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# DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE ASSESSMENT OF THE DEMOCRATIC REPUBLIC OF THE CONGO FINAL REPORT

NOVEMBER 2012

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# ACRONYMS AND ABBREVIATIONS

ACAS	<i>Association Congolaise pour l'Accès à la Justice</i>
AFDL	Alliance of Democratic Forces for the Liberation of Congo-Zaire
AIDS	Auto-Immune Deficiency Syndrome
AMP	<i>Alliance pour la Majorité Présidentielle</i>
ANR	National Intelligence Agency ( <i>Agence Nationale de Renseignements</i> )
ASADHO	African Association for the Defense of Human Rights
ATEA	<i>Agir pour des Elections Transparentes Appaisées</i>
CEI	Independent Electoral Commission
CENI	National Independent Electoral Commission
CIAT	International Committee for the Support of the Transition
CNDP	Congress for the Defense of the People
CPIA	Country Policy and Institutional Assessment
CSM	High Council of Magistrates
ECC	Church of Christ in Congo
ETD	Decentralized Territorial Entity
DFID	Department for International Development (UK)
DIILS	Defense Institute for International Legal Studies
DRC	Democratic Republic of the Congo
DRG	Democracy, Human Rights and Governance
EITI	Extractive Industries Transparency Initiative
FARDC	Armed Forces of the DRC
FCN	Common Front of Nationalists
FDLR	Democratic Forces for the Liberation of Rwanda
FRF	<i>Forces Républicaines Fédéralistes</i>
GDP	Gross Domestic Product
GIZ	German International Cooperation Agency
HIV	Human Immunodeficiency Virus
ICC	International Criminal Court
M23	Movement named to highlight the promises of the March 23 Agreement
MLC	Movement for the Liberation of Congo ( <i>Mouvement pour la Libération du Congo</i> )
MONUC	United Nations Observer Mission in the Democratic Republic of the Congo
MONUSCO	United Nations Organization Stabilization Mission in the DRC
MP	<i>Majorité Présidentielle</i>
MPR	Popular Movement for Revolution
MSR	<i>Mouvement Social pour le Renouveau</i>
NGO	Nongovernmental Organization
OCEP	Observers of the Professional Ethical Code
OECD	Organization for Economic Cooperation and Development
ONUC	United Nations Operation in Congo

PALU	<i>Parti Lumumbiste Unifié</i>
PARECO	<i>Patriotes Résistants Congolais</i>
PIR	<i>Police d'Intervention Rapide</i>
PPPD	People for Peace and Democracy
PPRD	People's Party for Reconstruction and Democracy ( <i>Parti du Peuple pour la Reconstruction et la Démocratie</i> )
RCD	Congolese Rally for Democracy
RCD-K/ML	<i>Rassemblement Congolais pour la Démocratie-Kisangani/Mouvement de Libération</i>
RPF	Rwandan Patriotic Front
SSR	Security Sector Reform
STAREC	Stabilization and Reconstruction Plan for Eastern Congo
UDPS	Union for Democracy and Social Progress
UN	United Nations
UNC	<i>Union pour la Nation Congolaise</i>
USAID	United States Agency for International Development
USG	United States Government



# EXECUTIVE SUMMARY

The challenges facing the Democratic Republic of Congo (DRC) today are immense. Ranked last in the most recent Human Development Index, the DRC suffers from crippling poverty, despite abundant natural resources. The government appears incapable of providing even the most basic of public services, such as maintaining the infrastructure (such as roads and water) and providing healthcare, education, justice, and security—even as rampant corruption allows government officials to enrich themselves. A large area of the country faces persistent insecurity, which regularly displaces people, disrupts production, and leads to increased misery and mortality.

Despite such overwhelming challenges, several points of entry for useful interventions can be identified. Poor democratic governance lies at the root of Congo's persistent economic stagnation and insecurity. Thus, improving the accessibility, accountability, and performance of government institutions could have a wide-ranging positive impact on the country's situation. With a long tradition of centralized authoritarian rule facilitating extensive corruption that denies government institutions the resources necessary to function, improving public accountability and enhancing checks and balances could allow service delivery to improve, support economic growth, and diminish the frustrations that are a major cause of continuing conflict.

The principles and institutions laid out in the 2006 Constitution are broadly supported by the population and represent a social contract between the Congolese society and the state. Unfortunately, many elements of the Constitution have never been implemented or have been undermined since 2006. Working to implement the provisions of the Constitution that would create greater public accountability and balance of powers between governmental institutions would go a long way to restoring the social contract and building up both the capacity and the legitimacy of the state. Promoting the decentralization process and working with local and provincial governmental institutions has great potential to improve service provision and allow people greater control over their government. Strengthening the judiciary, particularly at the local and provincial levels, could also help to build rule of law and rein in corruption. Focusing on improving democratic governance in areas such as healthcare, education, economic development, and conflict mitigation could greatly enhance service delivery. While these interventions could have major positive benefits for the Congolese population, they are likely to be opposed by entrenched interests that benefit from the status quo, so diplomatic pressure will be an important complement to USAID programming.

## **DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE**

### **CONSENSUS**

Despite a history of conflict and a variety of ethnic, regional, and other loyalties, most Congolese have a strong sense of national identity. A strong consensus exists around the principles and institutions defined in the 2006 Constitution, making it an expression of a social contract between the society and the state. Despite this positive consensus about how things *should* work, a negative consensus around how people *expect* the system to work continues to support corruption, inefficiency, and other problems.

### **INCLUSION**

The political system in the DRC is generally open for anyone to participate, though lack of money limits the access of the majority of the population. The exclusion of women remains a serious problem, while some regional and ethnic exclusion continues. Perceptions of exclusion help drive persistent conflict in the east.

### **COMPETITION AND POLITICAL ACCOUNTABILITY**

The competition of ideas and responsiveness of government to the people are not part of political culture and political practice in the DRC. In the past several years, the executive branch has moved increasingly to exercise its dominance over competing institutions in a troubling concentration of executive power. The flawed presidential and parliamentary elections of November 2011 are the point of departure for many

discussions about the current political problems in the DRC. The shortcomings of the elections did much to undermine the legitimacy of both the presidency and Parliament. Political parties are quite weak, though civil society and the media do provide some space for the open exchange of ideas and opportunities to hold the government accountable, despite threats and harassment.

### **RULE OF LAW**

Despite the Constitution and a formal set of rules that has all the trappings of a functioning democracy, the Congolese political system does not operate under the rule of law. This deficit in the rule of law exists because the legal system is mired in a degree of uncertainty, fluidity, and confusion that largely undermines the power of the law. Political authorities conceive of laws as tools of power but not as constraints on their behavior; they see the rights the law confers to them significantly more than the obligations it imparts upon them. There is also a wide gap or disconnect between the text of laws and their application: passing a law is far from a guarantee that its provisions will ever be implemented. The weakness of the law contributes to making informal practices—including corruption—as important as the formal legal system in the country’s political and administrative life. The willingness of the regime to violate human rights promotes considerable self-censorship among opposition politicians, journalists, and would-be whistleblowers, while the judiciary itself suffers from deep structural limitations. As a result, Congo operates in a context of widespread impunity.

### **ADMINISTRATIVE ACCOUNTABILITY AND EFFECTIVENESS**

While DRC rulers are particularly effective at wielding power in their relations with other social and political actors, they are largely ineffective at providing governance and delivering even the most basic services to their population. The DRC is ranked as the second most failed country in the world. The Congolese government hardly delivers governance and public services, not even basic safety. Its governance cannot be conceptualized as policymaking. The lack of means is a serious impediment to effective governance in Congo. The regime practices governance by asphyxiation, starving government institutions of the revenues they need for even basic activities. The inability or unwillingness of the government to carry out essential functions, like administering justice, guaranteeing public security, and providing healthcare and education, seriously undermines legitimacy, so that governance failures are at the heart of the challenges facing the DRC today, including the insecurity that grips large parts of the country.

### **ACTORS AND INSTITUTIONS**

Some observers seem to believe that the DRC needs a strong leader to address the country’s massive governance challenges, but the Congo in fact has a long history of authoritarian leadership used to serve private interests rather than the public good. Corruption is not so much an affliction of the Congolese system as it is the system itself, deeply rooted in the history of the state. Addressing Congo’s wide-ranging and persistent problems of corruption, inefficiency, insecurity, and repression requires a state where power is diversified so that various institutions check and balance one another and the state becomes more accessible and responsive to the public.

Although reforms inaugurated by the 2006 Constitution initially diversified power and increased the points of access to the political system, a significant reconcentration of power in the executive branch—and particularly the presidency—has taken place since 2009. The replacement of an influential and independent Speaker of the National Assembly by a more loyal ally of President Kabila helped to rein in the independence of Parliament. The 2011 elections resulted in a Parliament more fully dominated by parties closely allied with the president and a government controlled by the president’s political party after five years of a government led by an allied but independent political party.

The local and provincial governments and the judiciary represent institutional arenas that provide opportunities to diversify power and promote better democratic governance. Yet both sets of institutions are handicapped, because the 2006 Constitution outlines institutional reforms that have never been fully implemented. Decentralization as laid out in the Constitution would represent a major shift in the political system that could bring greater access and accountability, but the process remains stalled. For example, the change from 11 to 26 provinces in the Constitution has never been implemented, and the boundaries of local

government units remain to be determined. Likewise, several higher courts defined in the Constitution have never been created. Both the provincial and local governments and the judiciary lack budgetary independence and are starved for resources. Nevertheless, these institutions represent important potential partners for promoting democratic governance.

Civil society and the media are large and strong in the DRC despite facing serious harassment and fiscal and institutional challenges. Both civil society and the media offer a plurality of voices and have a presence throughout much of the country. They offer important opportunities for inclusion and participation of women and other groups largely absent from governmental institutions. Both civil society and the media help to give voice to the ideas and opinions of the Congolese population, and they provide important oversight of public institutions. Religious groups are particularly strong in the DRC, with broad territorial reach and a strong tradition of social activism. Working to develop civil society's capacity to engage with local and regional governments and with the judiciary could prove particularly fruitful.

## **STRATEGIC RECOMMENDATIONS**

The core challenge to democratic governance in the DRC is that declines in checks and balances and in public accountability, and the failure to deliver public services have led to a breakdown in the social contract that was established with the 2006 transition. The practice of using government offices to serve private interests frustrates the population and starves the state of resources needed to provide public services. Limitations on political and civil rights and the concentration of executive power prevent both the public and other state institutions from ensuring the state acts in the general public interest. Failures in democratic governance lie at the root of the DRC's persistent economic stagnation and ongoing insecurity and conflict.

As a result, including democracy, human rights, and governance (DRG) considerations in all sectors of USAID engagement in the DRC is essential to improving the delivery of public services. Establishing basic political legitimacy, security, and justice, as well as effective economic governance institutions are necessary conditions for any long-term sustainable development and lasting security. A weak state, illicit governance, and pronounced insecurity are core development challenges in the Congo that are not only problems in their own right but hinder development in other areas. Thus, economic growth will only take hold when the political, legal, and security regime is improved. Democratic governance and institution-building considerations should be mainstreamed into other aspects of the development portfolio.

Programs and policies typically organized under the DRG mantel are critical elements in any strategy to promote health, education, and economic development, peacebuilding, or conflict mitigation. For this reason, USAID/DRC should recognize the fundamental thematic and strategic linkage between those programs related to democratic governance and to economic development, stabilization, so-called "conflict" minerals, sexual and gender-based violence, and human trafficking. Achieving sustainable solutions to these issues will require a mix of diplomatic pressure combined with development of a more capable, accountable, responsive, and proactive Congolese state.

Because the issues of development, conflict management, democracy, rights, and governance are so clearly linked, USAID should be wary of interventions addressing only one aspect without due consideration for the other dimensions. Strengthening a legitimate and effective state in the DRC should be the primary objective of all DRG assistance; activities that do not contribute to this end are less likely to yield sustainable results and may even risk doing harm. For example, providing healthcare to the Congolese population is absolutely essential and responds to important public needs, but without addressing the democratic governance issues within the Congolese health sector, the system will remain permanently dependent on international interventions and financing. Promoting greater popular involvement and control in the healthcare system and combating corruption and inefficiency could ultimately allow the Government of the DRC to take full charge of providing healthcare to its population. As many people pointed out to us, the DRC has the resources to support itself—if only they were effectively managed and directed toward the public good.

## PROGRAMMATIC RECOMMENDATIONS

USAID/DRC should implement DRG programs that help increase the balance of power, promote accountability, and improve the delivery of services to help strengthen the social contract between the Congolese society and the state. Our assessment suggests that, for all the democracy, governance, and human rights shortcomings of their political system, the Congolese nevertheless share a social contract whose essential values are embedded in the 2006 Constitution. The need to establish popular accountability and to build checks and balances among state institutions are key components to this social contract. Nearly everyone we interviewed for this report indicated that the principles laid out in the 2006 Constitution are sound but that they have either never been realized or have deteriorated since 2006. Because of the concentration of power; growing problems in the electoral system (including both flawed and long postponed elections); repression of freedoms to speak, publish, and organize; and the failure of the government to provide development, security, and basic services—the Congolese population feels increasingly that the government is not respecting this social contract. Indeed, national elites who benefit from the current system are likely to resist change and make for poor partners in restoring the Congolese social contract.

The social contract provides a strong basis for promoting Congo’s development, not only in the DRG area but also in economics and security. USAID programming in all sectors should work to honor and strengthen this social contract by promoting popular accountability, the diversification of power among state institutions, and improved delivery of public institutions.

Most of the problems facing the DRC today are not the unique fault of the Kabila regime but are deeply rooted in the country’s history and are, thus, challenging to resolve. Efforts to strengthen the social contract must remain realistic about the nature of power and of the political system in Congo. The DRC has a long history of concentrated executive power, so merely building up the national executive is more likely to facilitate corruption than to improve service delivery. However, finding ways to promote a balance of power between state institutions and between the state and local communities could counteract the regime’s authoritarian drift. USAID’s goal should be to empower the local population and certain state institutions to hold all state institutions accountable to the ideas and structures of the Constitution.

Four broad focuses for USAID DRG programming could support efforts to strengthen the Congo’s social contract:

### **I. FURTHERING DECENTRALIZATION WILL STRENGTHEN CHECKS AND BALANCES**

Power will return to the Congolese people if other state institutions provide checks and balances on the executive. Decentralized institutions at the provincial and sub-provincial levels appear to be the most promising point of entry, both because they are closer to the population and because they already show a somewhat greater degree of autonomy than other state institutions.

The most important step to take in this respect is to hold the government to its legal commitment to organize provincial and local elections. Several intermediary steps are necessary for this to take place. They include holding a census (Congo has not had one since 1984) to ensure a reliable voter registry; formally identifying rural “groupements” and urban communes, which are the voting districts, but many of which exist only *de facto* without legal recognition; and reforming the National Independent Electoral Commission (CENI).

Second, it is essential to help strengthen provincial and local decentralized institutions to improve their effective governance. These institutions suffer from very low levels of human capital, which hamper their effectiveness. Trainings in budgeting; in procedures for proper oversight of local executives; and in the legal responsibilities of local government, particularly toward local populations, are badly needed.

Finally, working with provincial and local governments to strengthen their capacity to provide public services will tangibly improve peoples’ lives, and as a result improve their perceptions of government. Many public services, including health and education, are now legally the prerogative of decentralized entities. Yet it is not uncommon for provincial and local leaders to not know what their domains of competence are. Even when they do know their responsibilities, they often lack the capacity to actually deliver services. Promoting the

local supply of these services has a democracy and governance dimension as they stand to strengthen the bond between people and their institutions and favor accountability.

## **2. BUILDING UP THE JUDICIARY WILL STRENGTHEN CHECKS AND BALANCES**

Along with working with local and provincial governments and legislatures, improving the delivery of justice is important. Working with lower-level courts seems particularly necessary. There can be little effective governance and rule of law if people are deprived of access to the most local level of courts and tribunals. It should be a priority to develop *Tribunaux de Paix* across the territory, to staff them, and to create incentives for magistrates not to desert these jobs. These tribunals are necessary to adjudicate widespread land disputes and conflicts over customary chiefdoms. Stronger lower-level courts will also be important for ensuring that provincial and local elections are more credible, as they will have authority to provide oversight and settle disputes in these elections. As such, developing these tribunals also has beneficial multiplier effects toward effective decentralization.

Strengthening the capacity of court staff and increasing the number of lower-level courts will be essential for providing greater access to justice and improving security. Lower-level courts also help to check the power of local and provincial governments and help guarantee that human rights are respected. Since the Constitution does not provide for a decentralization of the judicial branch, continuing work with the High Council of Magistrates and other national judicial bodies will likely be necessary to ensure effective reform at the local and provincial levels.

## **3. EMPOWERING LOCAL COMMUNITIES TO DEMAND ACCOUNTABILITY WILL STRENGTHEN THE STATE AND IMPROVE ITS CAPACITY**

Increased empowerment of the population through improved public participation in strengthened civil society and media advocacy is necessary to ensure that strengthened state institutions serve the public good rather than merely enjoying increased capacity for predation and abuse of rights. Successful changes are more likely to come from below from an empowered population than through mere institutional reform imposed from above. As local and provincial governments become increasingly important, the citizens of the DRC will need to learn to engage with these governments and hold them accountable. Institutional capacity building has to be balanced with increased empowerment of the population through improved public participation, media oversight, and enhanced lower-level judicial control.

Many Congolese at the grassroots level do not have sufficient knowledge of their rights and of the laws passed since 2003 that have expanded and guarantee these rights. Simple interventions to teach people their rights might go a long way to help them enforce them. Many grassroots and religious associations (the bar association, human rights nongovernmental organizations [NGOs], and the Catholic Church to name a few) are already involved in this type of work and can benefit from support.

Local communities can also be empowered for more active and productive involvement in elections and electoral supervision. The Congolese cannot always (or successfully) rely on outside observers to preserve the integrity of their elections. Citizens must be trained to be their own observers. Strengthening domestic observer organizations to provide oversight and protection is as important as the strengthening of the lower-level courts that will have authority to settle disputes in these elections. Parallel structures of electoral oversight and accountability, such as *Agir pour des Elections Transparentes Appaisées* (ATEA), can benefit from support.

In this respect, promoting local and community media can act as a safety net to reduce abuse by local authorities. Civic education can also help citizens engage with their government rather than only attacking it. Work with local and regional civil society groups to lobby provincial legislatures and work with courts and provincial and local governments will be important.

Focus on empowering local and regional Congolese civil society and media must include a significant focus on gender. The attitudes and customs excluding women from social, economic, and political power and exposing them to abuse and violence are deeply entrenched and will take time and effort to transform. Working on empowering women at the grassroots level and improving their access to government offices and

government services could have an important effect at all levels of public life in the DRC, providing a basis from which women could gain a stronger foothold in the political system.

#### **4. ADDRESSING DEMOCRATIC GOVERNANCE ISSUES IN ALL SECTORS WILL IMPROVE SERVICE DELIVERY**

Helping the government ensure the population has access to healthcare, education, economic development, justice, and security will increase the legitimacy of the state and strengthen the social contract between citizens and their government. The goal must not be simply to provide services in place of the state but to improve governance to help the state itself, in cooperation with the Congolese society, to provide the services. Strategic partnerships with ministries focused on health, education, agriculture, justice, etc., will likely be necessary, along with work at the local and provincial levels.

The process of decentralization presents substantial opportunities for fruitful cross-fertilization between DRG interventions and other areas of USAID activity. As decentralization transfers many government responsibilities to local and provincial state institutions, addressing DRG concerns will prove key to improving the delivery of public services. Improving service delivery requires not only improving governance in state institutions but also empowering the population. Democratic participation is necessary for improved governance in state institutions. Developing local civil society in diverse sectors of state activity can serve to engage the public not simply to demand their rights to health, education, employment, justice, and security but also to work with the decentralized institutions to guarantee these rights are realized. By working with grassroots associations to help deliver social services, relationships of accountability and citizen ownership can be developed which can also enhance the DRG dimensions of these other sectors and provide virtuous reinforcing mechanisms across USAID interventions. The active role that parents have taken in funding and managing schools in the absence of effective state action is a model for social engagement in service delivery, though improving the state's cooperation with such social organization remains important.

