

**ESCAPING THE CONFLICT TRAP:  
PROMOTING GOOD GOVERNANCE IN THE CONGO**

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## ESCAPING THE CONFLICT TRAP: PROMOTING GOOD GOVERNANCE IN THE CONGO

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Democratic Republic of Congo's strides toward peace could prove short-lived if the government and donors do not increase efforts to create a transparent and accountable government. State institutions such as parliament, courts, the army and the civil service remain weak and corrupt. The national elections scheduled for 30 July 2006 risk creating a large class of disenfranchised politicians and former warlords tempted to take advantage of state weakness and launch new insurgencies. Donors must initiate new programs in support of good governance that include more funding to strengthen state institutions (in particular parliament and the various auditing bodies), as well as apply more political pressure to make sure reforms are implemented.

The Congolese state has suffered from corruption since independence. The logic of the 2002 peace agreement, which established the current political transition, has brought problems of governance into sharp relief. Senior positions in the administration and state-run enterprises were shared between signatories, and state resources were siphoned off to fund election campaigns and private accounts. Between 60 and 80 per cent of customs revenues are estimated to be embezzled, a quarter of the national budget is not properly accounted for, and millions of dollars are misappropriated in the army and state-run companies. The mining sector is particularly prone to corruption, with valuable concessions granted with little legitimate benefit to the state.

These governance problems have an immediate impact on the humanitarian situation. Unpaid soldiers harass and intimidate civilians. Factions within the army and government continue to fight over mines and control of border crossings. The displaced civilians have almost no health services to fall back on, and 1,000 or more die daily as a result.

While international attention has concentrated on elections, the other elements of a stable democracy are weak or missing, including the necessary checks on executive power. Parliament is poorly funded and divided, mirroring the weakness of political parties. Parliamentary inquiries

lack necessary resources and expertise to be effective. The judiciary is deeply politicised and inadequately funded. Not a single official has been tried during the transition for corruption. Presidential and legislative candidates should have – but have not – presented detailed plans for addressing corruption in customs, public finance and natural resources.

The incoming government will offer new opportunities for improving governance. The president, parliament and local governing bodies will be democratically elected and in theory accountable to their constituencies. Twenty-six provinces are to be created out of the current eleven, each with locally elected provincial assemblies, and to manage 40 per cent of national revenues raised on their territories. Three new high courts will replace the current Supreme Court. But without international support and funding, these institutions will remain largely a shell.

Donors have treated corruption as a technical problem and emphasised data management systems, training programs and laws. They have shied away from the more political aspects, such as strengthening parliament, courts and anti-corruption and auditing bodies. They finance more than half the national budget and should do more to press charges against corruption suspects, make sure the government complies with the mining code and hold multinational corporations accountable for violating national and international norms.

A complete overhaul of the approach to good governance is needed after the elections, with much greater focus on strengthening institutions, especially parliament and courts. The Poverty Reduction Strategy Paper the new government is to publish later this year is already substantially prepared but it should be supplemented by more detail on anti-corruption initiatives and parliamentary capacity building. Major donors should then launch plans to promote governance over a five-year period and at the same time create a successor group to the International Committee for the Support of the Transition to coordinate their actions and their pressure on the incoming government to implement the promised reforms.

## RECOMMENDATIONS

### To the Incoming Government of the Democratic Republic of Congo:

1. Fund parliamentary commissions sufficiently and cooperate with their investigations.
2. Strengthen the judiciary by supporting legislation to guarantee the independence of the courts and by funding them adequately.
3. Complete a census to get ghost officials off payrolls and raise salaries of civil servants above the poverty level.
4. Create a National Program in Support of Governance to coordinate all actions on behalf of good governance, headed by an anti-corruption czar appointed by the president upon proposal of parliament and provided with sufficient means to carry out the duties.
5. Promote accountability and transparency in the management of natural resources by:
  - (a) creating a sub-commission within the National Program in Support of Governance to apply the criteria of the Extractive Industry Transparency Initiative, including publishing all financial transactions between companies and the government;
  - (b) incorporating the provisions of the Extractive Industry Transparency Initiative into domestic law;
  - (c) licensing an international NGO to monitor implementation of the mining and forestry codes, in collaboration with the Ministry of Mines and the Mining Inspection;
  - (d) providing the anti-corruption czar and the sub-commission for natural resources with websites on which to publish all payments and mining contracts between the government and private companies and to which complaints can be submitted; and
  - (e) installing truck scales for mineral ore at border crossings and laboratory equipment for mineral analysis.
6. Create an international oversight body within the National Program in Support of Governance and deploy international personnel in all government oversight bodies.
7. Create a cell within the Ministry of Finance responsible for recording and investigating the declarations of assets made by members of government before and after their tenure.

8. Carry out the decentralisation outlined in the constitution by:

- (a) setting up a commission within the Ministry of the Interior to plan and implement creation of the 26 new provinces and their provincial assemblies; and
- (b) creating local offices for the state auditor and financial inspector, as well as for the National Program in Support of Governance initiated in the government's anticipated Poverty Reduction Strategy Paper.

### To Presidential and Legislative Candidates in the 30 July 2006 Elections:

9. Present detailed programs on how to reduce corruption, in particular in public finances, customs and natural resources.

### To the Incoming Parliament:

10. Discuss, during the first session, the Lutundula Commission report on contracts signed during the two wars and renegotiate or cancel mining and forestry contracts that are not in the state's interest.
11. Create a permanent parliamentary commission on natural resources to review contracts signed since 30 June 2003 and monitor compliance with the mining and forestry codes as well as management of revenues in the mining and forestry sectors.

### To Congolese Civil Society:

12. Address issues of governance and corruption through pressure on national and provincial elected representatives, including by tracking their voting records.
13. Put more focus on corruption, including by conducting advocacy based on Congolese laws, as well as on the Organisation for Economic Cooperation and Development Convention on Combating Bribery, the Extractive Industry Transparency Initiative, and the U.S. Foreign Corrupt Practices Act.
14. Create an NGO network dedicated specifically to governance issues with a regularly updated website.

### To the World Bank and the International Monetary Fund:

15. Work with the government to ensure that, in accordance with Article 46 of the mining code,

- titles to state-owned mining fields are granted through open tenders.
16. Promote transparency and environmental protection in the forestry industry by:
- (a) encouraging the government to enforce the moratorium on concessions;
  - (b) completing the zoning exercise to distinguish lands available for industrial logging from those reserved for community activities and environmental protection; and
  - (c) contracting an NGO to work with the Ministry of Environment to monitor compliance with the forestry law and ensure that tax revenues flow back to local communities and concessions granted comply with the zoning exercise.
17. Participate in a group with major governmental donors to coordinate funding and other actions, in particular in the field of good governance.
18. Increase funding to state anti-corruption bodies, including the proposed National Program in Support of Governance, the State Auditor, the Financial Inspectorate and parliamentary commissions.
- To France, the UK, the U.S., Belgium, South Africa, the EU, the World Bank, the International Monetary Fund, the African Development Bank and Other Major Donors:**
- 19. Form a new donors group on good governance to coordinate funding and policy advice to the new government, regularly discuss governance issues with key ministries and government anti-corruption bodies and work closely with the proposed National Program in Support of Governance.
  - 20. Put together a five-year donor plan, based on the new government's anticipated Poverty Reduction Strategy Plan and the United Nations Development Program's Congo Action Plan, that conditions a substantial funding increase on steps to increase accountability and reduce corruption and includes:
    - (a) funding for parliamentary commissions at the national and provincial level, in particular the commissions on natural resources and economic and financial affairs;
    - (b) reform of the judiciary, including an emergency plan for the East and support for setting up the new High Court of Appeals, Constitutional Court and State Council;
    - (c) placement of international personnel in major anti-corruption bodies;
    - (d) support for the creation of 26 provincial assemblies within three years, including funding for infrastructure and training; and
    - (e) direct financial and technical support to the State Auditor, the Army Inspectorate and the Financial Inspectorate.
21. Contract an international auditing firm to train and advise the Ministry of Finance cell in charge of recording and investigating government officials' asset declarations.
- To Major Investors and Trade Partners of the Congo, including Belgium, France, the U.S., South Africa, China, Germany, Portugal and the UK:**
- 22. Use export credits to promote accountability with national companies by granting them only to companies that disclose all payments to governments and demonstrate respect for international and domestic laws and norms, including environmental, labour and anti-bribery laws and norms.
- To the United Nations Mission in the Democratic Republic of Congo (MONUC):**
- 23. Create a cell within the Political Affairs Division to monitor and report on good governance in coordination with donors.

**Nairobi/Brussels, 20 July 2006**

## ESCAPING THE CONFLICT TRAP: PROMOTING GOOD GOVERNANCE IN THE CONGO

### I. INTRODUCTION

The erosion and collapse of state institutions was a proximate cause of the Congo's two wars between 1996-1997 and 1998-2003. By the time Rwanda invaded in 1996, President Mobutu Sese Seko's abusive government had so badly undermined the army, administration, parliament and court that the local population greeted the Rwandan-backed rebels with euphoria. However, the new government of President Laurent Kabilal was similar in many ways, and state institutions remained weak and corrupt. In the East, rebel movements established ad hoc administrative structures bent on extracting natural resources and taxes. The country was essentially divided into large fiefdoms ruled by military movements.

The Global and Inclusive Agreement, signed by the belligerents, political opposition and civil society in South Africa in December 2002, dramatically changed the country's power structure. President Joseph Kabilal, who succeeded his late father, shared power with four vice presidents named respectively by Kabilal's former government, the political opposition and the main rebel movements – the Congolese Rally for Democracy (RCD) and the Movement for the Liberation of the Congo (MLC).<sup>1</sup> A bicameral parliament was established (national assembly and senate), whose members were named by the signatories to the peace deal.<sup>2</sup> A transitional constitution guaranteed separation of powers, independence of courts and basic civil liberties. However, the transitional government has been marked by intense political infighting, lack of accountability and corruption.

A new constitution approved by referendum in December 2005 and promulgated in February 2006 has established a

system in which a fairly strong president will share power with a prime minister chosen from the majority party or coalition in parliament. Although legal texts provide numerous checks and balances as well as oversight mechanisms to guard against abuse of power and corruption, parliament, auditing bodies and courts are weak, untrained and lack resources to do their jobs. The state is not able to collect revenue or provide basic services. In 2005, revenue amounted to only 10 per cent of Congo's gross domestic product (GDP).<sup>3</sup> The government spent less than 2 per cent of its national budget outside Kinshasa.

The international community has focused on the immediate goal of elections, which are now scheduled for 30 July 2006. However, donors, who have provided over \$6 billion in the past five years in development aid and support for the elections, have paid relatively scant attention to promoting viable state institutions. Most have considered rebuilding the state a technical problem and concentrated on infrastructure, administrative capacity and expert advice. State institutions such as parliament, courts and oversight bodies have been a secondary consideration.<sup>4</sup> Security sector reform, itself a critical component of good governance, has also lagged. Donors have assisted in training around 20,000 of the country's 90,000 to 120,000 soldiers but only in recent months have begun to tackle pressing problems such as corruption and parallel chains of command.<sup>5</sup> Integrated brigades have suffered from desertions, cholera epidemics and crippling corruption.

Donors and agencies are launching new development programs and appeals for funds to support the incoming government. The UK government is increasing its aid to some \$147 million in 2006, the European Union (EU)

<sup>1</sup> The vice presidents are Abdoulaye Yerodia Ndombasi (former government), Zahidi Ngoma (political opposition), Azarias Ruberwa (RCD) and Jean-Pierre Bemba (MLC).

<sup>2</sup> The signatories of the peace deal were the RCD, the former Kabilal government, the MLC, the political opposition, civil society, the Mai-Mai, the RCD-National and the RCD-Liberation Movement.

<sup>3</sup> The sub-Saharan average is 18 per cent. "Country Overview: Uganda, 2005", European Commission, <http://ec.europa.eu/comm/development/body/country/ug/home>.

<sup>4</sup> International aid totalled \$1.2 billion in the 2006 budget. Figures denoted in dollars (\$) in this report refer to U.S. dollars.

<sup>5</sup> Crisis Group Africa Report N°104, *Security Sector Reform in the Congo*, 13 February 2006. The EU launched a program to reform management of the army payroll for the integrated brigades in January 2006.

will spend around \$91 million and the UN has launched a humanitarian aid appeal for \$681 million for the year. While donors are increasing their focus on good governance and strengthening state institutions, the programs are often under-funded and not backed up by coordinated political pressure from the embassies.

Recent studies by the World Bank and academics have shown the close link between conflict and the failure of state institutions. Almost half the countries emerging from conflict fall back into conflict within five years, and there is a strong correlation between such recidivism and the failure of institutions such as parliaments.<sup>6</sup> A combination of resources and effective political pressure is needed to address Congo's deep-seated governance problems and prevent it from sliding back toward conflict.

This report examines sectors that are particularly vulnerable to corruption and graft, including customs, natural resources, state-run companies and the army. It also discusses why regulatory bodies such as courts, parliament, and anti-corruption and auditing institutions remain ineffective and prone themselves to corruption. Finally, it reviews international approaches to good governance and proposes new ways of addressing corruption and the abuse of power in Congo.

## II. THE LEGACY OF POOR GOVERNANCE

The Congolese state and economy still bear the heavy imprint of Mobutu's 32 years of predatory rule. Executive power in his Zaire was absolute, and the 1974 constitution granted him, as head of state, authority over the executive, legislature and judiciary branches. Mobutu also had the right to change the constitution at his discretion, and he banned political parties while making membership in his Popular Revolutionary Movement (MPR) compulsory. Through the MPR he controlled most aspects of society, particularly in the west and north. MPR cadres held key trade union, student association and security services positions.

