



PRELIMINARY STATEMENT

BY

**HONOURABLE JOSEPH MALANJI, M.P., MINISTER OF FOREIGN
AFFAIRS OF THE REPUBLIC OF ZAMBIA**

AND

HEAD OF THE SADC ELECTORAL OBSERVATION MISSION (SEOM)

TO

**THE 2018 PRESIDENTIAL, LEGISLATIVE AND PROVINCIAL
ELECTIONS**

IN

THE DEMOCRATIC REPUBLIC OF CONGO

KINSHASA, 2 JANUARY 2019

- Your Excellency, Mr Dioncoundra Traore, Former President of the Republic of Mali, and Head of the African Union Election Observation Mission (AUEOM) to the Democratic Republic of Congo;
- Your Lordship, Mr Justice Ernest Linesi Sakala, Former Chief Justice of the Republic of Zambia and Alternate Head of the SADC Election Observation Mission to the Democratic Republic of Congo;
- Mr Jorge Cardoso, Director of the Organ on Politics, Defence and Security Affairs, representing Her Excellency, Dr. Stergomena Lawrence-Tax, SADC Executive Secretary;
- Distinguished Members of the SADC Organ Troika;
- Esteemed Members of the SADC Electoral Advisory Council (SEAC);
- The Chairperson of the Independent National Electoral Commission (CENI);
- Distinguished Heads of Election Observation Missions;
- Representatives of Political Parties;
- Heads and representatives of Diplomatic Missions;
- Religious leaders and members of the Civil Society;
- Partners from the media;
- Ladies and gentlemen.

I. INTRODUCTION

On behalf of the SADC Electoral Observation Mission (SEOM) and as mandated by His Excellency Mr. Edgar Chagwa Lungu, President of the Republic of Zambia and the Chairperson of the SADC Organ on Politics, Defense and Security Cooperation, it is my honour to welcome you to this important occasion.

In accordance with the Revised SADC Principles and Guidelines Governing Democratic Elections, His Excellency Mr. Edgar Chagwa Lungu, constituted the SEOM to observe the Presidential, Legislative and Provincial Elections in the Democratic Republic of Congo, following an invitation from the Independent National Electoral Commission (CENI).

Furthermore, the Chairperson appointed me in my capacity as the Chairperson of the Ministerial Committee of the Organ (MCO) to lead the SEOM to the Democratic Republic of Congo.

Your Excellencies,

Distinguished Ladies and Gentlemen,

The SEOM observed the 30 December 2018 Elections in the Democratic Republic of Congo, with a total of seventy-three (73) observers who were deployed to sixteen (16) provinces of the country, namely, Kinshasa, Equateur, Haut-Katanga, Haut-Lomami, Haut-Uele, Kasai Central, Kasai Oriental, Kongo Central, Kwango, Lualaba, Mai-Ndombe, Sud-Kivu, North Kivu, Kwilu, Tanganyika and Tshopo. These provinces reflect the geographical diversity of the population of the country.

Our Mission engaged the Government of the Democratic Republic of Congo, the CENI, civil society, youth, political parties, presidential election candidates, local observers, the diplomatic community and representatives of regional and international organisations and the media.

In undertaking this observation process, the Mission recognises that the Democratic Republic of Congo has experienced various challenges throughout its history which have impeded its development and political progression. This has included a protracted civil war involving external elements which cost thousands of lives and destabilised large parts of the population, contributing to human development and human security challenges.

Following the transition from a period of conflict to a democratic dispensation, the DRC has endeavoured to rise above these obstacles and develop democratic institutions in line with global and regional trends, supported by SADC, the African Union, the United Nations, and the International Cooperating Partners.

Your Excellencies,

Distinguished Ladies and Gentlemen,

It is particularly notable that following the 2006 elections, the Democratic Republic of Congo has put in place various institutions to support democracy and governance, among them, an inclusive constitution, which was an important element towards a democratic state. Other key institutions include the establishment of the CENI. Over time, these institutions are critical for the sustenance and consolidation of democracy

In addition, the DRC has embraced multiparty democracy which has been evidenced by more than 600 political parties participating in the 2018 Elections. For the presidential elections, there were 21 candidates of whom 1 was female, while 15,355 aspirants competed for seats in the National Assembly and 19,640 for the Provincial Assemblies.

