



Election Watch | DRC

October 2011

MEASURING THE DEMOCRATIC REPUBLIC OF CONGO'S ELECTORAL ENVIRONMENT ACCORDING TO THE SADC GUIDELINES GOVERNING DEMOCRATIC ELECTIONS

On the 17th of August 2004, the Southern African Development Community (SADC) leaders adopted the "[SADC Principles and Guidelines Governing Democratic Elections](#)." As a member of SADC, The Democratic Republic of Congo was a signatory to these benchmark principles, and therefore it is fitting that the DRC's performance in relation to the future elections be measured against these principles and guidelines.

Electoral Institute for the Sustainability of Democracy in Africa's brief [overview](#) of the DRC's electoral system.

The DRC is scheduled to hold presidential and legislative elections on 28 November 2011. In early September, fears rose that the elections may be postponed, due to rising costs and pre-election violence. According to media reports, armed supporters of the ruling People's Party for Reconstruction and Democracy (PPRD) stormed the Kinshasa headquarters of the opposition Union for Democracy and Social Progress (UDPS) and a broadcaster supporting the party on 6 September 2011. This was allegedly done in retaliation for an arson attack on PPRD headquarters earlier in the year.

In a meeting in September, Pastor Daniel Ngoy Mulunda, DRC Election Commission Chairman, dismissed UN concerns that peacekeeper deployments that were supposed to take place over three months would have to be done in ten days due to delays. Diplomats who attended the meeting reported that even if these concerns were exaggerated, the election plans were running anywhere from 15 days to two months behind schedule. According to a senior official at the Independent Electoral Commission (CENI), transport delays in equipment delivery (e.g. ballot boxes, voting booths) were to blame. Furthermore, the cost of the elections has increased to an estimated \$1.2billion from the initial budget of \$700m – 70% of which must be raised by the Congolese government, which has a total budget of \$6bn.

There have, however, been some positive developments. About 31 million people have registered for the upcoming election, compared to the 25 million people who registered for the 2006 elections. On 15 September, CENI released its list of 11 presidential candidates: Jamba Andeka, Adam Intole Bombole, Joseph Kabagne Kabila, Malela Kakese, Vital Kamerhe, Oscar Kashala, Léon Ndondo Wa Kengo Antipas Mbusa, François Nzanga Mobutu, Kamama Mukendi, and Etienne Mulumba Wa Tshisekedi. The only woman candidate is said to have withdrawn her initial application to join Léon Ndondo Wa Kengo's campaign.

The Election Watch is designed to aid civil society groups in the DRC, and the region, in holding governmental institutions accountable and ensuring a free and fair election.

The Election Watch is based on the SADC principles and guidelines for conducting elections. It holds countries to the standards that they originated and agreed to abide by as members of the regional community.

It will be released on a bi-monthly basis to track progress towards or divergence from SADC standards.

The [baseline](#) for this study is the 2006 DRC Presidential Election.

SADC principles for conducting democratic elections:

	Divergence/Obstructive Legislation	Compliant
2.1.1 Full participation of citizens in the political process	• Universal, equal, and secret suffrage is granted under article 5 of the Constitution. • Eight amendments to the DRC's Constitution were approved by the legislature in January 2011; most had the effect of consolidating the power of President Joseph Kabila and the state. Most notable was a new provision that the majority vote system has been abolished in favour of a single-round plurality vote. Under article 71 of the Constitution, a presidential candidate had to win a majority of the votes in the first round, or a second round would be called. This system has been replaced by one that has only one round of voting, in which the candidate with a simple majority is declared victorious. The purported purpose of this system would be to alleviate the cost burden of holding two elections, although critics remain sceptical given the potential impact this system could have on the outcome of the upcoming elections. • According to article 10 of the Constitution, Congolese citizenship is exclusive and dual nationality is prohibited. Under article 8 of the <i>Loi n° 04/028 portant identification et enrolement des électeurs en République Démocratique du Congo</i>, only Congolese nationals may vote. Moreover, you must be in the territory of the DRC during the election to vote. Mentally incapacitated individuals, those who have been sentenced to a prison term, and military and police officers are also barred from voting	☐ Yes ☒ No
2.1.2 Freedom of association	• Article 37 of the Constitution guarantees the freedom of association, however it also states that legislation will determine the conditions for the exercise of this freedom. • The Office of the High Commissioner for Human Rights noted in its 2009 report to the Human Rights Council that while the Constitution guarantees freedom of assembly, it requires prior information be provided to the competent administrative authority before a demonstration takes place. In practice, the authorities interpret this provision as a requirement of prior authorisation and consistently oppose the demonstrations which express opinions contrary to those of the state.	☐ Yes ☒ No