To forestall any threats, Mobutu kept his government factionalised while maintaining the loyalty of elite military and police forces. Corruption was integral to the system, and politicians became entirely dependent on his good will. In the first decade of his rule, 1965-1975, only 41 of the 212 top figures in government kept their positions.<sup>7</sup> There were frequent purges in army and government. Many senior officials were imprisoned or rotated into different positions or from one geographical area to another.

All this came at great economic cost. After the stabilisation of the economy in 1967, the country enjoyed several years of relative prosperity and growth. However, Mobutu needed money to maintain his patronage network. In some years, he personally disposed of over 20 per cent of the country's operating budget.<sup>8</sup> At the same time, huge loans were taken out to build white elephant projects, including a dam on the Congo River for \$1 billion and a steel mill at Maluku for 250 million that was barely functional. By the mid-1970s, profligacy and corruption had crippled the economy.

Mobutu's disastrous system was facilitated by continued support from France, Belgium and the U.S. Zaire was a key pawn in the Cold War, and each of these countries had considerable economic and political interests in it.<sup>9</sup> Zaire's debt was rescheduled fourteen times between 1976 and 1990, when the Bretton Woods institutions

<sup>6</sup> Paul Collier et al., "Breaking the Conflict Trap: Civil War and Development Policy", World Bank, Washington DC, 2003; Daniel Esty, Jack Goldstone, Ted Robert Gurr, Barbara Harff, Marc Levy, Geoffrey Dabelko, Pamela Surko and Alan N. Unger, "State Failure Task Force Report: Phase II Findings", Science Applications International Corporation, 2000.

<sup>7</sup> Crawford Young and Thomas Turner, *The Rise and Decline of the Zairian State* (Madison, 1985), p. 166.

<sup>8</sup> Ibid, p. 169.

<sup>9</sup> The U.S. was particularly concerned about socialist regimes in neighboring Angola, Congo (Brazzaville) and Tanzania. It funneled funds through Mobutu to the Angolan UNITA rebels, who used Zaire as a rear base.

finally cut off new funds. At that point, the country had accumulated \$14 billion in debt.<sup>10</sup>

The rule of Laurent Kabilà, who toppled Mobutu in 1997, was similar in important aspects.<sup>11</sup> He banned political party activity, dissolved parliament and suppressed all provincial and local deliberative bodies.<sup>12</sup> There was no state budget between 1998 and 2001 and no new constitution. Laws were issued by presidential decree. Collaboration ended with international financial institutions, which were pressing him to investigate war-time massacres. He gave Zimbabwe management of many copper, cobalt and diamond mines in return for military support. Similarly, in the East, the rebels financed their armies with revenues from gold, diamond, coltan and tin mines,<sup>13</sup> much of which went to Ugandan and Rwandan officials, whose armies were closely involved in the mines. Military spending, lack of financial oversight and poor monetary policy produced near economic collapse. By 2000, inflation was 511 per cent and per capita GDP \$100 – far below the \$259 level at independence 40 years earlier.<sup>14</sup>

Laurent Kabilà's assassination in 2001 ushered in an era of halting reform and relative growth. Donors reengaged and sponsored a stabilisation plan that included new investment, mining and forestry codes and reformed fiscal and monetary policies to cut inflation and boost revenue. GDP growth was 7 per cent in 2005, while national revenues tripled between 2000 and 2005.<sup>15</sup> These reforms have been coupled with increases in aid, which in 2006 amounted to 56 per cent of the national budget.<sup>16</sup>

Nonetheless, this economic growth is somewhat misleading. The increase in GDP is largely due to the

state's improved fiscal control over activities previously in the informal sector. Few jobs have been created, and there has been little foreign capital investment, as many large multinational companies remain apprehensive.<sup>17</sup> The budget increase from 10 per cent of GDP in 2002 to 17 per cent in 2004 was mostly due to unification of revenue agencies and the inclusion of demobilisation and election expenses, which are donor-funded.<sup>18</sup>

<sup>10</sup> Thomas Callaghy, "Life and Death in the Congo", *Foreign Affairs*, September/October 2001.

<sup>11</sup> Laurent Kabilà tried to hold local elections when he came to power, but quickly gave up on the experiment.

<sup>12</sup> This included provincial assemblies and communal and territorial councils.

<sup>13</sup> Coltan is shorthand for Columbite-tantalite, a metallic ore comprising Niobium and Tantalum widely used in electronics manufacture. The most exhaustive study of this pillage was conducted by a UN Panel of Experts, which issued seven reports and addendums between January 2001 and October 2003: S/2001/49, S/2001/357, S/2001/1072, S/2002/565, S/2002/1146, S/2002/1146/Add.1, S/2003/1027.

<sup>14</sup> "Staff report", International Monetary Fund, op. cit., p. 5.

<sup>15</sup> Ibid, p. 28 and "Selected Issues and Statistical Appendix, Democratic Republic of the Congo", IMF, 16 August 2005, p. 4.

<sup>16</sup> Budget 2006, ministry of budget, [http://www.radiookapi.net/\\_fichiers/documents\\_fichier\\_43.pdf](http://www.radiookapi.net/_fichiers/documents_fichier_43.pdf). Only 17 per cent of foreign aid is direct budgetary support managed by the Congolese government. The rest is aid managed by donors or contracted out to private companies in coordination with the government.

<sup>17</sup> Crisis Group interview, international banking official, Kinshasa, November 2005.

<sup>18</sup> "Democratic Republic of Congo", African Economic Outlook, 2004/2005, OECD, [www.oecd.org/dev/aoe](http://www.oecd.org/dev/aoe). In 2004, for example, the budget included \$300 million for demobilisation and reintegration of combatants.

### III. CORRUPTION AND GRAFT

Corruption continues to undermine the economy and administration. The abuse of public office for personal gain reaches from minor civil servants to the highest members of government and implicates many international corporations.<sup>19</sup> Political actors regularly interfere in the administration, customs service, army and control of natural resources to embezzle funds. This, in turn, has perpetuated a system of governance that is largely predatory, with the state living off the citizenry and the country's resources without providing even the most rudimentary social services. A telling illustration was given by a World Bank survey. People were asked: "If the state was a person, how would you interact with him?" Often the response was: "Kill him".<sup>20</sup>

#### A. THE ADMINISTRATIVE APPARATUS

Corruption and politicisation within the administrative apparatus undercuts the state's capacity to collect revenues or use them for salaries or social services. The Congo has one of Africa's weakest collection capacities, with revenues (excluding aid) amounting to just over 10 per cent of GDP, compared to some 13 per cent for Rwanda and Tanzania and 18 per cent for Kenya. Hundreds of millions of potential tax dollars are embezzled or lost due to inefficiency.<sup>21</sup>

Hiring and promotions in the administration depend more on connections than competence. Mobutu, Laurent Kabila and Joseph Kabila have all placed political appointees in management positions, creating deep tensions between career civil servants and party cadres.<sup>22</sup> While Congolese law in theory gives ultimate decision-making power to ministry secretaries general, who are usually career civil servants, this is rarely the practice. Political appointees often sideline or overrule the secretaries general.<sup>23</sup> In addition, the government has

<sup>19</sup> Evidence is provided by parliamentary investigations, including the audit of state-run companies led by Gregoire Bakandeja and the review of contracts signed during the two wars led by Christophe Lutundula.

<sup>20</sup> "Democratic Republic of Congo: Economic and Sector Work, Governance and Service Delivery", World Bank Report no. 32205, 30 June 2005.

<sup>21</sup> The ratio of revenue to GDP is often used as a measure of state capacity and legitimacy. Figures at [www.imf.org](http://www.imf.org). In addition to poor revenue collection, much of the Congolese economy is in the informal sector. Despite mineral riches, official GDP per capita in the Congo is half that of Rwanda or Kenya.

<sup>22</sup> "Economic and Sector Work", World Bank, op. cit., p. ii.

<sup>23</sup> Ibid, pp. 8-9.

attached "missions" to the ministries that essentially serve as a parallel chain of command. While such missions are not unusual in a French-based administrative system, they are meant to be created for a limited period. In the Congo, they often last for years.<sup>24</sup> An international financial expert commented: "The proliferation of institutions is one of the main reasons for corruption".<sup>25</sup>

Administrative capacity is limited. For example, in 2004, the ministry of finance had little information on the income generated by state-run companies, few of which submitted financial accounts.<sup>26</sup> Similarly, an audit of the state payroll revealed no correlation between pay slips and the civil servant database. The procedure for adding new employees lacked transparency, and numerous institutions and individuals could add employees to the payroll.<sup>27</sup> The census of civil servants undertaken by France and South Africa to eliminate ghost workers and illegal entries has been underway for more than a year and is still not concluded.<sup>28</sup>

The rules governing the release of money from the central bank through ministries are poor. In 2003, two thirds of the budget was spent outside normal procedures with only retrospective justification.<sup>29</sup> By 2004, this had declined to 27 per cent,<sup>30</sup> but the presidency overspent by \$18 million. Vice President Jean-Pierre Bemba alone exceeded his budget by some \$11 million.<sup>31</sup> In theory, once a budget line is exhausted, the institutions in the cost chain should cut off access to funds. In practice, politicians regularly override such restrictions.<sup>32</sup> A joint International Monetary Fund (IMF)-World Bank evaluation of budgetary management in November 2004 revealed that the Congo fulfilled only three of sixteen good governance

<sup>24</sup> Crisis Group telephone interview, World Bank official, April 2006.

<sup>25</sup> Crisis Group interview, international financial expert, Kinshasa, November 2005.

<sup>26</sup> "Case study on the DR Congo: Anti-corruption projects limited by the logics of transition", report for UNDP by Karen Hussman and Marie-Ange Bunga, 12 October 2005, p. 10.

<sup>27</sup> "Economic and Sector Work", World Bank, op. cit., p. 14.

<sup>28</sup> Crisis Group telephone interview, diplomat, Kinshasa, April 2006.

<sup>29</sup> "Observations de la cour des comptes relatives au projet de loi portant arret des comptes et reglement definitif du budget de l'état pour l'exercice 2003", Journal officiel de la République Democratique du Congo, 24 June 2004.

<sup>30</sup> Crisis Group interview, State Auditor, April 2006.

<sup>31</sup> Crisis Group interview, state auditing office, Kinshasa, November 2005. All vice presidents overspent by large amounts.

<sup>32</sup> Crisis Group interview, international financial officials, Kinshasa, November 2005.

criteria, with only partial internal oversight and many budget lines that were either drastically over or underspent.<sup>33</sup> In May 2006, questions about transparency prompted the IMF to freeze \$40 million in new loans.<sup>34</sup>

Civil servants have been steadily impoverished by graft. There are an estimated 90,000 to 120,000 soldiers and 600,000 civil servants.<sup>35</sup> Their monthly base salaries range from \$50 for a janitor to \$77 for a doctor and \$111 for a judge.<sup>36</sup> In contrast, ministers receive monthly wages of \$4,000, while some directors of state-run companies earn \$25,000.<sup>37</sup> Low salaries have also led to brain drain, as many qualified officials take jobs with NGOs or the UN. A driver for the UN Development Program (UNDP), for example, makes between \$450 and \$750 monthly.<sup>38</sup>

Low wages combined with absence of oversight or sanctioning bodies has prompted many civil servants to extort money from the population to survive. A study conducted along trade routes in Equateur and Bandundu provinces showed that over 90 per cent of taxes had been arbitrarily created at the local level and were illegal. Only 4 per cent reached the national treasury.<sup>39</sup> This is both a burden on the local population and a drain on state resources.

## B. CUSTOMS OFFICE

The state-run Office of Customs and Excises (OFIDA) generates the most income of all fiscal services – \$348 million in 2005, 36 per cent of total revenue – but is

<sup>33</sup> “République Democratique du Congo: Suivi des dépenses relatives à la réduction de la pauvreté”, Joint mission by the IMF and World Bank, November 2004, p. iv.

<sup>34</sup> “Congo needs elections for new IMF deal – minister”, Reuters, 11 May 2006.

<sup>35</sup> Crisis Group interview, World Bank and EU officials, Kinshasa, November 2005. Real figures may be much lower. A recent audit of civil servants in Kinshasa discovered that around 70,000 of the 170,000 on the payroll did not exist.

<sup>36</sup> Crisis Group interview, administrative official, Kinshasa, May 2006. In 2003, the signatories of the peace deal agreed on a new salary scale for civil servants (the Mbudi Agreement), which provided for an almost ten-fold increase. The new salary scale was not respected. State employees do, however, often receive bonuses, and for judges these constitute the bulk of their income.

<sup>37</sup> African Economic Outlook, OECD, op. cit.

<sup>38</sup> Crisis Group interview, UNDP official, Kinshasa, May 2006.

<sup>39</sup> “Combating Low-level corruption on the Waterways in the Democratic Republic of Congo: Approaches from Bandundu and Equateur Provinces”, by Michael Brown, Philippe Ngwala, Albert Songo and Leonard Wande for Innovative Resources Management, October 2004.

also probably the greatest source of revenue loss.<sup>40</sup> Private consultants and the UN estimate that between 60 and 80 per cent of custom duties – \$870 million to \$1.7 billion – are not collected.<sup>41</sup> Loss of customs duties in the East is one of the most direct links between corruption and conflict, as militias finance their operations through taxes they collect at border crossings.

In Ituri, militias regularly clash over control of border posts, causing hundreds of deaths.<sup>42</sup> A UN expert panel investigating violations of the arms embargo revealed that customs duties helped fund creation of the Congolese Revolutionary Movement (MRC) in 2005, which has been the cause of widespread violence in Ituri. It estimated that \$4 million was embezzled or not collected by OFIDA in Ituri in the first ten months of 2005.<sup>43</sup>

In North Kivu, high ranking RCD officials are alleged to be complicit in embezzlement of duties in Goma.<sup>44</sup> Some officials there are linked to Laurent Nkunda’s militia, which has attacked the army numerous times since 2004.<sup>45</sup> The border crossing at Kasindi, 100 km north of Goma, where RCD-ML officials and Congolese army officers have been accused of embezzlement, has seen its revenues decrease from \$1 million to \$400,000 since 1996.<sup>46</sup>

Kasumbalesa in Katanga, the only export route to Zambia, is the site of large-scale smuggling of copper,

<sup>40</sup> “Rush and Ruin”, Global Witness, September 2004, p. 12; 2006 Congo Budget.