#### **5. DIPLOMATIC PRESSURE MAY BE NECESSARY TO ENSURE REFORMS ARE ALLOWED**

Although we find that localized interventions are likely to be more productive than attempts to directly affect central power, the success of these reforms will necessarily imply some diplomatic pressure at the national level. While people almost universally condemn the current situation in the DRC, Congolese elites who are benefiting from the status quo are likely to resist changes. Successful changes are thus more likely to come from below from an empowered population than through mere institutional reform imposed from above. However, reforms will ultimately require acquiescence from higher state authorities. The executive branch in particular is likely to resist attempts to create alternative centers of power. Diplomatic pressure will be needed to push the government to follow through on the creation of the decentralized institutions named in the Constitution and timely electoral reform. This is particularly true with the necessity to reform CENI, to shore up the judiciary, and to make the government follow through with its constitutional commitment to decentralization. To be effective, such diplomatic pressure will require coordination among Congo's foreign partners.

# I.0 INTRODUCTION

With abundant fertile land and extraordinary reserves of natural resources, the Democratic Republic of Congo (DRC) has incredible potential for development. Yet unrelenting political dysfunction, social disorder, and economic collapse have combined to make the DRC among the least developed states in the world. The United Nations Development Program's 2011 Human Development Index ranked the DRC dead last, 187<sup>th</sup> out of 187 rated countries.<sup>1</sup>

Many of the political problems confronting the DRC today are deeply rooted in the country's authoritarian history, making them particularly challenging to resolve. Since its colonial foundations, the Congolese state has been used primarily to control the population and extract resources from the country.<sup>2</sup> The predatory nature of the state that profits a limited international and domestic elite rather than benefiting the general population was intensified under the long rule of President Mobutu Sese Seko. Most of the dysfunctional political practices that plague the modern DRC, such as the pervasiveness of corruption and the strategic asphyxiation of state offices, were institutionalized over many decades of colonial and post-colonial rule.<sup>3</sup>

The DRC's political problems were exacerbated by a decade of political turmoil and armed conflict. A pro-democracy movement in the early 1990s challenged President Mobutu's political monopoly but fractured and proved able only to weaken but not remove the president. A rebel movement supported by troops from Rwanda, Uganda, and Burundi ultimately ousted Mobutu in a 1996-1997 war to great popular acclaim, but the new regime led by President Laurent Kabila was no more democratic, competent, or honest than its predecessor.<sup>4</sup> The attempt in 1998 by Rwanda, Uganda, and Burundi to repeat their previous successful intervention in an attempt to oust Kabila inspired a number of other African countries to intervene, leading to a protracted and messy armed conflict that devastated the country's economy and infrastructure and left the Congo divided and unmanageable.<sup>5</sup>

The deep historical and structural roots of the Congo's political challenges frustrate most attempts to address them. Although the Congolese population feels frustrated by the persistent corruption, they see no alternative to paying bribes, trading on the black market, and engaging in other illegal and informal practices that are necessary for their survival but ultimately preserve the dominance of the wealthy and powerful. Similarly, although the public widely supports the idea of more representative and transparent government, people see no way to break free of the patrimonial structures that are their only means of accessing state services. The

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<sup>1</sup> United Nations Development Program, <http://hdrstats.undp.org/en/countries/profiles/COD.html>.

<sup>2</sup> Young, Crawford. *The African Colonial State in Comparative Perspective*, (New Haven: Yale University Press, 1997). Young sees the Belgian Congo as the quintessential example of the predatory nature of colonial rule in Africa.

<sup>3</sup> Young, Crawford and Thomas Turner. *The Rise and Decline of the Zairian State*, (Madison: University of Wisconsin Press, 1984), is the best account of the first two decades of the Mobutu regime. See also Callaghy, Thomas. *The State-Society Struggle: Zaire in Comparative Perspective*, (New York: Columbia University Press, 1984); Schatzberg, Michael G. *The Dialectics of Oppression in Zaire*, (Bloomington: Indiana University Press, 1988).

<sup>4</sup> Nzongola-Ntalaja, Georges. *The Congo from Leopold to Kabila: A People's History*, (London: Zed Books, 2002).

<sup>5</sup> A large number of publications have appeared providing analysis of the two wars in the Congo. The best include Lemarchand, René. *Dynamics of Violence in Central Africa*, (Philadelphia: University of Pennsylvania Press, 2009); Turner, Thomas. *The Congo Wars: Conflict, Myth, and Reality*, (London: Zed Books, 2007); Reyntjens, Filip. *The Great African War: Congo and Regional Geopolitics, 1996-2006*, (Cambridge: Cambridge University Press, 2009); Stearns, Jason K. *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa*, (New York: Public Affairs, 2011); Prunier, Gerard. *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*, (Oxford: Oxford University Press, 2009); Clark, John F. (ed.), *The African Stakes of the Congo War*, (New York: Palgrave Macmillan, 2002).

domestic and international actors who benefit from the chaotic status quo work to undermine most efforts for reform.

Despite the enormity of difficulties confronting the DRC, several factors provide an important basis for improving the country's political, social, and economic situation. Even in the face of a weak and predatory state, most Congolese have a solid sense of national identity and would prefer a stronger but less rapacious state that is more effective at providing essential services. Most violent conflicts in the DRC today involve groups seeking greater inclusion in the system rather than seeking autonomy. A vibrant civil society; diverse media sector; and strong, socially engaged religious institutions offer effective potential partners in efforts to promote a democracy, human rights, and governance (DRG) agenda. Furthermore, the institutional and legal reforms adopted following the Second Congo War (1998-2003) provide a sound basis for positive political change. While they have yet to be implemented in practice, the institutions and rights defined in the 2006 Constitution have broad popular support. Hence, although the challenges facing the DRC are immense, the potential for improving the political situation is real. By focusing on improving the delivery of services and developing the balance of powers specified in the Constitution, the social contract developed in the transition process between the state and the Congolese people could be strengthened and provide a basis for more general economic, social, and political improvements.

## **1.1 METHODOLOGY**

To develop this DRG assessment of the DRC, a combined team of outside specialists and USAID personnel undertook three weeks of field research in July and August 2012. The research team included three political science professors with expertise in the politics of the DRC (two from US universities and one from the University of Kinshasa), a representative of the Africa Bureau of USAID/Washington, a representative of the USAID/Washington Office of Conflict Management and Mitigation, and three representatives of the USAID DRG program in Kinshasa. Members of the team visited Kinshasa, Bandundu, Bas Congo, and Kasai Oriental, interviewing national, provincial, and local government officials; and representatives of political parties, human rights organizations, women's groups, labor unions, religious institutions, businesses, and international development agencies. The team also conducted focus group interviews with women, youths, farmers, university professors, and Members of Parliament. Due to travel restrictions, we were unable to visit eastern Congo as originally planned, but the team intentionally sought out a number of individuals from the east to ensure we had a perspective from that region.

## **1.2 BACKGROUND**

The DRC stretches across a vast territory ranging from the mountainous highlands of the Great Rift Valley in the east to the Atlantic Ocean in the west. Covering 905,355 square miles, the DRC is the size of the United States east of the Mississippi. With much of the land covered by dense rainforests and only portions of the innumerable rivers that cut across the territory navigable, governing the DRC would be a challenge in the best of circumstances. The population of the DRC was estimated at nearly 68 million in 2011 (no census has taken place since 1984), with an annual population growth rate of 2.4%. The rate of urbanization is high, with the capital, Kinshasa, now home to possibly more than nine million people, even as a number of other cities are growing rapidly.<sup>6</sup> The population of the DRC is highly diverse, with four dominant local languages, plus French, and as many as 300 ethnic groups.<sup>7</sup> Social divisions are not, however, the primary source of conflict

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<sup>6</sup> *Encyclopaedia Britannica*. "Democratic Republic of Congo (DRC)," <http://data.worldbank.org/country/congo-dem-rep>.

<sup>7</sup> Vansina, Jan. *Introduction à l'éthnographie du Congo*. (Brussels: Centre de recherche et d'information socio-politique, 1966a).



in the DRC, and the persistence of conflict is due more to governance failures and struggles to gain access to political power and to control natural resources than any intractable conflicts over identity.<sup>8</sup>

The DRC is extraordinarily rich in natural resources, boasting not only abundant arable land and water but also extraordinary mineral wealth, including copper, gold, diamonds, cobalt, uranium, tin, magnesium, and petroleum. Yet this natural resource wealth has proven more a

curse for the DRC than a blessing, because it has opened the country to exploitation by numerous private interests while providing very few benefits to the majority of Congo's people. For more than a century, international actors, both public and private, have colluded with the country's elite to exploit the DRC's natural resources, but nearly all of the resulting income has flowed out of the country.<sup>9</sup> The contrast between the wealth extracted from the DRC and the country's lack of development is astounding. From 1960 to 2008, the DRC's per capita GDP fell from \$323.15 to \$98.51—a 70% decline.<sup>10</sup> As a number of people we interviewed for this report claimed, if the DRC could effectively manage and equitably make use of its economic resources, the country would need no foreign assistance.

### 1.2.1 A COLONIAL EXPERIENCE BUILT ON VIOLENCE

A brief review of the DRC's history is useful for understanding the deep historical roots of the country's political dysfunction and weak economic system.<sup>11</sup> The exploitation of the DRC's wealth for the benefit of outside interests and a limited domestic elite began with the colonial creation of the Congolese state. Like many African states, the Congo had no pre-colonial precedent. The boundaries of the DRC were drawn arbitrarily, lumping together several hundred diverse political entities that ranged from highly centralized



<sup>8</sup> Dunn, Kevin C. *Imagining the Congo: The International Relations of Identity*, (New York: Palgrave, 2003); Nest, Michael, François Grignon, and Emizet Kisangani. *The Democratic Republic of Congo: Economic Dimensions of War and Peace*, (Boulder: Lynne Rienner, 2006); Lemarchand, (2009) *Op. Cit.*, pp. 191-280; and Autesserre, Séveine. *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding*, (Cambridge: Cambridge University Press, 2010) caution that local identity issues should not be discounted in understanding the persistence of conflict in eastern DRC, but that the conflicts are driven by struggles for influence and resources.

<sup>9</sup> Turner (2007) *Op. Cit.*, pp. 24-40.

<sup>10</sup> Gambino, Tony. "Democratic Republic of Congo," *World Development Report 2011*, Background Case Study, (Washington: World Bank, March 2, 2011).

<sup>11</sup> Schatzberg, Michael G. "The Structural Roots of the DRC's Current Disasters: Deep Dilemmas," *African Studies Review*, 55, no. 1, (April 2012), pp. 117-121.

kingdoms in the south and west to the highly democratic “stateless societies” of the rainforest.<sup>12</sup> King Leopold II of Belgium, seeking a colonial territory, hired Henry Morton Stanley to assert control over much of western Congo and ultimately organized the Berlin Conference of 1884-1885 to establish the principles that would allow him to lay claim to the vast area that today comprises the DRC. Stanley’s methods of establishing control through violence and trickery set a precedent for colonial governance in the DRC. The Kikongo language nickname ascribed to Stanley, *Bula Matari* (“the Crusher of Rocks”) reflected the cruelty he used in building a railroad from the Atlantic coast into the interior, and ultimately became the local term for the colonial state.<sup>13</sup>

Lacking the support of the Belgian government for the creation of his colony, King Leopold II needed the Congo Free State to be self-sustaining. He created concessions that turned control of much of the territory over to private companies who, in exchange for providing financial support to the colonial administration, were allowed to operate without restrictions. The concessionary companies required local populations to work for them. The violence with which companies forced people to harvest and process rubber became an international scandal, as critics labeled Leopold’s rule the “Red Rubber Regime,” because of the massive amounts of Congolese blood that was shed. One of the first international human rights movements emerged to bring an end to Leopold’s rule, ultimately forcing the Belgian government to take direct control of the colony, though conditions improved only marginally. Demographers estimate that in the first several decades of colonial rule, Congo’s population decreased by as much as one-third due to violence, malnutrition, and disease, an extraordinary trauma whose lasting impact should not be underestimated.<sup>14</sup>

## 1.2.2 CHAOS AND AUTHORITARIANISM FOLLOW INDEPENDENCE

Belgian colonial administration did virtually nothing to prepare Congo for independence. Colonial state structures that were designed primarily to control the population and extract wealth were inherited by Congolese politicians largely unchanged. A veneer of democratic institutions was pasted onto the state at independence, but these institutions were poorly defined and lacked roots in the society.<sup>15</sup> Immediately after independence on June 30, 1960, a conflict arose over whether ultimate authority lay in the office of the prime minister or the president. The colonial system of indirect rule and the practice of divide and conquer also left the Congolese state without a coherent society, and in the vacuum of authority created by the conflict over state power, the provinces of Katanga and Kasai—spurred on by outside business interests—declared independence. Fearing the precedent a successful secession might set for the rest of Africa, the United Nations Security Council created a multinational force to intervene. Although the United Nations Operation in Congo (ONUC) sought to preserve the integrity of the Congolese state, in many ways it contributed to its instability, as the country became a pawn in the Cold War.<sup>16</sup>

In September 1960, the head of the military, Joseph Desire Mobutu, who allied himself with the West, took power in a coup. He dismissed Parliament, which was sympathetic to Prime Minister Patrice Lumumba, who

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<sup>12</sup> Vansina, Jan. *Kingdoms of the Savanna*, (Madison: University of Wisconsin Press, 1966b); Vansina, Jan. *The Children of Woot: A History of the Kuba Peoples*, (Madison: University of Wisconsin Press, 1978); Vansina, Jan. *Paths in the Rainforest: Toward a History of Political Tradition in Equatorial Africa*, (Madison: University of Wisconsin Press, 1990). Vansina’s various works demonstrate the extraordinary political diversity of pre-colonial DRC.

<sup>13</sup> Young (1997) Op Cit.

<sup>14</sup> Hochschild, Adam . *King Leopold’s Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa*, (New York: Houghton Mifflin, 1999), provides an accessible discussion of the brutality of Congo’s colonial experience. See also, Slade, Ruth M. *King Leopold’s Congo*, (London: Oxford University Press, 1962); Anstey, Roger. *King Leopold’s Legacy: The Congo Under Belgian Rule, 1908-1960*, (London: Oxford University Press, 1966).

<sup>15</sup> Young, Crawford. *Politics in the Congo: Decolonization and Independence*, (Princeton: Princeton University Press, 1967); Lemarchand, René. *Political Awakening in the Belgian Congo*, (Berkeley: University of California Press, 1964); Weiss, Herbert F. *Political Protest in the Congo: The Parti Solidaire Africain in the Independence Struggle*, (1967).

<sup>16</sup> Lefever, Ernest W. *Crisis in the Congo: A United Nations Force in Action*, (Washington: Brookings Institution ,1965); O’Brien, Conor Cruise. *To Katanga and Back: A U.N. Case History*, (New York: Grosset and Dunlap, 1966).

had support from the Eastern Bloc. Lumumba attempted to flee to Stanleyville (today's Kisangani in Orientale Province) but was arrested and later killed. Mobutu turned power back over to civilians in early 1961, and ONUC was able to recapture Kasai. Katanga was eventually reincorporated into Congo through negotiations. Yet the country descended further into chaos as new rebellions by Lumumba allies arose in Bandundu and several eastern provinces in 1964.<sup>17</sup>

The disorder of Congo's first five years of independence created significant hardship for the population and destroyed most of the limited developments the colonial regime had left behind. When army chief Mobutu once again took power on November 24, 1965, his coup was greeted with general popular acclaim, as people hoped he might be able to bring stability back to the country. He successfully crushed the rebellions in Bandundu and the east (including a rebel group commanded by future president Laurent Kabila) and built on the resulting popularity to consolidate his power. Mobutu outlawed political parties and then created a single political party, the Popular Movement for the Revolution (MPR), which all Congolese were required to join. Civil society groups outside the MPR were banned and replaced by official MPR women's, youth, and other groups. Mobutu promoted an ideology called "authenticity" that promised to rid the country of colonial influences, changing the name of the country to Zaire and requiring all Congolese to adopt African names rather than Christian names. His "Zairianization" program seized foreign-owned businesses and turned them over to Mobutu supporters. He sought to challenge the power of the Christian churches, who count over 90% of the population as members, by nationalizing church schools and medical establishments.<sup>18</sup>

Mobutu was successful at building both the state and his own personal power in his first decade in office, but his political practices ultimately proved unsustainable. He built much of his power on an elaborate patron-client system, in which political positions and other opportunities for personal enrichment were exchanged for support and kickbacks. Corruption lay at the heart of the system, as government officials charged fees to provide state services and accepted bribes for their own enrichment rather than charging taxes and providing services to the population. Corruption was, in fact, so widespread that longtime Congo observer Crawford Young coined the term "kleptocracy," rule by theft, to describe the system.<sup>19</sup> Earnings from mineral extraction sustained the patrimonial system for a time, but the collapse of copper prices in the early 1970s deprived the regime of its main source of foreign exchange, and the growing demands of patrons and clients tapped deeper into government coffers. The Mobutu regime benefited from substantial international assistance because it allied Zaire closely with the West in the Cold War and allowed the country to serve as a transit point and base of operations for anti-communist Angolan rebels, but even the income this brought in was not sufficient to support the voracious appetite of the patrimonial system. The regime gradually cut back on service provision, as the money needed to repair roads and pay the salaries of teachers, medical personnel, and police was diverted into private accounts. With their salaries unpaid, soldiers and police set up ubiquitous roadblocks to demand "unofficial taxes"—tolls to pass a road or enter a market, or fines for imaginary infractions. Churches had to take back control of most social services. As life became increasingly difficult for average citizens, Mobutu's claim to have brought security to the country no longer proved legitimate, and the regime had to rely increasingly on repression and a pervasive surveillance system. The state ultimately withdrew to its basic colonial functions of controlling the population and extracting wealth.<sup>20</sup>

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<sup>17</sup> Nzongola-Ntalaja (2002) Op. Cit.; Young, (1967) Op. Cit.; Verhagen, Benoît. *Rebellions au Congo*, (Brussels: Centre de recherche et d'information socio-politique, 1966).

<sup>18</sup> Young and Turner (1984) Op. Cit.

<sup>19</sup> Young, Crawford. "Zaire: The Unending Crisis," *Foreign Affairs*, 57, no. 1, (Fall 1978), pp. 169-185.

<sup>20</sup> Young and Turner (1984) Op. Cit.; Newbury, Catharine. "Dead and Buried or Just Underground? The Privatization of the State in Zaire," *The Canadian Journal of African Studies*, 18, no. 1, (1984), pp. 112-114, puts it well: "The state ... may no longer be so visible in performing the functions associated with the post-industrial state in the West (health, education, transport, infrastructure, and court systems). But it is nonetheless very active in performing those functions associated with a pre-industrial state: the accumulation of resources and the creation of a dependent work force" (114).

### 1.2.3 MOBUTU'S LONG FALL<sup>21</sup>

After Mobutu completed his second decade in power in the mid-1980s, his personal authority and the authority of the state were in steep decline. As the government no longer provided services, much of the country became increasingly isolated and fell outside the reach of the central state. Churches and other groups stepped in to provide many of the basic services generally expected of a state, from education to building roads to running markets. Flouting the rules giving the MPR a monopoly on social organizing, many new civil society groups formed, often to address practical economic issues. Mobutu personally was deeply unpopular, and the population became increasingly outspoken in its criticisms of the regime.

In 1990, as the “Third Wave” of democratization swept across Africa, popular discontent in the DRC coalesced into a democracy movement. Mobutu was pressured into legalizing opposition parties, and in 1991, he organized a National Conference that brought together political, religious, civil society, and business leaders to chart the country’s future. In several other Francophone African countries, national conferences were successful in removing sitting presidents, and for a time it looked as though Mobutu might also be on his way out. The conference selected the respected Catholic archbishop and regime critic Laurent Monsengwo as head of the conference and named long-time Mobutu opponent Etienne Tshisekedi as prime minister, setting itself up as a sort of Parliament.

