the necessary funds to implement educational initiatives. It is not clear that CENI materials reached those groups who could have capably led such activities.

The Center notes overall that CENI has largely failed to meet its international, regional and national obligations to institute proper voter education efforts throughout the DRC well in advance of election day. Efforts that have been made have been made primarily by international organizations that may not have targeted citizen populations adequately enough. Additional voter education efforts have been made by partisan organizations, thus emphasizing the need for CENI to institute and apply stronger voter education efforts.

#### ***CANDIDATES, PARTIES AND THE CAMPAIGN ENVIRONMENT***

Equitable treatment of candidates and parties during an election as well as the maintenance of an open and transparent campaign environment are important to protecting the integrity of the democratic election process.<sup>36</sup> This wide-ranging constituent part includes campaign finance, the registration of candidates and political parties, and other aspects of the electoral process associated with campaigns and/or candidates and political parties.

Chapter IV of the DRC electoral law governs the conduct of campaign activities during elections. The Carter Center welcomes the establishment of a code of conduct as recommended in the African Charter on Democracy, Elections and Governance and the establishment of a mediation committee with the aim of "*helping to the peaceful resolution of conflicts and incidents between electoral parties.*"<sup>37</sup>

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<sup>35</sup> CENI budget for voter education is approximately \$2 million.

<sup>36</sup> African Charter on Human and People's Rights, arts. 2 and 13(1); UN, ICCPR, art. 25(b); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(c).

<sup>37</sup> "Code de Bonne Conduite" of political parties, political groups, and candidates for the presidential and legislative elections in DRC, Art.29

The early campaign period was characterized by a low level of political campaigning of both legislative and presidential candidates. Two of the 11 presidential candidates (Etienne Tshisekedi and Oscar Kashala) were outside of the DRC for half of the campaign period. Observers reported in some places campaigning was not visible until the last few days of the campaign. Legislative candidates have given several explanations to observers, including: they were waiting on party materials in order to begin campaigning; logistical constraints delayed deployment of campaign materials to the interior of the country; they had limited funds to campaign and saved their resources for the last week of the campaign period; and/or they did not wish to spend their own funds on their election campaign. Observers observed more activity in provincial capitals and principle cities than in remote areas. In the remote parts of provinces, some parties appeared to receive little or no support from their national office.

Observers reported that the campaign events that took place seemed to be scheduled with little organization or advance notice - major political parties were not able to provide an itinerary of scheduled events for the campaign period. When campaign itineraries were given, it was common for the events to not go forward. Observers reported that of all of the parties and candidates, PPRD/Majority Party (MP) and incumbent President Joseph Kabila were the most visible on billboards, banners, and motorized caravans. Similarly MP-affiliated candidates reportedly had good access to TV and radio stations – consistent with this, MP candidates had greater presence in media programming and campaign ads.

Opposition groups, UDPS in particular, allege that local authorities interfered with rallies and other campaign events. With few exceptions (Kinshasa, Mbuji Mayi) Carter Center observers did not report first-hand observations of authorities violating assembly rights of parties.

There was no visible response by UDPS supporters to their presidential candidate, Etienne Tshisekedi's call to action of Nov. 6, 2011, to secure the release of 34 party members in jail (his speech was seen by many as an incitement to violence).

### ***PARTICIPATION OF WOMEN***

Women enjoy the same fundamental right as men to participate in the public affairs of their state, including voting in elections and participating in other aspects of the electoral process.<sup>38</sup> International law recognizes that women should be able to vote in elections on equal terms with men, without discrimination.<sup>39</sup> Furthermore, states are encouraged to take special, temporary measures to achieve *de facto* equality for women,<sup>40</sup> including the use of quotas to equalize women's participation in the political affairs of their country.<sup>41</sup>

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<sup>38</sup> African Charter on Human and Peoples' Rights, art. 13(1); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 9(1); ICCPR, art. 25(b).

<sup>39</sup> Convention on the Political Rights of Women, art. 1.

<sup>40</sup> African Charter on Democracy, Elections and Governance, art. 29(3); ECOWAS, Protocol, art. 40; CEDAW arts. 3, 4 and 7.