<sup>41</sup> “Report of the United Nations expert panel on the arms embargo in the Democratic Republic of the Congo”, 26 July 2005, UN S/2005/436, p. 15.

<sup>42</sup> Crisis Group Africa Report N°64, *Congo Crisis: Military Intervention in Ituri*, 13 June 2003; Crisis Group Africa Report N°84, *Maintaining Momentum in the Congo: The Ituri Problem*, 26 August 2004.

<sup>43</sup> “DR Congo militias increase attacks in Ituri”, Agence France-Presse, 29 March 2006; “Thousands of civilians used as human shields in Ituri”, OCHA press release, 2 March 2006; “Report of the United Nations expert panel on the arms embargo in the Democratic Republic of the Congo”, UN S/2006/53, 27 January 2006, p. 14.

<sup>44</sup> Crisis Group interview, RCD-ML officials, Goma, December 2005.

<sup>45</sup> The UN panel suggests that money from customs and immigration goes to financing the NGO Everybody for Peace and Development, which is close to North Kivu Governor Eugene Serufuli. This NGO has helped transport weapons and soldiers for Nkunda and RCD dissidents. Crisis Group interviews, RCD officials, Goma, December 2005. UN expert panel report, op. cit., 27 January 2006, p. 15.

<sup>46</sup> Crisis Group interviews, RCD-ML officials, Goma, December 2005; “Nord-Kivu: La fraude cause de la baisse de recettes douanières à Kasindi”, Radio Okapi, 18 February 2005, [www.radiookapi.net](http://www.radiookapi.net).

cobalt and other minerals. A study by Global Witness concluded that the 13,720 tons of cobalt and copper concentrate exported legally through Kasumbalesa each month is likely only a fraction of actual exports.<sup>47</sup> With cobalt prices around \$35,000 per ton and the export tax on cobalt 1 per cent, the estimated monthly loss is in the millions of dollars.

A review by the independent British consultants Crown Agents revealed a weak and poorly structured customs office suffering from “antiquated practices and procedures, lack of infrastructure and equipment, excessive bureaucracy, overstaffing of posts, endemic corruption, smuggling and the widespread acceptance of malpractice, such as facilitation payments and undervaluation or mis-description of goods”.<sup>48</sup> State-licensed private intermediaries are a key part of the corruption chain, arranging for goods to be undervalued or smuggled. The World Bank has helped reform procedures at the most profitable customs post, the port of Matadi. Creation of the “guichet unique” there in 2003, replacing at least twelve separate payments by one, helped increase revenues by 280 per cent between 2002 and 2005 and highlighted the loss through proliferation of taxation agencies.<sup>49</sup> The World Bank plans a similar initiative at Kasumbalesa.

While this is welcome, centralising duties will not eliminate corruption. Greater oversight is needed over OFIDA by the state auditor, and courts must prosecute those accused of corruption. In addition, there is an urgent need at border crossings for truck scales (weigh bridges) and laboratory equipment to perform mineral analysis. Ideally, OFIDA’s border performance should be subjected to regular spot checks by an independent firm.

## C. MINING AND FORESTRY

### 1. Corruption in mining

The role of natural resources in fuelling conflict in the Congo has been amply documented.<sup>50</sup> The Congo used to

be the world’s largest producer of cobalt and one of the main suppliers of industrial diamonds and copper. It is also rich in gold, tin, uranium, zinc and silver. While mining made up 80 per cent of GDP at independence, by 1990 the sector had collapsed due to mismanagement and the decline in world copper prices. In 2004, it accounted for only some 9 per cent of GDP and less than 1 per cent of revenue.<sup>51</sup> Copper production – once the bedrock of the economy – shrunk from 465,000 tons in 1990 to 19,000 tons in 2002.<sup>52</sup> Industrial mining and refining has all but halted, and much of the infrastructure is run-down or looted. By the beginning of the 1996 war the only parastatal still producing significant amounts was the diamond company Société Minière de Bakwanga (MIBA), with annual production of \$70 million.<sup>53</sup>

To raise money for the war, all belligerents sold minerals to, and signed mining contracts with, multinational corporations and smaller mining entrepreneurs. In 2000, the UN mandated a panel of experts to look into the illegal exploitation of natural resources. According to its 2001 to 2003 reports and subsequent NGO reports, the belligerents made money in mining by:<sup>54</sup>

- offering monopolies in exchange for kickbacks;<sup>55</sup>
- embezzling from state-run companies;<sup>56</sup>
- creating joint ventures in which politicians were shareholders;<sup>57</sup> and

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the Congo, April 2001 (S/2001/357), October 2002 (S/2002/1146) and October 2003 (S/2003/1027).

<sup>51</sup> *Rise and Decline*, op. cit., p. 295; “Selected Issues and Statistical Appendix”, op. cit., pp. 47, 51.

<sup>52</sup> “Document de Stratégie pour la Réduction de la Pauvreté, Draft No 3 pour Discussions”, Ministry of Planning, December 2005, pp. 73-74.

<sup>53</sup> George Coakley, “The Mineral Industry of Congo-Kinshasa, 1997”, U.S. Geological Survey.

<sup>54</sup> UN expert panel report, April 2001, op. cit., pp. 32-33.

<sup>55</sup> The most renowned case involved the grant of a monopoly to International Diamond Industries (IDI) for exporting diamonds in 2000 in return for \$20 million dollars. The agreement was revoked within months but the founder of IDI, Dan Gertler, was awarded rights to buy 88 per cent of the Congo’s diamonds at a discount of 3 per cent for four years. In return, he gave MIBA a \$15 million interest-free loan. Similarly, the RCD rebellion gave a coltan export monopoly to the financier and arms dealer Aziza Gulamali. Lutundula Report, op. cit., pp. 52-55.

<sup>56</sup> Between 1999 and 2001, 54 per cent of taxes from MIBA, \$35 million, were given in cash to officials working for the company, who allegedly shared it with political patrons. One of Laurent Kabila’s ministers admitted to getting \$2.3 million from MIBA in 1999 for war expenses. Ibid, pp. 64-65.

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<sup>47</sup> “Rush and Ruin”, Global Witness, op. cit., p. 11.

<sup>48</sup> UN expert panel report, 25 January 2006, op. cit., pp. 24-25.

<sup>49</sup> Crisis Group interview, Gabriel Mwepu Numbi, director of OFIDA, Matadi, November 2005.

<sup>50</sup> For information on mining in the Congo, see “The Same Old Story: A Background Study on Natural Resources in the Democratic Republic of the Congo”, Global Witness, June 2004; “Report of the Parliamentary Commission on the Examination of the Validity of Contracts Signed During the 1996/7 and 1998 Wars”, known as the Lutundula Report, at [www.freewebs.com/congo-kinshasa](http://www.freewebs.com/congo-kinshasa); three reports of the UN expert panel on the illegal exploitation of natural resources in

- taking kickbacks on numerous contracts with terms unfavourable to the state.

Similar rackets continue to deprive the state of valuable resources. Between \$80 million and \$100 million in diamonds are believed to be smuggled out of the country every year.<sup>58</sup>

In the former rebel-held territories, the focus is on gold and cassiterite, a mineral refined to make tin, the price of which tripled between 2002 and 2004. Until 2005, much of the mineral came from artisanal mines in areas controlled by the former RCD rebels in North Kivu. Cassiterite is transported to Goma, then to Rwanda for refining. Traders benefit from close links to RCD officials in Goma and Rwandan authorities across the border. As recently as June 2004, Rwandan army officers were reported to be deployed in the Walikale area of North Kivu to organise shipments.<sup>59</sup> The loss to the state is hard to estimate but several sources indicate that little revenue from cassiterite moving through Goma reaches Kinshasa.<sup>60</sup> According to Congolese data for 2004, production in North and South Kivu was 7,591 tons worth \$7.6 million, and there have been numerous reports of smuggling involving Congolese army officers through the border posts in Kasindi, Bukavu and Goma.<sup>61</sup> Following the failure of a mutiny in North Kivu in late 2004, the former RCD rebels lost control of many cassiterite mining areas, although trade networks with local businessmen remain.

Gold smuggling has been equally troublesome in north eastern Ituri, on the Ugandan border. Although the Ugandan army withdrew from the Congo in 2003,

<sup>57</sup> In return for their support in the war, Laurent Kabila created joint ventures with Zimbabwean partners. Sengamines was an example. Founded in 2000 with equal Zimbabwean and Congolese shares, it controlled 45 per cent of MIBA's concessions in return for an unknown sum of money and had broad tax exemptions. Between 2000 and 2004, it produced 2,524,034 carats of diamonds, which, depending on quality, could be worth between \$12 million and \$300 million. Ibid, pp. 31-49.

<sup>58</sup> Crisis Group telephone interview, Global Witness, April 2006.

<sup>59</sup> For more information on cassiterite and conflict in North Kivu, see Crisis Group Africa Report N°91, *The Congo's Transition is Failing: Crisis in the Kivus*, 30 March 2005; and "Under-Mining Peace – Tin: The explosive trade in cassiterite in eastern DRC", Global Witness, June 2005.

<sup>60</sup> Under-Mining Peace, op. cit., p. 31; Crisis Group interviews, provincial officials, Goma, January 2005.

<sup>61</sup> Under-Mining Peace, op. cit., pp. 28-30; ex-RCD Lieutenant Colonel Rama was punished in Bukavu for smuggling cassiterite in 2005; see also "Nord-Kivu: La fraude, cause de la baisse de recettes douanières à Kasindi", Radio Okapi, 18 February 2005, [www.radiookapi.net](http://www.radiookapi.net).

its officers have continued to support Congolese proxy militias, which in turn have killed thousands of civilians while fighting for control of gold mines. Human Rights Watch has argued that the "chain of Congolese middlemen, Ugandan traders, and multinational corporations forms an important funding network for armed groups operating in the north eastern Congo".<sup>62</sup>

According to the Congolese government, gold exports in 2004 were only \$7.4 million, in stark contrast to the \$58 million in Congolese gold that the UN estimated went through Uganda that year. Uganda itself has traditionally produced less than \$50,000 a year in gold.<sup>63</sup>

After the Congolese army took control of the main gold mining town of Mongwalu in 2005, it, too, reportedly became involved in gold smuggling. Officers, including the Ituri commander, General Bob Ngoy, have allegedly helped businessmen smuggle significant amounts of gold out from Mongwalu to Kigali – a UN source suggested between \$2 million and \$6 million in two shipments alone.<sup>64</sup> Elsewhere in Ituri, the MRC militia founded in July 2005, allegedly with Uganda's support, controls important border crossings.

## 2. Political interference

Minerals are the largest Congolese export, over 60 per cent of the total,<sup>65</sup> and on paper the situation in the mining sector has improved slightly since Joseph Kabila came to power. In 2002 the World Bank helped draft new mining and investment codes and funded a retirement scheme for 10,000 employees to streamline the bloated Gécamines workforce.

In practice, however, the sector remains deeply troubled. While most leadership positions in the state-run enterprises were shared out between the parties to the peace deal in late 2005, Kabila's party was slow to relinquish control over Gécamines and MIBA (the largest state-run mining companies). More importantly, the presidency kept control over new contracts and concessions. All state-run companies are still regulated by a Mobutu decree that deprives managers of these companies of any real power<sup>66</sup> and gives ultimate

<sup>62</sup> "The Curse of Gold", Human Rights Watch, June 2005, p. 3.

<sup>63</sup> UN expert panel report on the arms embargo, S/2005/436, 26 July 2005, pp. 20-21.

<sup>64</sup> Crisis Group interview, Human Rights Watch official, Nairobi, April 2006.

<sup>65</sup> "Selected Issues and Statistical Appendix", op. cit., p. 86.

<sup>66</sup> The law is no. 78/002. See "The State vs. the People: Governance, mining and the transitional regime in the Democratic Republic of Congo", Fatal Transactions and

authority for all state-run companies to the president and the ministries. Congolese legal experts believe there was greater transparency in mining under Mobutu in the 1980s, as the state-run companies and ministries negotiated most of the contracts which are now often handled through the presidency.<sup>67</sup>

A letter allegedly sent by Kabila's party chairman in Lubumbashi to the national headquarters and leaked to the press gives a good summary of how mining in the province has been politicised. It expressed appreciation for the generous donations of six Gécamines directors and the current and previous governors of Katanga and named several other prominent businessmen and politicians, the vice governor of the central bank and the director of the mining parastatal Office de Mines de Kilo Moto (OKIMO) as well.<sup>68</sup> While such donations are not illegal, the letter implied that some may have been given in the name of the institutions and not privately.<sup>69</sup>

Mining sector reform, led by the World Bank, was supposed to lead to privatisation, eliminate political interference and promote efficiency. The World Bank pushed for the properties of state companies like Gécamines to be sold through open tenders. This has not happened. Gécamines reached deals with private firms in an opaque process that granted companies very favourable terms. Hence, while the logic of privatisation was to reduce corruption and political meddling in the mining sector, it actually accentuated the problems.<sup>70</sup> Given the Congo's risky investment climate, it is difficult to evaluate how much better a deal could have been struck, but the lack of open tenders has fuelled suspicions of kickbacks and corruption. The sale of significant state assets requires approval of the council of ministers, presided over by the president, so the process was subject to political interference. The Belgian International Peace Information Service (IPIS) concluded from its interviews with international mining advisers that:

The parastatal directors usually do most of the negotiating of the joint venture agreements [between

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International Peace Information Service (IPIS), March 2006, pp. 34, 46.