Yet Mobutu was a masterful politician who managed to hold on to power by dividing and co-opting his opponents. He first accepted Tshisekedi’s appointment, then dismissed him and named another opposition politician to replace him, exploiting a regional division between Tshisekedi’s home region, Kasai, and the new prime minister’s region, Katanga, effectively splitting the opposition. Ethnic violence against Kasaians in Katanga and rioting and looting by unpaid soldiers added to insecurity that allowed Mobutu to remain on top. Mobutu named a new Parliament dominated by his supporters, challenging the authority of the National Conference, and both Tshisekedi and Mobutu’s appointee claimed to be the rightful prime minister, setting up competing governments. In June 1994, a compromise was reached, as Mobutu named Kengo wa Dondo, as prime minister. Mobutu promised to organize elections in 1995, but they were never held.

With non-violent, democratic means unable to remove Mobutu, his demise ultimately came from military intervention. At the end of the 1994 genocide and war in Rwanda, nearly one million refugees poured into the eastern DRC. Having been an ally of Rwandan President Habyarimana, Mobutu also gave safe haven to the Rwandan government officials, army, and militia groups who had carried out the genocide. Mixing with the refugees in camps just across the Rwanda border, these armed groups presented a perceived security threat for the new Rwandan regime set up by the Rwandan Patriotic Front (RPF), the rebel group that had driven the former regime from power and put an end to the genocide. As the Hutu militias regrouped in the DRC, they also began to target Congolese Tutsi, creating a wave of refugees into Rwanda. The RPF along with their close ally Uganda organized a rebel group, the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL). Although they named a leader from the rebellions of the 1960s, Laurent Kabila, a Luba-Katanga as AFDL commander, the core of the troops was Congolese Tutsi, including Banyamulenge from South Kivu.

With support from Ugandan, Rwandan, and Burundian troops, the AFDL launched an invasion of the DRC in October 1996. The troops closed the Rwandan refugee camps, driving most Rwandan refugees home, but also hunting down thousands of others who fled into the Congolese interior.<sup>22</sup> As the AFDL troops advanced across the DRC, they gained support from the population, including many members of the Zairian Armed Forces who deserted and switched sides, and ultimately Angola and other African states joined in the effort to oust Mobutu. In May 1997, the AFDL and its allies took control of Kinshasa, and Laurent Kabila

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<sup>21</sup> This section on the fall of Mobutu is based primarily on Nzongola-Ntalaja (2002) *Op. Cit.* ; Reyntjens (2009) *Op. Cit.*, pp. 10-143; and Lemarchand (2009) *Op. Cit.*, pp. 191-204.

<sup>22</sup> Human Rights Watch, “What Kabila is Hiding: Civilian Killings and Impunity in Congo,” (New York: Human Rights Watch, October 1, 1997); French, Howard W. “U.N. Congo Report Offers New View on Genocide,” *New York Times*, (August 27, 2010).

became president and renamed the country the Democratic Republic of Congo. Mobutu, sick with cancer, fled into exile, and died a few months later. Although the Congolese population that had supported Kabila's rise to power hoped that he would implement the democratic reforms that Mobutu had resisted, Kabila soon proved himself to be no more democratic than his predecessor. He refused to negotiate with Tshisekedi and other opposition leaders and instead named a government drawn mostly from the ranks of AFDL officers. His regime quickly drew criticisms for intolerance of dissent and a poor human rights record, including efforts to obstruct UN investigations into the massacre of Rwandan Hutu in several areas of the country.<sup>23</sup>

#### **I.2.4 A SECOND WAR FOLLOWED BY A POLITICAL TRANSITION**

Kabila initially placed RPF officers and Congolese Tutsi in important positions, but as the public became increasingly critical of what they saw as a Rwandan occupation, Kabila asked the RPF to leave the country. Congolese Tutsi in his regime and in the military became increasingly marginalized. After riots in Kinshasa and elsewhere opposing Rwanda's continuing presence in the east targeted Congolese Tutsi, Rwanda and Uganda backed a new rebel movement, the Congolese Rally for Democracy (RCD), which launched a new invasion of eastern Congo in August 1998. In a bold move, Rwanda airlifted troops to western Congo, who swiftly advanced on Kinshasa and might have taken the capital if Angola and several other African states had not intervened on behalf of the Kabila regime. Due largely to tensions between Rwanda and Uganda—tensions driven in no small part by competition over Congo's mineral wealth—the rebel movement split. Uganda backed the Movement for the Liberation of Congo (MLC), led by Jean-Pierre Bemba, as well as a break off faction of the RCD. The conflict descended into a stalemate, in which Kabila and his allies controlled the west and south of Congo, Rwanda and the RCD controlled the east, and Uganda and the MLC controlled the north. Local militia groups known as Mai-Mai fought the RCD and RPF in the east. The remnants of the Rwandan army and Hutu militias formed the Democratic Forces for the Liberation of Rwanda (FDLR), which targeted forces on all sides, further complicating the situation and adding to the violence.<sup>24</sup>

The human costs of the conflict were extraordinary, with hundreds of thousands displaced and agricultural production and trade routes decimated. Sexual and gender-based violence were so widely practiced that the DRC was labeled "The worst place on earth to be a woman."<sup>25</sup> Some 2.7 million people are estimated to have died as a result of the conflicts, mostly from malnutrition and lack of access to medical care,<sup>26</sup> making this among the most deadly conflicts since the Second World War. As with the violence of the Red Rubber Regime and the immediate post-independence rebellions, this war left the population traumatized, the economy devastated, and the country divided.

The Organization of African Unity sponsored peace negotiations beginning in 1999, leading to the Lusaka Accords, which were largely ineffective, as foreign troops remained in the DRC and combat continued. In November 1999, the UN Security Council authorized a new intervention force, called MONUC (*Mission de l'Organisation des Nations Unies au Congo*), which ultimately became the largest UN mission in history, involving more than 20,000 foreign troops and personnel. In January 2001, President Kabila was assassinated by one of his bodyguards. He was replaced by his son, Joseph Kabila, a little-known figure who was only 29 at the time. The new president proved more open to negotiation than his father. A broad-based process known as the Inter-Congolese Dialogue brought together all the Congolese and foreign warring parties plus representatives

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<sup>23</sup> Reyntjens (2009) Op. Cit., pp. 80-101, 144-169; French, Howard W. and Jeffrey Gettleman. "Dispute Over Report Evokes Rwandan Déjà Vu," *New York Times* (September 30, 2010); Kisangani, Emizet. "The massacre of refugees in Congo: A case of UN peacekeeping failure and international law," *Journal of Modern African Studies*, 38, no. 2, (2000), pp. 163-202.

<sup>24</sup> Reyntjens (2009) Op. Cit. pp. 194-231; Stearns (2011) Op. Cit., pp. 181-304.

<sup>25</sup> Public Broadcasting Service Newshour, "'The Worst Place on Earth to be a Woman': Healing the Eastern Congo," [www.pbs.org](http://www.pbs.org), (March 7, 2012).

<sup>26</sup> Human Security Report Project, "The Shrinking Costs of War," *Human Security Report 2009/2010*, (Oxford: Oxford University Press, December 2, 2010); Bohannon, John and John Travis. "How Many Have Died Due to Congo's Fighting? Scientists Battle over How to Estimate War-Related Deaths," *Science Insider*, (January 21, 2010) <http://news.sciencemag.org/scienceinsider/2010/01/post-1.html>.

of the political opposition and civil society for negotiations. In April 2002, the Sun City Accords set up plans for a political transition, and in July 2003, a transitional government took power. Kabila remained as president but vice presidents were drawn from the MLC, RCD, political opposition, and Kabila's own party, the People's Party for Reconstruction and Democracy (PPRD) in a plan known as "1+4."<sup>27</sup>

From 2003 to 2006, the 1+4 government, with support from MONUC and a group of foreign ambassadors known as the International Committee for the Support of the Transition (CIAT), prepared for a democratic transition. Twenty-five million voters were registered, and by an overwhelming majority, the Congolese approved a new Constitution in December 2005. The Constitution required decentralization of power to provinces and local units of government within three years, and a shift from 11 to 26 provinces. The Constitution guaranteed a wide range of civil, political, and economic rights. It established new provincial legislatures that would select the governors and called for a balance of powers, setting up a bicameral legislature at the national level, with a popularly elected National Assembly and a Senate indirectly selected through the provincial legislatures. The Constitution also sought to reorganize the judicial branch, with more specialized courts and a system of legal oversight. It sought to assert judicial independence by removing the president from any direct position of power within the judiciary. The international community provided massive support to organize a series of elections, beginning with a referendum on the Constitution and continuing with presidential, parliamentary, and provincial elections in July, August, and October 2006. Despite some limited violence, the elections were widely praised as free and fair. With 33 candidates in the first round, Kabila won a plurality, followed by MLC leader Bemba. In the run off, Kabila won 58.05% of the vote, according to the Independent Electoral Commission (CEI). Sixty-seven parties gained representation in the 500-member National Assembly along with 63 independent candidates who won seats.<sup>28</sup>

### **1.2.5 A GRADUAL CONCENTRATION OF EXECUTIVE POWER**

After multiple rounds of voting in 2006, the post-transition institutions began to function in 2007, and there were early signs both that a broad range of voices were being heard and that constitutional provisions for checks and balances were having an effect. The cabinet of 60 ministers that Kabila named in February included a wide assortment of politicians, including several of the candidates who had challenged him in the presidential election. The National Assembly appointed committee leaders from both parties allied with Kabila and opposition parties, and committees began to provide some oversight of government ministries. Although Vital Kamerhe, who was named president of the National Assembly, came from Kabila's PPRD, he sought to express the independence of Parliament. Under Kamerhe's leadership, the National Assembly called ministers for questioning, held lively debates over proposed legislation, and offered some control over the budget. The Senate, whose members were named by provincial legislatures and included a number of prominent political figures, also provided a degree of open discussion and oversight. The new provincial institutions also began to assert themselves. Governors from opposition parties were elected in two provinces.<sup>29</sup> Provincial legislatures in some regions worked to provide effective oversight of provincial governments, and in several cases, they removed governors.

While the institutional changes that emerged immediately after the transition provided much cause for optimism, within only a few years, progress on democratic consolidation slowed and in a number of areas moved backward. Both Parliament and the executive branch failed to move forward on a number of the organic laws needed to create the institutions defined in the Constitution. While provinces are functioning, the law dividing the country into 26 provinces from the current 11 has never been adopted. Neither have the laws necessary to move forward with decentralization beyond the provincial level. Local elections have, thus,

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<sup>27</sup> Reyntjens (2009) *Op. Cit.*, pp. 233-278.

<sup>28</sup> Weiss, Herbert F. "Voting for Change in the DRC," *Journal of Democracy*, 18, no. 2, (April 2007), pp. 138-151; International Crisis Group, "Escaping the Conflict Trap: Promoting Good Governance in the Congo," Africa Report no. 114, (July 20, 2006); International Crisis Group, "Congo: Staying Engaged after the Elections," Policy Brief, (January 9, 2007).

<sup>29</sup> Governors are chosen by vote of provincial assemblies.

never been held, and the president continues to appoint all local officials. The judiciary also remains a hybrid between its pre-transition structure and the organization envisioned in the Constitution. The High Council of Magistrates (CSM) was not created until 2008, while the Court of Cassation (an appeals court) and the Constitutional Court have never been established.

The executive branch has become quite powerful, and has increasingly come to dominate the political system. The institutions of the judicial branch have never fully matured, and the judiciary does not have an independent budget. Parliament has also not played a strong oversight role in regard to the executive branch. The 2011 election results did little to restore the public credibility of Parliament as a potential counterweight to a strong executive. The failure to hold provincial elections since 2006 has undermined the legitimacy that elections could provide to both the provincial legislatures and the governors and senators that they name. The cabinet that Kabila named after the 2011 elections is much smaller and more limited to members of his party and close allies, further limiting the diversity of voices in the government. Together, these developments seriously undermine the system of checks and balances envisioned by the Constitution and appear to be returning Congo to the system of executive dominance that characterized the Mobutu and Laurent Kabila administrations.

**“Kabila is increasingly imposing his rule through force. He is becoming like Mobutu.”**

*Elderly Widow in Lemba, Kinshasa*

Despite the 2003 peace deal and the 2006 political transition, insecurity remains a problem in the DRC, particularly in the east, where Mai-Mai and FDLR militia groups remain armed and other rebel groups continue to emerge. In 2007, Laurent

Nkunda (a Congolese Tutsi military commander who had been part of the AFDL and then fought against Kabila with the RCD in the Second Congo War and was incorporated into the post-transition armed forces) led a group of former RCD soldiers to break off from the army and form the National Congress for the Defense of the People (CNDP). Unlike in the previous two uprisings, the CNDP was unable to gain broader support for its rebellion against Kabila, but they were able to occupy portions of North Kivu and created substantial social disruption and a humanitarian crisis. Mai-Mai and FDLR groups engaged in combat as well, in part to gain access to mineral resources. In January 2009, the RPF joined with the Congolese army in joint military operations against the FDLR and CNDP. The RPF arrested Nkunda on war crimes and human rights violation charges when he crossed the Rwandan border. On March 23, 2009, the CNDP signed a peace agreement with the Congolese government, and its soldiers were incorporated into the Congolese armed forces. Bosco Ntaganda, the leader of the CNDP following Nkunda’s arrest, was named a general in the Congolese Armed Forces, despite having an outstanding indictment against him from the International Criminal Court (ICC) for recruiting and deploying child soldiers. In April 2012, after the Kabila regime suggested that they might turn Ntaganda over to the ICC, a group of former CNDP soldiers mutinied, and Ntaganda defected to become the leader of the new M23 Movement, named to highlight the promises of the March 23 Agreement that they claim the Kabila government was not respecting. Military operations by M23 in North Kivu soon displaced tens of thousands of Congolese, creating another security and humanitarian crisis.<sup>30</sup> In November 2012, M23 seized the town of Goma and forced the Kabila government to enter into negotiations with the rebels.

## **1.2.6 LINKS BETWEEN POOR DEMOCRATIC GOVERNANCE AND INSECURITY**

The reasons for the persistence of conflicts in the DRC are complex. Although the repeated armed conflicts in eastern Congo are often treated as a separate problem from the general challenges plaguing the rest of the DRC, they are in fact both fed by and in turn feed the country’s general political problems. The fragile nature of the Congolese state, imperfect or illegitimate democracy, abuse of rights, and poor governance all

<sup>30</sup> International Crisis Group, “Eastern Congo: Why Stabilisation Failed,” Policy Briefing, Africa Briefing 91, (Brussels: ICG, October 4, 2012); Autesserre, Séverine. “Hobbes and the Congo: Frames, Local Violence, and International Intervention,” *International Organization*, 63, no. 2, (April 2009), pp. 249-280.

contribute to the onset and perpetuation of armed conflict and political violence. Lack of effective security sector governance or rule of law undermines individuals' and communities' sense of security, causing them to seek protection from other sources or establish their own self-protection mechanisms—such as in the form of militias. Abuse of human rights undermines trust in the state and can foster new grievances that provide fuel to narratives of armed struggle. As discussed in the next section, frustrations over poor economic governance and inequitable access to resources feeds conflict as well.

When the state lacks the capacity or willingness to maintain basic control of its territory, the effective “cost” of rebellion is low. Militant activity therefore becomes a more attractive economic prospect, as a small number of armed men with guns can seize control of public resources for private gain. The troubling instances of violence and human rights abuses most commonly associated with conflict in the DRC—atrocities against civilians, sexual and gender based violence, child soldiering, forced labor, and illicit trade in minerals and other natural resources—are tragic outcomes of the broader problems of conflict and fragile governance. Bringing violence to a halt requires addressing the source of conflict and frail governance, not merely providing relief for chronic violations of rights.

Just as the DRC's chronic political problems feed conflict, armed conflict and insecurity have a negative effect on democracy, human rights, and governance. Armed conflict has allowed elites and political factions to gain power and positions in the state through non-democratic means. Since the 1996-1997 war, taking up arms has become the most important means to gain influence in the political system. The First Congo War brought Laurent Kabila and his AFDL colleagues to power. The peace deal implemented in 2003 brought the RCD, MLC, and other rebel groups into government. Then, once again in 2009, a peace deal brought Ntaganda and others from the CNDP into the regime. Despite the 2006 transition, democratic institutions are only one forum among several for competing for political power, and the continuing success of armed groups in gaining attention from both the government and international community undermines the impact of democratic processes such as elections. Groups that choose peaceful means to seek power, such as Tshisekedi's Union for Democracy and Social Progress (UDPS), find their ambitions frustrated by the failings of the democratic process and are unable to gain the attention of the international community.<sup>31</sup>

Conflict in the DRC has consistently undermined human rights. The armed forces lack adequate training or civilian oversight, and systems of accountability are inadequate. Preventing rape or forced recruitment is difficult when the state is unable to direct even basic actions of the armed forces or control the territory, and effective governance depends upon the rule of law, which presupposes basic political stability in which the state has a monopoly on the use of force. In turn, the government's failure to protect rights alienates citizens from the state and makes them more likely to search out means to protect their own rights, such as creating local militias.

### **I.2.7 LINKS BETWEEN POOR DEMOCRATIC GOVERNANCE, INSECURITY, AND ECONOMIC STAGNATION**

Just as poor democratic governance both fuels conflict and is perpetuated by conflict in the DRC, the country's poor economic performance

**“It's difficult to build democracy in poverty.”**  
*Congolese civil society leader*

drives the conflicts even as ongoing insecurity hinders opportunities for economic development. The abundance of natural resources in the Congo helps fuel the flames of conflict. In a context in which the population is desperately poor and the government fails to provide even basic services, taking up arms seems to some individuals and communities to be the only way to break through the corruption, patrimonialism, and government incompetence that prevents their accessing the benefits of the abundant mineral wealth in their territory. Competition over resources has been a factor driving conflict, and the exploitation of Congo's resources by groups linked to Rwanda, Uganda, and other outside interests has provided particular motivation

<sup>31</sup> Interviews with UDPS and MLC leadership, August 2012.



for local militia groups to act to secure economic resources for their communities—or at least for themselves. By engaging in the black market trade in diamonds, coltan, and other resources, groups of combatants gain the financial ability to arm and support themselves, even without substantial popular support.<sup>32</sup> As a leader of the Catholic Justice and Peace Commission told us based on their research with former combatants and others, “Conflict is not just about personal relations but about control of resources. ... If we don’t address this, we won’t bring an end to the violence.”<sup>33</sup>

“Groups like M23 destroy in one day what we’ve spent ten years building.”

*Catholic Church leader*

Armed conflict in turn hampers efforts to promote economic development. When the state has to defend its own authority, resources are diverted from socially desirable ends such as health, education, or

support for markets toward security forces and the war effort. The displacement of people from zones of conflict not only disrupts agricultural production and trade but also places a burden on the state to house, feed, and otherwise support the displaced. In our research, we heard multiple people, including officials in the government, explain that the war effort in the east drained the government’s resources and diverted attention from other important issues.

In sum, security, economics, and democratic governance in the DRC are in a complex and dynamic relationship with problems in each area feeding problems in the other two. A central contention of this report, however, is that the lack of progress on democratization; the government’s continuing failure to defend and respect human rights; and ongoing governance problems such as corruption, inefficiency, and the failure to provide public services are at the root of the DRC’s economic stagnation and persistent insecurity.

A World Bank study in March 2012 found that governance issues were the main obstacle to economic growth in the DRC.<sup>34</sup> Our analysis indicates that improving democratic governance and rebuilding the state should yield returns in terms of both economic growth and security. Meanwhile, investments in other areas like economic growth, health, education, or technology are unlikely to yield sustainable benefits if governance practices are not changed and democratic accountability does not improve. As it is, in all likelihood any new revenue streams or assets are likely to be mismanaged or misappropriated toward private ends before there can be any reinvestment toward promoting long-term growth and providing social services.