In short, since the first multiparty elections of 2006, the DRC has made incremental steps toward strengthening its democracy, which is extremely commendable.

One of the key elements we note as a Mission, for example, is that while the first two elections held in the new Millennium, the 2006 and 2011 national elections, were supported largely by the international community, the 2018 elections have been fully financed by the Government of the DRC. Taking full financial responsibility for holding national elections is an important milestone in the DRC's democratic trajectory, and indeed in the growth of any democratic state.

Despite these incremental steps, we note that the Democratic Republic of Congo's democracy is still in the process of progressive improvement, having only held three elections since independence in 1960.

Your Excellencies,

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The Mission has taken note of these historical and structural imperatives that have occasioned the DRC's transition to democracy in its assessment of the pre-election and voting phases of the electoral process. Failure to acknowledge these key imperatives would, in our view, be to denude the very progress we seek to promote as regional and international communities.

As a Mission, therefore, our engagement with the wide range of stakeholders representing various sections of Congolese society attempted to have a deeper appreciation of these perspectives and their influence on the performance of the electoral management institution across three electoral cycles.

Against this background, and in line with the revised SADC Principles and Guidelines Governing Democratic Elections, the Mission therefore presents the good practices related to the administration of the DRC electoral system and processes. The Mission also presents its observations of the conduct of the elections in general and the areas that require improvement.

Your Excellencies,

Distinguished Ladies and Gentlemen,

This interim statement only covers the pre-election period, which includes the assessment of constitutional and legislative frameworks and their application during the electoral process; the political and security environment and how it conditions the elections; voter and civic education; voter registration processes, funding mechanisms; political campaigning, and other related aspects. The report also covers the voting day processes, which include the casting of ballots, application of established voting procedures and practices; counting and tabulation processes and related management and administrative imperatives.

Our final report, which should be ready within 30 days of the final results; will cover the post-election phase which embraces results management and announcements; and post - election adjudication processes.

Your Excellencies,

Distinguished Ladies and Gentlemen,

Allow me now to present our key findings based on our observation of the process thus far:

II. SUMMARY OF KEY FINDINGS

(i) The Political and Security Environment

The political and security environment before, during, and immediately after polling day was generally peaceful. Our observers generally reported an atmosphere of peace in the areas they observed during their period of deployment.

The Mission notes however that the DRC continues to experience armed insurgencies in the eastern parts of the country as well as the outbreak of the Ebola Virus in Beni and Butembo areas. The Mission also notes that due to the combined security and public health challenges, CENI postponed the elections in Beni, Butembo and Yumbi to March 2019. The full import of this development on the overall outcome of the elections is yet to be fully comprehended and analysed. The Mission appreciates the explanations given by the health authorities and the CENI in regard to why this decision was made. The Mission also notes the complaints raised by key stakeholders and unrest in the aftermath of the decision to postpone elections in these regions. Therefore, the Mission is of the view that regular and timely communications by the CENI might have avoided unnecessary tensions with stakeholders at the critical stage of the process.

In the rest of the country, campaign events were mostly peaceful and well attended except for acts of violence, which regrettably resulted in the loss of lives in Kalemie, Lubumbashi and Mbuji-Mayi.

The Mission also noted with concern the burning of one of CENI's warehouses in Kinshasa that resulted in damage to electoral materials during the pre-election phase and led to the postponement of the elections from 23 December to 30 December, 2018.

The incidents notwithstanding, the Mission notes that the Congolese people rose above these developments and proceeded to vote in peace on 30 December, 2018.

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In this regard, the SEOM observed the following aspects of good practice:

(ii) The Legal Framework

In addition to the Constitution of the Democratic Republic of Congo, the 2018 Elections were conducted under the electoral law governing the electoral system and processes, in particular, the Law on the Organisation of Presidential, Legislative, and Provincial Elections, as variously amended, and the Law on the Organisation and Functioning of the Independent National Electoral Commission (CENI).

The Constitution provides for universal, equal, secret and direct suffrage, existence of political parties, the right of women to equitable representation within national, provincial and local institutions; and amongst others, the rights to the freedoms of expression and assembly. The Constitution also assures the regularity of elections and the establishment of the CENI.