<sup>67</sup> Crisis Group electronic communication, Congolese legal expert, May 2006; Crisis Group interviews, international mining lawyer and former high-ranking Mobutu official, Kinshasa, June 2006.

<sup>68</sup> "The State vs. the People", op. cit., pp. 72-73.

<sup>69</sup> These officials later stated that these donations were private. Crisis Group interview with local NGOs, Kinshasa, June 2006.

<sup>70</sup> International businessmen in Kinshasa have corroborated these allegations. Crisis Group interview, Kinshasa, July 2005.

the state-run mining companies and private corporations], but they receive directives from Kinshasa officials, often the president himself, or advisors in his entourage....A recurrent element in negotiations allegedly is the Congolese officials' demands for kickbacks, which, if granted, evidently lead to conditions that are disadvantageous to the state and the parastatal.<sup>71</sup>

Gécamines itself is beholden to political interests. Under the terms of the peace agreement, the ministry of mines was supposed to be controlled by the opposition. However, just before the transitional government came to power, Kabila created a Permanent Committee for the Restructuring of Gécamines, which transferred administrative control to the presidency.<sup>72</sup>

In an effort to block political meddling in the granting of new concessions, the World Bank pressured the government to create a mining registry that would deal with applicants on a first-come-first-served basis. The government opened the registry in April 2003 as part of mining sector reforms that began with the drafting of a new code in 2002. To expedite applications, the mining registry was given a legal deadline of one week to evaluate a request before sending it on to the ministry of mines.

Instead of reducing political interference, however, the mining registry became part of the problem. Its first director was Ambroise Mbaka, a close Kabila associate. He did not respect the first-come-first-served principle, and political meddling in the granting of concessions was evident.<sup>73</sup> Mbaka was dismissed under World Bank pressure but in November 2005 Jean-Felix Mupande, another close presidential associate, was named his successor.<sup>74</sup>

### 3. The Lutundula Commission

The peace deal signed in South Africa in 2002, which established the transitional government, provided for a parliamentary commission to review all contracts signed during the two wars to make sure they conformed with Congolese law and their benefits accrued to the state. The commission, headed by an opposition parliamentarian, Christophe Lutundula, faced numerous

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<sup>71</sup> "The State vs. the People", op. cit., p. 34.

<sup>72</sup> Ibid, p. 46.

<sup>73</sup> Ibid, p. 69. But according to various sources, the true origin of the political meddling was the presidency. See "Comment Evariste Boshabe a tué Ambroise Mbaka Kawaya", *Le Soft*, 9 June 2004; Crisis Group telephone interview, country specialist, Johannesburg, April 2006.

<sup>74</sup> "The State vs. the People", op. cit., p. 69.

difficulties, in particular obstruction by the former belligerents. Parliamentarians from Kabila's party repeatedly tried to block its creation in parliament, and some of the former belligerents refused to answer its requests for information.<sup>75</sup> The commission's report, submitted to parliament in June 2005, suggested that the management of natural resources had worsened during the transition and recommended that many contracts be reviewed.<sup>76</sup> It shed light on past abuses and identified serious flaws in ongoing operations:

- There are no independent evaluations of the value of the concessions, making the bidding process arbitrary and allowing authorities to undervalue concessions.
- Partners are often incorporated offshore with no liability; if the venture goes bankrupt, the Congolese firm is left holding the debt.
- Partners often do not respect the terms of their agreement, provide no social services and do not process the raw minerals in the country, as required by law; as a consequence, the Congo loses substantial value-added taxes from refining.<sup>77</sup>
- Some companies, including large ones such as Sengamines and Anvil Mining, pay few or no taxes due to exemptions granted by their contracts.<sup>78</sup>

The report stresses that unless the terms of existing contracts are altered, the mining sector will bring little profit to the state. In the meantime, Gécamines, which from 1967 to 1985 contributed between 20 per cent and 30 per cent of national revenue, has gone bankrupt. In 2004, it produced a paltry \$400,000 in state revenues.<sup>79</sup> By 30 December 2005, when the French company Sofreco was given co-management, most of its most valuable properties had been bartered away.<sup>80</sup>

The Lutundula Report urged that no new concessions be given out or mining operations privatised until a new government was in power after elections and recommended that all contracts signed since the beginning of the transition be cancelled. According to Human Rights Watch, however, grants given for mining exploration increased four-fold in the second

half of 2005.<sup>81</sup> Parliament has not discussed the report and is unlikely to do so before the elections. There has also been little pressure for discussion from embassies in Kinshasa, fuelling rumours of international complicity with mining entrepreneurs.<sup>82</sup>

Two deals in particular attracted the attention of mining experts. In August 2005, President Kabila approved contracts between Gécamines and two young companies: Katanga Mining, Ltd. and Global Enterprises Corporate. They are owned in part by George Forrest and Dan Gertler, respectively, who have been mentioned in a UN report on the illegal exploitation of natural resources.<sup>83</sup> Lutundula, as well as an independent study commissioned by the World Bank in 2002, recommended that these contracts – under negotiation at the time – be frozen and renegotiated through a transparent tender process.<sup>84</sup> The concessions contain some of the country's largest copper and cobalt reserves. A group of European NGOs protested the contracts and hired a private law firm specialised in mining contracts to investigate them. The firm concluded that numerous aspects of the contracts did not conform to standard mining practice, for example the lack of an international tender process and remuneration reserved for Gécamines so low that it is unlikely to profit from the deal and could possibly go into debt.<sup>85</sup>

If the government now tries to renegotiate or cancel existing contracts, it might be sued for violating international investment conventions, which could lead to international arbitration. In this case, however, the government could argue that the conditions in which the contracts were signed violated domestic law, in particular clauses in the mining code requiring an

<sup>75</sup> Ibid, pp. 24-25. MLC, RCD-National and PPRD officials refused to respond to commission queries.

<sup>76</sup> Lutundula Report, op. cit., p. 270.

<sup>77</sup> Congolese law requires companies to use domestic refineries if feasible. Several could be used.

<sup>78</sup> Lutundula Report, op. cit.

<sup>79</sup> "The State vs. the People", op. cit., p. 33.

<sup>80</sup> Ibid, p. 45.

<sup>81</sup> "Democratic Republic of Congo: Elections in Sight: 'Don't Rock the Boat'?", Human Rights Watch, 15 December 2005, p. 14.

<sup>82</sup> Crisis Group interviews, embassies and parliamentarians, Kinshasa, November 2005 to April 2006.

<sup>83</sup> UN expert panel report on illegal exploitation of natural resources, April 2001, op. cit., p. 33 (Gertler); Ibid, October 2002, pp. 8-11, 35-42 (Forrest). Katanga Mining, Ltd is a joint venture owned by the Belgian George Forrest and the Canadian Arthur Ditto, while Global Enterprise Corporate is owned by the Israeli Dan Gertler.

<sup>84</sup> Lutundula Report, op. cit., pp. 175-176.

<sup>85</sup> Memorandum from Rights and Accountability in Development (RAID) of 20 February to CIAT, World Bank, and the transitional government. Under the terms of the contracts, it can be assumed that profits will first reimburse the private partners for the loans with which they financed the project. As operation and management costs were not specified, RAID believes that even after the loan has been paid back, there will be little to no profit for Gécamines, as the managing partners could exaggerate operating costs. See [http://www.raid-uk.org/docs/DRC\\_contracts/Memo\\_DRC\\_Contracts.pdf](http://www.raid-uk.org/docs/DRC_contracts/Memo_DRC_Contracts.pdf).

open tender to be issued, and deadlines for the start of exploitation. The World Bank has commissioned a legal audit of the mining sector after which it will be better able to advise the incoming government. Wherever the government can renegotiate unfavourable contracts, it should do so. It should also make sure contract terms and the requirements of the mining code, in particular the in-country processing of minerals and provision of social services to the local population, are implemented. Congolese institutions such as the mining registry and the mining inspectorate (a body within the ministry responsible for local oversight) need to be given the resources to fulfil their mandates. At the same time, parliament and anti-corruption bodies must intensify oversight and inspection of natural resources.

#### 4. Forestry

The Congo contains approximately half Africa's rain and humid forests.<sup>86</sup> Nonetheless, due to the poor investment climate and the inaccessibility of many concessions during the war, tax revenues on logging were only some \$2 million in 2002, less than 1 per cent of the national total.<sup>87</sup> Smuggling is a major problem; there are indications actual timber export is seven times higher than official figures.<sup>88</sup> But the sector is undergoing a revival of sorts; many concessions inaccessible during the war, primarily in Province Orientale and Equateur, are again being logged.

The EU and the Ministry of Environment reviewed the forestry sector in 2004 and concluded that the Congo was producing only one-sixtieth of its potential. Due to the very low concession fees, companies occupy much more land than they actively use, hoping to sublease to other investors once there is economic and political stability.<sup>89</sup> Despite pressure from the World Bank and other donors, forestry taxes are only \$0.20 per hectare per year, far lower than elsewhere in Africa.<sup>90</sup>

In 2002, President Kabila declared a moratorium on new concessions and promulgated a forestry code. Concessions were reviewed and 163 contracts for 25 million hectares cancelled. However, subsequent studies indicate fifteen million hectares of new concessions were granted and 2.4 million hectares reinstated.<sup>91</sup> Revenue services

<sup>86</sup> Crisis Group interview, forestry expert, Paris, April 2006.

<sup>87</sup> National revenues in 2002 were around \$431 million. For the 2002 budget, see [www.minifinrdc.cd](http://www.minifinrdc.cd).

<sup>88</sup> Crisis Group interview, forestry expert, Paris, April 2006.

<sup>89</sup> Ibid.

<sup>90</sup> Rainforest Foundation, Friends of the Earth letter to Director of the World Bank, 2 December 2006, p. 6.

<sup>91</sup> Nikki Reisch (Bank Information Centre), Michelle Medeiros (Friends of the Earth) and Shannon Lawrence (Environmental

failed to find seven companies with concessions totalling over one million hectares whose postal addresses and telephone numbers were fictitious.<sup>92</sup>

A year-long legal review of all logging contracts is in progress in order to cancel those that are flawed. The World Bank is funding an independent observer for this process but international and local NGOs have voiced concerns that, given the limited time frame and prospect of political manipulation, the review will not be thorough and will not take into consideration local community interests. Only two of the seventeen seats on the responsible inter-ministerial committee are reserved for civil society and one for a local community representative. Government officials occupy the remaining seats.<sup>93</sup>

As in other sectors, the World Bank's strategy relies on fostering development by stimulating private sector growth and investment, assuming that these will raise the standard of living for the entire country. The weakness of government institutions, however, has badly limited economic returns at the community level. While 40 per cent of forestry taxes are supposed to go to local communities for development, this rarely happens.<sup>94</sup> In addition, local and international NGOs have complained that the government and the World Bank have not fully considered the traditional land rights of forest-dwelling communities.<sup>95</sup> It is crucial that all voices be heard as the government prepares to demarcate the areas available for industrial logging and community use.

#### D. THE ARMED FORCES

##### 1. Corruption in the army: “Operation retour”

Corruption in the armed forces has been particularly detrimental. It has been relatively easy for some commanders to embezzle their troops' salaries. In December 2005, a foreign military expert close to the defence ministry suggested that \$3.5 million to \$5.8 million was being embezzled monthly from the \$8 million

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Defence), “The World Bank in the Democratic Republic of the Congo”, update March 2006. Kabila issued another decree in October 2004, revoking the illegal concessions.

<sup>92</sup> Crisis Group interview, forestry expert, Paris, April 2006.

<sup>93</sup> “Visit to the Democratic Republic of Congo”, Bank Information Centre, Environmental Defence, April 2006, p. 4.

<sup>94</sup> Ibid, p. 3

<sup>95</sup> “New Threats to the Forests and Forest Peoples of the Democratic Republic of Congo”, The Rainforest Foundation, briefing paper, February 2004, p. 4. The World Bank says it will consider local interests in the zoning exercise, and communities are ultimately better off with logging and economic development.

set aside to feed and pay soldiers.<sup>96</sup> The troops, who live in terrible conditions, in turn harass and extort the local population. The army is itself the largest single threat to civilians in the country, while the police in many areas are still seen as a menace. Embezzlement has decreased but not ended in 2006 thanks to the introduction of a payroll mechanism independent of the chain of command instituted by the EU in January and better surveillance by Congolese authorities but the army continues to be plagued by lack of troop discipline in many parts of the country.<sup>97</sup>

Officers receive paltry wages compared to politicians. A general's monthly salary is around \$80, compared to the minister's \$4,000 and the parliamentarian's \$1,500. A colonel complained: "We spilled our blood so our politicians could get a place in government – is this all we get in return?"<sup>98</sup> The low wages and still poor internal control mechanisms give rise to embezzlement schemes, the most notorious of which, called "operation retour", is practiced in both the army and the police.<sup>99</sup> When the commanding officer of a unit receives the payroll, he sends a percentage – often 10 per cent – back to his commander.

According to interviews with senior Congolese and foreign military officers, this system is practiced from the head of the Joint Chiefs of Staff to brigade commander level, although now at decreasing levels due to payroll reforms.<sup>100</sup> An example was reported in the Ituri police in 2005. When Major Banga wi Miseka of the Rapid Intervention Battalion was arrested in July after stealing \$11,000 of the payroll, a trail of corruption was revealed that led to the upper echelons of the force. A military court investigation discovered Western Union receipts indicating he sent back to Kinshasa \$80,000 of the \$120,000 he had received for wages, medicine and logistics.<sup>101</sup>

Corruption has left little for average soldiers. For the first two transition years, they were to be paid \$12 in

wages and receive an additional \$8 for food a month. In early 2006, they were given a raise to \$24 a month, still well below the poverty line. There are few if any provisions for shelter and medical care. The fourth integrated brigade had 236 cholera cases soon after its deployment to Ituri.<sup>102</sup> Crisis Group found that in two of three units visited in South Kivu and Katanga, troops had either not been paid in three months or had received less than half what they were owed.<sup>103</sup>

Military operations are business opportunities for some commanders. An example was the Kanyabayonga crisis of November 2005, when 10,000 troops were sent east to deal with RCD dissidents in North Kivu. As much as \$30 million was likely embezzled during the operation.<sup>104</sup> The government chartered airplanes in which both President Kabila and Vice President Bemba owned shares and flew food rations from the Kivus to Kinshasa and then back east again.<sup>105</sup> Many soldiers were not paid or fed, which led to mass desertions and the looting of villages.

