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

Oct. 17, 2011

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

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

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

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

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

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

The Carter Center International Observation Mission

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

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

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

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

Historical Background

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

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

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

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

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

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

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

Legal Structure

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

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

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

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

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

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

⁶ Article 73 of the Electoral Law

Election Administration

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

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

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

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

⁷ Law creating CENI

⁸ Organic Law 10/001 (January 10, 2011)

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

Election Administration Observations

Voter Registration:

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

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

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

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

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

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

Electoral Calendar:

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

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

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

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

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

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

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

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

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

Voter Education:

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

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

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

¹⁴ CENI press conference, September 23, 2011

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

Transparency:

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

Major Political Parties and Candidates

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

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

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

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

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

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

Campaign Environment and Assembly

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

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

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

Civil Society and Domestic Observers

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

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

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

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

Women's Participation

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

Media

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

¹⁷ International Covenant on Civil and Political Rights, Article 25 (a): "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives". UN Human Rights Committee, General Comment no. 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service" paragraph 8: "Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association."

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

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

Security Situation

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

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

Recommendations

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

The Carter Center calls on the Congolese government:

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

The Carter Center strongly encourages the Independent National Electoral Commission:

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

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

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

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