

ALLIANCE OF CITIZEN-BASED ELECTORAL OBSERVATION MISSIONS (SYMOCEL)

FINAL REPORT ON DIRECT AND INDIRECT ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO, 2018 AND 2019

Note: this is a very detailed report on the Congolese elections by one of the major locally based electoral observation groups. What appears below is first a translation of the executive summary of the report. This is followed by a translation of one of the key chapters describing the counting procedure. As will be clear from the summary, SYMOCEL's most serious reservations about the elections were with respect to the way the votes were counted and aggregated. A particularly crucial omission was the failure of the majority of the regional counting stations to post or display their compilations of the records of local counts at polling stations. As a consequence of the opaque quality of the counting procedures, SYMOCEL was unable to offer an endorsement of the "integrity" of the declared electoral outcome.

Summary.

Background

Initially scheduled for 2016, presidential, legislative and provincial elections in the Democratic Republic of Congo (DRC) finally took place on 30 December 2018, more than two years after the legal deadlines. Four electoral districts were not affected by the elections. These are Beni city, Beni territory, Butembo and Yumbi, where by decision of the electoral commission (CENI), the legislative and provincial elections were postponed to 31 March 2019, due to public health problems caused by the Ebola virus epidemic and security issues arising from inter-communal clashes.

The Alliance of Citizen-based Electoral Observation Missions (SYMOCEL) observed this electoral process in all its phases with a view to assessing its quality independently, impartially and objectively, in the light of the national and international legal instruments in this area. The Mission has deployed 275 accredited Long Term Observers and 19,927 Accredited Short Term Observers in all provinces and territories of the country.

Although they resulted in the first-ever peaceful political alternation in government, the December 2018 elections were held after an electoral process characterized by a political crisis caused by the overstaying of elected officials, including that of outgoing President Joseph Kabila.

These overstays, called "slides" by public opinion, have led to a political crisis as well as protests that have prompted political negotiations, including that of the OAU. These eventually resulted in the Political Compromise on 18 October 2016, and that of the Inter-Diocesan Centre in Kinshasa which culminated on 31 December 2016 in the Global and Inclusive Political Agreement, that is the "New Year's Eve Agreement." This last Agreement had as main resolutions the prohibition of amending the Constitution, the commitment of President Joseph Kabila not to stand for a third term, the relaxation of political restrictions, the establishment of a new government to be headed by a Prime Minister appointed by the Opposition and the organization of the elections on December 31, 2017.

These elections were finally held on 30 December 2018, after a one-week postponement.

Long before that, two major innovations in electoral procedure were introduced, namely the legal threshold for representation and the use of the voting machines. The objective advanced for the establishment of the legal threshold of representativeness, namely to stabilize democracy by consolidating large political parties or alliances, has been counterbalanced by the arguments that this method of representation leads to the exclusion of small political parties from the democratic game.

The Commission (CENI) proposed and introduced the machines as a measure to, among other things, reduce election expenses, even though their use was not on the electoral calendar. Despite objections and protests from some opposition political parties and groups as well as some presidential candidates, who considered the voting machines illegal and likely to promote massive fraud in favour of the ruling majority, CENI maintained its use.

Another point of disagreement between the stakeholders and the CENI was the electoral register. After the identification and enrolment of voters, the CENI published, on 6 April 2018, statistics showing a register of 40,287,387 voters. This was after the delisting 5,381,763 duplicate names and 902,290 minors. The Organisation Internationale de la Francophonie (OIF), which audited the register in May 2018, concluded that it had "an inclusive, comprehensive and up-to-date electoral register " and made recommendations for its "reliability". Despite persistent stakeholder disagreements over the reliability of this electoral file as well as the voting machines, political parties and groups as well as independent candidates went to the elections.

The appointment of Emmanuel Ramazani Shadary as the candidate of the FCC, by President Joseph Kabila, who could no longer run for president, fulfilled the promise for an alternation in the state's top offices and helped to relax the political climate.

After the disqualification of some presidential candidates, including Jean-Pierre Bemba, and the prevention of Moise Katumbi from returning to the DRC to submit his candidacy, 7 opposition political parties and groups signed an agreement on 12 November 2018 in Geneva creating the electoral platform "Lamuka"² and designating Martin Fayulu as their joint candidate.

Less than 24 hours after this designation, two of its signatories, the Union for Democracy and Social Progress (UDPS) and the Union for the Congolese Nation (UNC) withdrew and subsequently signed their own agreement on 23 November 2018 in Nairobi, creating an electoral platform called Cap for Change (CACH), with Félix Tshisekedi as their preferred candidate. Of the 26 candidates running for the supreme office, 21, including a woman, were confirmed by the CENI and then the Constitutional Court.