Perhaps most costly is the continued bloating of the payroll with ghost soldiers. When the transition began, all former belligerents exaggerated their troop strength to gain important political and military positions as well as to embezzle funds. The army payroll for the first two years was 340,000 – at least 210,000 of whom did not exist. South Africa began an army census in 2005 but has not released results. While military experts estimate the army has between 90,000 and 120,000 soldiers, salaries and food rations for roughly double the actual number – worth some \$2.5 million a month – were embezzled.<sup>106</sup> While payroll reform has made for marked improvements, the census of the armed forces should be made publicly available to serve as a basis for rational restructuring of the security forces and the elimination of ghost soldiers.

The above machinations have had a demonstrably negative impact on discipline. A UN commander described a visit to a company in South Kivu during a joint UN/Congolese offensive against the FDLR Rwandan rebel group: "The last position on the frontline was manned by a lieutenant who only had flip-flops on. He told me his last meal had been a day and a half ago and they had run

<sup>96</sup> Crisis Group interview, military expert, Kinshasa, October 2005. Crisis Group Report, *Security Sector Reform in the Congo*, op. cit.

<sup>97</sup> The mechanism is starting with the integrated brigades and is meant to include all army units by the end of the year. Crisis Group interview with independent military experts, Kinshasa, June 2006

<sup>98</sup> Crisis Group interview, Bukavu, December 2005.

<sup>99</sup> Crisis Group interview, Congolese army commander, Bukavu, April 2006.

<sup>100</sup> Crisis Group interviews, Kinshasa and Bukavu, November and December 2005.

<sup>101</sup> Pascal Kambale, "Corruption dans l'armée et les forces de l'ordre : coupez la tête, pas le bras", *Le Phare*, 26 September 2006.

<sup>102</sup> "DRC-East Africa: 236 soldiers infected with cholera", IRIN, 26 August 2005.

<sup>103</sup> The visits were in Sange and Bukavu, South Kivu, in December 2005 and April 2006 and in Lubumbashi, Katanga in July 2005.

<sup>104</sup> "Elections in sight", op. cit., p. 10.

<sup>105</sup> Crisis Group Report, *The Congo's Transition is Failing*, op. cit., p. 15.

<sup>106</sup> Crisis Group Report, *Security Sector Reform in the Congo*, op. cit.

out of clean water".<sup>107</sup> The military commander of Katanga, General Widi Divioka, was dismissed after he used military trucks and trains for private trade, preventing them from bringing food to his troops. More than twenty died of hunger in the Kamina camp, allegedly due to his mismanagement.<sup>108</sup>

Left to their devices, soldiers often turn on the local population to survive:

- When the army deployed the 63<sup>rd</sup> brigade to central Katanga to attack the Mai-Mai in November 2005, \$250,000 destined for the operation allegedly went missing.<sup>109</sup> According to international humanitarian officials, soldiers went to the camps of displaced people (IDPs) they were supposed to protect to extort money and food.<sup>110</sup>
- In February 2006, 700 soldiers from Aba in Province Orientale ransacked the town of Aru, raping and abusing civilians.<sup>111</sup>
- A crime wave broke out in Bukavu in March and April 2006 after soldiers were deployed around the town.
- A special forces unit mutinied against its commander in Ituri during an operation against a local militia, accusing him of stealing their pay.<sup>112</sup>

In February 2006, the UN mission (MONUC) gave the government a list of abuses committed by the army during joint operations, including dozens of cases of executions, rapes and pillaging. MONUC has threatened to stop supporting the army unless these crimes are addressed<sup>113</sup> but little has been done to remedy the situation.

## 2. Control mechanisms: The inspector general and EUSEC

The army has an internal control mechanism – an inspector general (*Inspection générale des forces armées*), responsible for overseeing financial management of the armed forces as well as the use and maintenance

of equipment.<sup>114</sup> His legal mandate is ambiguous, as the Ministry of Defence has not yet submitted a draft law to the council of ministers, as required by the Law on the Organisation of the Armed Forces. However, Kabila named General Olenga, a close associate of the presidential military establishment, to the post in 2004. Since then and despite numerous reports of corruption in the armed forces, he has not ordered a single audit or investigation.<sup>115</sup> His office is poorly funded, and he lacks the means to carry out his tasks.

The second control mechanism is the military court system. Military justice was reformed in 2002 to address arbitrary sentencing and abuse of due process. However, the High Military Court lacks a legal library and a courtroom and has not tried a serious crime since its inception in 2003.<sup>116</sup> Courts-martial in the provinces are mostly no better off. Crimes committed by soldiers ranging from embezzlement to rape go unpunished. Commanders such as Jerome Kakwatu from Ituri and Gabriel Amisi from the former RCD continue to serve although the UN and human rights groups have compiled extensive documentation on their actions.<sup>117</sup>

Military tribunals have convicted several officers in 2006, including in a trial in Equateur during which legislation that reflected many of the provisions of the Rome Statute of the International Criminal Court (ICC) was applied to sentence seven officers to life in prison for mass rapes.<sup>118</sup> Thomas Lubanga, a prominent Ituri warlord, has been indicted by the ICC and transferred to The Hague for trial. These trials are welcome first steps but the majority of crimes still go unpunished.

Another means for promoting accountability in the military is a payroll mechanism proposed by the EU's military advisory mission to the Congo, EUSEC. It has put management of the payroll for the integrated brigades in the hands of EU military experts, 27 of whom are being inserted into the army administrative

<sup>107</sup> Crisis Group interview, Bukavu, April 2006.

<sup>108</sup> "Congo general accused as soldiers die of hunger", Reuters, 17 March 2006.

<sup>109</sup> Crisis Group interview, senior Congolese administrative official, Lubumbashi, November 2005.

<sup>110</sup> Crisis Group telephone interview, UN official, February 2006.

<sup>111</sup> Alphonse Maindo, "Creating an Integrated National Army in the Democratic Republic of the Congo", Netherlands Institute of International Relations, April 2006, p. 3.

<sup>112</sup> Crisis Group interview, UN official, Kinshasa, February 2006.

<sup>113</sup> "UN says won't support Congo army if abuses continue", Reuters, 8 February 2006.

<sup>114</sup> The body was created by Article 118 of Law no. 4/023 on the Organisation of the Defence and the Armed Forces, 12 November 2004.

<sup>115</sup> Crisis Group interviews, international and Congolese military experts, Kinshasa, May 2006.

<sup>116</sup> "S.O.S. Justice", Global Rights, August 2005, p. 43.

<sup>117</sup> For example, "Ituri: Covered in Blood", Human Rights Watch, July 2003; "Ituri: A Need for Protection, a Thirst for Justice", Human Rights Watch, October 2003; "Congo: Kisangani Residents Again Under Fire", Human Rights Watch, May 2002; "Eastern Congo Ravished: Killing Civilians and Silencing Protest", Human Rights Watch, May 2000.

<sup>118</sup> "Songo-Mboto: 7 soldats condamnés pour crime contre l'humanité", www.radiookapi.net, 13 April 2006. The Congolese state was also asked to pay \$5,000 in damages to the rape survivors.

structure to handle payments down to the brigade level. However, EUSEC is small and depends heavily on MONUC for logistics. Cooperation between the two bodies has reportedly been inconsistent.<sup>119</sup> For the mechanism to be sustainable – EUSEC's mandate is not indefinite – internal control and auditing within the army need to be strengthened and given adequate resources. Above all, commanders who embezzle funds must be punished. There is much anecdotal evidence of such embezzlement but investigations are exceedingly rare.

## **IV. STATE OVERSIGHT: WEAKNESS AS A STRATEGY**

Institutions that are supposed to serve as checks and balances on the executive are often under-funded and weak. Keeping them that way is a political strategy in Congo.

### **A. PARLIAMENT**

#### **1. Inadequacies of the transition parliament**

The transition parliament included a national assembly with 500 deputies and a senate with 120 senators. The peace deal defined power-sharing in these bodies, dividing the seats between the signatories.<sup>120</sup> Permanent commissions were formed to draft and study laws, the most important of which dealt with political, legal and administrative matters. Ad hoc commissions of inquiry were also established, such as the Lutundula Commission (war-time contracts) and the Bakandeja Commission (audit of state-run enterprises).

Donor support was crucial to the functioning of these commissions, which often lacked offices, administrative staff or legal experts. In the Commission on Political, Administrative and Legal Affairs, for example, the U.S. Agency for International Development (USAID) funded consultants to provide legal expertise, while other donors gave office equipment and paid communication costs. Many parliamentarians showed little interest in attending sessions or drafting laws. They were often indifferent to the nuances of the important bills on citizenship, amnesty and elections they approved and skipped training sessions provided by donors.<sup>121</sup> The result was a legal process with disappointingly little Congolese ownership.

The transition parliament spent relatively little time overseeing the executive branch. It was authorised under the old constitution to question ministers and launch commissions of inquiry into their activities. However, a two-thirds majority in the national assembly was needed to sanction a member of government, and the factionalised nature of the old parliament made this virtually impossible. For the president and vice presidents,

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<sup>119</sup> Crisis Group interview, international military adviser, Kinshasa, May 2006.

<sup>120</sup> Each main political group – RCD, MLC, PPRD, the political opposition and civil society – obtained 94 deputies and 22 senators. The RCD-ML was given fifteen deputies and four senators, the Mai-Mai ten deputies and four senators, and the RCD-N five deputies and two senators. “Accord Global et Inclusif”, Annex 1.

<sup>121</sup> Crisis Group interview, donors, Kinshasa, December 2005.

a three-fourths majority was needed.<sup>122</sup> The former belligerents, each with 94 seats in the national assembly, rarely agreed and did not want to set a precedent for their own ministers by pressing charges against others. In a telling incident, Minister of Justice Kisimba Ngoy at first refused to appear before parliament and then came only to declare that “even if there is an evaluation, the national assembly cannot overthrow the government”.<sup>123</sup> The new constitution is an improvement, allowing an absolute majority to sanction a member of government and two thirds to press charges against the president or prime minister.<sup>124</sup>

Commissions of inquiry were few and poorly funded, forced to ask the executive for additional money which was rarely received, though donors helped some, like the one headed by Lutundula. Others, like the Bakandeja audit of state-run companies, had to raise their own funds.<sup>125</sup> Administration of parliament was weak, with five different accounting systems producing a confusion of data.<sup>126</sup>

The executive undermined the transition parliament, eroding the separation of powers. In July 2005, Kabila turned down a request for an extraordinary session of parliament to discuss the budget. In December 2005, after parliament had passed an amnesty that would have freed the assassins of his father, Laurent, he sent the law to the Supreme Court, which interpreted it so as to exclude assassination of a president. In February 2006, the Supreme Court ruled – this time allegedly upon Vice President Bemba’s prompting – that all parliamentarians who had left their parties during the transition could be replaced by their parties, despite clear provisions in the constitution and internal legislative regulations that they could stay for the entire transition.<sup>127</sup>

## 2. The weakness of the incoming parliament

Oversight of the executive is a vital parliamentary task. As argued by the State Failure Task Force, which produced a comparative study across 97 post-conflict countries, there is a strong correlation between a weak

<sup>122</sup> Transition constitution, Articles 141-144. The president and vice presidents were only liable for treason, corruption or intentional violation of the constitution.

<sup>123</sup> “Le ministre Kisimba Ngoy indésirable au parlement”, *La Conscience*, 2 November 2005. Kisimba Ngoy later apologised for the tone of his comments and agreed to answer questions.

<sup>124</sup> Transition constitution, Article 166.

<sup>125</sup> “Commission d’examen des rapports d’audit des entreprises publiques – rapport final”, national assembly document, 20 November 2004.

<sup>126</sup> Crisis Group electronic correspondence, UN official, May 2006.

<sup>127</sup> Transition constitution, Articles 101 and 107.

parliament and the likelihood that a country will fall back into conflict:

The odds of [state] failure were seven times as high for regimes we identified as partial democracies [than for autocracies or full democracies]. The characteristic of partial democracies...is the combination of a powerful chief executive with a relatively fractious or ineffective legislature.<sup>128</sup>

The new constitution and electoral law, brought into force in February and March 2006, respectively, created a relatively weak parliament that will be hard pressed to oversee and challenge the executive.

- The electoral law provides for open lists for legislative elections, which means that voters will choose individuals and not lists established by political parties. In the immediate term, this has eroded the cohesion of parties. During the transition, 130 deputies and 40 senators changed parties.<sup>129</sup> Weak parties will make it easier for the government to coopt and divide opposition.
- The president has the right to dissolve the national assembly in case of a serious crisis between the legislative and executive branches.<sup>130</sup> While the national assembly has power in theory to sanction and even dismiss the government by an absolute majority vote, the threat of dissolution is likely to undermine the lower house’s inclination to check particularly the president. The president’s substantial powers could create dangerous resentments in a post-conflict situation where he is opposed to his former enemies, some of whom retain links to militias.
- There are few requirements regarding the competence of parliamentarians. The minimum age is 25 for the national assembly and 30 for the senate. No minimum level of education is proscribed in either the constitution or electoral law.
- The president will preside over the council of ministers instead of the prime minister. In contrast

<sup>128</sup> State Failure Task Force, op. cit., p. 14. The State Failure Task Force was founded in 1994 at the request of senior policymakers in the U.S. government and includes academics from a wide range of universities in that country. The task force has also found substantial correlation between high rates of infant mortality and low levels of openness to trade, on the one hand, and the risks of state failure and widespread conflict on the other. The presence of civil conflicts in two or more neighbouring states was likewise strongly associated with state failure.