The Mission noted that the legal framework is based on a progressive policy that builds upon lessons learnt from the 2006 and 2011 elections; and from some stakeholder recommendations in the context of the 31 December 2016 Agreement.

(iii) Management of the Electoral Process

The Mission noted that despite numerous challenges, the CENI which has administrative and financial autonomy, was able to achieve the following key milestones with respect to the management of the electoral process;

- i. registration of over 40 million voters;
- ii. establishment and operationalisation of 75,563 polling stations, including delivery of requisite election materials;
- iii. recruitment and training of 511,901 operational personnel; and
- iv. complete administrative formalities for over 34,000 candidates for legislative elections and 21 candidates for the presidential election.

In the context of the considerable challenges facing the CENI, the Mission commends its management for the above achievements.

The Mission has taken cognisance of stakeholder opinions on the alleged shortcomings of the CENI. However, based on the assessment of the structure, composition, mandate and levels of autonomy extended by the Constitution to the CENI;_ and taking into account the efforts invested into rendering the 30 December, 2018 elections, the Mission notes that CENI is, by law, an independent institution whose composition, functions and management have been subject to periodic review and improvements to incorporate the following good practices:

- i. CENI is composed of members appointed by political parties in the National Assembly, based on proportions for the majority and opposition political parties respectively; and
- ii. CENI is also composed of Civil Society with delegates from each of the following: religious denominations; women's rights organisations; and organisations involved in civic and electoral education.

The Mission finds that the structure and mandate of the CENI is largely consistent with the key provisions in the revised SADC Principles and Guidelines Governing Democratic Elections which bodes well for the future of electoral management in the DRC.

(a) Improved voting opportunities

The Mission observed that in line with paragraphs 4.1.7 and 4.1.8 of the Revised SADC Principles and Guidelines Governing Democratic Elections, the following improvements have been made with respect to enhancing voting opportunities for citizens:

- i. Amendments in 2015 to allow for the possibility of diaspora voter registration and voting;
- ii. Publication of provisional voters lists by polling station location, permission for the use of duplicate voter cards, inspection and verification of voters lists, and a procedure for filing complaints regarding the voters list;
- iii. Reduction of the categories of people who are disqualified to vote; and
- iv. Enhanced security features for voter identity verification on the voters list, and the publication of the list 30 days before election-day.

The Mission also observed complaints regarding lost voter cards and last minute attempts by voters to apply for replacement cards, thus indicating the need to

consider expeditious and cost effective ways of replacing them to avoid unnecessary disagreements with stakeholders.

(b) Gender parity

In the promotion of equal employment opportunities for women, the Mission noted that CENI is required to take into account gender parity when appointing polling station staff.

(c) Prohibition of the use of public resources

The Mission noted that the electoral framework specifically prohibits the abuse by candidates of finances, personnel, companies and other institutions belonging to the State for election campaign purposes. Some stakeholders alleged the misuse of such resources, however the Mission could not verify these claims during its deployment.

(d) Security of the vote and transparency of the counting process

The Mission noted that the CENI introduced the voting machine for the December 2018 elections. The machine has been subject of intense debate. The Mission also noted that CENI provided clarification that the machine would be used by the voter to confirm their choice of candidate, and thereafter the ballot will be printed out for manual counting purposes.

Your Excellencies,

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In this context the Mission further noted the following measures that are in place for the security of the vote;

- i. Candidates are permitted to appoint witnesses who monitor the voting process;
- ii. At close of voting, polling stations transform into counting centres;
- iii. The ballots are reconciled with the verified voters' list;
- iv. Counting is done in front of the witnesses, observers, journalists and also includes the participation of 5 voters designated by the head of the polling station;
- v. Results are immediately posted at polling stations after counting; and
- vi. The witnesses are entitled to accompany the ballot boxes as they are moved from the polling stations to the CENI results tallying centre.

Thus, the Mission found that CENI had put in place adequate measures against the perceived potential of the voting machine to be used for fraudulent purposes. It is the Mission's considered view however, that Voter education on the use of the machine was inadequate and could have contributed to the persistent doubt about the efficacy of the machine.

