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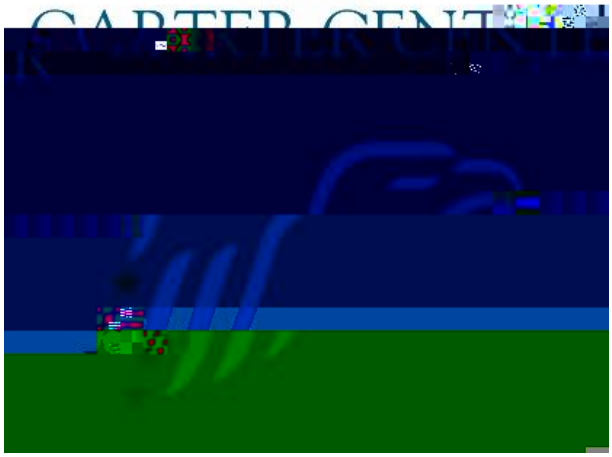

Democratic Republic of the Congo 2018 Harmonized Presidential, Parliamentary and Provincial Elections

Expert Mission Report
The Carter Center

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On Jan. 17, a consultative meeting in Addis Ababa headed

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

In advance of the 2018 elections, the political and security environment in the Democratic Republic of Congo was XQVWDEOH 6WDNHKROGHUV LQFOXGLQJ .
so-FDOOHG ³3UHVLGHQWLDO 0DMRULW\´ WKH SROLWLFDO RSSR
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,

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.

Section 4. Freedom of Political Participation and Electoral Processes

Although the electoral law mandates that the CENI implement elections impartially, opposition political parties perceived the Congo (FCC) coalition. Because of the government's lack of political calendar, the CENI faced serious challenges in disbursing

Political Environment after the 2011 Elections: State Institutions Weakened

The Carter Center and several other international observation missions highlighted many irregularities PDUULQJ WKH 1RYHPEHU SUHVLGHQWLDO DQG OHJLVODWLY 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-FDOOHG 3UHVLGHQWLDO 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 tha

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 WKLV IRUXP erUean-Pierre Bemba, then detained at The Hague, instructed MLC leaders to ³VD\ DOO WUXWKV LQ WKH IDFH WR WKH PDQDJHUV RI SXEOLF from afar.[12] The MLC welcomed the introduction of security and intelligence sector reforms to the DJHQGD 7KH 81& KRZHYHU VDZ WKHVH VHVVLRQV DV D PHUH FRDOLWLRQ DQG LWV V\SDWKL]HUV $FFRUGLQJ WR WKH 81& needed, not only to hold a genuinely inclusive dialogue, but also to sensitize the population against any

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 DFFRUGLQJ WR WKH FRQ 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 GHPDQGLQJ SUHVLGHQWLDO HOHFWLRQV XQGHU WKH VORJDQ headquarters on fire, including those of UDPS, the Lumumbist Progressive Movement (MLP), the

Dialogue of the African Union City

Under the auspices of the African Union, facilitator Edem Kodjo kicked off a national policy dialogue

Common Opposition Candidate

Over time, several RI WKH '5&¶V PDLQ RSSRVLWLRQ OHDGHUV GHFLGH
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 electi RQV 9DULRXV SROOV SXEOLVKHG E\ WKH %XUHD
Consulting International (BERCI) DQG /H *URXSH G¶(WXGH VXU OH &RQJR
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 SROLWLFLDQV VLJQHG DQ DJUHHPHQW WR IRUP D SROLWLFDO
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]

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

'HVSLWH SURPLVLQJ VLJQDOV JLYHQ WR WKH 8QLWHG 6WDWHV DQG LQ November 2016, 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 WKH &(1, GLG QRW DFFUHGLW WKH &DUWHU &HQWHU¶V H 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. ,Q VSLWH RI WKHVH OLPLWDWLRQV W expert mission was a

DRC Constitution

The preamble of the 2006 Congolese constitution reaffirms the country's adherence to the principles of 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 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