Homeless woman sleeping on streets of Kinshasa

<sup>32</sup> Kabamba, Patience. “External Economic Exploitation in the DRC: 1990-2005,” *African Studies Review*, 55, no. 1, (April 2012), pp. 123-130; Nest et al., (2006) Op. Cit.; Turner (2007) Op. Cit., pp. 24-48.

<sup>33</sup> Interview with Catholic Commission of Justice and Peace, Kinshasa, August 2, 2012.

<sup>34</sup> Herderschee, Johannes, Kai-Alexander Kaiser, and Daniel Mukoko Samba, “Resilience of an African Giant: Boosting Growth and Development in the Democratic Republic of Congo,” (Washington: the World Bank, April 2012).

# 2.0 DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE VARIABLES

## 2.1 CONSENSUS

Consensus refers to agreement over a nation's identity and the state's fundamental structure and rules.<sup>35</sup> Despite a history of conflict, including separatist movements in the early years after independence, according to our research, consensus is the area of least concern for democracy and governance in the DRC today. Congolese have a variety of ethnic, regional, and other loyalties, but most still see themselves as Congolese. Most of the conflicts that have taken place in recent years have involved struggles by various groups to gain greater influence and inclusion within Congo and greater access to the country's resources rather than attempts to gain autonomy or to secede. The control of the state over much of Congo's vast territory is limited, but the population widely supports the goal of increasing state capacity to provide vital public services such as security, justice, and economic development. While the people object to the predatory nature of the current state, they do not generally object to the idea of a stronger, more effective, and more beneficial Congolese state.

Beyond the basic consensus about the state, a wide popular consensus also exists around the Constitution and the institutions it establishes. Congo's Constitution was drafted by a broadly based constitutional commission during the transitional period that began in 2003. The new Constitution, which was adopted by referendum in December 2005 with 84.31% voting to approve and came into effect in February 2006, outlined substantial institutional changes, including creating a bicameral Parliament; reorganizing the judicial branch to increase its independence; and establishing a quasi-federal and decentralized system, with provincial legislatures empowered to select both governors and senators. The Constitution also guarantees broad civil, political, social, cultural, and economic rights. While in practice few of the institutions and the rights defined in the Constitution have been realized, the population expresses strong support for the principles of checks and balances, decentralization, and human rights and favors their full implementation.

While a positive consensus exists around how the population *wants* the political system to work, political progress is hampered by a negative consensus around how people *expect* the system to work, based on long experience. Corruption and inefficiency are grudgingly accepted as inevitable characteristics of Congolese political and social life. Most people are frustrated that they are forced to pay bribes and rely on personal connections, but they see no way to avoid participating in the system, thus helping to reinforce practices that undermine democracy and good governance. Developing the political system that people in the DRC hope for will require strong action to control deeply ingrained practices in current Congolese politics and society,

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<sup>35</sup> USAID, "Conducting a Democracy, Human Rights, and Governance Assessment: A Framework for Strategy Development," (Washington: USAID, December 2011), pp. 7-9.

and a fundamental long-term change in political and social behavior so that the values and institutions articulated in the Constitution can become a reality.

## 2.2 INCLUSION

Inclusion involves the absence of formal rules or informal practices that exclude segments of the population from full participation in the political life of a state.<sup>36</sup> The Congolese political system is generally open to anyone with the money to participate (or the military ability to demand a seat at the table). Neither formal regulations nor informal practices bar any individual or group from registering a political party or standing as a candidate. The Constitution guarantees that, “All Congolese are equal before the law and have the right to equal protection by the law” (Article 12). Nevertheless, several challenges in the area of inclusion persist.

The most serious issue is the continuing exclusion of women from full political participation. The Constitution commits the government to “the elimination of all forms of discrimination against women” and asserts that “Women are entitled to equitable representation in national, provincial, and local institutions” (Article 14). As with many other aspects of the Constitution, however, there has yet to be legislation passed implementing these constitutional provisions.

Women’s exclusion is evident both at the level of political representation and in day-to-day observance of rights. While many countries in the region took the opportunity of political transition coming out of conflict to actively promote women’s representation, women were poorly represented in the peace negotiations that oversaw the DRC’s transition process, and no provisions were included either in the Constitution or in electoral laws to encourage the election of women to office. As several women’s rights activists told us, cultural prohibitions to women in politics are high in the DRC, particularly because politics is seen as corrupt and therefore inappropriate for women. Despite these prohibitions, in both the 2006 and 2011 National Assembly elections, a moderate number of women ran for office, but fewer than 10% of deputies elected in both elections were women.<sup>37</sup> The 2011 elections increased the number of women deputies in the National Assembly by only two, from 42 to 44, increasing the percentage of women from 8.4% to 8.8%.<sup>38</sup> Representation of women in the provincial assemblies is even lower, generally under 5%. Women interviewed for this report claimed that women had difficulty getting elected not only because of cultural barriers but also because they lacked the economic position or time to support candidacies.

Limited political representation for women is but one aspect of a broader problem of women’s inclusion in the DRC. Women face widespread discrimination both in law and practice. The 1981 Family Code restricts women’s full citizenship rights, limiting their ability to own land, start a business, or take out a loan. Domestic violence is not yet prohibited by law, even though over two-thirds “of Congolese women (71%) have suffered from spousal or partner abuse at some point in time,” according to the 2007 Demographic and Health Survey of the DRC.<sup>39</sup> Yet even when laws have been changed to improve women’s legal rights, the general problem of poor enforcement of the law allows discriminatory practices to continue. For example, the 2006 laws on sexual and gender-based violence in the Penal Code (6/018, 6/019) created fairly strong legal prohibitions but have rarely been enforced.<sup>40</sup> The troubling issue of rape and severe violations of women’s human rights (outlined in the Rule of Law section) is a matter of particularly grave concern.

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<sup>36</sup> USAID (2011) Op. Cit. pp. 14-15.

<sup>37</sup> For example, in the 2011 elections, of 18,386 candidates, 2,276 were women, or just over 12%. Carter Center, *Presidential and Legislative Elections in the Democratic Republic of Congo: Final Report*, (Atlanta: The Carter Center, October 30, 2012), pp. 4, 36.

<sup>38</sup> InterParliamentary Union, “Women in African Parliaments,” [www.ipu.org](http://www.ipu.org), (September 30, 2012).

<sup>39</sup> Demographic and Health Survey, “Democratic Republic of Congo,” (2007), available at <http://www.measuredhs.com/pubs/pdf/SR141/SR141.pdf>

<sup>40</sup> IRIN. “Analysis: New laws have little impact on sexual violence in the DRC,” (Bukavu: IRIN, June 7, 2011).

A few ethnic and regional issues continue to confront the DRC as well. The question of inclusion of Congolese Tutsi, including the Banyamulenge, continues to be a source of conflict in eastern DRC. Although Kinyarwanda-speaking people have lived in the DRC for centuries, considerable movement of peoples between Rwanda and the DRC raised questions about the citizenship of Rwandophone populations even before the 1994 genocide in Rwanda drove hundreds of thousands of additional refugees into the Kivus. The involvement of many Congolese Tutsi in the rebel movements sponsored by the Rwandan military in 1996 and 1998—and claims that Rwanda continues to be behind the more recent groups, CNDP and M23—continue to raise doubts about the national loyalties of Congolese Tutsi for many other Congolese, while the Congolese Tutsi themselves fear persecution if Rwanda were to stop defending their interests. Meanwhile, the FDLR, the Hutu group founded by Rwanda Hutu exiles, has gained many Congolese Hutu members and comes into conflict with the Congolese Tutsi groups, Mai-Mai militias, and Congolese government forces.<sup>41</sup>

Another ethnic/regional issue that remains salient is discrimination against the Luba-Kasai, members of the Luba ethnic group from Kasai region who were historically among the more prosperous groups in the DRC. Since the Mobutu era, the Luba-Kasai have experienced discrimination and occasionally violence. Our research team was shocked at how neglected Mbuji-Mayi was even compared to the low level of development in other Congolese cities. Marginalization and discrimination remain problems for some other ethnic groups, particularly those such as the Pygmies that are less numerous. As Father Malu Malu, the head of the Stabilization and Reconstruction Plan for Eastern Congo (STAREC) told us, the democratic system needs to find a way to give representation to minority groups such as Tutsi and Pygmies. “We don’t want to over-emphasize ethnicity, but we need some equilibrium so that groups feel represented.”<sup>42</sup>

Another problem raised in many of our interviews was the undue influence of people from President Kabila’s home region, the province of Katanga. People expressed concerns over the growing reliance of the Kabila regime on people from his main political base. In the new cabinet, 9 of the 25 ministers are from Katanga. Regional chauvinism is also a problem in some areas. In Bas Congo, for example, our team found considerable hostility toward people from other regions and claims that all political positions in the province should be for natives of Bas Congo. One sign of strong regional bias is that in the 2011 parliamentary elections, only one candidate was elected in a district outside his home region.

The largest factor limiting inclusion in Congolese politics today is the degree to which money dominates political competition. The people that we interviewed repeatedly complained that the political system in the DRC only serves the interests of the wealthy. Political power in the Congo can give access to substantial resources. As explained in the historical overview, the state structures that facilitate corruption date back to the colonial era, when the Congolese state was designed to extract resources from the land and people—not for the good of Congolese society but to serve limited means (for both individuals and the Belgian state). The practice of using the state for private purposes became only more deeply entrenched during the long Mobutu era. Aware of the lucrative possibilities of public office, many wealthy and powerful individuals have taken advantage of the new electoral system inaugurated in 2006 to gain access to political positions. Some wealthy individuals have used their resources to create parties and media outlets to try to get themselves elected, and in both the 2006 and 2011 parliamentary elections, numerous candidates sought to buy votes with bribes of money, food, and other goods.

Money alone could not guarantee electoral success. In fact, some of those elected in both 2006 and 2011 did not have substantial resources, such as the widely discussed case of a bicycle taxi driver who won a seat in Kisangani. As one person in a rural area of the Kinshasa Plateau told us, “We took their money, but then we voted for someone else.”<sup>43</sup> This reaction, however, is likely exception, as many people told us that much of

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<sup>41</sup> Willame, Jean-Claude. *Banyarwanda et Banyamulenge: Violences ethniques et gestion de l'identitaire au Kivu*, (Paris: l'Harmattan, 1997); Turner (2007) pp. 76-145.

<sup>42</sup> Interview in Kinshasa, August 2, 2012.

<sup>43</sup> Interview in Menkao, Kinshasa, August 13, 2012.

the Congolese population does not know and understand its democratic rights. Most political campaigns in the DRC require resources that surpass the capabilities of the vast majority of people in this desperately poor country. In our interviews with farmers and workers, they complained vociferously about their politicians, but when we asked why they didn't run for office themselves, they laughed and said that they could never afford to mount a campaign. The need for financial means to run for office adds to the massive problem of corruption to create an impression that the political system is closed to most Congolese, exacerbating the frustration that leads some people to take up arms in an attempt to gain political influence. While the problems of exclusion caused by the role that money plays in Congolese politics are true across the board, they are particularly challenging for women, whose economic rights remain severely limited under Congolese law and who disproportionately constitute the country's poor.

## 2.3 COMPETITION AND POLITICAL ACCOUNTABILITY

Competition and political accountability involve citizens exercising sovereignty, having the ability to make choices that allow them to govern themselves.<sup>44</sup> Similar to other fragile states, political authority in the DRC is wielded by a limited number of individuals and factions representing a narrowly based set of interests. Competition for that authority occurs only partially through liberal democratic mechanisms—and imperfectly at that. The relatively successful 2006 elections represented a departure from the norm in a country that has a long history of authoritarian rule. With a single political party and severe restrictions on civil society activity, the Mobutu regime tolerated little political competition, holding non-competitive elections periodically as a means of bolstering claims for legitimacy. The current regime has roots in the AFDL that originally came to power through military force in 1997 rather than electoral means and then in turn restricted the very political parties and civil society groups that had opposed Mobutu and helped facilitate the AFDL's rise to power.

The competition of ideas and responsiveness of government to the people are not part of political culture and political practice in the DRC. Michael Schatzberg refers to a Congolese saying, "Power is eaten whole," which is to say, "There is a real reluctance to share power, to devolve power. The impulse, even today, is to hang on to whatever parcel of power one might be lucky enough to have, and then to exploit it for all it is worth. This is usually done because of the insecurity of the political situation and because one can never really know, especially in a non-democratic context characterized by political instability and weak political institutions, just how long one will have power"<sup>45</sup>.

Not surprisingly, given the long historical patterns in the DRC, political competition has been characterized in the past several years by a trend toward reconcentration of power in the executive branch. The absence of effective balance of powers creates substantial challenges in the area of competition and political accountability. At the same time, despite periodic threats to government critics in the media and civil society, the free exchange of ideas is widespread in the DRC.

### 2.3.1 FLAWED ELECTIONS UNDERMINE LEGITIMACY

The flawed presidential and parliamentary elections of November 2011 are the point of departure for many discussions about the current political problems in the DRC. During the three-year transitional period after the 2003 peace accords, a wide range of domestic and international actors focused on preparing for the 2006 elections. Despite some irregularities,

"The elections are like a soccer game. One side has 34 players, the other 9. The referees are wearing the large team's uniform. And the net for that team is put backward. But still we say 'let's watch the game'"

*Opposition MP*

<sup>44</sup> USAID (2011) Op. Cit. pp. 11-13.

<sup>45</sup> Schatzberg (2012) Op. Cit. pp. 117-121.

both the presidential and parliamentary election results that year were widely regarded as credible. In contrast, the 2011 elections were prepared in a much shorter time period with more limited international support, and they suffered from both logistical and political problems.

In January 2011, the government proposed and Parliament quickly passed a constitutional revision that included changes to the electoral rules eliminating runoff elections for president in favor of a plurality vote.<sup>46</sup> Although justified in part as a means of avoiding electoral violence between first round and run-off elections, this change was commonly seen as a politically motivated attempt to improve the electoral prospects of President Kabila. A new electoral commission, the CENI, was established on February 26, 2011, with the seven CENI commissioners chosen by Parliament to represent the majority (four) and opposition (three) blocs rather than politically independent commissioners chosen with consultation or representation of civil society, as had been the case with the previous electoral commission.<sup>47</sup> The head of the CENI, Daniel Ngoy Mulunda, is perceived as being close to President Kabila, having been an associate of Laurent Kabila when he was in exile in Tanzania and a founding member of the president's party, the PPRD. The CENI confronted massive logistical challenges yet rejected substantial pressures to delay the elections. Some observers expressed concern that delaying elections could lead to a constitutional crisis, but many others argued that delay of a few months would allow the CENI to improve greatly the conduct of the elections.<sup>48</sup>

According to the human rights group African Association for the Defense of Human Rights (ASADHO), “The preparation, organization, and conduct of the November 2011 elections were a failure for democracy and the consolidation of rule of law. These elections, which constituted an opportunity to promote human rights, instead led to their violation.”<sup>49</sup> Ballots were insufficient and late in arriving to many remote locations, requiring an extension of the voting period to three days.<sup>50</sup> Both the poor organization and active suppression of independent election observation prevented independent confirmation of results. Observers were denied access to the tabulation process. For example, the Carter Center noted, “the results published for at least two constituencies in Katanga province were implausible because their validity would have meant that every registered voter was able to vote on election day, that all voters voted for Kabila, and that all voters correctly marked their ballots.”<sup>51</sup> The two main opposition presidential candidates contested the results as soon as voting concluded, based on irregularities their party observers noted, and many candidates contested the legislative results as well. Longtime opposition activist Etienne Tshisekedi of the UDPS claimed to have won the most votes and declared himself the rightful president, a conclusion shared by many other Congolese (though not most outside observers), but because of problems in the compilation and tabulation process, the actual results are impossible to determine. The Carter Center concluded simply that, “DRC presidential election results lack credibility.”<sup>52</sup>

The legislative electoral results also lacked credibility. The elections resulted in a very high turnover rate, with only 20% of delegates returned to the National Assembly. The human rights group *Voix des Sans Voix* claimed that they and other nongovernmental organizations (NGOs) had urged the Congolese population “to vote for those who would defend their interests, not who gave them money or gifts, and there were

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<sup>46</sup> ASADHO. “Rapport sur l’Etat de droit sous la legislature de 2006 à 2011 en RDCongo: ‘La démocratie sur papier, le peuple n’en veut plus,’” no. 002/2012, (Kinshasa: ASADHO, April 2012).

<sup>47</sup> Carter Center (2012) Op Cit. p. 21. According to the Carter Center, “The absence of civil society representation within the CENI leadership generated criticism” (21).

<sup>48</sup> International Crisis Group, “Congo: The Electoral Dilemma,” *Africa Report* 175, (Brussels: International Crisis Group, May 5, 2011); interview with Father Appolinaire Malu Malu, Kinshasa, August 2, 2012.

<sup>49</sup> ASADHO (2012) Op. Cit. p. 65.

<sup>50</sup> Carter Center (2012) Op Cit. p. 51.

<sup>51</sup> Ibid. p. 55.

<sup>52</sup> Carter Center, “Carter Center: DRC Presidential Election Results Lack Credibility,” (Atlanta: Carter Center, December 10, 2011), available at <http://www.cartercenter.org/news/pr/drc-121011.html>.

candidates who were voted out because they tried to bribe the people.”<sup>53</sup> Yet *Voix des Sans Voix* also claimed that the final results often did not reflect popular will. They noted major discrepancies between what observers noted at the local level and the released results. “When the vote was sent to the compilation level, there was greater fraud. Some candidates were simply named, others were dropped. ... The powerful realized that those in the posts for the past five years were unacceptable (to the population), so they replaced them with people from the same party. They changed the people but not the ideology. That is why we speak of members being ‘named’ rather than ‘elected.’”<sup>54</sup> The claim that most members of the National Assembly were “selected, not elected” was repeated widely in our interviews. The Carter Center noted that the number of votes in the legislative and presidential contests often differed widely, and that in opposition strongholds, many more votes were declared invalid than in areas that supported the presidential coalition. Candidates and parties were often unable to consult results. Although mechanisms for appeal existed, many appeals were thrown out on technical grounds, and the success of appeals by opposition candidates has been undermined by the lack of independence of the judiciary.<sup>55</sup> Regardless of the actual level of fraud, the perception that election results were brazenly manipulated was widespread in the interviews we conducted, expressed not only by university professors and civil society activists but by farmers and unemployed urban women.

The flawed elections further undermined the popular legitimacy of a regime whose legitimacy had already been declining for several years. One human rights activist told us that, “Since the publication of election results, the legitimacy of institutions has become increasingly contested.”<sup>56</sup> The elections confirmed an image of unchecked executive power, particularly as so many Congolese believed that the results favoring the president were falsified. As one Congolese social science researcher asserted, “Even the problems in the east are in part tied to these elections. Because they were not legitimate, we are living with the consequences.”<sup>57</sup> The message to groups that have chosen electoral means to gain influence in Congo’s political system could be that only violence gets a response. As one human rights activist told us, “The only way to be respected is to take up arms.”<sup>58</sup>

### **2.3.2 A TROUBLING CONCENTRATION OF EXECUTIVE POWER**

The Constitution that came into effect in 2006 sought to create checks and balances, and in the first years of the new regime, both horizontal and vertical checks were functional to a limited degree. However, in the past several years, the executive branch has moved increasingly to exercise its dominance over competing institutions. As discussed in the section on Rule of Law, the judicial branch has never enjoyed effective independence, providing almost no constraint on either the executive or legislative branches. Although the creation of the High Council of the Magistrature is a positive development, the failure to create other judicial institutions envisioned in the Constitution and to provide adequate independent funding has hampered the effectiveness of the judicial branch.

Parliament also has become increasingly dominated by the executive branch. In the first years after the 2006 elections, Parliament offered limited checks on the executive, with committees providing oversight of ministries and meaningful discussion of proposed laws. After the removal of National Assembly president Kamerhe in 2009, however, and his replacement by close Kabila ally Évariste Boshab, the National Assembly rarely challenged the executive branch and instead became a point of blockage for numerous initiatives that could potentially have limited executive authority, from the implementation of decentralization to the establishment of judicial institutions stipulated in the Constitution. The dominance of the executive over the

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<sup>53</sup> Interview with *Voix des Sans Voix*, August 2, 2012.