Your Excellencies,

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III. OBSERVATIONS ON ELECTION DAY

On polling day the Mission observed the following at the Polling Stations that the Mission visited:

- (i) Generally the atmosphere was orderly, calm and peaceful at most polling stations;
- (ii) No major incidents of concern were observed;
- (iii) 59% of the polling stations that the Mission observed opened on time. On average the remainder opened late by between 45 minutes to 5 hours at the most due to heavy rainfall, late reporting of presiding officers and slow opening procedures. This eventually necessitated late closing of the polling stations;
- (iv) 98% of the polling stations visited had a voter's roll displayed outside for verification by the voters;
- (v) Polling stations that opened late, particularly in Kinshasa had their closing time extended to compensate for the earlier delays and to ensure that all voters who were in the queue at the closing time were given an opportunity to vote.
- (vi) Voters exercised their right to a secret vote, expectant mothers, the disabled, and the elderly were given priority and assistance;
- (vii) On average, voters took 3-5 minutes to cast their votes using the voting machine. Where needed, voters were assisted by party agents, polling staff;
- (viii) Local observers were present at some of the polling stations;
- (ix) Police Officers were present at most polling stations, and they conducted themselves in a professional manner and did not interfere with the process both within and around the polling stations;
- (x) After the close of polling, the process of counting of votes began immediately at all polling stations, and results were displayed at the polling stations; and
- (xi) All the teams who observed counting noted that reconciliation of the votes was transparent.

Your Excellencies,

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IV. AREAS OF THE ELECTORAL PROCESS THAT REQUIRE IMPROVEMENT

Our Mission also observed the following areas of the electoral process and system that require improvement:

(a) Voters registration and voting opportunities

Whilst the law has been amended to provide for the possibility of diaspora voting, the administrative and logistical requirements were not in place to enable citizens in the diaspora to vote.

While the Mission has noted the commendable efforts at enhancing voter participation in the electoral process, the Mission further notes that the Electoral Law does not allow members of the Armed Forces and the Congolese National Police to vote at an election. This prohibition deprives a large number of the Congolese society of their political rights, and is contrary to paragraph 4.1.7 of the Revised SADC Principles and Guidelines Governing Democratic Elections.

Further, the law commendably makes provision for the voters' lists to be published at least 30 days before election day, and to be accessible on the CENI website, our observers noted that by 28 December 2018, voters lists were not accessible on the CENI website.

(b) Voter Education and Stakeholder Consensus on Voting Machine

The Mission holds that greater investment in civic and voter education is required particularly when there are major transformations such as the introduction of technology.

Further, the introduction of new voting technologies would have benefitted greatly from broader and regular stakeholder consultations at every stage of the process to ensure that all doubt was eliminated.

Such engagement would involve enabling consensus on the use of the technologies as opposed to traditional voting methods, taking into account the advantages and disadvantages; consultations on procurement procedures; storage, transportation and application of the machines.

A strong and concerted effort on communication with the voter population could also have mitigated the lingering doubt about the use of this apparatus. The role of political parties and civic agencies in further amplifying the efforts of the CENI would conceivably have further bolstered these efforts.

(c) Freedom of assembly and of demonstrations

In general, the Mission took note of the exercise of freedoms of expression, association and assembly by contestants during its period of observation. In at least three occasions, complaints were raised that some rallies were disrupted by competing parties. The Mission did not however independently observe these alleged acts in the areas it deployed.

The Mission further notes that on 19th December 2018, the Governor of Kinshasa announced an election campaign ban across Kinshasa on grounds of security-related concerns. The Mission noted the concerns of some political parties that this ban was aimed at crippling their election campaigns, as in their view, they were the dominant political force in Kinshasa. The Mission found as follows:

- i. In terms of the Electoral Law, campaign rallies are held in accordance with the law relating to public demonstrations, which is the Legislative Decree 196 Regulating Demonstrations and Public Meetings, and article 25 and 26 of the Constitution which guarantee freedoms of meetings and demonstrations.
- ii. The Decree provides for prior declaration or a discretionary prior authorisation for meetings or demonstrations held in public. The Mission noted that the ban affected all candidates without exception.