Presidential and legislative elections on 30 December 2018 were generally conducted in a calm manner, compared to the 2006 and 2011 processes, which recorded serious incidents on polling day and bloody post-voting clashes.

The Mission noted, however, that during and after the voting days, the polls of 30 December 2018 and 31 March 2019 were marred by several irregularities, including the late opening of polling stations, the lack of material required at the opening (indelible ink, voting booths, electoral lists, numbered seals...), the violation of the secrecy of the vote, the failure to take into account the demands of witnesses, the non-public display of the results in some voting stations and the non-delivery of the results sheets.

With respect to the performance of the voting machines, the Mission noted that it had been generally positive, despite the fears and concerns expressed from the outset and notwithstanding

some technical problems that occurred during the vote, but which were quickly resolved once reported.

SYMOCEL also found that the results of the 30 December 2018 elections were not posted in front of the Polling and Counting Offices (BVDs) in several observed BVDs, while the Electoral Act and the Principles of Transparency require that the results of the polls be displayed publicly at each stage. CENI also did not post the local results in front of its premises and on its website. The mission considers that this non-display puts at risk the transparency of the process of compiling the results.

At the end of the count, the results were transmitted to the Local Results Compilation Centers (CLCRs), but the manual compilation was not made according to the legal provisions for the results of the legislative and provincial elections, which were announced before the completion of their compilation at the CLCR level.

Ten days after the polls, i.e. January 10, 2018, CENI announced the following provisional results:

- Turnout: 47.56%, with a total vote cast of 18,329,318 voters.
- Presidential: Félix Antoine TSHISEKEDI, 7,051,013 votes, or 38.57%, elected President of the Republic; Martin FAYULU 6,366,732 votes, or 34.83%; Emmanuel RAMAZANI SHADARY, 4,357,359 votes, or 23.84%.
- National legislatures: FCC: 350 seats; CACH: 48 seats; OPP/Lamuka: 80 seats.
- Provincial legislatures: FCC: 518 seats; CACH (A 2018, RDT, UDPS / Tshisekedi, UNC): 59 seats; Opposition (AAD, AMK, AR, Let's Advance, G7, MLC, MS, Zaire): 122 seats.
- The mission noted a contradiction between on the one hand, the results of the presidential election and, on the other, those of the national and provincial legislatures.

Recommendations

In order to help improve future electoral processes and to provide an overview of areas where electoral reforms and assistance would be needed, the SYMOCEL EOM mainly recommends:

- Clarification of the provisions of the Election Law and its implementing measures relating to results management and processing procedures and the taking of binding measures for their publication;
- Communication, to stakeholders, of the measures and modalities of transmission of results to the Local Results Compilation Centres and of these to the National Processing Centre, so as to guarantee transparency, through the presence and follow-up. witnesses and observers;
- The invalidation of any list of candidates that does not include at least 30% of candidates from women;
- The prohibition of the practice of cutting off access to the Internet and to SMS, during an election period, in order to guarantee the transparency and integrity of the electoral process as well as the population's right to information;
- Simplifying the access of candidates to authentic evidence during electoral disputes, by revising the relevant legal provisions;
- Conducting a general census of the population to help settle the question of the electoral register;
- The evaluation of electoral reforms that took place between 2015 and 2017, including the legal threshold for representation and the rates of de-deposit fees, so as to draw the appropriate conclusions;

- Clarification of the timing of the elections and their impact on the establishment of institutions;
- Restructuring the electoral commission to improve its organisation and operation, taking into account developments and lessons learned from past and ongoing electoral processes;
- The attribution of a more active role to electoral litigation courts in the search for evidence of the results of the ballot box and any offences related to the electoral process;
- Changing the way governors and vice-governors and senators are elected by expanding the electoral body to all elected officials in the province (national MPs, MLAs and local councillors), if not turning it into a direct election, to make it difficult to buy votes;
- Participatory evaluation of the use of voting machines, with a view to possible appropriation and security of its data against external attacks;
- Safeguarding of all documentation including material produced by the voting machines;
- The establishment of a National Results Publication Centre to monitor the gradual dissemination of results.

Conclusion

An electoral process is considered democratic and credible when it guarantees the integrity of the vote reflecting the free expression of the electorate.

This requires, in particular, an impersonal, cohesive, precise, comprehensive and inclusive legal framework; an independent and professional electoral administration; and a pre-election environment characterized by respect for the freedoms of citizens as well as independent courts.