<sup>129</sup> Crisis Group interview, parliamentarian, Kinshasa, March 2006.

<sup>130</sup> Transition constitution, Article 148.

to ministers, the president does not have to answer to parliament for policy decisions.

- The proportional voting system will continue to encourage party proliferation, which will in turn dilute the political opposition. There are 213 parties but only a half dozen are present throughout the country. Few have support outside their narrow, ethnic or regional base. As the transition has shown, these weak and poorly structured parties are easily coopted by more affluent parties.<sup>131</sup>
- Additionally, the Union for Democracy and Social Progress (UDPS), the main opposition party, is boycotting both the presidential and legislative elections.<sup>132</sup> Its absence will contribute to a toothless parliament.

It will be difficult for strong opposition parties to develop in the current landscape. Parties have been banned for most of the country's history, with brief windows of activity between 1960-1967 and 1990-1997. While Joseph Kabila repealed his father's ban on party activities in 2001, most parties only slowly began setting up offices outside Kinshasa when the transition began in 2003.

Toward the end of the transition, ethnic affiliations and personal ambitions have tended to become more important determinants of voting in parliament than party membership.<sup>133</sup> Given that electoral districts are small,<sup>134</sup> and electoral lists are open, members of parliament may often be constrained by the narrow interests of their community. In the two previous, brief periods of democratisation, ethnicity became the dominant feature of political discourse, making it difficult to lobby for substantive political changes and triggering politically motivated clashes in the Kivus and Katanga. This ethnicisation of political space will be a danger for the incoming parliament.

## B. THE COURT SYSTEM

Courts have been in a dire state since the days of Mobutu, who stood above justice and could name and dismiss judges at his discretion. Courts were left to fend for themselves in the years of Zaire's decline, living off the fees paid by litigants. The justice sector still suffers

<sup>131</sup> Crisis Group interview, political opposition and civil society members of parliament, Kinshasa, November 2005.

<sup>132</sup> For more detail on the UDPS boycott, see Crisis Group Africa Report N°108, *Congo's Elections: Making or Breaking the Peace*, 27 April 2006.

<sup>133</sup> Crisis Group interview, MONUC official, Kinshasa, December 2005.

<sup>134</sup> They correspond to territories, a relatively small administrative unit.

from political interference and lack of resources. There is only one judge for every 30,000 citizens, and an estimated 80 per cent do not have access to courts.<sup>135</sup> In 2005, the budget for the Ministry of Justice was \$2 million, in contrast to the \$17 million allocated to the presidency and \$3 million to the national intelligence service.<sup>136</sup>

Neglect of the judiciary, together with the weak police force in charge of implementing legal decisions, has made the penal system almost defunct. Estimates of the prison population vary between 9,000 (official) and 55,000 (NGOs). Prisoners often live in inhumane conditions, and jailbreaks are frequent.<sup>137</sup> Prisoners frequently are held for months without trial in makeshift jails, sometimes just a hole in the ground. In South Kivu and Maniema, where 4.5 million live, there are only three prisons.<sup>138</sup>

The new constitution has replaced the Supreme Court with three new courts:

- the High Court of Appeals (*Cour de cassation*), which can also hear cases against members of government, parliamentarians, governors and vice governors;
- the Constitutional Court, which can hear cases against the prime minister and the president in addition to interpreting the constitution; and
- The State Council (*Conseil d'État*), with jurisdiction over civil cases brought against central administrative authorities.

However, these courts will not be set up until after the inauguration of a new government. They will require significant additional funding and support to fulfil their mandates.

The judiciary is incapable of providing checks and balances between the executive and the legislative branches. Politicians regularly interfere with higher courts, undermining their authority. The new constitution, like its predecessor, guarantees the independence of the Supreme Council of Judges (*Conseil supérieur de la magistrature*), the body that names, promotes and sanctions judges.<sup>139</sup> In practice, however, the minister of

<sup>135</sup> "S.O.S. Justice", op. cit., p. 25; "A First Few Steps: A Long Road to a Just Peace in the Democratic Republic of Congo", International Centre for Transitional Justice, October 2004.

<sup>136</sup> "S.O.S. Justice", op. cit., p. 266.

<sup>137</sup> "Audit organisationnel du secteur de la justice en République Démocratique du Congo", Mission Conjointe Multibailleurs, May 2004, pp. 27, 60.

<sup>138</sup> "S.O.S. Justice", op. cit., p. 71.

<sup>139</sup> Transition constitution, Article 147.

justice has continued to name judges, despite protests from the judges' union and the Supreme Court.<sup>140</sup>

The signatories of the peace deal agreed on two laws to organise the judiciary: a law on the status of judges and a law on the Supreme Council of Judges. Bills were submitted to parliament in July and September 2004, respectively, but the minister of justice sent them to the Commission for the Reform of Congolese Law, a body not functional since 2003, where they languished until April 2006, when they were put back on the parliament's agenda.<sup>141</sup> The law on the status of judges was passed by the lower house on 22 May 2006. While laws have been issued to structure smaller bodies such as the anti-corruption commission and the truth and reconciliation commission, the judiciary is the only branch of government that is still governed by Mobutu-era laws.

The old Supreme Court, which remains in existence until after inauguration of the new government and has frequently been accused of bias, will have jurisdiction for disputes in the presidential and legislative elections.<sup>142</sup> All its judges were appointed by Joseph Kabila before the transition, and it has favoured him in several decisions.<sup>143</sup>

The judiciary's balance sheet is bleak. No corruption cases have been tried during the transition.<sup>144</sup> A corruption law passed in 2003, which incorporated the UN Convention against Corruption and the African Union

<sup>140</sup> "S.O.S. Justice", op. cit., p. 40. A decree (no. 03/27) issued in September 2003 contravened the constitution by placing the Supreme Council of Judges under the control of the Ministry of Justice. The national judges' union SYNAMAC went on strike in October 2003 to protest the minister's arbitrary promotion and sanctioning of dozens of judges, as well as poor working conditions. After months, three SYNAMAC leaders were banned from serving as judges by ministerial decree. These incidents triggered protest letters from civil society, but little mention in diplomatic circles.

<sup>141</sup> According to Article 130 of the new constitution (125 of the transition constitution), if the government does not act within two weeks on a draft bill, the national assembly can vote on it. The fact that the law took so long to adopt is, therefore, also due to the lack of initiative of the national assembly.

<sup>142</sup> Crisis Group interviews, NGOs and UN officials, Kinshasa, November and December 2005; "S.O.S. Justice", op. cit., p. 43.

<sup>143</sup> After inauguration of the new government, new judges will be named for the three successor courts: of the nine members of the Constitutional Court, three are named by president, three by parliament, and three by the Supreme Council of Judges; the procedure for nomination of all other high court judges will be decided through separate laws that have not yet been passed.

<sup>144</sup> Crisis Group interview, Globalrights official, Kinshasa, April 2006.

Convention on Preventing and Combating Corruption, has never been used.<sup>145</sup>

Moreover, the weakness of the justice and penal system has had a particularly devastating effect on women due to the prevalence of sexual violence in the country. International legal experts believe sexual violence is the Congo's most common violent crime.<sup>146</sup> In four eastern provinces, 40,000 rapes were registered in 2004, which, considering the lack of reliable reporting, is the tip of the iceberg.<sup>147</sup> Only 429 sexual violence prosecutions were brought in this region, however, with 66 convictions. Over 70 per cent of sentences were less than the mandatory minimum. Almost all cases concerned minors, as adult women rarely press charges.<sup>148</sup> Only a thorough reform of the justice system that takes gender into consideration can address this situation.<sup>149</sup>

In 2004, the EU launched a program to support the justice system in Ituri through the NGO Réseau des Citoyen Network (RCN), which rebuilt infrastructure and provided resources, including paying police, judges and defence lawyers. In May 2004, the European Commission – together with the UK, Belgium, France, MONUC, UNDP and the UN High Commissioner for Human Rights – audited the justice sector, and in November an action plan was adopted.<sup>150</sup> The EU will pursue the plan's main recommendations: promoting independence of the justice sector and better access to courts, and reinforcing the legal institutions and their management tools. Donors established a mixed follow-up committee of international and Congolese officials in late 2005 to implement these reforms. However, the focus on elections has slowed progress.

<sup>145</sup> Crisis Group interview, Congolese legal experts, Kinshasa, April 2006.

<sup>146</sup> Crisis Group interview, UN official, Kinshasa, November 2005.

<sup>147</sup> "DRC: Focus on rampant rape, despite end of war", IRIN, 8 March 2004.

<sup>148</sup> "S.O.S. Justice", op. cit., pp. 131-133.

<sup>149</sup> See also Crisis Group Reports, *Congo's Elections and Security Sector Reform in the Congo*, both op. cit., for further discussion of the weakness of the justice system with respect to women, including the suggestion that part of the necessary reform is establishment of a vice squad within the police with exclusive jurisdiction over sexual violence cases.

<sup>150</sup> "Audit organisationnel du secteur de la justice en République Démocratique du Congo", Mission Conjointe Multi-bailleurs, May 2004, pp. 27, 60.

## C. OTHER OVERSIGHT BODIES: GOOD ON PAPER, WEAK IN REALITY

### 1. Anti-corruption bodies

There is no lack of institutions or laws in the Congo to combat corruption and the abuse of power. The very proliferation of institutions and their lack of coordination have undermined efficiency but the real problems are the lack of capacity and, more fundamentally, the lack of will in parliament and the executive to provide the resources and authority necessary to investigate and sanction. Donors have also not prioritised support to anti-corruption bodies.

Since the late-1980s, when the World Bank and the International Monetary Fund pressured Mobutu to clean up corruption, a number of anti-corruption bodies and strategies have been put in place. None has borne fruit, and findings are often disregarded.

- The State Auditor (*Cour des comptes*) is perhaps the most respected auditing mechanism. Headed by Professor Mabi Mulumba since the 1990s, it is a tool of parliamentary oversight and reports to the national assembly. It also reviews the state accounts on a yearly basis. However, it does not have an office of its own and, until the African Development Bank agreed to provide \$500,000 in 2006, only a fraction of its budget was funded.<sup>151</sup> Its 2005 audit found vast overspending on line items in the budget falling under the president and the four vice presidents but those concerned were not sanctioned. The auditor does not have the right to audit the president directly.<sup>152</sup>
- The Ethics and Anti-Corruption Commission is an institution of the transition, with a mandate to investigate “violations of ethical values and corrupt activities”.<sup>153</sup> It was authorised only in October 2004, fourteen months after the transition began, and given a paltry monthly operating budget of \$2,400. Donors helped, but the commission was itself accused of corruption and in October 2005 they suspended collaboration.<sup>154</sup> It has completed no investigations, and its mandate expires with the transition.
- The Financial Inspectorate was created in Mobutu’s final years as part of the ministry of

<sup>151</sup> In 2002, it received only \$3,000 of its \$200,000 budget.

<sup>152</sup> Crisis Group interview, State Auditor, Kinshasa, December 2005.

<sup>153</sup> “Case study on the DR Congo”, op. cit., p. 17.

<sup>154</sup> Ibid, p. 22.

finance. While its mandate is roughly the same as the State Auditor, it works strictly on demand of the ministry and cannot publish its reports.

### 2. Civil society

Civil society has played an important role during the wars and the peace process, especially in the East, where together with churches, non-governmental organisations have stepped in to assume roles that state institutions had abandoned. They participated in the Sun City talks and became members of the transitional institutions, with 116 seats in parliament and four ministerial portfolios.

Civil society’s involvement in government has been a double-edged sword, however. It has allowed it to exert a much greater influence on state policy but it has also become deeply politicised and coopted by political parties.<sup>155</sup> The end of the transition marks the end of civil society’s participation in government, and many of its major figures have left their associations to join parties or campaign as independent candidates. One of the most successful efforts to harness the influence of these actors has been through the Social Movement for Renewal (MSR), a party founded by Pierre Lumbi, a Kabila associate, which is fielding many former civil society leaders as its candidates in the East.<sup>156</sup>

The departure of many former leaders has sapped the strength of civil society. If it is to fulfil its function as a counterbalance to the state, remaining leaders and donors will need to redouble their efforts during the next five years. It will also be crucial for NGOs to adapt to the new political realities by launching projects that are geared toward better use of the tools of the democratic system, for example tracking voting records and the performance of legislators, following the progress of the Poverty Reduction Strategy Program (PRSP) and conducting civic education programs to teach voters how to hold their representatives accountable.

<sup>155</sup> In Kinshasa, this politicisation pre-dated the transition, as Laurent Kabila’s banning of political parties prompted many politicians to set up NGOs to press for political agendas. But in the East, where civil society had often been able to check or at least publicise the abuses of rebel movements, the politicisation became noticeable during the transition.

<sup>156</sup> In South Kivu, for example, MSR candidates include Zita Kavungirwa, a leading women’s rights activist; Aurelie Bitondo, a development worker and the vice governor of the province; and Dunia Bitakuya, leader of a community organisation in Kalehe territory.