(d) Stakeholder consultations by CENI

The Mission noted the controversy surrounding the postponement of the elections from 23rd December to 30th December, 2018; and the postponement of elections in Beni, Butembo, and Yumbi to March 2019. The Mission noted that, based on article 211 of the Constitution, and article 52 of the Electoral Law, it is within CENI's competencies to fix the election dates and organise the electoral process.

However, the Mission observed that, with respect to the postponements, stakeholder consultations were either inadequately or not substantively conducted in order to assure the public of the need for the postponements.

(e) Gender representation for elected positions

The Electoral Law requires political party lists to reflect equal representation of men and women and the promotion of people living with disabilities as candidates in elected positions. However, failure to reflect gender parity on the party lists did not render the party lists inadmissible for the purpose of the elections, thus rendering the requirement for gender equality redundant.

(f) Access to the media

The Constitution provides for the equitable access of political parties and citizens to State Media. The Electoral Law of 2017 gives powers to the Superior Authority of Audio and Visual Communication in consultation with the CENI to issue the measures guaranteeing equitable access to the public media; and also by providing penalties for non-compliance with these measures.

Generally, the Mission noted that access to media has considerably improved in terms of allowing all parties the freedom to campaign in the 2018 elections as compared to previous elections.

The Mission noted the commendable effort by CENI in establishing a radio station to cater for all the candidates in the election campaign period.

The Mission observed that despite these legal provisions, there was an unequal access to State Media coverage.

Your Excellencies,

Distinguished Ladies and Gentlemen,

V. RECOMMENDATIONS

In light of the above observations, and considering the issues highlighted by the various stakeholders, the SEOM makes the following recommendations for the improvement of the electoral process in the Democratic Republic of Congo:

- (i) Voter registration and voting opportunities:**
 - (a) CENI and the Government are urged to consider and implement the logistical and budgetary requirements to facilitate diaspora voting in future elections.
 - (b) The Government is urged to consider reviewing the Electoral Law in order to allow the Armed Forces and Congolese National Police to vote in elections.
 - (c) CENI is urged to consider making the voters' list accessible to the public in a timely manner.

- (ii) **Freedom of assembly and demonstrations:**
 - (a) The administrative authorities are urged to consider implementing the Constitutional requirements guaranteeing the freedoms of assembly and demonstration in accordance with the applicable law.
 - (b) The Government is urged to consider reviewing the Legislative Decree 196 Regulating Demonstrations and Public Meetings in conformity with the Constitution of the DRC.
- (iii) **Stakeholder consultations by CENI:** CENI is urged to consider enhancing its communication strategy, in particular by engaging in timely and effective stakeholder consultations with respect to the electoral process.
- (iv) **Gender representation for elected positions:** The Government is urged to consider reviewing the Electoral Law to ensure that political party lists that do not comply with gender parity are inadmissible for election purposes.
- (v) **Access to the State Media:** The Superior Authority of Audio and Visual Communication in consultation with the CENI is urged to consider reviewing the implementation of the measures guaranteeing equitable access to the public media by political parties and candidates.
- (vi) **Voter education:** CENI is urged to consider enhancing its voter education particularly with respect to the introduction of new voting technologies.

Your Excellencies,

Distinguished Ladies and Gentlemen,

VI. CONCLUSION

In conclusion, as a Preliminary Statement, and considering the range of challenges around these elections, the SEOM observed that the 2018 Presidential, Legislative and Provincial Elections were comparatively well managed and the voting process proceeded relatively smoothly, enabling the majority of the people of the DRC to exercise their right to vote.

The SEOM recognises the public health and security challenges affecting the eastern part of the DRC, and commends the Armed Forces of the DRC, the Force Intervention Brigade (FIB), MONUSCO, and the health professionals who are doing their best in the circumstances to create a secure environment for the citizens in that part of the country.

In accordance with the revised *SADC Principles and Guidelines Governing Democratic Elections* (2015), our Final Report will be issued within thirty (30) days of the conclusion of the electoral cycle. The Final Report will reflect the SEOM's overall assessment and qualification of the 30 December, 2018 Presidential, Legislative and Provincial Elections.

***Thank you very much
Muito Obrigado
Merci beaucoup***