

**Testimony prepared for the Senate Foreign Relations Committee,
Subcommittee on African Affairs
“Improving Governance in the Democratic Republic of Congo”
15 December, 2011**

The International Crisis Group appreciates the opportunity to testify today and I would like to thank Chairman Coons, Ranking Member Isakson, and the members of this subcommittee for holding this important hearing during a precarious moment for the people of the DRC.

Crisis Group is an independent, non-partisan, non-governmental organization that provides field-based analysis, policy advice and advocacy to governments, the United Nations, and other multilateral organizations on the prevention and resolution of deadly conflict. Crisis Group was founded in 1995 as an international non-governmental organisation by distinguished diplomats, statesmen and opinion leaders including Career Ambassador Mort Abramowitz, Nobel Prize winner and former Finland president Martti Ahtisaari, the late Congressman Stephen Solarz, and former UN and British diplomat Mark Malloch Brown who were deeply concerned at the international community’s failure to anticipate and respond effectively to mass atrocities in Rwanda and Bosnia. Senator George Mitchell was our first chairman; Ambassador Thomas Pickering is our current chairman. Louise Arbour, former chief prosecutor at the International Criminal Tribunal for Rwanda and at the International Criminal Tribunal for the former Yugoslavia and former UN High Commissioner for Human Rights is our current president. In 2011, Crisis Group was awarded the Eisenhower Medal for Leadership and Service.

Crisis Group publishes annually around 80 reports and briefing papers, as well as the monthly CrisisWatch bulletin. Our staff are located on the ground in ten regional offices and sixteen other locations covering between them over 60 countries focused on conflict prevention and post-conflict stabilization. We maintain advocacy and research offices in Brussels (the global headquarters), Washington and New York and liaison and research presences in London, Moscow and Beijing.

Crisis Group’s Africa program oversees four projects covering Central, Southern, and West Africa, and the Horn of Africa, reporting on 21 different countries within these regions. We have produced 34 reports/briefings on the DRC and circulated an urgent statement on 8 December.

Current Context

Crisis Group’s DRC reporting, in particular over the last eighteen months, raised alarm bells regarding the coming elections and their implications for future governance in a

country which was barely eight years removed from a state of anarchy resulting from a civil conflict and the military interventions of neighbors directly and through militia proxies. Our recent reports questioned the consequences of a hasty constitutional change in January 2011, flawed voter registration and voter roll issues, minimal outreach by Congo's Independent National Election Commission (CENI) to the political parties, the lack of transparency, a sharp increase of political tension, incidents of violence, the general inadequate preparation of the elections, and the late design of an integrated electoral security plan. And we especially pressed unsuccessfully, given all of these suspect issues, on the CENI, the government, opposition parties, MONUSCO and the larger international community, including the U.S. and the EU, to insist on development of a consensual Plan B if, despite all good faith efforts, the outlook for decent elections appeared grim well before 28 November. Otherwise, we warned that without concerted and unified action by the DRC and committed international diplomacy, the November general elections, the second since the end to the Congo conflict, would result in irregularities if not massive fraud with the potential for widespread violence and the undermining of the legitimacy of any pronounced elections winner.

We recognize the international and US diplomatic engagement leading up to the 28 November elections and welcome the new appointment of Ambassador Barrie Walkley as Special Advisor for the Great Lakes and the Democratic Republic of Congo to coordinate and respond to the myriad of challenges for the region over the coming weeks and months. Unfortunately that engagement was not enough. The Democratic Republic of Congo faces a political crisis that already has resulted in loss of life. Every diplomatic measure needs to be exerted to avoid a return to national violence. The 9 December provisional results were announced by the electoral commission, with Kabila declared by the CENI to have won the presidential election (49% of the votes) by seventeen percentage points. The longtime opposition leader Tshisekedi came in second place with 32% and Kamerhe came in third with 7.7 percent. Both opposition candidates have rejected the results. Scheduled on 28 November, it was extended for two days as materials arrived late and many names were missing from voter lists. Estimated voter turnout was reported at 58 percent which reflects the courageous commitment of millions of Congolese voters to democracy. However, they along with the international community are living through their worst nightmare, an electoral result marred by such widespread charges of fraud, deceit and dishonesty that the credibility of the process may be fatally impaired and so too the legitimacy of the government that follows.