2.1.3 Political tolerance	• According to some reports, there have been calls to take up machetes and kill to assert the strength and power of the Hutu in speeches by politicians. Radio stations broadcast similar messages. Violence is being used to mobilise the vote along ethnic lines, and bad feeling among the candidates running for president is increasing. • The International Crisis Group has recommended that all stakeholders in the electoral process (MONUSCO, the SRSG) should encourage a more sustained respect for political freedom and dialogue between CENI, the political parties and civil society at both national and provincial levels.	☐ Yes ☒ No
2.1.4 Regular intervals for elections as provided by the respective National Constitutions	• Under article 70 of the Constitution, the President of the Republic is elected for a term of five years which is renewable only once. • Under article 73 of the Constitution, a presidential election must be scheduled by the Elections Commission 90 days before the end of term of the incumbent. • Senate members are indirectly elected for terms of five years based on proportional representation of the Provincial Assemblies. Former presidents sit as senators for life. • While the legislation for regular intervals between elections exists, concerns have been raised that November 2011 elections will be postponed for a myriad reasons, including that voting materials will not arrive on time. As of mid-September, however, regular shipments of materials have been arriving, according to CENI.	☒ Yes ☐ No
2.1.5 Equal opportunity for all political parties to access the state media	• Article 33 of the electoral law stipulates that media authorities must ensure that the principle of equality between candidates is respected in broadcast and print media. • A limiting factor on the access to the media in the DRC is that, under article 35 of the <i>Loi n° 06/006 portant organisation des élections en République Démocratique du Congo</i> [henceforth, <i>Loi n° 06/006</i>], the media authority may refuse to broadcast material that they deem defamatory or injurious. • Despite independence clauses in the Press Law (1996), the state broadcast channels remain under state control and are often accused of favouring the ruling PPRD party. There do, nevertheless, exist many independent news sources, although in practice many journalists have to report in a biased manner since event organisers, for example, sometimes pay for the reporting. IREX's 2008 report on media sustainability found that journalists who do report without bias often see their articles sidelined while their editor waits for a better offer from a politician or advertiser.	☐ Yes ☒ No

2.1.6 Equal opportunity to exercise the right to vote and be voted for	- Article 14 of the Constitution guarantees gender parity between men and women in national, provincial and local institutions. Article 13 of the Loi n° 06/006, however, states that political parties are exempt from realising gender parity, and may form their party lists “if they choose” by taking into account gender parity and the promotion of people living with disabilities. - As discussed in section 2.1.1, there are restrictions placed on who is not eligible to vote, namely non-Congolese nationals, those who would be eligible but are not in the DRC at the time of the election, mentally incapacitated individuals, those who have been sentenced to a prison term, and military and police officers	☐ Yes ☒ No
2.1.7 Independence of the Judiciary and impartiality of the electoral institutions	- On 5 October 2011, the Supreme Court of Justice made its verdict on a case brought by the UDPS against the PPRD and CENI. UDPS argued that PPRD was cheating by putting more candidates on the ballots in certain ridings than there are seats available. The court ruled that the case was inadmissible because the UDPS were a day late in filing their court documents. - The UN Special Rapporteur on the independence of judges and lawyers found that the system in the DRC was “in a deplorable state and lacked the necessary resources”. According to her report, the judiciary does not function independently, as it is subject to political interference and corruption, partly because of the lack of adequate salaries and of an independent Higher Council of the Judiciary.	☐ Yes ☒ No
2.1.8 Voter education	On 3 August 2011, a website was launched by the <i>NGO Agir pour des Elections Transparentes et Apaisées</i> (AETA) to provide up-to-date information, a database of key facts and figures, analysis of the electoral process, and a forum for debate. The website provides partners with a dynamic space where they can share information and ideas. (http://www.aeta-network.org).	☒ Yes ☐ No
2.1.9 Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent National Electoral Authorities in accordance with the law of the land	All candidates in the upcoming elections have stated that they will accept the outcome of the elections as long as they are deemed to be free and fair.	☒ Yes ☐ No
2.1.10 Challenge of the election results as provided for in the law of the land	- Article 161 of the Constitution provides that the Constitutional Court settles disputes relating to the presidential and parliamentary elections. The Court of Appeals can settle disputes for provincial elections, whereas the High Court and the Lower Courts may be used for municipal and local elections, respectively. - Loi N° 06/006 stipulates that only political parties or their candidates as prescribed on the voting list, or an independent candidate, may contest the election. This must be done within three days of the announcement of provisional results by CENI.	☒ Yes ☐ No