## V. THE INTERNATIONAL APPROACH TO REFORM

### A. THE WORLD BANK GROUP AND THE INTERNATIONAL MONETARY FUND

The World Bank Group has given \$2.3 billion in loans and grants to the Congo in the past five years, making it by far the largest contributor.<sup>157</sup> Due to the limits of its mandate, however, it has refrained from involvement in the political arena, which has significantly hampered the impact of reform. Nonetheless, it has been able to improve management of state finances, the mining sector and civil services.<sup>158</sup>

As helpful as these reforms have been, an international fiscal expert commented: "Systems are good – but if the people in the systems are corrupt, you have not gotten very far".<sup>159</sup> The lack of enforcement has meant that many reforms have remained hollow. The mining sector offers an example.<sup>160</sup> Since the mining code was introduced in 2002, several contracts have been signed that contravene it. In 2003 a Bank-commissioned study of Gécamines by International Mining Consultants (IMC)<sup>161</sup> recommended the immediate dismissal of all Gécamines directors and that international experts renegotiate the company's joint ventures. In particular, as described above, it recommended against proceeding with deals with two foreign mining companies: Global Enterprises Corporate (GEC) and Kinross-Forrest. Gécamines' director was not dismissed until December 2005, and the two deals were signed in August 2005. The World Bank argued that the IMC study was only one factor informing its plans for reforming Gécamines, and other considerations prevented it from implementing the recommendations.<sup>162</sup>

<sup>157</sup> "The World Bank in the Democratic Republic of the Congo", op. cit.

<sup>158</sup> Reforms implemented by the World Bank include new procedures regarding cost chain management; a civil servant retirement program, in particular for over 10,000 Gécamines workers; new investment, mining and forestry codes to meet international standards; and reform of the procurement and tendering process.

<sup>159</sup> Crisis Group interview, fiscal expert, New York, January 2006.

<sup>160</sup> According to a mining company official, businesses often have to pay up to 5 per cent export tax, though the official level is 2 per cent.

<sup>161</sup> The contents of this paragraph stem mostly from the report "The State vs. the People", op. cit., pp. 44-45.

<sup>162</sup> Crisis Group telephone interview, World Bank official, April 2006.

While the Bank is not directly to blame for these contracts, it could do more to promote transparency and accountability in the mining sector, where it carries a lot of weight, not least because it is funding the retirement of thousands of Gécamines employees as well as pushing for privatisation. Above all, it needs to make sure that state-owned assets are put up for open and transparent tender.

World Bank officials are aware of the continuing corruption and institutional problems but point out they are dealing with a sovereign government and that cutting off aid would be counterproductive.<sup>163</sup> Nonetheless, the Bank needs to invest more in strengthening the capacity of the government institutions to manage their funds and their own revenues. If the Bank itself cannot exert adequate pressure due to the limitations set by its mandate, it must work with member states – in particular the major actors in the Congo such as the U.S., UK, South Africa, France, Belgium and China. But there is little coordination between international financial institutions and the embassies, the EU and the UN in Kinshasa.

In May 2006, the IMF announced it would not disburse \$40 million dollars in new loans after the Congo failed to pass a review of the Poverty Reduction and Growth Facility (PRGF) program.<sup>164</sup> The World Bank, however, has been reluctant to pull out because it does not want to destabilise the government.

### B. UNITED NATIONS AND REFORM

There has been little effort to couple technical reforms with political pressure for good governance. In May 2005, UN Secretary-General Kofi Annan recommended forming a donors' group to coordinate action on good governance.<sup>165</sup> The UN wanted to include the World Bank and the IMF in the group, as well as Congolese institutions, such as the finance and budget ministries. The initiative foundered on the objections of Security Council members, including China, Russia, Brazil and Algeria, who believed it would infringe on Congolese sovereignty and set an unwelcome precedent.<sup>166</sup> President

<sup>163</sup> Crisis Group interview, World Bank official, Kinshasa, December 2005.

<sup>164</sup> "Congo needs elections for new IMF deal – minister", Reuters, 11 May 2006.

<sup>165</sup> "Special Report of the Secretary-General on Elections in the Democratic Republic of the Congo", May 2005, p. 8.

<sup>166</sup> Crisis Group interview, UN officials, Kinshasa and New York, December 2005.

Kabila also expressed misgivings when the Security Council visited the region in November 2005.<sup>167</sup>

Many Congolese actors, however, have supported the idea of an international mechanism for promoting good governance.<sup>168</sup> Officials in the ministry of mines and Gécamines, for example, protested vehemently about the contracts signed with Kinross Forrest Limited and GEC in 2005.<sup>169</sup> Churches and NGOs have persistently protested corruption. While national sovereignty is always a legitimate point to consider, a Congolese NGO official reasonably asked: “Are they talking about the sovereignty of a rich few, or the sovereignty of 60 million Congolese?”<sup>170</sup>

The idea was kept (barely) alive by Security Council Resolution 1635 (2005), which stated that MONUC should coordinate with donors to:

provide advice and assistance as well as the necessary support, to the effective follow-up to the meeting on 21 September 2005 between the [Presidential Office] and the International Committee in Support of the Transition, to strengthen support for good governance and transparent economic management.<sup>171</sup>

The Security Council, however, dropped the reference to an “arrangement” that had featured in resolution 1621 (2005) and had been interpreted by many in MONUC as authorising a mechanism of good governance.<sup>172</sup> MONUC has continued to hold ad hoc meetings with donors and Congolese institutions to discuss corruption but the lack of a Security Council mandate and donor support has undermined this initiative.

<sup>167</sup> Crisis Group interview, diplomat, Kinshasa, December 2005.

<sup>168</sup> This includes Vice President Ruberwa as well as ministers from several parties. Crisis Group interviews, Kinshasa, November and December 2005.

<sup>169</sup> Crisis Group interview, Rights and Accountability in Development (RAID), April 2006.

<sup>170</sup> Crisis Group interview, Congolese NGO, Kinshasa, March 2006.

<sup>171</sup> United Nations Security Council Resolution 1635, paragraph 7.

<sup>172</sup> Resolution 1621 encouraged MONUC “to provide advice and assistance, as well as the necessary support, to the setting up by the transitional government, international financial institutions and donors, of an arrangement to strengthen support for good governance and transparent economic management”.

## C. THE MULTINATIONALS

Multinational corporations have contributed to the cycle of graft, state weakness and violence over the past decade, and indeed since independence. It is important to highlight their responsibility and hold them to the same standards as in the countries where they are incorporated. The president of the World Bank, Paul Wolfowitz, commented regarding corruption:

Every corrupt transaction has two parties. There's if you like a corruptor and a corruptee, and frequently the corruptor is some company in a developed country or some developed country or even a multilateral institution that made a loan to people they shouldn't have made a loan to.<sup>173</sup>

Most guidelines and regulations for multinational corporations are voluntary and non-binding, the exceptions being the U.S. Foreign Corrupt Practices Act and the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery. Both make bribing a public official in a foreign country a crime. The OECD convention has 30 parties, who have incorporated it into national legislation. However, there are few enforcement mechanisms for these laws, and justice officials often remain unaware of the behaviour of companies abroad. Congolese and international NGOs have played an important role in collecting information and raising awareness but much more needs to be done.

The Extractive Industries Transparency Initiative (EITI) has similar enforcement problems. Countries that sign up must publish all revenues they receive from companies in the natural resources sector, while companies must make public their payments. Both the government and the companies must undergo a private audit under international standards. The Congo signed EITI in November 2005 and created a national committee with representatives from civil society, the government and the private sector to implement its criteria. However, no concrete steps have been taken on publishing payments or revenues.

The Kimberley Process for diamonds is another example of a good plan with little implementation. All signatories of the process are required to ensure that exported diamonds do not fuel violence, human rights abuses or conflict and issue certificates to accompany every package. Signatories are also to establish internal controls to enforce this process. However, in the Congo, while there is a government agency that issues certificates in

<sup>173</sup> “Interview of World Bank President Paul Wolfowitz with Associated Press Television”, 5 July 2005, [www.worldbank.org](http://www.worldbank.org).

accordance with the process, there are few internal mechanisms actually to enforce the regulations. It is, therefore, difficult to track the origins of many of these diamonds.<sup>174</sup> Moreover, even if all strictly conflict diamonds were excluded from exports, the state institutions and companies that deal with diamonds would still be plagued with allegations of corruption.<sup>175</sup>

Export credits are not used enough to promote accountability and sanction abuse. All main bilateral Congo donors have export credit agencies that provide political risk insurance and subsidised loans for companies investing where commercial insurance or loans are difficult to obtain. OECD countries agreed on recommendations for regulating export credits in 2003 but these are not binding and cover only environmental hazards, not social or governance issues. Donors should coordinate with anti-corruption bodies and civil society to use export credits to promote accountability and transparency within companies. They should make disclosure of taxes, fees and other payments to foreign governments a condition for receiving credits.

#### D. IN SEARCH OF A COMMON APPROACH TO REFORM

The international community has been a major player in the Congolese transition, indeed a formal part of it through the International Committee for the Support of the Transition (CIAT), the body which has coordinated the actions of the major international actors in the country but will go out of existence with the elections.<sup>176</sup> It contributes 56 per cent of the national budget. The international development agencies of the U.S., the UK, the EU, Belgium and France have all launched good governance projects – albeit relatively low-cost ones – with the Congolese government.<sup>177</sup> In order to

<sup>174</sup> “Reforming the DRC Diamond Sector”, Global Witness, June 2006, p. 3

<sup>175</sup> Ibid, p. 2

<sup>176</sup> Annex IV, articles 1-4 of the peace agreement indicate, among other things, that CIAT will mediate and decide any disagreement between signatories and help the transitional government fulfil its mandate. CIAT is composed of Angola, Belgium, Canada, China, France, Gabon, Mozambique, Republic of Congo, Russia, South Africa, the UK, the U.S., Zambia, the African Union/African Commission and the European Union/European Commission and is chaired by MONUC.

<sup>177</sup> The European Union has the most substantial project, having pledged to invest \$41 million in governance over the next four years. France, Belgium and the UK have supported the reform of the justice sector and civil service, and the U.S. has provided support to parliament and funded a project focused on the management of mining revenues in local communities in Katanga.

coordinate their actions and to condition their investments on greater reform by the Congolese government, donors have developed three overarching plans to promote good governance with their Congolese counterparts: the Poverty Reduction Strategy Paper (PRSP), a “governance compact” drafted by the EU and the World Bank, and the Congo Action Plan led by UNDP and MONUC.

The Poverty Reduction Strategy Paper (PRSP) being prepared by the ministry of planning, with outside consultant advice and after consultations with civil society, local and national officials, is intended to provide the framework for donor funding. While it has not been finalised, one of its five pillars is directed at consolidating peace, promoting good governance and building state institutions.<sup>178</sup> It proposes numerous ways to combat corruption and build state institutions.<sup>179</sup> Good governance initiatives are to be managed by a National Program in Support of Governance.

The second document, drafted by the European Commission with the World Bank, is a “governance compact” to provide much-needed operational detail for the PRSP. It includes many innovative ideas, including recruiting a legal firm to review periodically the handling of key corruption cases, setting up a trust fund to raise salaries of select senior civil servants and cancelling mining contracts unfavourable to the government.<sup>180</sup> However, the recommendations made in this document are presented in the conditional tense, pending approval by all donors and, most importantly, by the Congolese government.

UNDP has produced a third plan for jumpstarting needed governance reforms. Its Congo Action Plan was

<sup>178</sup> The other four are: restarting economic activity and consolidating growth; improving access to social services and reducing vulnerability; fighting HIV/AIDS; and supporting communal development.

<sup>179</sup> These include: a census of civil servants and the army and an increase in their wages; an audit of social services at the local level, in particular in education, health and justice sectors; retirement of all civil servants of a certain age and seniority, with World Bank help; decentralisation of administration and resource managements; reform of the justice sector based on recommendations of an audit by donors; strengthening the state’s audit and control mechanisms and periodically reviewing public spending; a National Program against Corruption, including a website where complaints can be submitted and corruption cases followed; and encouragement of mining companies to operate more transparently in order to conform with the Extractive Industry Transparency Initiative.

<sup>180</sup> Crisis Group interview, UN official, Kinshasa, June 2006. These ideas were put forward for discussion, not as a definitive plan.

launched in February 2006 to spur fundraising and coordinate humanitarian and development aid for one year. It tripled the aid request over the previous year to \$705 million. However, by July 2006, only \$183 million had been donated or pledged.<sup>181</sup> The Action Plan includes budgets for emergency aid to those in acute need and development aid to local communities.<sup>182</sup> A third component, not yet released, will focus on good governance and building state institutions; it is intended to develop and strengthen parts of the PRSP. The UN plans on asking for around \$200 million over two years to fund this part of the proposal, but there is little sign that donors are willing to invest that much.<sup>183</sup> The combined present good governance funding of the U.S., UK, EU and Belgium is less than \$40 million for 2006.

## VI. THE WAY FORWARD

These plans are a good start. However, all, in particular the PRSP, are vague on details and implementation, with little mention of how auditing and control mechanisms are to be strengthened. The importance of political checks and balances from the parliament, political parties and the court system is not mentioned in detail. The “governance compact”, which contains many innovative suggestions, is still in draft form and will depend largely on the will of all donors, including financial institutions, to pressure the Congolese government to accept far-reaching and sometimes intrusive reforms. Given the relative lack of coordination among donors in Kinshasa, it will be difficult to carry all these suggestions through.

There must be three steps to reform. First, Congolese control mechanisms must be strengthened, in particular parliament and courts. Secondly, donors must better coordinate and substantially increase their aid if they want to consolidate the advances made in the peace process. Previous efforts to improve the state’s capacity to collect and use revenues must be intensified but particular attention should also be paid to the political dimension of good governance by strengthening state institutions and battling impunity. For this donors need a coordination body in Kinshasa to replace CIAT, whose mandate expires at the elections. Finally, special attention must be paid to enhancing good governance in the natural resources sector by ensuring the government as well as foreign companies abide by domestic and international regulations.