Tallying of the legislative elections results is not going to be concluded for many weeks and the preservation of those ballots to avoid further "losses" and the transparent verification of that vote tabulation is essential.

The Carter Center, which maintained 26 teams of international, impartial observers deployed in Kinshasa and the 10 provinces for the counting and tabulation, issued this statement:

"Carter Center observers reported that the quality and integrity of the vote tabulation process has varied across the country, ranging from the proper application of procedures

to serious irregularities, including the loss of nearly 2,000 polling station results in Kinshasa. Based on the detailed results released by CENI, it is also evident that multiple locations, notably several Katanga province constituencies, reported impossibly high rates of 99 to 100 percent voter turnout with all, or nearly all, votes going to incumbent President Joseph Kabila. These and other observations point to mismanagement of the results process and compromise the integrity of the presidential election. Candidates and parties have a limited time to submit any complaints to the Supreme Court, and tabulation for the legislative elections is ongoing. The problems observed in the tabulation and announced results are compounded by inadequate access for observers at multiple compilation centers around the country and no official access to the national results center in Kinshasa. The Carter Center is therefore unable to provide independent verification of the accuracy of the overall results or the degree to which they reflect the will of the Congolese people.”

The responses from other key organizations:

- “After analyzing the results that were made public by the (election commission) this past Friday, Dec. 9, 2011, we could not help but conclude that the results are not founded on truth or justice,” said Cardinal Laurent Monsengwo, the head of the influential Catholic Church in Congo. The Catholic Church deployed 30,000 observers, more than any other group, nationwide.
- In a 12 December MONUSCO press release: “MONUSCO notes with deep concern the findings of these observer missions relating to the significant irregularities in the management of the results process, in particular the counting and tabulation of the votes.” It went on to recommend, as we have that CENI “undertake a timely and rigorous review of the issues identified by observer missions with the full participation of witnesses and observers, including foreign observer groups...”
- In the EU Electoral Monitoring Mission (EUOM) preliminary statement: “a strong mobilization of the electorate in a process inadequately controlled” and noted that “poor communication between INEC and the actors of the process has had a negative impact on transparency and trust.”

The lack of credibility of the preliminary results already has sparked opposition protests that, in turn, prompted heavy-handed repression by Congolese security forces in Kinshasa and could lead to wider disorder. To avert further violence, Congolese authorities must make possible the in-depth verification of the counting process. The United Nations, African Union and European Union must work together to impress on Congolese leaders the need for immediate action to allow transparent, independent verification of the initial results and full participation of international observers as an essential first step to find a way out of the crisis.

The vote marked the culmination of a troubled year of preparations, with the playing field increasingly skewed towards incumbent president Joseph Kabila. Constitutional changes dropped the requirement for a run-off, which, with opposition leaders failing to unite behind a candidate, effectively split their vote. Kabila loyalists were appointed to the election commission at the beginning of the year and to the Supreme Court on 9

November, which settles electoral disputes. Despite discrepancies in registration figures, opposition parties and observers were unable to audit voter rolls. The state-run media drummed up support for the president. Nonetheless, considerably less popular than when he won the 2006 polls, Kabila faced stiff competition, especially from veteran opposition leader Tshisekedi. With another candidate, Vital Kamerhe, threatening to sap Kabila's votes in the Kivus – vital to his win five years ago – the president's re-election was far from secure.