<sup>41</sup> EISA, SADC, pg. 10; CEDAW Committee, General Recommendation No. 5, paras. 15, 28 and 33.

Both the DRC constitution and the electoral law make include language that upholds the DRC's international obligations. The preamble of the constitution notes that the Congolese people reaffirm their commitment to uphold a number of its international commitments, including the United Nations Convention the Rights of Children and Women, "particularly in regard to equal representation between men and women in positions of responsibility within governmental institutions."<sup>42</sup> Article 14 pledges the promotion of equality between men and women within the civil, political, economical, social and cultural realms to take measures to combat all public and private forms of violence against women. The electoral law promotes women's rights as well noting in a number of articles that political parties, poll station leaders, and national and provincial bodies should make note of the gender make up of their members.<sup>43</sup>

Approximately half of registered Congolese votes are women and during the 2006 presidential elections, more women reportedly voted than men. In spite of these registration statistics, a low number of female candidates ran for any political office during this election. The Carter Center regrets that no party has nominated a woman to stand for the presidential election (in 2006 there were four female candidates). It is also regrettable that the percentage of women candidates in the legislative elections decreased from 12 percent in 2006 to 10 percent in 2011. With this low rate, and the lack of binding measures to promote the role of women in politics, the DRC has not met the SADC declaration target of 30 percent representation of women in parliament.

International and regional commitments of the DRC encourage the government and political leaders to implement procedures that promote more participation of women in politics.<sup>44</sup> The Carter Center encourages government and legislative leaders to put in place more formal mechanisms that encourage such gender parity. This would require educating the public and seeking solutions to obstacles that block many women for running for public office. Many female-focused domestic NGOs institute some efforts but more systematically implemented efforts are needed. Though CENI did engage in some gender sensitization efforts during the registration period, more strategically tailored gender education efforts – to men and women alike – may also help to dispel beliefs shared with some observers that women are not suited for public office.

## ***THE MEDIA***

The media play an indispensable role during democratic elections by educating voters and political parties about major issues, thus giving them access to information so they can make an informed decision.<sup>45</sup> This constituent part includes not only issues related to the rights of journalists, but also to the overall media environment, media coverage, and the ability of political contestants to equitably access the media. Both public and private media are considered, with the understanding that the rights and responsibilities of each will differ.

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<sup>42</sup> DRC Constitution, Preamble. The Preamble also notes a commitment to uphold the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

<sup>43</sup> Electoral Code, Arts. 13, 50, 230 and 234. Note however that Article 13 notes that the failure of a political party to have equal representation of men and women on their membership list will not be cause for invalidation of the list.

<sup>44</sup> CEDAW, art.3,4,7; African Charter on Democracy, Elections, and Governance 29(3).

<sup>45</sup> ICCPR, art. 19(2); United Nations Convention Against Corruption, arts. 10(a) and 13(b).

Article 33 of the electoral law gives competence to the Superior Council of Audiovisual Communications (CSAC) to oversee activities of the media in regard to the electoral environment.<sup>46</sup> CSAC was formally established Oct. 11, 2011, just one month prior to the start of the electoral campaign. It is charged with ensuring in part that the DRC meets its international obligation to provide equal airtime to candidates within the realm of public media. The same article vests CSAC with authority to enlist the aid of appropriate authorities as needed to enforce this principle of equality. CSAC is tasked with providing public notice of what the conditions of media access will be during the electoral campaign period. Based on Article 35, CSAC may deny media airtime to candidates if they feel the media presented would be injurious, defamatory, or in grave violation of the Congolese constitution or other laws. If CSAC takes such action, the candidates denied media access have four days to lodge an appeal with the State Council.

Since the start of the electoral campaign, CSAC has sanctioned 30 acts of media violations against various print journalists and television stations. The most notable sanction CSAC administered was against Lisanga Radio and Television (RLTV). CSAC blocked its signal for seven days for conducting a telephone interview with presidential candidate Etienne Tshisekedi that both criticized the ruling party and incited acts of violence. Though CSAC administered these sanctions, it has also been accused by many as being pro-PPRD and not enforcing its regulations in an impartial manner. This is exemplified somewhat by CSAC's failure to sanction the PPRD for posting presidential campaign posters in public buildings, one of which was most notably located at the Congolese National Radio and Television (RTNC) building which serves as CSAC headquarters.