### A. STRENGTHENING CONGOLESE CONTROL MECHANISMS

The only way to guarantee long-term stability in the Congo is by supporting self-sustaining institutions that can keep the government and administration in check. These already exist on paper but are underfunded and lack political clout. As a start, donors should make parliamentary support a priority by supporting parliamentary commissions technically and financially, in particular the Commission on Economic and Financial Affairs – as well as the State Auditor, who answers to the national assembly. Equally important is rehabilitation of the justice sector, which should build on lessons learned by the EU-funded justice program in Ituri. Donors need to make sure that oversight bodies have enough staff and resources, in both Kinshasa and the interior. While these bodies should eventually be funded by the government, for the time being they will not be able to function without outside support.

<sup>181</sup> “Consolidated Appeal: Democratic Republic of Congo Action Plan 2006”, Financial Tracking Service, [www.re liefweb.int/fts](http://www.re liefweb.int/fts).

<sup>182</sup> “Action Plan 2006 – Democratic Republic of Congo”, Office of Coordination of Humanitarian Affairs (OCHA), February 2006.

<sup>183</sup> Crisis Group telephone interview, UN official, May 2006.

Initially, international observers are needed to reinforce the oversight bodies. There is a long history of complicity in corruption between these institutions and the administration. Crisis Group interviews with staff in ministries, state-run companies and the private sector indicate many anti-corruption mechanisms receive kickbacks and look the other way instead of reporting graft.<sup>184</sup> In the words of a state employee, “wolves don’t eat each other”.<sup>185</sup>

Raising salaries would create a climate in which corruption could be tackled, but in itself is not enough. For an initial period, donors and the government should create a small coordination and oversight body within the National Program in Support of Good Governance, staffed by experienced international personnel, who should be deployed to anti-corruption bodies, including the State Auditor, the Financial Inspectorate and the Anti-Corruption Commission, and be involved in all audits and investigations, thus helping to train Congolese. The president, on parliament’s proposal, should name an anti-corruption czar to chair the board and to lead on promoting good governance. The czar should update parliament regularly and open a website where complaints could be submitted and financial audits and parliamentary reports posted.

The new provincial assemblies are also crucial for limiting government excesses. The constitution has created 26 provinces from the current eleven,<sup>186</sup> with locally-elected assemblies that in turn are to name senators and governors. Three years are allowed for their establishment. The assemblies will have rights and duties similar to those of the national parliament and provide controls over local abuse of power.

As the provincial government will manage 40 per cent of national taxes levied in their provinces and all local taxes, the stakes are high. It is unlikely, however, these bodies will have enough money or training for their tasks. If not properly set up, provincial governments could turn to decentralised despotism and corruption. The international community should prepare a special program to assist creation of these bodies, and parliaments in other countries, such as the Amani forum of parliamentarians from Great Lakes countries, should consider sending delegations to train and assist their new colleagues at the national and provincial level.

For all these bodies, the government should take concrete steps to implement constitutional provisions requiring

gender parity in local, provincial and national institutions. A law requiring 20 per cent of members of these bodies to be women would be a start.

Another method of targeting corruption is to require declaration of the private assets of office holders before and after their tenure, as provided for by the new constitution.<sup>187</sup> The ministry of finance will be in charge of registering these declarations. These provisions, however, will be meaningless if the ministry does not review the veracity of declarations. An independent cell should be created within it to collect and investigate them. Donors should help train this cell, for example by hiring an international auditing company to assist the investigations.

All these provisions should be included in the Poverty Reduction Strategy Paper (PRSP), which will be the blueprint for future action on good governance once it is issued by the new government.

## B. DONOR COORDINATION AND GOOD GOVERNANCE

As noted, CIAT, which coordinates the actions of major international actors in the Congo, is being dissolved with the end of the transition. The incoming government could take advantage of a vacuum to play donors off against each other.<sup>188</sup> CIAT suffered from the sheer size of its membership and from the lack of cohesion of those members, especially towards the end of the transition. While the UN is drafting a plan for a new structure, it is unlikely that any UN body will be able to obtain a robust enough mandate for promoting good governance from the Security Council. The full membership of the old CIAT may eventually create a “Group of Friends” similar to it but what is essential is for the most important donors – including the UK, U.S., France, Belgium, South Africa, the EU, the World Bank and the IMF – to form a donors group on good governance. Discussions should be held regularly with the new government in this forum, which should be used to coordinate not only projects but also political pressure.

At the same time, MONUC should use its Security Council Resolution 1635 mandate to “provide advice and assistance as well as the necessary support...[and] strengthen support for good governance and transparent economic management”. In coordination with UNDP, it should open a cell

<sup>184</sup> Crisis Group interviews, Kinshasa, November 2005 to May 2006.

<sup>185</sup> Crisis Group interview, state employee, Kinshasa, May 2006.

<sup>186</sup> Strictly speaking, it is 25 plus the capital, Kinshasa.

<sup>187</sup> Transition constitution, Article 99.

<sup>188</sup> Crisis Group interviews, Kinshasa, November and December 2005.

within its political affairs section to focus on promoting good governance and become the secretariat of the donors group.

### C. PROMOTING ACCOUNTABILITY IN NATURAL RESOURCES MANAGEMENT

The Lutundula Commission is an example of what can be achieved by Congolese good governance initiatives. Despite political pressure not to dig deep, it produced a thorough report. Its fate to date, however, is also an example of how good local efforts can be stymied. The report should be discussed urgently by parliament, as soon as possible after elections, and both donors and the government should revise or cancel contracts that are undervalued or tainted by corruption. A new permanent parliamentary commission should then be launched with a broader mandate to oversee good governance in the natural resources sector, including reviewing contracts signed during the transition. It should have at its disposal the services of a Congolese or international law firm specialising in mining law.

Parallel to creation of a coordination body within the government, donors, as part of their new coordination group on good governance, should create an oversight board for natural resources, together with the World Bank, which has invested millions of dollars in this sector, Congolese authorities and civil society. This board would help minimise transaction costs and eliminate bribes for international companies seeking to invest and centralise information and complaints regarding the mining and forestry sectors. International NGOs should be hired to follow up on implementation of reform in these sectors and work with the ministries to monitor compliance. This approach was relatively successful in Cambodia, where Global Witness served as an independent monitor in the forestry sector from 1999 until the government terminated the contract in 2003.<sup>189</sup>

The signing of the Extractive Industries Transparency Initiative was a good step but the incoming parliament should prioritise passage of a bill making disclosure of payments and greater transparency part of domestic law. This bill should amend the mining code to make open tender for any state asset that is to be sold obligatory, in particular mining concessions, and to ensure that commercial confidentiality requirements do not prevent disclosure of mining revenue and

payments.<sup>190</sup> All these financial transactions should be published on a state website.

The illegal exploitation of Congolese wealth has often happened with the complicity of foreign companies. These need to be held to the laws and standards of the countries where they are incorporated. Numerous interviews with international mining experts indicate that companies continue to pay bribes and give kickbacks to obtain lucrative deals in the Congo.<sup>191</sup> For OECD-country companies, this is illegal and should trigger domestic investigations.

Finally, in order to prevent natural resources from illicitly benefiting militias or crime rings, the Congolese security forces should be deployed to secure areas of important mineral reserves in Katanga, the Kivus and Ituri.<sup>192</sup>

<sup>189</sup> <http://www.globalwitness.org/campaigns/forests/cambodia/monitoring.php>. Global Witness was part of the Forestry Crime Monitoring Unit, which also had offices in the department of forestry and wildlife and the ministry of environment.

<sup>190</sup> The latter provision is meant to avoid the difficulty experienced in Timor Leste where its lack hampered transparency. “Revenue transparency in Timor Leste”, Global Witness, September 2004.

<sup>191</sup> “The State vs. the People”, op. cit., p. 34; Crisis Group interview, international mining expert, Kinshasa, July 2005.

<sup>192</sup> Ideally, this task should be undertaken by a *gendarmerie* trained to deal with criminal gangs and protect the population, while the army would be tasked primarily with protecting the borders. Crisis Group Report, *Security Sector Reform in the Congo*, op. cit.

## VII. CONCLUSION

Many decision-makers, both in the international community and the Congo, tend to see corruption as a deplorable but inevitable fact of life. In the words of a senior diplomat in Kinshasa:

Corruption in the Congo has elicited superlatives since the days of Mobutu. The system that is in place stretched from the president to the minister to the lowly civil servant. We cannot change this system from one day to the next. We also have to be careful [not] to cut them off from their sources of income too quickly – in this post-conflict situation, which could quickly lead to further armed violence.<sup>193</sup>

The opposite argument, however, is stronger. As long as the principle access to resources is through public office, strongmen will use any means necessary – including insurrection – to gain public office. This year's elections will create a significant class of disenfranchised politicians. Given the poor state of the national security forces and the many disgruntled soldiers, renewed violence is likely before the next electoral cycle in five years if action is not taken now. Inability to express political grievances through the political system and state dominance over economic activity are what is likely to encourage politicians to take up arms again.

Donor focus should be on promoting institutions that can sustain reforms. Parliament, the strongest political check on the executive, should receive particular attention and funding, on both the national and provincial level. The State Auditor, the legislature's main financial tool, is also very important. The judiciary needs a complete – and expensive – overhaul; in many places courts must literally be rebuilt from the ground up.

The collapse of the Congolese state has never been just a national affair. Other countries and multinational corporations have been complicit in and at times have fanned the flames of state failure. Donors must be consistent in their approach and hold foreign companies to the rigorous standards of international and Congolese law. Foreign ministers who have criticised impunity in the Congo must also act decisively against mining and forestry companies that have spurned labour, environmental and financial regulations and laws.

The next five years will be the most trying time of the peace process. Those who lose at the polls will be tempted to return to arms, while donors are already suggesting they want to start extricating themselves or at least be less politically engaged. At the same time, however, these years can be the most promising since independence if Congolese leaders and their international counterparts can manage to build a state that is no longer seen as the enemy of the people.

Nairobi/Brussels, 20 July 2006

<sup>193</sup> Crisis Group interview, diplomat, Kinshasa, July 2005.

## APPENDIX A

## MAP OF CONGO



## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with nearly 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and Boeing's Senior Vice-President, International Relations and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

Crisis Group's international headquarters are in Brussels, with advocacy offices in Washington DC (where it is based as a legal entity), New York, London and Moscow. The organisation currently operates fourteen field offices (in Amman, Bishkek, Bogotá, Cairo, Dakar, Dushanbe, Islamabad, Jakarta, Kabul, Nairobi, Pretoria, Pristina, Seoul and Tbilisi), with analysts working in over 50 crisis-affected countries and territories across four continents. In Africa, this includes Angola, Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Liberia, Rwanda, the Sahel region, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia,

Afghanistan, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Myanmar/Burma, Nepal, North Korea, Pakistan, Tajikistan, Turkmenistan and Uzbekistan; in Europe, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kosovo, Macedonia, Moldova, Montenegro and Serbia; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia, the Andean region and Haiti.

Crisis Group raises funds from governments, charitable foundations, companies and individual donors. The following governmental departments and agencies currently provide funding: Australian Agency for International Development, Austrian Federal Ministry of Foreign Affairs, Belgian Ministry of Foreign Affairs, Canadian Department of Foreign Affairs and International Trade, Canadian International Development Agency, Canadian International Development Research Centre, Czech Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union (European Commission), Finnish Ministry of Foreign Affairs, French Ministry of Foreign Affairs, German Foreign Office, Irish Department of Foreign Affairs, Japanese International Cooperation Agency, Principality of Liechtenstein Ministry of Foreign Affairs, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Republic of China (Taiwan) Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, Royal Norwegian Ministry of Foreign Affairs, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, United Kingdom Foreign and Commonwealth Office, United Kingdom Department for International Development, U.S. Agency for International Development.

Foundation and private sector donors include Carnegie Corporation of New York, Compton Foundation, Flora Family Foundation, Ford Foundation, Fundación DARA Internacional, Bill & Melinda Gates Foundation, William & Flora Hewlett Foundation, Hunt Alternatives Fund, Korea Foundation, John D. & Catherine T. MacArthur Foundation, Moriah Fund, Charles Stewart Mott Foundation, Open Society Institute, Pierre and Pamela Omidyar Fund, David and Lucile Packard Foundation, Ploughshares Fund, Sigrid Rausing Trust, Rockefeller Foundation, Rockefeller Philanthropy Advisors, Sarlo Foundation of the Jewish Community Endowment Fund and Viva Trust.

**July 2006**

## APPENDIX C

### CRISIS GROUP REPORTS AND BRIEFINGS SINCE 2003

#### **AFRICA**

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***Rwandan Hutu Rebels in the Congo: a New Approach to Disarmament and Reintegration***, Africa Report N°63, 23 May 2003 (also available in French)

***Congo Crisis: Military Intervention in Ituri***, Africa Report N°64, 13 June 2003

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***Katanga: The Congo's Forgotten Crisis***, Africa Report N°103, 9 January 2006 (also available in French)

***A Strategy for Ending Northern Uganda's Crisis***, Africa Briefing N°35, 11 January 2006

***Security Sector Reform in the Congo***, Africa Report N°104, 13 February 2006

***Congo's Elections: Making or Breaking the Peace***, Africa Report N°108, 27 April 2006

***Chad: Back toward War?***, Africa Report N°111, 1 June 2006 (currently only available in French)

***Beyond Victimhood: Women's Peacebuilding in Sudan, Congo and Uganda***, Africa Report N°112, 28 June 2006

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***Negotiating a Blueprint for Peace in Somalia***, Africa Report N°59, 6 March 2003

***Sudan's Other Wars***, Africa Briefing N°14, 25 June 2003

***Sudan Endgame***, Africa Report N°65, 7 July 2003

***Somaliland: Democratisation and Its Discontents***, Africa Report N°66, 28 July 2003

***Ethiopia and Eritrea: War or Peace?***, Africa Report N°68, 24 September 2003

***Sudan: Towards an Incomplete Peace***, Africa Report N°73, 11 December 2003

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