As requested by the international community, the electoral commission published results by polling station, which in theory would permit their verification by opposition parties and observers. However, the Carter Center noted that the tabulation process lacks transparency, the votes of the results of 2,000 voting stations in Kinshasa and 1,000 voting stations in the rest of the country were lost or at least never made it to the final compilation, indicate that at least 850,000 voters who reached the polls and voted were effectively disenfranchised. This is all the more disconcerting as the criteria for disqualifying ballots are unclear, with Kinshasa – an opposition stronghold – disproportionately affected and Katanga – a presidential stronghold – overestimated. Results returned from Katanga – a presidential stronghold – show, on the other hand, an extraordinarily high turnout, as noted by the Carter Center, suggesting skewed representation. Moreover, electoral material is now at risk of being lost because of poor storage conditions.

Election day flaws were bad enough; but perceptions that results are fiddled behind closed doors remain. Congo's electoral woes reflect the country's broader lack of democratic and institutional development since 2006. But they also stem from weak international and continental engagement, from MONUSCO and the AU to donors – especially the EU and the UK, who partly funded the polls, and the U.S. All have been largely ineffective in preventing Kabila's consolidation of power and stacking the decks.

A sense of foreboding now hangs over Kinshasa. The fierce crackdown by the security forces against opposition protesters on the eve of election, according to Human Rights Watch, which left eighteen dead and more than 100 injured, has been followed by violence on the day of elections and repression the days after. Thousands of Congolese reportedly crossed into neighbouring Congo-Brazzaville, fearing violence. Rumours of machetes distributed, gangs mobilizing and a heavy security presence risk spreading panic in the capital where all activities are suspended since Thursday evening. The International Criminal Court (ICC) prosecutor, meanwhile, has stated that the DRC situation was under watch.

Given the electoral commission's partisanship and the widespread irregularities, the preliminary results cannot inspire much confidence. Opposition politicians have already rejected them out of hand and Vital Kamerhe lodged a complaint to the Supreme Court. The Supreme Court should resolve disputes, but with that body also dominated with Kabila loyalists, some additional support may be needed to avoid losers taking their grievances to the streets. To this point, the opposition leaders have shown some restraint in that respect.

While the focus is on presidential election, legislative elections are forgotten. In the absence of international observers to ensure results counting and compilation are transparent, frauds and irregularities are to be expected. The Carter Center and the EU mission either have left or are planning to soon leave the country and the legislative results will not be under watch. Already governmental security forces are threatening opposition MP candidates from Kasai Occidental, Bas-Congo, North Kivu and the UN is providing them with temporary protection.

Next steps?

The key problem now is how to get a peaceful outcome out of a messy, polarized and fraudulent electoral process. The management of the electoral process has been extremely difficult and the management of the coming weeks will be much more difficult. The preliminary electoral results have already been rejected by Etienne Tshisekedi and Vital Kamerhe and most of the Congolese voters have a first-hand experience of the bad performance of the electoral commission (general lack of confidence in the electoral commission, the 2011 elections are a step back compared to 2006 elections). In addition, president Kabila has been reelected with what appears to be a much lower turnout this year (70% turnout in 2006 at the first round and 58% this year). The key issue is to avoid more post-electoral violence and to design a government that will provide stability for the next five years. The publishing on CENI's website of the detailed results by polling station, as called for by the US and others, now requires in-depth verification and the monitoring of the dispute resolution. If not, the electoral process cannot be regarded as credible.

Election Recommendations:

- The published results polling station by polling station must now be verified by the political parties and independent observers from civil society and international organizations in order to ensure the transparency of the tabulation process.
- Electoral authorities must explain clearly how political parties and observers can contest the results of any polling station and provide free access to the relevant information and explanations about the lost results of several thousands of voting stations. Those stations that returned suspicious results or where observers report irregularities should be subject to rigorous investigation – again in the presence of observers – with clear criteria applied when disqualifying ballots. Voters in areas where polling did not take place or where the results have been lost should be given the opportunity to vote.
- The rules of the Supreme Court must be revised, notably the proceedings must not be in camera.
- The tabulation process for the legislative results must urgently be corrected on the basis of the errors and problems encountered during the tabulation process of the presidential results and the electoral material secured. Given the poor work done by the electoral commission and the failure to secure voting results from more than 3,000 polling stations covering some 850,000 votes demonstrates the absolute requirement for independent monitoring of the tabulation process for the parliamentary election.