Observers who spoke with political parties in Kivu also expressed concern about unequal access to the media and limits on freedom of expression. For instance during the initial days of the electoral campaign, Center observers reported that some print journalists were arrested for writing critically about the ruling party, PPRD. There have been numerous other reports as well of radio stations or television signals being shut down when it aired persons speaking against the ruling party.<sup>47</sup> This may contribute to a culture of self-censure by journalists for reasons related to job security and safety.

Throughout the campaign, observers noted that the wealthier PPRD and the MP-affiliated parties appeared to have the best means to media access, as the parties have been more visible in television and radio mediums. Opposition and independent party candidates complained about limited access to public media and that access to the private media is not a viable option as it costs too much for them to purchase air time. Many private media stations are also owned by politicians with ties to the ruling PPRD party. Observers also reported that several radio stations permitted incumbent President Kabila to campaign in advance of Oct. 28. By contrast, Radio Okapi, the MONUSCO-run radio station has worked to train journalists on objectivity and professionalism in reporting campaign news.

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<sup>46</sup> CSAC replaced the *Haute Autorité des Médias* (HAM), on Aug. 19 as the official media regulatory body.

<sup>47</sup> In Mbuji Mayi, observers learned from MONUSCO that one station was shut down for two weeks after opposition party members insulted the Governor of Kasai Oriental the PPRD, the political party he supports.

The Center encourages CSAC, as the media regulatory body to better uphold its obligation to ensure equal access to political candidates during electoral periods. CSAC should also exercise the powers of Article 35 in its regulatory law to deny or remove media access to certain candidates whose messages harm the integrity of the electoral process. CENI should monitor persons who are appointed to serve on CSAC to ensure they have no major political affiliations or commitments that would deter them from being impartial in carrying out duties. Though the realities of a difficult infrastructure in the DRC may render it difficult to ensure radio and television access is available across the country, CENI may consider strategizing methods to ensuring more Congolese citizens are aware of key events and campaigns related to the elections so they can make the most informed decision when they vote.

### *ELECTION DAY*

The opening of polls was generally reported by Carter Center observers as calm and well ordered, however, more than 50 percent of the polling stations observed opened after 7:00 a.m.

Most of the essential material reached the polling stations before the opening. In nine percent of the cases, polling stations opened with some missing ballot papers. It was reported later on that in 53 percent of the cases, ballot papers were not in sufficient quantity to accommodate all the voters.

No electoral propaganda was reported near polling stations and voters lists were displayed outside in 80 percent of the cases. All polling station staff were reported present at the time of opening and political party witnesses were represented in 96 percent of polling stations visited. PPRD and UDPS were the most represented with 60 and 80 percent of the polling stations covered. Other parties observed an average of 30 percent of the polling stations visited. In 88 percent of the cases, domestic observers were present at the time of opening. In some polling centers, the large presence of witnesses led to disturbances and several cases of violence. In general, the confusion prevailing in many of the BVDs generated tensions that polling station staff were unable to control. Security personnel was reportedly present in 96 percent of cases, however, the number of personnel affected to polling centers appeared to be insufficient.

With the modifications of electoral cartography and the absence of efficient communication of polling stations locations, it was reported that a significant number of people reported difficulty finding their polling stations. No system was in place on election day to assist disoriented voters and polling station staff proved unable to do so. Although a special procedure was put in place by CENI on Nov. 25 to allow voters to vote in their voting site if their name was not on the voters list, the information was not applied evenly by polling station presidents.

Apart from the management of these "omitted voters", procedures were generally respected. In the majority of cases ballot boxes were properly sealed, ballot papers were counted before polls, and empty ballot boxes were presented to all presents. Of serious concern, ballot papers were missing in 20 percent of the polling stations visited while ballot boxes, PVs and voters lists were missing in less than 10 percent of the cases.