The 2018 elections featured positive aspects that need to be sustained and pitfalls that must be avoided to improve future electoral processes. The process was marred by several irregularities and allegations of fraud, particularly for indirect ballots.

With regard to the positive aspects, it is worth mentioning the calm and orderly organisation of the polls, generally calmly; the freedom given to candidates to campaign overall; the strong mobilization of citizens throughout the electoral process; the professionalism of citizen observation missions and the well financed organisation of the electoral process.

As for the areas for improvement, the following issues need to be addressed: the need for consensus-building around the electoral process and the use of voting machines; harassment of candidates by their rivals in three cities (Beni, Butembo and Kinshasa); the training

polling and counting station agents; and compliance with the procedures for compiling and transmitting results and publishing them; and the treatment of complaints.

On one key issue SYMOCEL does not currently have information to judge the integrity of the results of the 30 December 2018 elections, in the absence of the display of results broken down by polling station.

Moreover, SYMOCEL has noted the mismatch between the presidential election, won largely by the Opposition and the national and provincial legislatures largely in favour of members of the previously incumbent coalition. There is also the problem of prohibitive fees for filing applications and for financing the activities of political parties, costs that restrict competition.

The indirect balloting procedures have also been marred by serious irregularities. The scale of the corruption allegations and the violation of voting secrecy have tainted the votes of most electors, especially in the Senators and Governors elections.

Finally, SYMOCEL invites all stakeholders to learn from all these elections in order to consolidate future electoral processes and, therefore, democracy in the DRC.

Compilation of results

SYMOCEL continued its observation of the electoral process after the polls of 30 December 2018. It has deployed 400 observers to monitor aggregation and results compilation operations at 104 Local Results Compilation Centres (CLCRs) across the country a percentage of 58.1% of the torakl.

Other election observation missions have also observed this process. They were present in 88% of CLCRs, mainly in Kasai-Oriental, North Kivu and North Ubangi.

The results are compiled according to the Elections Act in articles 67, 67 and 69 to 70, of which here is the summary:

- The head of the Vote and Counting Centre (CVD) receives valid ballots, invalid ballots and originals of voting and counting minutes (PV) from each BVD of his Centre in separate and sealed envelopes. These envelopes are placed in "folders" that he carries to the Local Results Compilation Centre (CLCR);
- With regard to electronic voting, procedures for transmitting results and verifications guaranteeing transparency are first brought to the attention of the stakeholders in the vote by the CENI;
- The CENI takes all the useful measures for a rapid and secure transmission of election results from the place as close as possible to the polling stations, in order to guarantee the truth of the ballot boxes;
- The CLCR draws up a compilation sheet and prepares a PV. These are signed by members of the CLCR office and by witnesses.
- The President of the CLCR displays at the Centre the results of the vote for the legislative and provincial elections [...] as well as the partial results of the presidential election at the city or territory level;
- PV and attachments are sent to CENI headquarters. The court passes them on to the competent court;
- In approving the results, the CLCR must accurately translate the results of the BVDs. In the event of a remedy for material error, the presence of the candidate is required, if he had any in this BVD.

Details of the compilation of the results are provided by the Measures of Application of the Elections Act in their articles 67 to 82 of which here is the summary:

- The "folders" recipients include the CLCR, the Constitutional Court, the CENI, and the SEP (Provincial Executive Secretariat);
- The CLCR approves the results of the BVDs;

- All folders arrive at the CLCR, and it is from the CLCR that they are dispatched;
- The "folders" for the CLCR contains the PVs of voting and counting operations, the results sheet, the ballot papers used and not used, the opening card, the closing card, the results sheet from the voting machine for each ballot, the oaths of the agents of the polling and counting stations; The derogation voting register, the list of votes and the scorecards;
- In its operation the CLCR consists of 5 positions: Centralization; Sorting, Counting-clearance; Compiling and Archiving.
- Centralization consists, in particular, of receiving duplicate folds and reporting them in score lists; control of the information on the polls and the polling stations concerned.
- Sorting consists, in particular, of assigning a sequential number to each fold for the local results compilation centre, depending on the order of arrival and the type of vote.
- The stripping-cleansing consists, in particular, of filling the available fold sheet and transmitting them to the compilation station.
- The compilation consists, in particular, of the printing of traces of the results of the BVD and the transmission of the folds with their traces of results immediately awarded to the deliberation teams, who proceed to open the folds in front of the witnesses and observers present. Deliberation teams monitor compliance between the track of the results printed at the compilation stations and the results sheets that come out of the folds. In case of compliance, they reconstruct the folds by inserting the trace of the printed results, of which they give a copy to witnesses and observers, while sending the folds, thus constituted, to the archives.
- However, if inconsistency persists, the teams, after using the counting TICKET for verification, extend their search, depending on the case, including the minutes of the voting operations, the scorecards, the eminent lists, and the recount of the ballots.
- Witnesses of political parties, political groupings and candidates as well as observers attend all of the CLCR's activities, particularly at the counting/clearing station. They have access to the deliberative teams and observe all the activities. Their only interlocutor is the president or rapporteur of the CLCR. The President of the CLCR has an obligation to make the results of the compilation public by displaying them in the centre, depending on the type of vote.