- All Congolese leaders must avoid inflammatory language. Given that protests will almost certainly turn violent, opposition politicians should appeal to their supporters to stay off the streets.
- If protests do occur, security forces must refrain from heavy handed responses – with clear instructions along those lines given by military and police commanders and by the president. Violence that happened since the end of the electoral campaign should be subject to investigation by Congolese and international human rights groups, as well as the ICC, if appropriate.
- The UN, AU and EU should urgently dispatch a high-level team, perhaps comprised of distinguished African leaders, to mediate between factions. Mediators should explore options as part of the verification process for alternative dispute resolution, modifications of the Supreme Court’s rules or independent oversight of existing mechanisms – possibly under AU auspices and with international support – given distrust in the responsible Congolese institutions. The mediators should also engage the factions on the long-term stability of the country and the necessity of an inclusive government.
- In the meantime, the UN, donors and regional leaders must make clear that any interethnic violence between Kasaians and Katangans will be condemned as such as harassment of opposition candidates. They must avoid statements that could legitimise a badly flawed vote and destroy what is left of their credibility in the Congo. They cannot paper over electoral flaws. No leader should be congratulated until all disputes are resolved.
- The UN should deploy additional peacekeepers to the western provinces and Kinshasa and should increase its surveillance in Katanga where anti-Kasaian feeling is presently on the rise. The return of ethnic violence in Katanga or/and a bloodbath in the capital of a country hosting the world's largest UN peace operation are unthinkable.

In addition to resolving the current electoral crisis, there are other serious questions affecting DRC’s future stability.

We believe that two critical challenges to development, governance and civilian protection in the Congo are army reform and more competent and non-corrupt management of the country’s natural resources---both of which are conspicuous failures at the moment. The result has been participation by an array of militias as well as FARDC units in rape and marauding in the Eastern Congo and an unending competition over conflict minerals that sows the seeds of violence throughout the region.

Security Sector Reform

Leading the agenda for stability in the aftermath of the elections remains the question of army reform. The army is undisciplined and too often, unpaid. The ineffective integration of militias into the army and military operations against armed groups combined to increase the insecurity of communities throughout the Kivus. It also produced militarization of mineral production sites during the last two years. The consequence of this is violence against civilians and the emergence of mafia behavior by mine operators. Corruption in the natural resources sector overwhelms attempts to police

and regulate the sector. Altogether, these problems indicate that there must be major reform of the army and general reform of the security sector as a whole.

Also, there has been an almost grotesque incapacity to manage the demobilization and integration of former armed militias into the FARDC. Too many former militia members have not been vetted; too many have not been paid or trained; and too many have not been held accountable for past crimes against humanity.

A critical mistake was made by allowing the militias to operate as an army within an army by not dissolving militia command structures after integration. Violent outbreaks persist throughout the country, particularly in the Kivu provinces, which will likely only intensify with growing tensions. As well, the justice system, plagued with corruption and limited resources from the DRC government, has to be fundamentally reformed with an emphasis placed on holding accountable those who are accused of vicious crimes such as rape and sexual violence. Until prosecution and conviction become the norm for violators of fundamental principles, it will be very difficult for national development to take place.

It also tends to underscore the rising unhappiness of sectors of the military over non-payment of salaries, and the failure of integration of various armed groups (Mai Mai, FRF, PARECO and CNDP) in the FARDC. With respect to the CNDP, it once again shows that the failure to dismantle CNDP units as they were integrated into the FARDC harmed international efforts, including those of the EUSEC, to restructure the national army.