Poor presence of security and disorganization of CENI agents in polling centers led to crowd violence in some instances. For example, in several Kinshasa locations, large crowds of UDPS supporters shouted pro-Tshisekedi slogans inside voting centers, violating the prohibition on campaign activity and possibly intimidating voters and election officials. In several cases, poll workers who were allegedly tempering with ballot papers were threatened with violence. In Kananga a local observer was molested when found in possession of marked ballot paper she was given as a proof of ballot marking. The actual (and alleged) circulation of ballot papers worsened an already volatile climate in some places.

Women were members of polling staff in 70% of the polling stations. While it is promising that 30 percent of the polling station presidents were women, improvements remain necessary to reach gender equality.

The overall evaluation of the polling process by Carter Center observers found that procedures were generally respected in 35 percent of stations visited. They reported that 49 percent of polling stations visited showed minor problems unlikely to affect the results. The level of disorganization prevailing in some polling stations led our observers give a poor evaluation in 16 percent of cases.

The results process is ongoing and Carter Center observers remain deployed to monitor the tabulation process.

### ***ELECTORAL DISPUTE RESOLUTION***

State practice notes that effective dispute mechanisms are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.<sup>48</sup> The resolution of disputes is relevant throughout the entire electoral cycle, and includes any mechanism established to hear and adjudicate election related disputes. This right is fundamental to ensuring all other human rights of citizens may be fulfilled.

According to the Congolese Bar Association, there are few legal remedies within the DRC available for breaches of electoral law. The Supreme Court is tasked with handling electoral disputes that reach its chambers. However, many have questioned its efficacy, noting that the location of the court in Kinshasa makes it difficult to reach from most regions in the Congo.<sup>49</sup> Observers were also told that many citizens avoid the court system since they believe judges are not impartial in their work and may be swayed by political interests instead of justice. Due to the political influence of ruling party members, many lawyers are also often reluctant to take cases that would oppose the PPRD for fear of some negative repercussion, political or otherwise.

CENI's capacity to address adequately electoral disputes was often questioned throughout the campaign. CENI does have a person in charge of responding to inquiries from political parties and stakeholders regarding the electoral law and the constitution. Nevertheless, CENI is limited in its enforcement power as it may issue verbal warnings for legal infractions but has no legal authority.

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<sup>48</sup> Article 40, the SSRC Rule and Regulations on Polling, Sorting, Counting and Declaration of Results.

<sup>49</sup> The MLC party feels there should be a constitutional court in place to handle this matter.

The National Mediation Committee was established late in the electoral process; prominent religious leaders were named on Nov. 18, 2011. Designation of mediators was done without consultation with political parties and it appears parties were unaware of the mechanism and it could not play an effective role. As a result, the election period saw a number of disputes arise due to the lack of dispute resolution capacity in the DRC.<sup>50</sup> As a demonstration of pressing need for such a mechanism, in Goma a mediation committee for electoral conflicts was established and had its first meeting on Nov. 7 to resolve complaints filed with CENI concerning campaign conduct and activities. Complaints of minors implicated in party campaign activities were addressed. This committee appears to be at the initiative of Goma political parties and the CENI SEP.

Based on findings of Center observers, it appears that the electoral dispute resolution mechanisms in both the CENI and at the national level lack wide accessibility to citizens and are perceived to be partial. The underdeveloped system does not seem to sufficiently protect citizens' fundamental right to adjudicative remedy for alleged violations of their rights. Citizens' awareness of the DRC's inadequate dispute resolution mechanisms is believed to have contributed some to the many street protests and violence that have permeated this election; many voters are frustrated and feel they have no other alternative but to protest in order to have their voice heard.<sup>51</sup> The Center would thus recommend the CENI devote effort to putting in place a more robust dispute resolution system in advance of upcoming provincial and local elections so that it can uphold its international and regional obligations to provide redress for the violation of fundamental rights related to the electoral process.

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<sup>50</sup> Observers learned of complaints filed by the UDPS to the CENI later in the campaign. These included allegations that: voter's cards were purchased, that the PPRD engaged in illegal early campaigning activity, and that mobile phones were given out in exchange for votes; that the PPRD gave motorcycles to employees in on governmental department. The UDPS also complained that the CENI violated Article 8 of the Election Code concerning the required posting of the voter's list at BVDs.

<sup>51</sup> Perhaps related to this, opposition parties typically incited disputes by denouncing each step of the electoral process to undermine the election credibility.