



Election Watch | DRC

November 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 the month leading up to the elections, there have been mounting fears of pre-election violence, particularly that which has been incited by political leaders. The UN Organisation Stabilization Mission in the DRC (MONUSCO) has stated that it is, "deeply concerned by the rising spate of pre-electoral violence in many parts of the country and incitement to violence by political leaders that has marred the presidential and legislative elections campaigns since 28 October." The Chairman of the National Independent Electoral Commission (CENI), overwhelmed by violence and breaches of electoral law, has even called on the ICC to assist in monitoring electoral campaign violations.

On 15 November 2011, during a trip to Brussels, the vice-President of CENI, Jacques Djoli, stated that he was "99.9% sure" the polls would take place as scheduled on 28 November as planned, but that, "if we are not ready, we will ask for a few days and organize elections on December 2 or 5." The logistical difficulties in installing voting material in the vast nation, compounded by threats and acts of violence, have raised doubts that the election can be held on schedule.

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.

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 notable among these was a new provision that the majority vote system has been abolished, in favour of a single-round plurality vote instead • According to article 10 of the Constitution, Congolese citizenship is exclusive and dual nationality is prohibited. Under article 8 of the Loi n° 04/028 portant identification et enrolement des électeurs en République Démocratique du Congo, only Congolese nationals may vote. Moreover, you must be in the territory of the DRC during the election in order 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.	☐ Yes ☒ No
2.1.3 Political tolerance	• Violence has erupted between supporters of the PPRD and UDPS parties on multiple occasions in the run-up to the election. In early November 2011, clashes between PPRD and UDPS supporters in Lubumbashi left 16 dead. • On 6 November, opposition leader Etienne Tshisekedi stated in a live telephone interview broadcast on the pro-opposition RLTV station that for the remainder of the electoral process, the authorities should report to him, as "the majority of the people are with me." He also called upon his supporters who had been imprisoned during recent protests to organize jail breaks. • Singer Fabrice Masumbuko was kidnapped in Goma by, according to many reports, the presidential guards. The singer's only alleged crime was to have produced campaign songs for opposition figures.	☐ 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.	☒ Yes ☐ No

2.1.5 Equal opportunity for all political parties to access the state media	- Article 33 of the electoral law stipulates that the 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 Loi n° 06/006 portant organisation des élections en République Démocratique du Congo (henceforth, Loi n° 06/006), 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 control of the state and are often accused of favouring the ruling PPRD party. In IREX's 2008 report on media sustainability, it was 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. - On 6 November 2011, UDPS leader Etienne Tshisekedi made anti-government statements on the pro-opposition RLTV station. The RLTV was subsequently shut down by the Minister of Information, pending an investigation by the media regulator, the electoral commission and the judiciary.	☐ 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. - In his report to the UN Security Council on 8 November 2011, the Secretary General's Special Envoy in the DRC noted with concern that there are no women candidates for the presidency, and that women constitute only 12% of the National Assembly.	☐ Yes ☒ No
2.1.7 Independence of the Judiciary and impartiality of the electoral institutions	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 NGO Agir pour des Elections Transparentes et Apaisées (AETA) to provide a source of 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 in real time (http://www.aeta-network.org) - It is not clear to what extent the government is involved in educating voters.	☒ 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. - In early November 2011, opposition leader Etienne Tshisekedi announced on live radio that authorities should report to him in the future, as “the majority of the people are with me”.	☒ 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 3 days of the announcement of provisional results by CENI.	☒ Yes ☐ No

Assessment of electoral processes:

	Divergence/Obstructive Legislation	Compliant
Voter registration	- According to the UN, more than 32 million people have registered to vote in the DRC. - CENI has allegedly contracted a company called “OLOGRAM” to clean up the register, but this process was done completely non-transparently, and the company’s report has not been made accessible. EISA, MONUSCO/UNDP and others, however, agree that OLOGRAM’s work has lead to up to 2 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 different areas based on the size of the electorate. The boundaries are those of the provinces, save for 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 left the room before discussions took place. • Pre-election violence has been an increasing issue in the DRC, in contravention to the code of conduct and electoral law. The Chairperson of CENI is so concerned at the violations of the latter that he has requested the assistance of the ICC in monitoring the elections.	☐ 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. • Levels of violence in the DRC has spiked dramatically since campaigning started in late October 2011. Overwhelmed by violence and breaches of the electoral law, the Chairman of CENI has even called on the ICC to help monitor electoral campaign violations. ICC Prosecutor, Mr. Moreno-Ocampo, has stated that the ICC will continue to monitor the elections for crimes falling within the Court's jurisdiction. • MONUSCO and the Congolese army have lost momentum, according to the UN Special Envoy, in responding to armed militias, particularly in the North and South Kivu provinces. • On October 28, militia allied to opposition leader Etienne Tshisekedi's UDPS party clashed with police, resulting in the death of a 13-year-old girl. • There continues to be a "shocking" number of rapes, according to the UN Special Envoy. More than 50% of reported cases of sexual violence that have occurred since January 2011 can be attributed to militia groups, namely the Lord's Resistance Army and the Forces démocratiques de libération du Rwanda (FDLR). Approximately 40% of sexual crimes can be attributed to members of the National Army. While these are not directly linked to the electoral process, the rates of sexual violence in the country, particularly by members of the army, contributes to an atmosphere of fear and intimidation.	☐ 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. • On 10 November, the International Federation of Journalists expressed grave concern over the death threats that were being received by Benjamin Litsani Choua, editor of the news website www.direct.cd, following two articles that were published regarding the illegal traffic of minerals by Congolese government officials and senior military personnel. • Amnesty International has reported that, “[s]cores 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.	☒ 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 which 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. • The ability of the MONUSCO-trained Congolese police to control and prevent violence surrounding the elections has been hampered by a lack of funding and equipment. As of early November, only \$500 000 of the necessary \$3 000 000 had been received in order to better equip the police force.	☐ Yes ☒ No

Reports by various civil society organisations

This list is neither comprehensive nor exhaustive.

[Enough Report, 'Impunity on Display during Election Season,' \(22 November 2011\)](#)

[UN Secretary General Special Envoy to the DRC, Report to Security Council, 8 November 2011](#)

Relevant documents

[Calendrier Electoral CENI 2011-2013](#)

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

[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

[International Federation of Journalists](#)

[Mail & Guardian \(15 November 2011\)](#)

[ReliefWeb](#)