With respect to army reform, the critical steps—regardless who ultimately is sworn in—are the following:

- Comprehensive review of the chain of payment in the army;
- Vetting of officers and investigation of suspected involvement into natural resources trade by a special commission of inquiry;
- Design of a pension plan and retirement for the soldiers;
- Restoring and reforming the military justice (revision of the military code, training, screening of military magistrates, appointment of “clean military judges”, etc.)

Sexual and Gender-Based Violence

DRC has made little if no progress on sexual and gender-based violence. Suspected rapists among FARDC are almost never charged or arrested. Impunity is still the norm concerning FARDC. DRC government and MONUSCO publicized the very few FARDC officers who were tried but prosecutions are usually cosmetic.

The National Strategy against SGBV has been elaborated without deep civil society involvement and lacks ownership. There is no genuine political commitment by the Congolese government. There is very little coordination between the various national

civil society actors, international organizations, United Nations Agencies and local authorities.

Lord's Resistance Army

The LRA legislation that President Obama signed into law in May 2010, which received broad bipartisan support in Congress, was an enormous step forward and reflected steps that Crisis Group had recommended, including: increased institutional capacity, enhanced coordinated DDR alongside greater military pressure which would include greater shared intelligence resources by UN/EU/US, and greater humanitarian support to LRA victims. On 14 October, 2011, the Obama Administration announced the deployment of 100 military advisors to the region, making the clear point that they will be there in an advisory capacity, helping the UPDF, and are not authorized for combat unless in self-defense. A majority of the military advisors will stay in Kampala, with the rest to advise in the field. The move is part of a broader ramping up of its political and military engagement against the LRA. It has also offered to train more Congolese soldiers and has given equipment to the CAR army in order to win the operation political space. The few score field advisers should be able to improve the Ugandans' performance. The deployment, the Obama Administration has made clear, will be short-term.

Uganda, with U.S. advice and support, should, therefore, lose no time in launching a reinvigorated attack on the LRA, if possible while most of the group's senior commanders and fighters are still in the CAR and before they can return to the DRC's more restrictive operational environment. A key part of the advice the U.S. should press on the Ugandan army is the need to prioritise protecting civilians, provide access to humanitarian agencies and accept stricter accountability for its actions. At the same time, full coordination with the AU is essential, particularly if it is able to oversee a multi-dimensional regional initiative, continuing after Kony's death or capture. Greater cooperation from Kinshasa with combined effort to put an end to Kony is essential.

Conflict Minerals

We still have a long way to go to halt illegal trade of conflict minerals in the Great Lakes Region. On 10 September 2010, Kabila appeared to have banned the production and trade of minerals in the Kivus and Maniema and ordered the demilitarization of the mining zones. However, that declaration neither ended the mineral smuggling nor militarization of the mining zones, and the ban was lifted on 10 March 2011.

International actors responded by attempting to preemptively resolve the illegal trade problem by developing regulations aimed to prevent the flow of conflict minerals into the raw materials market, such as with the Dodd-Frank Act passed by Congress in July 2010.

The provision mandates identifying the mines under the control of armed groups, introducing traceability and certification mechanisms to cover transfer from the mines to the trading counters, and encouraging importers to only buy certified minerals. The delay in the final SEC regulations (due in April, 2011 and now expected by the end of

December, 2011) and the resulting required annual report submissions have stalled the full implementation of the Dodd-Frank measure.

Conclusion

DRC faces enormous challenges: only one out of ten Congolese has access to electricity; three-fourths of the population is undernourished according to the Global Hunger Index; less than a third the rural population has access to clean water, less than half in the cities. The DRC ranks last, 187 out of 187 in the Human Development Index in 2011.

During this tense and uncertain time in the DRC's history, it is imperative that the United States and the international community remain engaged.

Thank you and I look forward to your questions.