<sup>54</sup> *Ibid.*

<sup>55</sup> Carter Center (2012) *Op Cit.* pp. 62-63.

<sup>56</sup> Interview with ASADHO, Kinshasa, August 3, 2012.

<sup>57</sup> Interview with Centre d’Etudes pour l’Action Sociale (CEPAS), Kinshasa, August 6, 2012.

<sup>58</sup> Interview with ACAS, Kinshasa, August 3, 2012.

legislature has been enhanced by the 2011 elections, which not only increased the representation of parties allied with President Kabila but also resulted in massive turnover, bringing in a large number of deputies who lack political experience and some of whom may feel that they owe their positions to national leaders who manipulated election results in their favor.<sup>59</sup> As one Member of Parliament told us, “Most Members of Parliament don’t have the background to know how to function in Parliament. It takes five years to learn how the system really works, and by then their term is up.”<sup>60</sup>

Members of Parliament, international partners, and domestic civil society observers interviewed for this report all claimed that the National Assembly lacks independence. The executive branch has also moved to rein in the independence of provincial governments. The Constitution redefined the DRC as a decentralized, quasi-federal state. It created new provincial legislatures empowered with selecting governors and senators. In the first years after the 2006 elections, a number of provincial governments acted with considerable independence. In some provinces, the legislative majorities were from opposition parties, and at least two named governors from their coalitions. In a number of provinces, legislatures sought to exercise oversight over the provincial governments, and in several cases, they removed governors from office. In recent years, however, President Kabila has exercised increasing control over the provincial governments. A constitutional amendment adopted in January 2011 gave the president the power to dismiss governors and provincial legislatures.<sup>61</sup> While in theory, this is only allowed in the face of crisis, in practice, the human rights group ASADHO claims that what defines a crisis is not defined, giving the president great power over the provinces in practice.<sup>62</sup> With the president regularly asserting influence over changes in provincial government, all 11 provinces now have governors from parties supporting the president. In Kasai Oriental, for example, an opposition stronghold, a formerly independent governor, Alphonse Ngoyi Kasanji, joined the PPRD once in office. This has led to significant tensions with the local population, particularly in the capital, Mbuji-Mayi, where UDPS supporters are numerous, leading one civil society activist to characterize the governor’s administration as “an administration of occupation.”<sup>63</sup>

In addition to making the provinces semi-sovereign, the Constitution also included provisions decentralizing power to sub-provincial administrative units. However, many of the necessary legal structures to implement these provisions have not been adopted, such as a law delineating the borders of the decentralized entities, and local elections have never been organized. The president continues to appoint all local government officials. According to many of the people we interviewed for this report, the lack of movement on decentralization and the failure to hold local elections are major obstacles to democratic consolidation in the DRC. As one USAID partner explained, “If democracy is about people getting involved, then provincial and local politics are important. At this moment, all local government officials are named by the president. If things were democratic at the base, then that would echo upward.”<sup>64</sup>

### **2.3.3 STRONG CIVIL SOCIETY AND MEDIA, WEAK POLITICAL PARTIES**

Civil society and the media do provide some space for the open exchange of ideas and opportunities to hold the government accountable. Both civil society and the media are diverse and vibrant in the DRC despite challenges such as inadequate funding and lack of capacity. Though more prevalent in urban areas, civil society groups are present throughout the country and in all sectors of public life. Umbrella groups at the

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<sup>59</sup> Interview with Members of Parliament, Kinshasa, July 30, August 5, August 6, 2012.

<sup>60</sup> Interview with Members of Parliament, Kinshasa, July 30, 2012.

<sup>61</sup> As ASADHO (2012) Op. Cit. explained, Articles 197 and 198 of the Constitution as revised by law No. 11/002, January 20, 2011, “Accord to the President of the Republic, without being restrained by the prerogatives of the Provinces, in consultation with the leadership of the National Assembly and Senate, to dissolve a provincial assembly or to remove a provincial governor in the case of a serious and persistent crisis that threatens the functioning of provincial institutions” (39-40).

<sup>62</sup> *Ibid.*, p. 40-41.

<sup>63</sup> Interview with civil society activist, Mbuji-Mayi, August 13, 2012.

<sup>64</sup> Interview with USAID implementer, Kinshasa, July 30, 2012.



national and provincial levels help bring together groups focused on such issues as human rights, women's rights, and economic development, though the links between urban elite groups and grassroots communities are sometimes weak. Given the poverty in the country and the limited availability of outside funding, the financial situation of most civil society groups is also quite precarious. Politically oriented groups such as human rights associations also face threats and harassment that hinder their work. Many groups have difficulty effectively lobbying the government, instead taking a purely antagonistic approach to the state. Despite these challenges, civil society associations play an important role in bringing people with common interests together and providing services and support in the face of limited state service provision. For example, in the face of the state's inability or unwillingness to fund schools adequately, parents in some communities have come together to organize their schools and pay teachers directly. While hardly an ideal situation, these parents committees do demonstrate a strong degree of social capital in the DRC. Most civil society groups function under democratic principles, regularly electing leaders who are expected to be accountable to the membership, thus providing an excellent workshop for democratic practice. The vitality and prevalence of civil society thus makes it an important social resource for the DRC.

The media is another bright spot on Congo's political landscape, though like human rights groups, journalists face threats, harassment, and pressures to accept fees for positive reporting. The DRC benefits from a proliferation of newspapers and other publications, and national, provincial, and community-based radio and television stations. The large number of media outlets provides a diversity of perspectives and lively public debates on a range of public issues in the DRC. Nevertheless, government harassment of the media is high. Particularly in the lead up to the November 2011 elections, a number of journalists were beaten or arrested. Both the High Council of the Media and various local and regional governments closed down radio and television stations. In 2011 alone, the NGO *Journaliste en Danger* recorded one journalist killed, 42 arrests, 57 cases of threats, and 43 cases of censorship.<sup>65</sup> Radio France International has been suspended three times in recent years. The resilience of the Congolese press in the face of such assaults is impressive, but this extensive



**Members of a development cooperative voting for leadership**

harassment encourages journalists to self-censor, placing limits on the public exchange of ideas. *Journaliste en Danger* points out the lack of professionalism among journalists and the overt politicization of some press organs,<sup>66</sup> while funding also remains a challenge for many media outlets.

In contrast to the relative strength of civil society and the media, political parties in the DRC are extremely weak. During the democratic awakening of the early 1990s, President Mobutu initiated the practice of protecting his power by encouraging the proliferation of political parties, and the country continues to have an excessive number

of parties today. In the 2011 elections, nearly 500 parties fielded candidates, with almost 100 parties gaining seats in the National Assembly. Most parties are built around an individual politician, with very few promoting a clear political platform or set of ideas. Many parties lack internal democracy. Party leadership is overwhelmingly male, and women's candidacy is promoted in only a few parties. Few parties are able to

<sup>65</sup> *Journaliste en Danger*, "RD Congo, XIVme Sommet de la Francophonie: 'Monsieur Kabila vous aviez promis de lutter contre l'impunité,'" (Kinshasa: JED, October 2012).

<sup>66</sup> *Journaliste en Danger*, "Rapport 2011: La liberté de la presse pendant les élections, des medias en campagne," Kinshasa: JED, (December 28, 2011); *Journaliste en Danger* (2012) Op. Cit.

provide funding to their candidates, so most candidates must fund themselves and thus feel little loyalty to their party. As one Member of Parliament told us, “Because people pay for their own election, they don’t feel that they owe anything to their party.”<sup>67</sup> Another added, “Most members who come to Parliament cut their links to their party and act as independents.”<sup>68</sup> As it did under Mobutu, the proliferation of parties today contributes to executive dominance, since both the pro-regime and opposition parties are too divided to present a coherent front.

## 2.4 RULE OF LAW

Despite the Constitution and a formal set of rules that has all the trappings of a functioning democracy, the Congolese political system does not operate under the rule of law. This deficit in the rule of law has several root causes. First, whether by design or mere dysfunction, the legal system is mired in a degree of uncertainty, fluidity and confusion that largely undermines the power of the law. Second, and related, political authorities conceive of laws as tools of power but not as constraints on their behavior; they see the rights the law confers them significantly more than the obligations it imparts upon them. Third, there is a wide gap or disconnect between the text of laws and their application: passing a law is far from a guarantee that its provisions will ever be implemented.

The weakness of the law has several nefarious consequences. First, it contributes to making informal practices, including corruption, possibly as important as the formal legal system in the country’s political and administrative life. Second, while human and civil rights violations are not as systematic and far-reaching as they might be in pure authoritarian regimes, they are nevertheless not rare, and the willingness of the regime to violate human rights promotes considerable self-censorship among opposition politicians, journalists, and would-be whistle blowers. Finally, compounding the weakness of the law, the judiciary itself suffers from deep structural limitations, such as a lack of administrative and technical capacity, few resources, and weak infrastructure, that limit the effective recourse to adjudication by courts available to Congolese citizens. As a result, Congo operates in a context of widespread impunity.

### 2.4.1 FROM LAWS TO REALITY

In contrast to the Mobutu regime (1965-1997), when the words of the president had force of law, Congo has come a long way in terms of rule of law. The Constitution has wide popular support, and laws are now

“What doesn’t work in the DRC is the application of laws. We have very nice laws, but they are not applied.”

*Women’s International League for Peace and Freedom*

adopted through a well-defined structure involving the legislative and executive branches. At the same time, the rule of law is undermined by a prevailing uncertainty and confusion. The succession of regimes since Mobutu has contributed to a patchwork of decrees, ordinances, and laws that frequently contradict one another and make it difficult to know what the law actually is. For example, the decentralization law of 2008 gives autonomy to “decentralized territorial entities” such as towns, communes, sectors, and chiefdoms. Yet, a decentralization law adopted in 1998 gave autonomy to *territoires* instead, with the result that many *territoire* administrators continue to exercise their functions according to this earlier law, undermining the autonomy of the new decentralized territorial entities. The current regime also produces multiple and at times contradictory rules. There is legal pluralism and a legal vacuum, both of which derive from chaotic governance. The Constitution might say one thing, but the law might say something else (e.g., there is no provision for the constitutionally recognized 26 provinces in the 2008 decentralization law). Governmental letters of intent to donors often contradict domestic legal provisions, with the hierarchy of rules usually unresolved. To this one can add the legislative outputs of provincial assemblies, which have already clashed with national legislation,

<sup>67</sup> Interview with Members of Parliament, Kinshasa, July 30, 2012.

<sup>68</sup> Ibid.

particularly in matters of taxation. While every federal or decentralized system encounters this type of problem, the lack of a reliable judiciary makes it more intractable in the Congo.

Congolese politicians and civil servants have a schizophrenic relationship with the law. The government uses legal procedure to its advantage, as when it tells donors that it lacks the authority to reform the CENI, because it is a prerogative of Parliament. Traffic police (*roulages*) invoke the law to establish alleged infractions to extract resources from drivers illegally. Legal procedure is thus frequently instrumentalized as a tool of power. But the obligations imposed by law on the government are dealt with much more selectively. For example, according to numerous watchdog organizations, people are regularly arrested and detained without warrants for political reasons, government actors engage in parallel mining contracts with foreign investors that violate the mining code or extant concession agreements, the government signs infrastructure contracts without the obligatory competitive tenders, and so forth.<sup>69</sup> In short, authority is not much constrained by law, but laws form part of the arsenal power holders use to establish and reinforce their authority. The Congo is an *Etat de lois* but not an *Etat de droit*.

Finally and most fundamentally, a wide disconnect exists between laws and reality, so much so that the legal narrative often appears fictional. Discussing democracy or decentralized governance, Congolese actors at local level of governance or in civil society often say, “there is no democracy” or “there is no decentralization.” Interlocutors warn that the formal regime or rules have little bearing upon reality. For example, the Constitution might stipulate a democratic regime of checks and balances and elections might be held regularly (for some offices), yet one should not infer that the country is ruled democratically. Many laws are passed, and many of them carry desirable provisions in terms of democracy, governance and human rights, yet they are rarely or only partially applied and end up making little difference in practice (also potentially wasting the resources of donors who focus on promoting new laws).

Several mechanisms allow the substance and spirit of laws to evaporate before implementation. The National Assembly commonly adopts a legislative agenda, sometimes to great fanfare, only to have the specific laws stuck in parliamentary committees or the reconciliation process with the Senate, as has been the fate of the Family Code. According to Verheijen, Mundedi, and Makombo, 96 laws needed adoption in the three-year period after 2006 for the Constitution to be translated into legal forms. But the total legislative output, including unrelated laws, was nine laws for 2006 (excluding 11 international treaty ratifications), 15 for 2007, 14 for 2008, and 11 each for 2009 and 2010, for a total of 60.<sup>70</sup> When laws are passed, they are sometimes not published in the *Journal Officiel*, which is required for promulgation and application. Similarly, once adopted, laws often do not receive the necessary presidential or ministerial “application decree.” For example, the Minister of Justice never signed the decree implementing a law passed by Parliament to free individuals accused of complicity in the assassination of Laurent-Désiré Kabila, so the accused remain in jail to this day. Even when new laws are passed, a parallel way of doing things emerges to bypass the law, as in the way government actors continue to sign opaque contracts with international investors despite the 2002 Mining Code.

Another mechanism undermining laws is to not fund the actions and institutions necessary for the implementation of a law. For example, the High Council of Magistrates was established in 2008 as an autonomous body of regulation and control of the judiciary but, as of end August 2012, had only received 38% of its budget allocation for 2012. Similarly, the National Directorate for Anti-Fraud Service has had to function with less than 3% of its budgeted funds, and the Inter-Ministerial Unit for Support to

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<sup>69</sup> See, for example, Human Rights Watch. *Democratic Republic of Congo : Country Summary*, (January 2012); ASADHO/Katanga, *Mine uranifère de Shinkolobwe : D’une exploitation artisanale illicite à l’accord entre la RD Congo et le groupe nucléaire français AREVA*. (Lubumbashi: July 2009).

<sup>70</sup> Verheijen, Tony, Faustin Musa Mundedi, and Jean-Marie Mutamba Makombo. “Dynamique institutionnelle,” In Johannes Herderschee, Daniel Mukoko Samba and Moïse Tshimenga Tshibangu, eds., *Résilience d’un géant africain: Accélérer la croissance et promouvoir l’emploi en République démocratique du Congo*. (Kinshasa : Médiaspaul, 2012), p. 102.

Decentralization has not so far received a single franc for 2012.<sup>71</sup> Yet, for any government, the budget is one of the most important legislative actions.<sup>72</sup> To have such blatant neglect of its provisions suggests the lack of will of the Congolese government to abide by its own laws unless they can be exploited for its own interests.

The general public's lack of knowledge of the law constitutes a final reason for the lack of implementation of laws. This situation derives in part from the uncertainty of laws, but also from the limited education of many Congolese, including those who serve in official capacity, and the lack of widely available information and civic education.

## 2.4.2 CORRUPTION AS A SYSTEM OF RULE

The absence of genuine rule of law manifests itself first and foremost by the continuation of the system of widespread corruption that has characterized Congo since even before the Mobutu regime. The numerous legislative and reform efforts in the last decade have failed to significantly remedy this deep-seated condition of Congolese politics. Patrimonialism, or the blurring of the line between public and private purse and action, and the redistribution of state resources for private accumulation and political gain underpin much of how rules are enforced and the Congolese political system is run. Corruption is deeply antithetical to rule of law, and it appears that corruption is not so much an affliction of the Congolese system as it is the system itself, deeply rooted in the history of the Congolese state.

Corruption trickles down, multiplying along the way to create a formidable web of monetized social and political relations that structure and stifle the lives of the Congolese. According to a 2007 survey, up to 55% of magistrates and judges accept bribes, a problem that several magistrates acknowledged to us, blaming their paltry salaries of \$450/month. For traffic police, the bribery figure is 93%.<sup>73</sup> According to the World Bank, 81% of companies reported having had to provide “gifts” to secure public contracts.<sup>74</sup> All over the country, multiple state agencies confront citizens with seemingly endless and unreasonable demands on their meager resources. Each parcel of state authority is an opportunity for extracting resources from others. Transparency International ranks the DRC 168<sup>th</sup> out of 182 countries for prevalence of corruption.<sup>75</sup>

## 2.4.3 A FRAGILE HUMAN RIGHTS REGIME

The lack of rule of law also facilitates the commission of human rights abuses by the regime, its security forces and provincial authorities. As a semi-authoritarian regime rather than a dictatorship, Congo is no North Korea, nor even Zimbabwe, and the human rights situation now is probably better than it was under Mobutu. Yet the state has grown increasingly repressive since 2006, and its human rights record remains problematic. Despite constitutional provisions that guarantee the protection of basic civil and political rights, human rights organizations have provided ample evidence that the Kabila government and local authorities often repress political opponents, independent journalists, and human rights activists. The assassinations of human rights activist Floribert Chebeya in 2010 and *Radio Okapi* journalist Serge Maheshe in 2007 are only two of the more publicized cases. Moreover, the complete breakdown of law and order in the east has favored a situation of systematic human rights abuses by state and non-state actors alike, and a generalized sense of vulnerability among civilians in that region.

Most recently, the November 2011 presidential and legislative elections provided the context for multiple serious human rights violations by the incumbent regime. According to a United Nations inquiry, 33 people

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71 Ministère du Budget. "ESB de Dépenses par Administration et Chapitre : Exécution au 31/08/2012." [http://www.ministerebudget.cd/esb2012/finaout2012\\_provisoire/esb\\_global\\_par\\_administration\\_et\\_chapitre\\_aout\\_2012.pdf](http://www.ministerebudget.cd/esb2012/finaout2012_provisoire/esb_global_par_administration_et_chapitre_aout_2012.pdf).

72 Interview, Kinshasa, August 2012.

73 Kodila, Tedika Oasis. "Corruption en République Démocratique du Congo: Tyrannie des Nombres," *Congo-Afrique*, (April 2012), 51(464):303.

74 World Bank. *Africa Development Indicators 2010*. (Washington, DC: World Bank, 2010), 15.

75 Transparency International, "Corruptions Perceptions Index 2011," <http://cpi.transparency.org/cpi2011/results/>.

were killed and 16 disappeared in Kinshasa alone in the month surrounding the elections.<sup>76</sup> More than 265 civilians were arrested, the majority of whom were kept in illegal or arbitrary detention mostly because of their real or alleged membership in opposition parties, mainly the UDPS. Outside of Kinshasa, the elections and the following period also witnessed serious repression, particularly in regions known to be favorable to opponents such as both Kasais, Bas-Congo, and Equateur. Human rights abuses are compounded by the refusal of government officials to acknowledge reports of abuse.

#### 2.4.4 LACK OF EFFECTIVE ACCESS TO JUSTICE

The lack of an effective judiciary compounds Congo's rule of law deficit. Huge physical shortcomings plague the justice system. The government has yet to name the Constitutional Court and *Cour de Cassation* (Court of Cassation) defined in the Constitution. We heard repeated estimates that only about one-third of the necessary courts are in operation throughout the country. Many towns, communes, and sectors do not have a *Tribunal de Paix*, the first level of court which adjudicates simple disputes and local grievances. Almost all chiefdoms rely on customary courts, where justice can be arbitrary. Moreover, many of the existing courts lack sufficient numbers of magistrates and judges. In many cases, a single judge handles all cases. Some tribunals, like appellate courts, have fewer judges than required for their functioning. At the Kinshasa public prosecutor's office, we were told each desk is shared by six magistrates. There is also a dearth of supplies in the courts. We observed courts functioning with no power, and insufficient paper for clerks.

