



NEW YORK
CITY BAR

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By E-mail and Mail

Mr. Comeille Nangaa Yobeluo
President
Commission Électorale Nationale Indépendante
4471, Boulevard du 30 Juin, Kinshasa-Gombe
Democratic Republic of Congo
E-mail: info@ceni.cd

Re: Results of the December 30, 2018 Presidential Election in the Democratic Republic of Congo

Dear Mr. Yobeluo:

I write on behalf of the New York City Bar Association¹ to request that you immediately publish the full results of the December 30, 2018 Presidential election in the Democratic Republic of Congo (DRC) for all twenty-one presidential candidates, disaggregated by polling station.

The Commission Électorale Nationale Indépendante (“CENI”) has stated that it is the sole authority with responsibility over national elections, including publication of election results.² We recognize that Article 211 of the Constitution of the DRC and the laws of the DRC entrust these powers and duties to it. The Constitution makes CENI responsible “for the organization of the electoral process,” including the “counting of votes,” and mandates that CENI “ensure[] the regularity of the electoral process.”³ The Organic Law on the Organization and Functioning of the Independent National Electoral Commission declares that CENI’s mission is to act as the principal in the organization of free, democratic and transparent elections. As part of its responsibilities,

¹ The Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to the rule of law, and engagement with Africa, notably through its Committee on African Affairs, which closely monitors and reports on legal developments in Africa.

² Giulia Paravicini, *Congo’s Electoral Commission Slams Catholic Church Over Vote Comment*, US NEWS & WORLD REPORT (Jan. 4, 2019), <https://www.usnews.com/news/world/articles/2019-01-04/congos-internet-shutdown-after-election-could-cause-violent-backlash-un>. (All websites cited in this letter were last visited on April 23, 2019.)

³ Democratic Republic of the Congo Constitution, art. 211, Translated to English by Jefri J. Ruchti (William S. Hein & Co., Inc. 2012), https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011.pdf?lang=en

CENI is required under the DRC's Election Act to publish election results.⁴

On January 10, 2019, CENI posted provisional results of the Presidential election online, but the results posted by CENI were incomplete, since they included only aggregated results for the top three candidates. While we recognize that Article 71 of the Election Act⁵ does not expressly require CENI to publish results for each polling station, CENI has the power and authority to do so.⁶ We urge it to publish such detailed results for all 21 candidates in accordance with its constitutional and statutory duties to ensure the regularity and transparency of the electoral process, and in order to gain the confidence of the Congolese people and the international community.

In your press release of January 21, 2019, you recognized the importance of guaranteeing the reliability of the elections and, as the responsible authority, you undoubtedly wish to do everything you can to assure the citizens of the DRC and the world at large of the integrity of the election results.⁷ As you noted in your press release, the proclamation of final results of the Presidential election by the Constitutional Court was an important milestone, but the process of establishing the integrity of the election must continue.⁸ An important part of that continuing process is to publish the final results in detail by polling station for all candidates, so that the Congolese people and international community can be assured that the results are reliable. It is only through such detail that the results can be transparently audited.

Publication of detailed results by polling station is particularly necessary due to significant questions regarding the veracity of the published results. The National Episcopal Conference of Congo, led by the DRC Catholic Church, reportedly deployed 40,000 trained election observers to over 75,000 polling stations on Election Day, and its data conflict with the results published by CENI.⁹ Likewise, entities including the Financial Times and the Congo Research Group have reported that their analyses of voting data do not conform to the published results.¹⁰ A number of

⁴ Election Act of the DRC, Law N 11/003 of 25 June 2011

http://www.ambardc.eu/index.php?option=com_content&view=article&id=232%3Aloi-electorale-de-la-rdc&Itemid=70

⁵ *Id.*

⁶ See Loi Organique Portant Organisation Et Fonctionnement de la Commission Electorale Nationale Independante (II) (9) (11) (July 2010), <http://www.leganet.cd/Legislation/Droit%20Public/Divers/Loi.28.07.2010.pdf>; *Id.*

⁷ Press Release, Commission Electorale Nationale Independante (Jan. 21, 2019), https://www.ceni.cd/assets/bundles/documents/publications-et-interventions/publications-et-interventions_1548151213.pdf.

⁸ Press Release, *supra* n. 7.

⁹ See, e.g., Anna Kapambwe Mwaba, *The African Union called on Congo to suspend its election's results. That's unprecedented*, WASHINGTON POST (Jan. 21, 2019), https://www.washingtonpost.com/news/monkey-cage/wp/2019/01/21/the-african-union-called-on-congo-to-suspend-its-elections-results-thats-unprecedented/?utm_term=.ad056e5125f2; Salem Solomon and Anasthasie Tudieshe, *Eager for Some Peace, Some Congolese Voters Accept Election Results*, VOA (Jan. 23, 2019), <https://www.voanews.com/a/eager-for-peace-some-congolese-voters-accept-election-results-despite-evidence-of-fraud/4755219.html>.

¹⁰ Tom Wilson, David Blood and David Pilling, *Congo voting data reveal huge fraud in poll to replace Kabila*, FINANCIAL TIMES (January 15, 2019), <https://www.ft.com/content/2b97f6e6-189d-11e9-b93e-f4351a53f1c3>; Jason Stearns, *Who Really Won the Congolese Elections?* CONGO RESEARCH GROUP (Jan. 16, 2019),

other reports have questioned the accuracy of the results.¹¹ As others, including USAID, have noted, the failure to publish results by polling station fuels suspicion and undermines the credibility of the elections.¹²

As you observed in your press release, the elections and peaceful transfer of power in the DRC represents an historic accomplishment. CENI can strengthen and further this accomplishment by publishing the full results of the election, including results for all 21 candidates disaggregated by polling center. You will also set an important precedent for future elections and serve as an example for other countries that have not yet achieved your success.

We urge you to publish the results of the election by polling station for all candidates on the internet as quickly as possible.

Respectfully,



Roger Juan Maldonado

<http://congoresearchgroup.org/congolese-election-leaks/>.

¹¹ See, e.g., Pierre Englebert, *Congo's 2018 elections: An analysis of implausible results* AFRICAN ARGUMENTS (Jan. 10, 2018), <https://africanarguments.org/2019/01/10/drc-election-results-analysis-implausible/>; *The Latest: Western nations ask Congo for election data*, AP NEWS (Jan. 11, 2019), <https://www.apnews.com/1723f621d83740a8a7364e02d1714988>; Dane Erickson, *The Peaceful Transition That Wasn't*, THE AMERICAN INTEREST (March 5, 2019), <https://www.the-american-interest.com/2019/03/05/the-peaceful-democratic-transition-that-wasnt/>.

¹² See USAID, *Assessment of Electoral Preparations in the Democratic Republic of the Congo* (Feb. 28-March 9, 2018), at 19, available for download at <https://www.ifes.org/publications/assessment-electoral-preparations-democratic-republic-congo>; Press Release, *Engel Pushes State Department to Address Concerns About DRC Elections*, U.S. House of Representatives, Committee on Foreign Affairs (Jan. 15, 2019), <https://foreignaffairs.house.gov/2019/1/engel-pushes-state-department-to-address-concerns-about-drc-elections>; Jason Stearns, *Opinion: An Imperfect Victory for Democracy in Congo*, NEW YORK TIMES (Jan. 11, 2019), <https://www.nytimes.com/2019/01/11/opinion/congo-election.html>.

cc:

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