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 Afric DQ &KDUWHU RQ +XPDQ DQG 3HRSOHV 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 SDUWV WKDW FRQFHUQ &(1, ¶V UHVROXWLRQ SURFHGXUHV VKRXOG EH UHYLHZHG DQG GLVSXWH 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 200 I9(c1)11(ur)-3(e)45.2aw 7] TJ37 W*nBTJETQqeW*eW49.1 r7aw

Organic Law 11/001 of Jan. 10, 2011,

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 KLQGHUV RQH¶V ULJKW WR EH HOHFWHG WR SXEOLF RIILFH

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

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 WKDW HOHFWRUDO WKUHVKROGV GR QRW LPSRVH XQUHDVRQD 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 FRXQWU\¶V VRYHUHLJQW\ WKHU 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

challenges to the CENI's provincial list of candidates for the 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, 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 the subsequent disqualification of the CENI's 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. Bemba's lawyers 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.

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

of government policy and the implementation thereof and to hold public office and perform all public IXQFWLRQV DW DOO OHYHOV RI JRYHUQPHQW´ $UWLFOH

Despite the 2015 adoption of a law that strongly encourages women candidacies, efforts to attain gender parity remain elusive.[69] 7KH '5&¶V FRQVWLWXWLRQDO SURYLVLRQV RQ JH 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 ZRPHQ¶V JURXS 1RXYHOOH =$&&$ &DPS RSLF aux elections (WhatsApp Group Camp RSLF *Groupe WhatsApp Camp RSLF aux elections* 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

7KH &(1, DQG WKH &RQVWLWXWLRQDO &RXUW IDLOHG WR HQVX commitment to protect the right to stand for public office. The drastic increase in fees for political parties

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 GHQRPLQDWLRQV ZRPHQ¶V 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 ³EDVLQJ DFFHVV WR SXEOLF VHUYLFH RQ HTXDO RSSRUWXQLV secured tenure, ensures that persons holding public service positions are free from political interference RU SUHVVXUHV´[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,

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 DFFHSWHG LQWHUQDWLRQDO PRGHO DQG GRHV QRW QHFHVVDU of the process if there is an appropriate system of checks and balances in place through which members PRQLWRU HDFK RWKHU¶V impartiality.[80] The nomination for 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. $FFRUGLQJ WR D SXEOLF RSLQLRQ VXUYH\ FRQGXFWHG E\ %(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 dgtas partisan ins

lacks a valid identification document for registration, three reliable citizens who are registered voters at the same identification center can offer ZLWQHVV WHVWLPRQ\ LQ ZULWLQJ WR FRQ 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 part

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

$FFRUGLQJ WR WKH ODZ JRYHUQLQJ WKH &(1, LW ³HQMR\V DG
its own budget in the form of a grant, which can be supplemented by external inputs.[106] The Ministry of
)LQDQFH GLVEXUVHV WKH &(1,¶V EXGJHW EDVHG RQ DQ DJUHH

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 VFUHHQ 9RWHUV PDGH WKHLU VHOHFWLRQ E\ SUHVVLQJ RQ allocated to that candidate. Depending on the number of candidates in a constituency, some voters were

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]

%\ WKHLU YHHOUHFQWDUXQLHF YRWLQJ V\VWHPV UHTXLUH SURFHGXU XVLQJ WUDGLWLRQDO PHWKRGV *LYHQ WKH XVH RI WHFKQRO PHDVXUHV VXFK DV DXGLWV DQG FHUWLILFDWLRQV RI WKH GDV LQWHJULW\ RI HOHFWURQLF RSDTXH WR FLWL]HQV D VLWXDWLRQ [((RI WHOHFWUL GYRWLQJ LDQJ

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. 139
[134]

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.

RSHUDWLRQV DUH FRQGXFWHG 7KH &(1,¶V LQWHUSUHWDWLRQ
prior to election day IURP WKH OHJDO QRWLRQ RI ³HOHFWRUDO RSHUDWL

6WDNHKROGHUV¶ XQGHUVWDQGLQJ RI WKH OHJDO DQG WHFKQ

Conclusion

7KH '5&¶V UHFHQW HIIRUWV WR LPSURYH WKH DELOLW\ RI 3:'V 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.