The lack of sufficient infrastructure is compounded by the material difficulties of the legal professions. Judges and magistrates allege being paid about \$400-450 a month. This salary is insufficient for a family to have middle class living standards in Kinshasa. Magistrates' morale is thus low, and they are more liable to corruption. They also lack proper training, since many are appointed directly from law school, and they resist being sent to isolated regions where they cannot bring their families. Finally, despite the creation of a High Council of Magistrates, the justice system continues to suffer weak independence from the executive.

#### 2.4.5 IMPUNITY

"Justice is at the center of everything. To address corruption, bad management, human rights, we need a functioning justice system. Justice is the base for changing the system."

*Voix des Sans Voix*

In the end, the failures of rule of law result in a regime of widespread impunity, which correlates with the lack of accountability we discuss in the next section. Impunity for

undemocratic behavior allows the government to renege on its legal commitments with few if any consequences. A general impunity for corrupt practices also exists. Although corruption is not always tolerated, it is rarely prosecuted. The Observers of the Professional Ethical Code (OCEP), the government's watchdog against corruption in public service, is understaffed, underfunded, and lacking in authority. Finally, there is impunity for criminal behavior. Human rights violations and other abuses by security forces are almost never prosecuted. Altogether, we observe a lack of sanction for poor governance. Power in the Congo is understood as the authority to dominate and command others, not to be accountable to them. Despite the best attempts of democratic reformers since the early 1990s, it remains largely absolutist.

### 2.5 ADMINISTRATIVE ACCOUNTABILITY AND EFFECTIVENESS

While DRC rulers are particularly effective at wielding power in their relations with other social and political actors, they are largely ineffective at providing governance and delivering even the most basic services to their population. The DRC is ranked as the second most failed country in the world (after Somalia) in the 2012

<sup>76</sup> MONUSCO/United Nations Human Rights Office. *Report of the United Nations Joint Human Rights Office on Serious Human Rights Violations Committed by members of the Congolese Defense and Security Forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*. (March 2012).

Failed States Index of *Foreign Policy*. It scores 9.2 (with 10 the worst possible score) on service delivery, 9.7 on human rights, and 9.7 on security.<sup>77</sup> It ranks 178<sup>th</sup> worldwide (out of 183) on the World Bank “Ease of Doing Business” indicator.<sup>78</sup> It scored 2 (1=low; 6=high) in 2011, the latest year available, on the World Bank’s Country Policy and Institutional Assessment (CPIA) variables for property rights and rule-based governance; public sector management; quality of administration; and transparency, accountability, and corruption in the public sector.<sup>79</sup>

### 2.5.1 POOR ADMINISTRATION AND SERVICE DELIVERY

It is hard to know where to start in the litany of Congolese governmental dysfunction. The Congolese government hardly delivers governance and public services, not even basic safety. Its governance cannot be conceptualized as policymaking. One Congolese professor we interviewed described Congolese governance as “*bricolage*,” or amateurish improvisation. The most typical problem is simply the absence of specific services. Thus, much of public education is provided through mixed arrangements: the state appoints the teachers and sanctions the degrees, but it often falls to local communities to pool their resources to pay them, build schools, and provide supplies. Healthcare too is largely privatized with churches delivering the most hospital and primary healthcare services and donors taking up the slack in immunization campaigns and dealing with epidemics like HIV/AIDs and malaria. Water and electricity supplies are hugely deficient, even in large cities. Power failures are frequent even in Kinshasa where many neighborhoods, particularly at the periphery, are not on the grid. Many communes also have deficient water supply, forcing many people to purchase water from private trucks that circulate through neighborhoods or to walk considerable distances to get it from distribution points.

“The capacity of the government to exercise the authority of the state is lacking, above all the ability to protect the security and well-being of the population.”

Congolese human rights activist

Unfortunately, decentralization does not seem to have so far improved the quality or effectiveness of local governance (see more on this in the section on Local Government below). Most provincial assemblies have focused the majority of their legislative work over the last five years on creating new sources of revenue for their provinces. In Kinshasa, the provincial assembly has adopted only one edict, which lists a long series of provincial taxes. In Kasai Oriental, 19 of the 22 edicts adopted since 2007 create taxes. The province has taxes on diamond transactions, tolls (particularly on river-crossing ferries, and entry points into the city); and taxes on rental income, sales (mostly on beer), land, cars, and more. Until recently it even had a tax on the drilling of water wells, despite Mbuji-Mayi facing a catastrophic water supply crisis.

### 2.5.2 GOVERNANCE BY ASPHYXIATION

The lack of means is a serious impediment to effective governance in the Congo. Whether in the judiciary, administration, decentralized entities or even the security sector, insufficient funds prevent proper functioning. Everywhere, without exception, we heard of the lack of funds for “*frais de fonctionnement*,” things as mundane as office space and supplies, transportation, telephone units, and the like, making effective administration often impossible. Thus, more often than not, people come to work but are then largely unable to properly fulfill their intended functions.

Figures on the execution of the budget provide a snapshot of what the financial asphyxiation of the administration looks like. As Table 1 makes clear, almost every branch of the administration ends up receiving significantly fewer funds than are initially budgeted. The exceptions (in italics) are the presidency,

<sup>77</sup> Foreign Policy and Fund for Peace, “Failed States Index 2012,” [http://www.foreignpolicy.com/failed\\_states\\_index\\_2012\\_interactive](http://www.foreignpolicy.com/failed_states_index_2012_interactive).

<sup>78</sup> World Bank, “Doing Business 2011,” (Washington: World Bank, 2010).

<sup>79</sup> World Bank, “CPIA Public Sector Management and Institutions Cluster Average,” <http://data.worldbank.org/indicator/IQ.CPA.PUBS.XQ>.

Prime Minister's Office, Supreme Court, Ministry of Foreign Affairs, Ministry of National Defense (perhaps understandably given the war in the east), and National Intelligence Agency (ANR). Every other ministry or state agency ends up with a significant shortage over budgeted funds.<sup>80</sup> The judiciary, for example, receives less than half its allocation, with the CSM receiving a mere 19% (still a lot better than the Anti-Fraud Commission which receives less than 4%). The decentralization section of the Ministry for Interior and Security also has to function with about 40% of its budget.<sup>81</sup> The lack of serious developmental policy effort is visible in the paltry spending on public health, education, and even infrastructure (1.6% on roads).

**TABLE I. GOVERNANCE BY ASPHYXIATION: 2012 BUDGET EXECUTION BY MINISTRY (AS OF JUNE, IN CF MILLION)**

<b>Ministry</b>	<b>Budget</b>	<b>Amount spent</b>	<b>% (50 = normal)</b>
<i>Presidency</i>	62,420	61,985	99.3
<i>Prime Minister</i>	22,128	13,037	58.9
National Assembly	149,430	52,206	34.9
Senate	57,558	18,182	31.6
Judiciary	58,528	12,738	21.8
<i>Supreme court</i>	739	1,483	200.6
CSM	45,128	8,522	18.9
Anti-Fraud Service	720	28	3.9
<i>Foreign affairs</i>	22,447	11,810	52.7
Decentralization	10,864	1,999	18.4
General secretariat	8,261	1,862	22.5
Committee for implementation of decentr.	586	32	5.4
Coordination with provinces	15	0	0.0
Unité d'Appui Decentr. Aménag. Terr.	48	0	0.0
Interior and Security	83,666	8,481	10.1
<i>National Defense</i>	227,021	114,741	50.5
DDR	445	0	0.0
Republican Guard	1,194	101	8.5
Economy	5,079	557	11.0
Finances	991,715	258,383	26.0
Domestic debt	77,799	27,716	35.6
External debt	427,815	71,086	16.6
Budget	155,602	41,026	26.4
Planning	25,186	7,136	28.3
Reconstruction	408	41	10.0
Justice (Min. of)	19,575	3,935	20.1
Cell for the Fight against Impunity	126	0	0.0
Institutional reforms	372	29	7.8
Public health	233,810	32,267	13.8
Physicians (5,487 units)	36,362	9,525 <sup>82</sup>	26.2
Vaccination program	4,025	1,508	37.5
National anti-AIDS program	15,713	124	0.8
National anti-malaria program	53	0	0.0

<sup>80</sup> We use 2012 budget data here, which are limited to the first six months of the year for execution figures. However, using full-year 2011 data provides a largely identical picture.

<sup>81</sup> Similarly, between 2007 and 2011, provinces and decentralized territorial entities (ETDs) received between 6% and 15% of the national budget, compared to the constitutional obligation to "retrocede" 40% to them, and in contrast to the average figure of about 20% before the decentralization.

<sup>82</sup> This means that the average salary paid to physicians by the state was \$1,886 for the first six months of 2012, or \$314 per month. However, denominational hospitals commonly provide additional wages to their doctors.

Ministry	Budget	Amount spent	% (50 = normal)
Education	453,926	77,129	17.0
General secretariat	192,540	2,461	1.3
SECOPE (teacher salaries)	232,854	73,311	31.5
School infrastructure	6,286	55	0.9
Elementary school completion exam	2,995	432	14.4
Schools' functioning costs	8,101	291	3.6
Higher Education	161,568	30,014	18.6
Infrastructure and Public Works	1,143,183	18,140	1.6
Office des routes	1,059,694	3,810	0.4
Agriculture	92,351	5,626	6.1
Rural development	50,182	1,875	3.7
Mines	43,649	5,267	12.1
MIBA	10,000	0	0.0
Energy	371,812	34,732	9.3
Transport	19,599	2,487	12.7
SNCC	2,500	0	0.0
Human Rights	1,702	669	39.3
Civil service (fonction publique)	31,107	5,931	19.1
OCEP	175	41	23.4
Gender, Women and Children	7,171	2,252	31.4
Cour des Comptes	3,076	530	17.2
CENI	325,870	14,285	4.4
National Police	112,366	37,036	32.9
ANR	13,214	7,496	56.7
<b>Total Budget</b>	<b>6,746,324</b>	<b>1,090,286</b>	<b>16.2</b>

Source: Ministère du Budget, Secrétariat Général au Budget. Crédits Provisoires 2012. ESB de dépenses par administration, exécution au 30/6/2012.

In part, administrative asphyxiation is linked to a failure to accrue sufficient revenue. The execution rates on the revenue side, while not yet available for 2012, hovered between 65% and 72% in the two preceding years. Thus, the overall 2012 budget of about \$7.3 billion (CF 6.7 trillion) is more likely to translate effectively into \$4.8 billion. Where does this money go? Forty percent, or \$1.9 billion, is spent on salaries and *primes* (bonuses which constitute the largest part of effective wages in the civil service).<sup>83</sup> Officially, the remaining 60% is allocated evenly between *frais de fonctionnement*, debt payment, and investments. It is likely, however, that given the revenue shortfall, salaries get taken care of first and the other categories end up disproportionately sacrificed. The \$1.9 billion supports an estimated 680,000 civil servants, 180,000 military personnel, and some 100,000 police for a total of about 960,000 people.<sup>84</sup> If we divide the wage bill by the number of civil servants, we get an average salary of \$2,017 per year or \$168 per month. An average apartment in Kinshasa costs about \$450 a month. Thus it is impossible for civil servants to live and provide for their families without finding additional sources of revenue. Possible consequences might include a greater propensity for corruption, taking additional employment outside the civil service to supplement one's income, or leaving the public sector altogether in search of employment that allows a livable wage. All of these options further undermine the administrative capacity of the state.

<sup>83</sup> All data from the Ministry of Budget and from interview with World Bank resident mission in Kinshasa, August 2012.

<sup>84</sup> This estimate does not include *nouvelles unités*, people hired locally without proper process, either by local state agencies, new ministries, or by rebels during the war. Some estimates place the number of *nouvelles unités* as high as 400,000. They do not receive wages but they typically accrue at least some *primes* which are paid to them either from other budgeted categories (e.g., *frais de fonctionnement* or investments) or which they provide for themselves in the case of revenue-generating agencies.



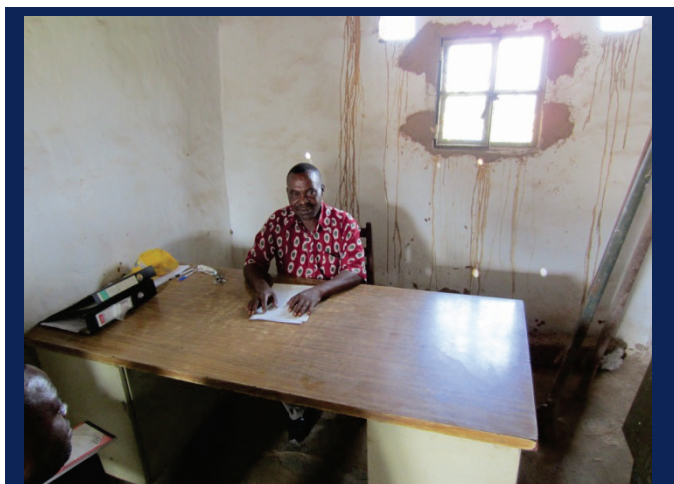
The paucity of individual incomes compounds the lack of *frais de fonctionnement* of state agencies. Whatever is left must cover office supplies, transportation costs, mission expenses, computers and internet access, representation abroad, etc. Without sufficient funds, administration units by and large go dormant. Those which have the capacity to raise revenue themselves (because, say, they award licenses or collect fees) can use these funds to provide for themselves, or become self-service agencies. They thus allocate a large part of their activities to fundraising to supplement their workers' incomes and for their own functioning, once again largely guaranteeing that they fall short of fulfilling their normal duties. These two trends produce Congo's failed state, the ineffectiveness of its government.

Similarly, the Congolese government engaged in a vast renegotiation of existing mining contracts between 2007 and 2011. The intended purpose of the exercise was to assess the extent to which unfair mining contracts had been signed during the 2003-2006 transition and renegotiate those that needed it. More than half of the 60 or more contracts investigated were found deficient and renegotiated. However, apart from Tenke Fungureme in Katanga, these negotiations and the resulting new contracts have not been made public, and have led to serious concerns that they have provided the opportunity for government negotiators to acquire significant signing bonuses and force additional concessions from the companies, few if any of which accrue to the state coffers.

Aside from these mineral transactions that largely elude official channels and seem to benefit only a small elite, there also appears to be a large diversion of the tax and royalty payments effected by mining companies on a regular basis. According to the report prepared by the Congolese Executive Committee for the Extractive Industries Transparency Initiative (EITI) in May 2012, the total differential in payments between what mining companies and government tax agencies report was \$219.7 million in 2008 and \$143.5 million in 2009.<sup>85</sup> This is respectively 5.5% and 3.5% of government domestic revenue budgeted for 2012. Yet, this number is an underestimation as the number of companies investigated was deemed incomplete by EITI and the report judged insufficient to warrant validating Congo's membership. For example, the report did not involve companies established as partnerships between the government and foreign investors which fall outside the mining code and are governed by their own conventions, in what constitutes a *de facto* dual mining regime. Moreover, there appears to be under-reporting of "*pas de porte*," signing bonuses for new mineral deals, which companies report paying but which did not accrue to the tax agencies. The 2010 budget

programmed \$181 million in revenue from *pas de porte* but only registered \$11 million in actual payments. For 2011, budgeted payments fell to \$26 million (with no execution figure available), which is an unrealistically low number. Chinese companies are also reluctant to report their payments, according to the EITI personnel we interviewed.

Altogether, one can broadly estimate the loss to the state budget from the three items mentioned above. The mineral asset sales represent an annual loss of \$1.4 billion. The missing payments from mining companies to state collecting agencies amount to about \$200 million a year. As for the diversion of tax and royalty payments, their 2010 shortfall was \$129 million. Taking these figures to represent average years, we can estimate the annual loss



Secretariat of Kaponda Chiefdom, Katanga, March 2012

<sup>85</sup> République Démocratique du Congo, Initiative pour la Transparence des industries extractives. *Synthèse du 2<sup>ème</sup> Rapport ITIE-RDC, Exercices : 2008 et 2009*. (Kinshasa : Promines, GIZ, CTB and DFID, May 2012).

to the budget from these practices to be about \$1.73 billion. This is significantly more than budgeted *frais de fonctionnement* and almost as much as the effectively disbursed annual wage bill for the public sector. Thus, the financial shortfall which asphyxiates the administration of the country can be directly related to the financial wrongdoings of those with legal and contracting authority over the state's natural resources.

### 2.5.3 GOVERNANCE OF NATURAL RESOURCES

The governances of natural resources represent one of the most significant points in the nexus of Congo's political economy, conflict dynamics, and prospects for development. The country is rich in a variety of natural resources, including notably minerals, timber, and now—thanks to recent exploration and discoveries—oil. Agriculture and fishing are also of great importance to local economies and livelihoods across the country, and could be further developed. Land is of fundamental importance across the board.

Managed effectively, these resources could be leveraged to finance development efforts and lift the standard of living. However, as it stands, the management of natural resources in the Congo is more a source of conflict and misery than welfare. As a matter of fact, natural resources are among the core interests driving competition, conflict, and cooperation in the Congo.

Minerals, the core of Congo's material resources, are exploited in a chaotic legal environment. The 2002 Mining Code is often bypassed, and there are a large number of mineral contracts that generate their own legal system. As mentioned earlier, the EITI has so far refused to accept Congo and has pointed out many shortcomings in its reporting activities. Much of the rest of mineral exploitation is artisanal, which is difficult to govern and where precarious conditions prevail.

Issues of access to land—of fundamental importance to rural populations—have been made hopelessly complex by decades of legal and policy sedimentation and conflict. Land management authority at the local level remains broadly under the authority of customary chiefs, although this authority can be superseded by more formal arrangements. As in some other spheres of Congolese life, legal pluralism prevails here and makes grassroots Congolese vulnerable. Political corruption of land administration, in which politicians and military officials pressure cadastre surveyors, title conservators, or magistrates for favorable treatment compounds the problem. “Although mining has traditionally dominated the economy, it contributes only around 14% of GDP. More than 40% of GDP is contributed by agriculture and logging.”<sup>86</sup> Thus, getting the question of land governance right for farmers could yield significant economic benefits.

The recent discovery of oil in the Great Lakes region is likely to further complicate the governance of natural resources in the country and to make it harder to combat corruption or the regime's drift toward authoritarianism. According to the International Crisis Group, the confirmation of oil reserves in the east could exacerbate the conflict in the Kivus. It also has the potential to lead to conflict with Uganda and Angola, the two countries with which Congo's reserves overlap. Here too, the core problem is one of governance: “Poor governance has been the hallmark of the oil sector since exploration resumed in the east and west of the country. Even with only one producing oil company, the black gold is the main source of government revenue and yet, with exploration in full swing, oil sector reform is very slow. Instead of creating clear procedures, a transparent legal framework, and robust institutions, previous governments have behaved like speculators, in a way that is reminiscent of practices in the mining sector. Reflecting the degraded business climate, they have allocated and reallocated concessions and often acted without considering the needs of the local people and international commitments.”<sup>87</sup>

Yet, it is unlikely that one can improve the dynamics of that sector by working on natural resources alone. Here too, it is governance in the political sphere that is at the root of both the problems and the possible solutions. Work needs to be done on improving the underlying architecture of the law in the form of laws

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<sup>86</sup> Economist Intelligence Unit, *Country Profile: Democratic Republic of Congo*, (2008), p. 3

<sup>87</sup> International Crisis Group. “Black Gold in the Congo: threat to Stability or Development Opportunity?” *Africa Report* 188, (July 2012) p. i.

(land laws, investment law, etc.), courts and alternative dispute resolution mechanisms, and enforcement mechanisms, at national and local levels.

## 2.5.4 IMPACT OF POOR GOVERNANCE

Governance failures are at the heart of the challenges facing the DRC today. The inability or unwillingness of the government to carry out essential functions, like administering justice, guaranteeing public security, and providing healthcare and education, seriously undermines legitimacy. If the government were to provide basic services, then the population might feel less frustrated over the personal enrichment of office holders and the limitation of democratic freedoms.

“We don’t believe in the results of these elections but if our leaders at least cared about our living conditions, we would not mind leaving them in their positions.”