On January 8 and 9, 2019, SYMOCEL released the detailed results of its observation of the compilation of the results. The Mission found that 99% of the CLCRs observed were operational.

- In 14% of the CLCRs observed, observers were not allowed to attend the compilation of the results. In 9% of CLCRs (with a peak of 14% on 9 January), although authorized to observe, observers and witnesses had been hampered in their work, mainly in Lower Uélé and Maniema.
- In the 43 CLCRs where the presidents of the centres had been willing to communicate with the SYMOCEL Observers, there had already been 19,922 folders on 8 January, out of an expected total of 24,694, or 81% of the folds received.
- In 99% of CLCR, the folders (PV, ballot papers and results cards) were stored in places deemed secure, i.e. protected from bad weather, theft and destruction. In 1% of cases, in Kinshasa (Nsele) the folds had been deposited outside the CLCR since their arrival, and thus exposed to alterations, thefts and other perils.
- In 96% of CLCR, the folders had arrived sealed. In 4% of cases, the folders were not sealed: 2% of CLCRs in Kinshasa, 1% of CLCRs in Sankuru and 1% of CLCRs in South Kivu.

- In 12% of CLCRs (on average, with a peak of 16% on 8 January), manual PVs were not taken into account in compiling the results, mainly in Maniema.

With respect to the fold processing and the results process, MOE SYMOCEL found that several provisions of the Act relating to the treatment of folds had been ignored or even violated.

As an illustration, the Mission was able to identify 49 cases of major irregularities over the two days of observation:

- 4 cases of refusal of witnesses to sign the PV (2 in Sankuru, 1 in Kasai and 1 in South Kivu);
- 20 cases of falsification of PV results. These cases were observed mainly in Maniema (7), Kasai (1), and Kasai Oriental (2) and Sankuru (7);
- 3 cases of allegations of corruption by CLCR members, mainly in Sankuru;
- 2 cases of nasty destruction of one of the fold elements;
- 11 cases of subtraction of one of the elements of the fold, including 5 in Kinshasa, 2 in Tshopo, 1 in Kasai, 1 in Kasai Oriental, 1 in North-Ubangi and 1 in Tanganyika;
- 4 cases of alteration of the results aggregation sheet;
- 2 cases of revelation of third-party voting results before the close of compilation operations;
- 3 cases of forgery and use of forgeries, including 2 in Maniema.

The work of witnesses of political parties and groups as well as candidates has been repeatedly hampered.

As well:

- Witness claims had not been systematically contained in the 15% CLCR PV observed, mainly in Kasai-Oriental, Kinshasa and Maniema;
- Witnesses were not allowed to sign the RESULTS compilation PV in 24% of the CLCRs observed, mainly in Lower Uélé, Haut-Uélé, Kasai Oriental and North Ubangi;
- **The compiled results of the counting PVs were not posted at 92% of the CLCRs observed. The 8% of CLCR that posted the results are located in Ecuador, Kongo Central, Kwilu, Lualaba, Tshopo;**
- No CLCR provided copies of printed results to witnesses and observers.
- THE SYMOCEL MOE notes that the results compilation phase has been characterized by confusion in some CLCCS:
- The access of observers and witnesses to the CLCCs has been impeded by members of the offices of the SOCCs;
- Only the results of the presidential election have been compiled. The compilation of those of the (national) legislative elections was decided shortly after its start-up and before its finalization. Provincial results have not been compiled.
- The compiled results have not been posted, while The Legislature requires the posting of the results of the vote in each CLCR for the legislative and provincial elections as well as the display of partial results of the presidential election at the city or territory level. These provisions were not respected on the grounds that the results of each centre were first validated by CENI Headquarters in Kinshasa.

The revision of the Elections Act should further clarify the provisions relating to the compilation phase of the results, in order to facilitate their application, by emphasizing the requirement of the publication of BVD results by BVD and by erecting, if necessary, the failure of such a publication to be infringed.

This revision should also specifically mention the presence of witnesses and observers at the National Results Processing Centre, in accordance with Articles 40 al 1 and 42 al 2 of the Elections Act.