All political parties and candidates should enjoy equal opportunities to campaign freely without

resources for campaigning purposes was violated in a substantial number of campaign activities.[152] The JRYHUQPHQW¶V IDLOXUH WR LPSOHPHQW FRQVWLWXWLRQDO S 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 &(1¶V 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.

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

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, ³LQ Y LHZ R ensure that the principle RI IDLUQHVV DQG HTXLW\ WKDW VKRXOG[200] This last issuance of the CSAC PHGLD 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 FRPPLWWHG SHUFHQW RI WKHLU DLUWLPH WR SROLWLFDO 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 VKRUWFRPLQJV ZHUH DWWULEXWHG WR WKH ERG\¶V ODFN RI I 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 Bdufficient funds from

Economy emphasizes that the rights of IUHHGRP RI H[SUHVVLRQ DQG DFFHVV WR L
RQOLQH DV ZHOO DV RIIOLQH ´[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 LWV 5HVROXWLRQ FRQGHPQHG ³XQHTXLYRFDOO\ PHDVXUH
or dissemination of information online in violation of international human rights law and calls on all States to refrain from and cease such measures,

Overall Online Environment

The Carter Center monitored the overall online atmosphere by regularly checking the social media accounts of journalists, civil society, activists, politiciano10 G[(61)] TJEano10 G[(61)] TJEano10 G[(61)] TJEano10 G

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 could not directly analyze voting and counting procedures. The mission did not have access to polling stations nor polling officials. In spite of these constraints, the Carter Center 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

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 UHSRUWHGO\ DQJU\ WKDW YRWLQJ PDFKLQHV RQO\ SULQWHG 6 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

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 DOVR FLWHG UHFHQW DOWHUFDWLRQV EHWZHHQ WKH UHJLRQ 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 &RXUW FRQWHVWLQJ WKH FRQVWLWXWLRQDOLW\ RI WKH &(1,¶V areas. The petition alleged that the decision violated the constitutional rights and freedoms of the voters LQ WKHVH DUHDV DQG DVNHG WKH FRXUW WR DQQXO WKH &(1 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,

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 RI WUDQVSDUHQF\ XQGHUPLQHG VWDNHKROGHUV¶ FRQILGHQ announced by the election management body and later confirmed by the Constitutional Court. Given WKH FRXQWU\¶V VL]H DQG WKH ORJLVWLFDO FKDOOHQJHV WKL

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

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,

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[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.

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 G R H V Q ¶W KDYH 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 E H K D O I R I W K H 'Opposition Coalition Lamuka (DCL), and independent presidential candidate Mgoy Ilunga Nsenga.

7 K H ' \ Q D P L T X H G H O ¶ 2 S S R V L W L R Q 3 R O L W L T X H & R Q J R O D L V H O F same grounds:

1. The CENI violated articles 70, 70 bis and 71 of electoral law by announcing provisional

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 UHIOHFWHG WKH ³,VLQHHUWKDWWKH\ZRWHG GXO\ YHULILHG the people.

4. The court declared that the challenge submitted by the independent candidate was not admissible because of duplication and the lack of WKH FDQGLGDWH¶V 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 WKH FRXUW¶V UXOLQJ 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 Commis VLRQ ³WRRN QRWH´ RI WKH UHVXOWV LQ D 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, 7VKLVHNHGL¶V $8 DSSRLQWPHQW UHSUHVHQWV D VWURQJ UHJ

12. Harmonize Article 165, para. 2.

24. 7R HQIRUFH ODZV WKDW VDIHJXDUG Y, R W H U F D ¶ Q G E H D W W H W ¶ R I 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 ¶ V and the State Council ¶ V 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.

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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 W K H S H U F H S W L R Q R I J ´ F R H U Y H U J U R X S V 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.