Assessment of electoral processes:

	Divergence/Obstructive Legislation	Compliant
Voter registration	• In September 2011, CENI had compiled a list of prospective voters, which it was preparing to present to the public. It is not clear if this has been done yet. • There have been increasing criticisms of CENI and its handling of the run-up to the elections. Its work has, by and large, been secretive and non-transparent, which has caused concern among civil society, opposition parties, and the international community, as well as damaged public opinion regarding CENI within the DRC. • Civil society organisations agree that the voter register needs a “complete clean up”. A thorough audit of the voter register, however, is estimated to take at least three months, and would therefore cause severe delays. • CENI has allegedly contracted a company called “OLOGRAM” to clean up the register, but this process was not done transparently, and the company’s report has not been made accessible. EISA, MONUSCO/UNDP and others, however, agree that OLOGRAM’s work has led to up to two million names being deleted from the voter register.	☐ Yes ☒ No
Freedom of choice	• There are various provisions under Loi n° 06/006 (see, for e.g., articles 85(3) & 88) that protect Congolese citizens’ freedom of choice.	☒ Yes ☐ No
Impediments to standing	• On 15 June 2011, the Congolese Parliament adopted a new electoral law that has increased the amount of the non-refundable deposit for presidential and legislative candidates from \$50,000 and \$250 to \$100,000 and \$5,000, respectively. This creates a significant (and presumably insurmountable) barrier for candidates from smaller parties to stand for election.	☐ Yes ☒ No
Boundary delimitations	• Electoral boundary delimitations for provincial elections are governed by articles 237-242 of the Loi n° 06/006 and seats are allocated to the different areas based on the size of the electorate. The boundaries used are those of the provinces themselves, with the exception of the city of Kinshasa, which constitutes its own electoral area. • While the gerrymandering of boundaries is not currently considered a concern, with the new Constitutional amendments converting the electoral system in the DRC to a majoritarian one, it could become an issue.	☒ Yes ☐ No
Use of public resources and political party financing	• Under article 6 of the Constitution, political parties may receive public funds from the State for the financing of their electoral campaigns and other activities.	☐ Yes ☒ No
Code of conduct	• On 25 July 2011, a CENI-backed Code of Conduct was adopted without opposition. It should be noted, however, that those who had concerns about the Code of Conduct had left the room before discussions took place. • On 8 September 2011, CENI opened a forum for consultation with all relevant stakeholders in the electoral process to resolve differences on the transparency of the process.	☒ Yes ☐ No

Assessment of electoral environment:

	Divergence/Obstructive Legislation	Compliant
Freedom from intimidation, fear and violence	• While civil and political freedoms are enshrined in the Constitution, there is conflicting legislation regarding human rights, and practice certainly deviates dramatically from the Constitution. • On 6 October 2011, supporters of the opposition UDPS party held a march in Kinshasa. The police met them with tear gas, barriers, and shots being fired into the air. Radio Okapi reported that about ten people were injured, and that a few arrests were made. • On 30 September 2011, a cameraman for France Télévision-Radio France d'Outre mer (FRO), John Kikendu, was intimidated and beaten in Kinshasa during a UDPS march. He sustained head injuries and was admitted to the intensive care unit at a Kinshasa hospital. According to his colleague who witnessed the event, the aggressors were dressed in PPRD colours.	☐ Yes ☒ No
Media freedom and access to information	• According to Article 34 of Loi n° 06/006, one of the only limits to media freedom is that no individual, political party or political organisation may use the media to incite violence, threats, or anything that would inhibit someone from exercising their constitutionally enshrined rights. • There have been multiple news reports that journalists have received death threats, been beaten up, and intimidated in the months leading up to the election. In August, a national legislator threatened to go to the office of a journalist, Eugenie Ntumba, and beat her up because the legislator believed that she had hung up on him (in actuality, the phone connection was lost). Ms Ntumba has since received an anonymous death threat. • A television station that aired programmes favourable to Etienne Tshisekedi (an opposition leader) was set ablaze on 6 September 2011 by men throwing Molotov cocktails and incendiary grenades. • In late August 2011, two leading DRC journalists received death threats in via email. Donat M'Baya Tshimanga, president of Journalistes en Danger (JED), and its secretary-general, Tshivis Tshivuadi, were warned that they should be ready for the "final battle". • Amnesty International has reported that: "Scores of journalists throughout the country were threatened, arbitrarily arrested, prosecuted, intimidated, warned by state authorities not to report on certain subjects, and sometimes killed for their work."	☐ Yes ☒ No

Role of civil society	• There are many international and national civil society organisations (CSOs) that operate in the DRC, and have played an important role in the preparations for the upcoming elections. See, for example, the website for voter education that AETA established (http://www.aeta-network.org). • Civil society has been active in monitoring registration, and placing observers in all the territories in South Kivu province. CSOs have been unable to deploy observers to North Kivu, however, because CENI has not issued accreditation to the relevant CSO staff members. • Civil society was, however, limited to observing the elections and was unable to directly or indirectly influence the electoral process. • The International Crisis Group noted that CENI did not seek dialogue with civil society. • On 3 October 2011, five members of an NGO were murdered in Malinda, South Kivu province. The UN reported that, since August, there have been 25 attacks ranging from extortion to hostage-taking to using humanitarian vehicles to carry military equipment on NGO personnel and property in North Kivu province. There have been 15 in the same period in South Kivu. Since January there have been nearly 140 such attacks.	☒ Yes ☐ No
Role of the security sector	• Article 46 of Loi n° 06/006 stipulates that the voting bureau may apprehend and deliver to the police station anyone who disturbs the peace during elections, or who is behaving in a way that might compromise the proper conduct of the election. • This law also prohibits members of the national police force or military to be in the voting station or its immediate surroundings, or to intervene without the express permission of the person in charge of the polling station. • The Congolese police have received training from MONUSCO, especially in regards to crowd management, but many observers say that it has been too little, too late. • It remains to be seen how the security sector respects this legislation in practice. Moreover, the wide discretion afforded to the officials of the polling station in conducting pseudo-arrests could allow for an abuse of power.	☐ Yes ☒ No

Reports by various civil society organisations

This list is neither comprehensive nor exhaustive.

[AETA](#)

[Brookings Institute](#)

[EISA Reports](#)

[Human Rights Watch](#)

[International Crisis Group](#)

[IREX](#)

[IRIN](#)

[Office of the High Commissioner for Human Rights](#)

[Open Society Initiative for Southern Africa \(OSISA\)](#)

[ReliefWeb](#)

Relevant documents:

[Constitution of the Democratic Republic of Congo \[Constitution\]](#)

[Loi n° 04/028 portant identification et enrolement des électeurs en République Démocratique du Congo \[Loi n° 04/028\]](#)

[Loi n° 06/006 du 9 mars 2006 portant organisation des élections présidentielles, législatives, provinciales, urbaines, municipales et locales \[Loi n° 06/006\]](#)

Media reports:

[The Guardian](#)

[News24](#)

[Radio Okapi](#)

[UN News Centre](#)

[UPI](#)