*Widow in Lemba, Kinshasa*

Instead, frustration over the lack of accountability and corruption of government personnel is exacerbated by

their inability to carry out even the most limited functions of government. Similar frustration ultimately led much of the population to support the rebellion against Mobutu’s rule in the late 1990s, and governance failures continue to feed unrest in large parts of the country. When the government appears to be providing little benefit, taking up arms is easier to justify, and when the government cannot guarantee basic security, populations will seek means to protect themselves. As one recent Congolese analyst argued, “Conflict in Africa’s Great Lakes region persists because of a complex mixture of regional politics, financial incentives, ethnic polarization, and weak and illegitimate governance.”<sup>88</sup> If the government could retain a higher portion of revenues and use them to government capacity, it could have a major impact on the legitimacy of the state.



“Etat civil” office, Likasi commune, Katanga, March 2012

<sup>88</sup> Bihuzo, Rigobert Minani. “Unfinished Business: A Framework for Peace in the Great Lakes,” *Africa Security Brief*, no. 21, (July 2012).

## 2.6 DISTILLING THE DRG PROBLEMS

### **A DECLINE IN CHECKS AND BALANCES AND IN PUBLIC ACCOUNTABILITY AND THE FAILURE OF THE STATE TO DELIVER PUBLIC SERVICES HAVE LED TO A BREAKDOWN IN THE SOCIAL CONTRACT**

With such large and deeply rooted problems in so many sectors, the major challenge for democracy and governance work in the DRC is to find a point of entry where USAID can make a useful contribution. Being aware that problems of consensus and inclusion are less severe and less central thus helps make problems more manageable and sets parameters on the scope of potential interventions. Even so, the challenges that our research identifies in the other three areas are immense and may seem daunting.

Our analysis indicates that the core challenge to democratic governance in the DRC is that a decline in checks and balances and public accountability and the failure to deliver public services have led to a breakdown in the social contract between the public and the state. Coming out of the 2006 transition, much of the population was optimistic that the Congolese state would become both more accountable and more competent. Yet a growing concentration of executive power; a decline in respect for civil liberties; a continuing expansion of corruption; and the failure of the government to provide security, justice, healthcare, education, and physical infrastructure such as roads, water, and power have seriously undermined the legitimacy of the state.

A major conclusion of our analysis is that problems in service delivery are deeply connected to deficiencies in democracy and rule of law. Rather than promoting greater efficiency and improved service delivery, as some observers seem to hope,<sup>89</sup> the overconcentration of executive power is facilitating corruption and further undermining the ability of the Congolese public to make the state responsive to their interests. While governance problems such as limited capacity and corruption must absolutely be addressed, they cannot be resolved without strengthening the rule of law, which is needed to provide security and control corruption, increasing democratic accountability of the government to the public, and creating a greater balance of powers so that each branch and level of government can check the others to ensure they are effectively carrying out their responsibilities and serving the interests of the public.

The appropriation of public goods for personal gain is a central problem for both rule of law and administrative effectiveness. Corruption is a long-term problem in the DRC, having its roots in the colonial state's focus on the extraction of wealth from the Congo for outside interests. The elaborate patrimonial system established under President Mobutu that enriched a limited elite while helping to funnel Congo's resources outside the country remains largely in place. The privatization of public goods is a fundamental problem for the DRC, because it diverts resources that might otherwise be used to support the proper functioning of the state and provide public services, and undermines the legitimacy of the state. A small number of Congolese individuals get rich from the system, but much of the DRC's wealth leaves the country without benefiting the majority of the population. The logic of personal enrichment works directly against the logic of good governance, as officials embezzle funds not only to support themselves but to support their offices and functions. The lack of an effective system of checks and balances, limited political competition and public accountability, and deficits in the rule of law allow corruption to continue to flourish in the DRC.

In a country where for a century the state has brutalized the population and bled them for resources, the public is not surprisingly suspicious of the state, a situation that could pose problems for encouraging people to engage with the state. The universal public perception in Congo, something we heard again and again in our research, is that the government only serves the interests of the elite. Even so, we found surprisingly strong interest in the population in a more responsive and effective government. People told us that they would be willing to accept the legitimacy of the government if it showed more concern for their lives. The

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<sup>89</sup> Some in the international community have apparently tolerated the move toward the concentration of executive power, believing that Kabila is an acceptable partner and that a stronger executive is needed to address the country's challenges.

2006 transition seems to have raised many people's hopes for greater freedom and better, more responsive government after many years of frustration, and the move back toward a more authoritarian and corrupt state is deeply disappointing for many. We also found considerable capacity for the society to organize itself in the absence of effective state actions. Both of these provide hopeful bases upon which reforms in democratic governance can be built.

The idea that public offices can be legitimately used for the enrichment of oneself and one's family and friends is deeply engrained in the DRC's political culture and its social and economic systems, making reform very difficult to achieve. Nevertheless, with input from many Congolese actors and extensive intervention by the international community, the 2003-2006 transition developed a framework that had the potential to address corruption and other core political issues. The institutional reforms specified in the Constitution, if they were fully realized, would provide strong checks and balances, improving transparency and fighting the impunity that facilitates the privatization of public goods. In the first years after the 2006 transition, these checks and balances began to work. However, since about 2008, there has been a troubling circumvention of the constitutional principles of balanced power and a concentration of power in the hands of the executive branch. Although the executive has justified its concentration of power in part with claims that it improves their capacity to rein in corruption and improve government effectiveness, there is no indication that in practice the executive has used its power for that purpose.

The motivations of the various armed groups operating in the eastern DRC are complex, but they include frustrations over a sense that the government is not responsive to their interests, both because it fails to provide services and because of a lack of democratic accountability, an impression heightened by the inadequacies of the 2011 elections and the failure to hold regional and local elections. One former rebel leader who had given up arms only a year earlier told us that his former combatants were considering again taking up arms because they were frustrated that they lacked representation in government and that public services and security could not be guaranteed, because, "We have a real absence of the state. The state is not there. It is a major problem of capacity."<sup>90</sup> The problems of growing authoritarian political practices, rampant corruption, and inadequate service delivery all contribute to the popular discontent that fuels insecurity. Thus, resolving issues of democratic governance in the DRC should help to promote greater security.

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<sup>90</sup> Interview in Kinshasa, August 7, 2012.

# 3.0 KEY ACTORS AND INSTITUTIONS

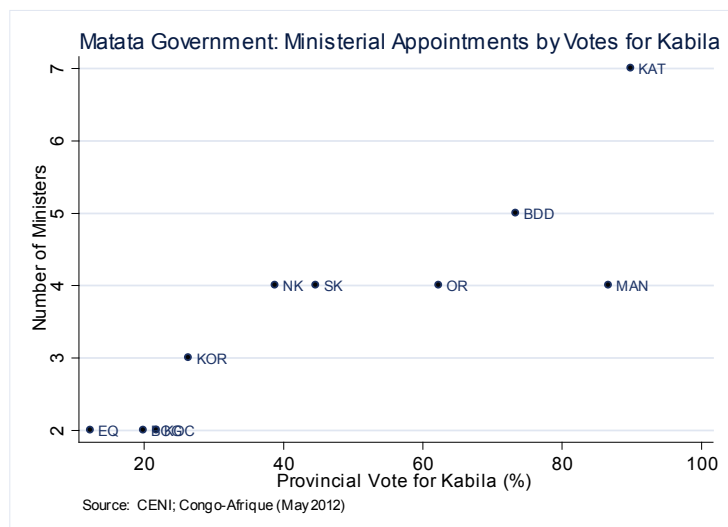
## 3.1 THE EXECUTIVE

When it was designed during the transition period and put into effect in 2006, the Congolese Constitution sought to provide checks and balances that would prevent the type of excessive concentration of power which had plagued the country under Mobutu. The Constitution set up a semi-presidential system with a strong prime minister accountable to Parliament, an independent judiciary, quasi-federalism with extensive decentralization, and safeguards against changing some provisions such as the number of presidential terms or the division of powers between the different levels of government. Yet, as discussed in the first section, there is a considerable gap between laws and reality in Congo.

President Joseph Kabila appointed Augustin Matata Ponyo Mapon, of Maniema, as prime minister of a new government in April 2012. Matata had previously been Minister of Finance since 2010 and was a protégé of Katumba Mwanke. In many ways, the Matata government appears more competent and efficient than its predecessors. First of all, it counts only 37 members, as against 61 for Gizenga (2007), 53 for Muzito I (2008), and 43 for Muzito II (2010). Although some portfolios are large, this reduction in personnel should have beneficial fiscal consequences. There are virtually no “big men” among the ministers and more technocrats than usual. Some civil society groups told us that this government was “day and night” compared to the previous ones in terms of competence and autonomy of action. Matata gave all of his ministers a roadmap with their goals for their terms in office, limited ministerial cabinets to a staff of seven, and drew a list of goals for its first 100 days. Some reforms have been rapidly implemented such as the introduction of new banknotes, and the setting up of public service salary payments through direct deposit in the banking system, but the resurgence of war in the east in March 2012 has slowed the government’s momentum.

Some Congolese seem to think, however, that the government is too junior (politically under-experienced) to be influential. The only politicians in the Matata government that were reappointed from the previous one are Lambert Mendé (spokesperson), Minister of Communications Kin-Kiey Mulumba (and publisher of the pro-government newspaper *Le Soft*), and Minister of Mining Martin Kabwelulu.

Whatever the merits of these different perspectives, it is clear that the government still functions in a patronage logic and that Kabila has appointed ministers along a provincial distribution that reflects his electoral support. As the figure at right indicates, there is almost a linear relationship between the percentage of votes for Kabila in a given province and the number of ministers appointed from that province, with Katanga far ahead of every other province. However, from a political perspective, this is a very tight and narrow-based government with strong



PPRD dominance. The PPRD has 12 posts in the government, the *Mouvement Social pour le Renouveau* (MSR) four, and *Parti Lumumbiste Unifié* (PALU) two. Every other party in the government only has one.<sup>91</sup>

## 3.2 THE LEGISLATURE

A legislature's three main functions are representation of the people, making of laws, and oversight of the executive. Congo's Parliament is at least partly deficient in all three of these categories.

Congo's Parliament is bicameral. The National Assembly's 500 *députés* are elected by direct universal proportional suffrage for a five-year term, with the last elections having taken place in November 2011. The Senate's 108 members are elected indirectly by the members of provincial assemblies, four of them for each district (which were initially meant to become new provinces) and eight for Kinshasa. The last elections for the Senate took place in 2007 and are now overdue. Because no provincial elections are expected to take place until at least 2013, the Senate is likely to continue functioning in relative limbo for a while.

Altogether 94 parties gained representation in the latest legislative elections, together with numerous independent candidates. There are many small pro-Kabila parties which benefited from the local arithmetic of proportional representation. Even the PPRD split into two parties: PPRD and PPPD (People for Peace and Democracy). The pro-Kabila majority in the National Assembly is organized in a loose coalition named the *Majorité Présidentielle* (MP), formerly the *Alliance pour la Majorité Présidentielle* (AMP). This is a typical patronage-based personalistic coalition around the head of state rather than focused on any meaningful policy program. As Table 2 indicates, political parties are organized in the National Assembly along a "parliamentary group," or caucus, structure. This structure, which allies one dominant party with smaller ones, allows the smaller ones some degree of representation in the organs of Parliament and some official recognition which they could not obtain with their small size, while giving the larger party greater clout. Altogether, as Table 2 makes clear, the *Majorité Présidentielle* has a comfortable majority of about 341 seats (the table does not mention independents some of whom are organized in a parliamentary group led by Jaynet Kabila, the president's sister).

**TABLE 2. NATIONAL ASSEMBLY: MAIN PARLIAMENTARY GROUPS, 2012**

Group	Seats
<b>In the "Presidential Majority"</b>	<b>341</b>
PPRD (and allies)	63
AFDC	33
MSR	40
ARD	33
Terre d'Avenir	29
Groupe Parlementaire Renouveau	32
Etat de Droit	28
<b>In the opposition</b>	<b>140</b>
UDPS/Forces Acquisées au Changement	55
MLC	22
UNC	17
Libéraux Socio-Chrétiens Démocrates	28

It appears that the ability of the National Assembly to engage in productive democratic debate has been eroded over the past few years, a process which the results from the latest elections might have accelerated.

<sup>91</sup> <http://radiokapi.net/actualite/2012/04/30/gouvernement-matata-le-pprd-en-tete-avec-8-ministres/>

This trend perhaps has its roots in the departure of Vital Kamerhe as president of the National Assembly in 2009. Under Kamerhe's leadership, Parliament acted, at least to some extent, as an organ of oversight of the government, and it did produce a few important laws. It is too early to pass judgment on the current president of the National Assembly.

The structure and functioning of the MP itself might favor the erosion of democratic practices in Parliament. According to one of its members (a former minister), the MP has its own "majority" and "opposition" and internally debates the presidential agenda. Once they come to the National Assembly, however, it is as a homogeneous group, acting with one voice. As a result, political debate is largely removed from the public realm and transposed to a private, almost secretive, sphere.<sup>92</sup> Consequently, the official opposition in Parliament is effectively sidelined.

There is less to be said about the Senate, whose composition has not changed for lack of elections. Paradoxically, the Senate needs to pass legislation (with the National Assembly) for provincial elections to be able to go ahead, which will lead to the renewal of its members. Thus, current senators have a vested interest not to make rapid progress with the organization of provincial elections and other necessary reforms such as the overhaul of the CENI.

While the new term is young and has yet to prove itself, the strong presidential majority in the Parliament and the propensity of *députés* for upward accountability suggest that the legislature is unlikely to be a key player for addressing the core DG problem. There remains a possibility, however, that the National Assembly could provide an arena for regime dissenters to express their grievances if the Kabila regime fails to meet their demands.

### 3.3 THE JUDICIARY AND LEGAL PROFESSIONS

In a country where political rule has long been characterized by corruption and impunity, there might be no more important focus of state reconstruction than independent judicial institutions. The judiciary is essential in its role as a check on the executive and legislative, but also as a means for people to adjudicate disputes among themselves. Given the poverty and deprivation of many Congolese, local struggles over such basic resources as land are widespread and in constant need for adjudication. To do so, after all, is one of the most fundamental functions of the state. Yet, despite the Congolese government's formal commitment to the restoration of justice, the total share of the Ministry of Justice and all other judiciary institutions in the 2012 national budget is 2%, a rather paltry allocation for a post-conflict state intent on rebuilding its institutions and promoting the rule of law<sup>93</sup>. It comes as little surprise, therefore, that the Congolese judiciary is in deep disarray.

#### 3.3.1 THE MISSING PHYSICAL STOCK OF JUSTICE

At a most basic level, the judiciary is simply physically absent from many people's lives. Indeed, a large number of courts and tribunals exist only on paper but have not been built, staffed, or maintained over the years. The litany of missing courts was a depressively recurrent theme in our conversations in all regions. This dramatic deficit makes it physically impossible for the justice system to function reasonably. When there is no *Tribunal de Paix*, people have to resort to customary courts if in rural areas, or go to the nearest *Tribunal de Grande Instance*, the next judiciary level, which can be 100 miles away or more. While they provide an important alternative to formal courts and can benefit from considerable local legitimacy, customary courts may be unreliable and suffer from an ill-defined link with the formal legal system. As a result of these different constraints, a large proportion of Congolese do not have effective physical access to justice.

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<sup>92</sup> The editor in chief of the national television was fired by Lambert Mendé after he broadcast internal PPRD debates.

<sup>93</sup> See 2012 budget at [www.ministredubudget.cd](http://www.ministredubudget.cd). This figure includes "Pouvoir Judiciaire," "Justice" and "Droits de l'Homme."



The Ministry of Justice estimates the total needs of the country at about 8,000 magistrates (judges and prosecutors). The number of magistrates currently appointed is about 4,000, the majority of whom were recruited in the last few years and are thus at very junior levels. There is little specific training for magistrates beyond the training of lawyers (a five-year undergraduate degree in the DRC). Case backlog due to overburdened judges and clerks is a serious issue; penal cases, where defendants are delivered from jail by the police service, might proceed faster; while civil cases can languish for years. As a result, many courts are unable to keep up with the caseload which can translate in people staying in jail for months beyond their sentence or while awaiting an eventual acquittal.

It is worth noting, however, that, derelict as it is, the justice system remains somewhat functional (when courts and/or judges are present). In several courts, judges handle cases swiftly and fairly, lawyers argue their cases and defendants are heard, despite difficult material conditions. Problems of dysfunctionality and corruption notwithstanding, the resilience and professionalism of some individuals in this sector deserves to be noted and might derive from the ethical dimensions of their training, a dimension that probably contrasts with the training of other civil servants.



### 3.3.2 CORRUPTION AND ASPHYXIATION

Yet, with judges earning between \$400 and \$1000 a month,<sup>94</sup> it is no surprise that many are accused of seeking to complement their meager earnings with “motivation” payments from the parties to a case. The practice of some judicial personnel in accepting such payments severely undermines the perceived quality and fairness of the administration of justice in Congo. In general, payments fall into two categories. The most egregious ones are from parties seeking to influence the outcome of the case and are constitutive of pure bribery. These payments, which are always illegal, might be directed to the judge or sometimes to the clerk (who might write a different judgment than pronounced by the judge). The second type of payment, wherein parties to a case pay to have the case proceed is more ambiguous, and often in accordance with the law. In some courts with considerable backlog, it might cost \$100 to open one’s case, for example. Once a judgment has been rendered, citizens also often need to pay fees for typing and officializing it to be able to avail themselves of it. These are cases of citizens directly bearing the financial burden of the administration of justice, and not everyone has the means to do so. Although they are often legal, these instances are also

<sup>94</sup> The lowest estimate we heard was \$400, in Kinshasa and Kasai Oriental. In Matadi, we heard of \$700. Prime Minister Matata told us the official wage (which he said was effectively being paid) is \$1,000.

occasionally liable to bias the fairness of trials. In 2009 and 2010, some 300 magistrates were dismissed by presidential decree on grounds of corruption.

The latter form of payment directly relates to the problem of asphyxiation of the judiciary through lack of funding and failure to implement laws and policies by the government. Not only does most of the judiciary not receive any significant funding, but several of the institutions it needs have not been set up. For example, the country still awaits the installation of the *Cour Constitutionnelle* (Constitutional Court), which, together with the *Cour de Cassation* (Cassation Court) and the *Conseil d'Etat* must replace the current Supreme Court according to the 2006 Constitution. However, although Parliament passed a law on the Constitutional Court, the president has yet to promulgate it. Yet, the Constitutional Court is the most important one in the country according to the Constitution, with power to dismiss the president and adjudicate election results. The law on the *Conseil d'Etat* has yet to be passed by Parliament. The law on the *Cour de Cassation* (a sort of ultimate appeal court which can reject previous judgments based on process) was passed by the National Assembly but not the Senate.

### **3.3.3 THE LACK OF JUDICIAL AUTONOMY**

By and large, the sovereign authority of the executive trumps the authority of the judiciary. Although the Constitution explicitly states the autonomy of the judiciary from the executive and legislative powers, in practice it appears that courts still struggle to have effective autonomy.

## **3.4 LOCAL GOVERNMENT**

### **3.4.1 LEGAL AND CONSTITUTIONAL PROVISIONS**

Decentralization is an essential provision of the 2006 Constitution. It marks a balance between the federalist wishes of many groups (which have been repeatedly expressed in Congolese history since 1960) and the more unitary stance of those in power. It also resulted from the post-conflict transition of 2003-2006 when it was seen as a way to distract the various armed factions based in different regions of the country, and to postpone the decision about DRC's federal arrangements until after a central government could be restored.

The Constitution and the 2008 laws on decentralization provide for three levels of government: national, provincial, and local. There are currently 11 provinces, each with its elected provincial assembly, which in turn elects a governor and a provincial administration. According to the Constitution, the number of provinces was to rise to 26 by 2009. Yet, this did not take place and this provision was suspended in the 2011 revision of the Constitution. Governors exercise authority for the province. Within each province, “decentralized territorial entities” (ETDs by their French acronym)—namely towns, communes, sectors and chiefdoms—exercise local rule. Although provincial elections were held in 2006, there have been none since then. Thus, currently, all provincial authorities across the country have exceeded their legal term in office. The revised electoral calendar schedules provincial elections for early 2013, but its suspension by the National Assembly in April 2012 makes it unclear when they might actually take place. No local election has so far been held, and on current trends, they are unlikely to take place before 2014 at the earliest.

Domains of executive competence are shared among the central government, provinces, and ETDs. Provinces have health, environment, agriculture, and education among their responsibilities and are expected to manage their own provincial civil service. They have shared authority with the central government in matters of security, justice, taxation, media, mining and land rights, water, forests, etc. The ETDs are expected to manage local public infrastructure, markets, and police, and they also issue legal documents like birth and death certificates.

### **3.4.2 RECENTRALIZATION AND ASPHYXIATION**

The reality of Congolese decentralization is a far cry from its legal provisions. The main obstacle to its success is the lack of commitment of the central government, which many perceive to actually be intent on sabotaging it and reaffirming its own political centrality. The government's main approach has simply been

not to implement the provisions of the decentralization laws. This is the case, for example, of the aforementioned provincial elections, which have only taken place once, and the local elections, which have yet to take place for the first time. As a result, all mayors, burgomasters, and chiefs are still directly appointed by Kinshasa. But it is also the case of multiple more mundane provisions of the law. For example, many national ministries' provincial divisions continue to manage issues that are now formally the domain of provinces. A 2010 report by the World Bank noted that "division chiefs of local public administration maintain the same hierarchical relationship with Kinshasa as they did before the creation of provinces and neglect to establish links with the provincial ministries in their field."<sup>95</sup> Similarly, the delayed revision of the Finance Law (finally passed in 2011) and the lack of revision of the Mining Code, which predates the decentralization laws, put them in contradiction with the decentralization laws and makes it difficult to implement some of the latter's articles.

As is true with other dimensions of public administration, the main tool whereby the government undermines decentralization is through finances (see Government Effectiveness section). As with other institutions, the government starves decentralized institutions out of resources, making it impossible for them to perform their intended functions and for power and authority to be effectively devolved to the local level. The main problem lies with the lack of "retrocession." This is the term the Congolese use to refer to the transfers that the central government is bound by law to make toward provinces and ETDs. According to the Constitution (Art. 175), retrocession should amount to 40% of "revenue of national character." The 2008 law on ETDs further specifies that 40% of these 40% are to be transferred to ETDs (Art. 115). Notwithstanding the practical difficulties in identifying the "national character" or source of revenue, and categorizing what province is entitled to what amount on the basis of what weight, all of which are legitimate problems which the Constitution glossed over, the government has fallen dramatically short of its obligations. Between 2007 and 2011, the average annual level of retrocession ranged between 6% and 15% of the national budget. Before decentralization it averaged 20%. Moreover, transfers are erratic rather than systematic, which prevents provincial and local authorities from proper budgeting of their own. The government might make a payment one month and not the next few ones.

ETDs perhaps suffer more than other levels of government as they are the last stop of the retrocession flows and frequently end up with no transfer of any significance. Although ETDs must officially allocate 40% of their own budgets to public investments, they typically spend all of it on salaries, *primes*, and recurring expenses. Research in four different provinces has not identified a single commune with a significant public investment program. ETDs are therefore best understood as self-serving institutions. They allocate much of their budget to provide for themselves, largely a result of the fiscal asphyxiation they are subjected to like other government agencies.

### 3.4.3 FISCAL BURDEN

Although they perform little of significance for their constituents, provinces and ETDs are more dynamic when it comes to fundraising, and they extract considerable resources from the Congolese. To some extent, their own extractive nature derives from their lack of funding from above. Since they receive systematically insufficient transfers from the central or provincial governments, provinces and ETDs have increasingly resorted over the last few years to raising their own taxes. In this respect, they compete with each other, with provinces coming largely ahead as they appropriate most of the local taxes. This is in large part because provinces have the legal authority to pass edicts (which can invent new taxes or transfer local taxes to them), whereas ETDs do not (although they can raise the taxes stipulated in the 2008 law). The multiplicity of local revenue-raising initiatives can be bewildering. Although no systematic data is available on this, it is possible that decentralization has had so far the effect of increasing the effective tax burden faced by the Congolese compared to the previous period, while not providing them with any additional service.

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<sup>95</sup> World Bank. *République Démocratique du Congo : Etude sur le Découpage. Étude Conjointe avec la Commission Européenne, la Coopération belge et le Programme des Nations Unies pour le Développement*, (Washington, DC : World Bank, 2010), p.10.

### 3.4.4 DECENTRALIZATION WITHOUT ACCOUNTABILITY

For donors, one of the main points of decentralization reforms is to improve local governance by increasing the proximity between state institutions and the public. Accountability, the argument goes, will increase as local ownership in governance expands. Little if any of this is yet visible in the Congo. The incomplete nature of the implementation of decentralization laws has appeared to result in quite the opposite outcome. Pending new provincial elections, governors and provincial assemblies significantly lack accountability to citizens. In every region we visited, we heard the same refrain that provincial authorities were more eager to please the central government than their local constituents, which makes sense to the extent that the president can now dismiss provincial authorities. At the local level, in the absence of elections, mayors, burgomasters, and chiefs continue to be appointed by Kinshasa. They are typically political clients and they too are more likely to be accountable to their hierarchy and patrons than to the local citizenry. ETDs have represented a very convenient local layer of patronage for the central government, where it appoints minor supporters. All mayors and burgomasters of Kinshasa's 24 communes, for example, as well as their deputies, belong to parties of the presidential majority. The government can hardly pay these supporters, but appointing them to ETDs gives them the tools to pay themselves. In addition, the central government has found the ETDs to be convenient dumping grounds of its own plethoric civil service. Given the new legal competences of ETDs and their lack of staff, central government ministries "delegate" staff to the ETDs and transfer thereby to them the responsibility to pay for the latter's many *primes*. Yet all these staff remain accountable to their central ministry in Kinshasa.

There is some variation across the country in terms of quality of local administration, with Katanga doing apparently better than the rest, in large part because its governor has made more systematic transfers to ETDs. It is also likely that citizens from more opposition-minded regions experience more marginalization by local authorities, as the latter essentially represent Kinshasa. In Bas-Congo, for example, a province where Kabila polled only 19.9% of the votes in the 2011 elections and where the Bundu-Dia-Kongo movement has presented the government with an autonomist challenge, we heard from several local administrators that policing (rather than the provision of services) was their first job. In addition, most of them come from outside the region (a practice that dates back to Mobutu's days) and thus may be less likely to take the local population's demands into account. In Kasai Oriental, where UDPS sympathies run deep, many respondents told us of living under an "occupation administration." Some people also argued that provincial institutions rule "in defiance" of local populations. There appears to be no democratic understanding of the decentralized exercise of power in this province, and there is little visible public service or investment, which gives the impression that the region is being punished for its opposition status.

Yet, despite all their shortcomings, provinces actually do represent significant counter-powers to central government. They do not simply cave in to its pressure but tend to challenge the latter, particularly in terms of fiscal competence. Thus, all provinces have established their provincial revenue services and are actively collecting taxes, fees, and levies in competition with national revenue agencies, which also have their offices in the provinces. Although their own governance is not particularly democratic, their existence *de facto* weakens the reach of the central government and produces a limited degree of democratization *within* the different layers of executive power.

## 3.5 POLITICAL PARTIES AND ELECTORAL INSTITUTIONS

### 3.5.1 POLITICAL PARTIES

As of July 2011, there were 394 registered political parties in the DRC. Needless to say, many if not most were one-man shows and few have had any effective existence since the November 2011 elections. There is usually little ideological differentiation between them. Despite the degree of polarization suggested by the sheer number, their names are largely indistinct from each other, and the vast majority of them profess a desire for unity, union, alliance, rally, or patriotism. One party named the Common Front of Nationalists paradoxically registers two factions (FCN/Mme. Tumba and FCN/Me Kamanda). To some extent, the lack

of specific threshold for the creation of a party in the current law favors the proliferation of one-man parties. As for the larger ones, they tend to be associated with specific regions of the country: the UDPS is particularly strong among the Tshiluba-speaking populations of both Kasais, PALU has historically dominated in Bandundu, the MLC is at home in Equateur, and the PPRD is strongest in the East.

The number of effective political parties is, of course, much smaller. There are two types of parties among them: those with a genuine organization and empirical roots that date back to before the transition; and those that are the institutional manifestation of a “Big Man”’s network.

The UDPS and PALU constitute the entire universe of the first category. PALU is the second largest historical Congolese party, largely anchored around the Bandundu region. The ruling *Parti du Peuple pour la Reconstruction et la Démocratie* (PPRD) provides perhaps the best example of parties created as the institutional appendage of a “Big Man.” It was set up one year after Joseph Kabila acceded to power in 2002 to provide him with a supporting organization and political legitimacy.

The *Mouvement pour la Libération du Congo* (MLC) of Jean-Pierre Bemba is a similar type of structure to the extent that it revolves around the persona of its leader, who has been imprisoned in The Hague awaiting trial with the International Criminal Court for a few years. The *Rassemblement Congolais pour la Démocratie-Kisangani/Mouvement de Libération* (RCD-K/ML) is also the offshoot of a rebel movement. The last two parties with some degree of effective institutional existence are the *Mouvement Social pour le Renouveau* (MSR) of Pierre Lumbi and the *Union pour la Nation Congolaise* (UNC) of Vital Kamerhe. The MSR has 27 *députés* (as it did in 2006) and is the second most significant member of the presidential majority. Lumbi has no official role in the current government, although he is a close advisor to Kabila. The UNC is strong in the Kivus and won 17 seats.

In general, as they exist today, political parties are not very mature partners for democracy promotion in the Congo. They lack a democratic culture of their own and are poorly institutionalized, although both of these dimensions can arguably be improved through donor programs. They do not represent the typical party functions of citizen preference aggregation, but serve as tools of mobilization in electoral periods. In general, it is probably safe to say that few of them have the consolidation of democracy as their goal. More accurately, their goal is access to power (as it is for parties all over the world) in order to access state resources.

In addition, it is important to recognize the functional limitations of Congolese parties. Politicians themselves and Members of Parliament recognize that “political parties do not play their intended role.” Because they do not typically finance the campaigns of their candidates, the latter once elected are not bound to them. As a result there is no party discipline and *députés* behave like “free electrons.” Thus members of the opposition can get themselves elected to the National Assembly bureau against the wishes of their party, and some UDPS *députés* sit in Parliament against the orders of their hierarchy.

### **3.5.2 THE NATIONAL INDEPENDENT ELECTORAL COMMISSION**

CENI is probably the most problematic of all Congolese public institutions. CENI was responsible for updating the electoral roll (*fichier*), for which it had to register some 32 million voters; identify, locate, staff, and organize the 63,000 polling stations; design, print, and distribute the ballots (with massive UN Organization Stabilization Mission in the DRC [MONUSCO] assistance); run the elections themselves; count the results at the local level; transmit these results to larger regional and national tally centers; and produce aggregate results for both the presidential and the legislative elections (for which there were some 11 and 19,000 candidates respectively).

There were, however, some shortcomings during the electoral process. Voter registration started late, was suspended and restarted, and remained opaque; with opposition members unable to access the main database despite reports of multiple double entries and other flaws (opposition parties were also unable to hire professional staff that would have been able to understand database challenges). There was also a problem with the locations of voting stations. While people registered where they had voted in 2006, the location of many polling stations was subsequently altered with the result that some people showed up to vote but failed

to find the appropriate station, while others were told they were not registered in that precinct and had to travel significant distances to reach theirs. Then there were numerous logistical problems. Some polling stations lacked material, including ballots. Many had received a number of ballots equivalent to their registered voters but had to accommodate displaced voters too, which in some places led to shortages.

What accounts for such failings? CENI defends itself in terms of time and money. It argues that eight months is an unrealistic time to revise the electoral register, take candidacies, order supplies, and print bulletins (all of which are imported from abroad). The second problem brought up by CENI is money. CENI's budget was \$300 million. Actual disbursements, however, were far below that level (the relative lack of donor support for the 2011 elections, in sharp contrast to the 2006 elections, might have partly accounted for lack of funds). The Congolese government is fond of saying that it paid for most of the elections this year, but the figures it gives are budgeted, not actual.

For the outside observers, other important variables and structural flaws seem to have also contributed to CENI's failures. They can best be highlighted by comparing CENI to its more successful predecessor, the CEI. One crucial difference between the two institutions is the context in which they operate. The very nature of CENI is different from that of the CEI. The CEI had members representing civil society, the opposition, and the government. CENI's seven members, on the other hand, were all designated by political parties, four from the majority and three from the opposition. This composition no doubt contributed to its politicization. In addition, because the UDPS boycotted the 2006 elections and did not have any representative in Parliament, CENI did not include any UDPS delegate.

The generalized outrage at the work of CENI, from domestic and international quarters, might have been a shock to the government and places the new National Assembly in an uncomfortable situation as many question how its members got their seats. To those who demand that it disband and reform CENI, the government has argued that such decision is the prerogative of Parliament. Yet, under sustained pressure from donors, the government appeared willing to make some reforms in late 2012 and the National Assembly began discussing CENI reform in October. It had already called in the CENI bureau in the spring of 2012, offering the strange spectacle of a legislature criticizing the electoral commission that got its members elected, and had decided, in July 2012, to suspend the organization of any new election until it had a chance to revise the 2010 law setting up CENI, particularly as regards the composition of its bureau.

### **3.6 THE SECURITY SECTOR**

Congo's security sector is plethoric, disorganized, and factionalized. It has proven largely ineffective at fighting military enemies, while it excels at repressing domestic civilian opponents. The national military, the Armed Forces of the DRC (FARDC), have an estimated 150,000 troops, about half of whom are deployed in the east. The core of these troops is made of soldiers from the AFDL, the insurgency that brought Kabila father to power, and remnants of Mobutu's army. Over the years, FARDC has added on multiple layers, which largely contributes to its lack of discipline and unified command. Soldiers from the former MLC (many of whom had been soldiers under Mobutu) and the RCD joined in the 2003-2006 transition period. For a while, integrated battalions were carefully put together under donor sponsorship in a process known as *brassage* (blending). Thereafter, the policy of incorporating insurgents from rebel groups, militias, and the Mai-Mai continued and expanded, but the quality of the integration, referred then as *mixage*, diminished dramatically as most groups remained under their previous leadership and deployed in their "home" areas, refusing to be assigned elsewhere. This was the case, for example, with the *mixage* of the CNDP rebel group in 2009, itself a spin-off from the original RCD. *Mixage* has resulted into a very fragile military in the east (where most of this integration takes place), that cannot be relied upon by the government to follow orders in all circumstances. Defections are frequent, as individuals often return to their insurgency after becoming disenchanted with their military career, including the lack of payment and the failure of the government to deliver on many of its promises in terms of ranks, housing, and other perks. Over the years, and in large part because of the policy of systematic integration of former insurgents (but also because of paltry salaries), the FARDC in the east has turned at times into a largely unhinged and autonomous armed group that operates in

many ways like local insurgents and militias and is more likely to collaborate with them than to fight them, and to oppress local populations than to protect them.

Although some 60,000-70,000 FARDC are estimated to be deployed in the east, making them by far the largest group, they have never defeated any of the local insurgents in battle. On the contrary, its soldiers—poorly trained and rarely paid—regularly engage in looting and other forms of violence, including rapes, against civilian populations. In the words of Séverine Autesserre, the FARDC “relentlessly commit horrific violations of human rights.”<sup>96</sup> Two other international observers concur: “The FARDC is often the single greatest threat to the Congolese and routinely terrorizes civilians, extorting protection money, looting villages, raping and killing civilians.”<sup>97</sup> There is also ample evidence that the FARDC, including some of its top officers, are involved in criminal mining activities, including smuggling with Rwanda. They also regularly sell their weapons and equipment to local rebels. Ninety-five percent of the weapons used by the FDLR—the group that ostensibly justifies the deployment of the FARDC in the east—are said to come from the FARDC.<sup>98</sup> It is based on accusations of selling weapons to rebels that Army Chief of Staff Gen. Amisi was dismissed in November 2012. Despite more than 10 years of donor efforts in SSR, the FARDC remains first and foremost a factor of instability.

In the east, it is essentially battalions of former rebels and Mai-Mai who do the majority of FARDC operations. First among them is the CNDP, a largely Tutsi group active mostly in the Rutshuru and Masisi regions of North Kivu and in some parts of South Kivu. It is often perceived as the agent of Rwandan interests in the region. Although the CNDP has officially disbanded and joined the FARDC, its leadership has continued to exploit certain mines in the east and remains in control of its battalions (refusing to redeploy away from the Kivus). The CNDP is also involved in smuggling and illegal taxation, runs its own parallel police, and redistributes land away from “autochthonous” groups in the areas it controls. Until recently, the CNDP’s leader was Bosco Ntaganda, a general in the FARDC and deputy commander of Amani Leo operations against the FDLR, who is under an ICC indictment for war crimes.<sup>99</sup> Although up to 6,000 CNDP joined the FARDC in 2009, about 1,700 of them remained unintegrated in three “hidden” battalions in charge of Ntaganda’s protection.<sup>100</sup>

In April 2012, the CNDP effectively splintered, as a faction named M23, under the leadership of Ntaganda, defected and launched combat operations against the FARDC in North and South Kivu. Deriving its name from the date (March 23) of the 2009 agreement that set up their integration, M23 is the latest manifestation of the failure of *mixage*. M23 results in part from Ntaganda’s fear of being arrested and prosecuted by the ICC, from grievances about the lack of implementation of the 2009 agreement, and from the manipulation of local groups by Rwanda in a continuous effort to destabilize Congo and retain leverage, if not indirect control, over the region. Although it started with only a few hundred fighters, it has grown and created considerable havoc in the region including the capture of Goma in November 2012. It is now estimated at more than 1,500 fighters and is actively recruiting from defeated forces.<sup>101</sup>

The *Patriotes Résistants Congolais* (PARECO) were integrated at the same time as the CNDP. Paradoxically, PARECO was created in 2007 as an anti-CNDP organization within local Hutu, Hunde, and Nande

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<sup>96</sup> Autesserre, Severine. “Dangerous Tales : Dominant Narratives on the Congo and their Unintended Consequences,” *African Affairs*, (February 2012), p. 203.

<sup>97</sup> Paddon, Emily and Guillaume Lacaille, *Stabilising the Congo*, Refugee Studies Center, Forced Migration Policy Briefing 8, (University of Oxford, December 2011), p. 6.

<sup>98</sup> United Nations. “Final Report of the Group of Experts on the Democratic Republic of the Congo.” (New York: United Nations Security Council S/2011/738, 2 December 2011), p. 41.

<sup>99</sup> Before its integration in the FARDC, CNDP’s leader was Laurent Nkunda who was arrested by Rwanda, the CNDP’s godfather, as part of the integration deal with the Congolese government.

<sup>100</sup> United Nations (2011) Op. Cit. p. 83.

<sup>101</sup> See Stearns, Jason “Congo Siasa,” at <http://congosiasa.blogspot.com/>

communities. Once in the FARDC, however, they have collaborated with the CNDP in their pursuit of material benefits. Many non-Hutu members of PARECO defected from the FARDC soon after their integration, however. The latest round of *mixage*, which took place in 2011, brought in the *Forces Républicaines Fédéralistes* (FRF), a group of Banyamulenge (South Kivu Tutsi) from Minembwe; Mai-Mai Kapopo, an ethnically mixed group; and Mai-Mai Kifuafua, a Tembo group from North Kivu.

Protecting the president is the Republican Guard, the president's own praetorian troops, who operate autonomously from the FARDC and respond directly to him and General Banze Lubunji. They number 10,000-15,000—largely northern Katangese recruits—and are the most consistently paid of all security forces, and are both feared and despised across the country. They are mostly deployed in Kinshasa and Katanga, around centers of power, and near large mining areas.

The national police, which numbers about 100,000, is among the least disciplined and most predatory of all Congolese security forces. Since the suspension of Katanga's John Numbi in 2010 (for his alleged involvement in the assassination of human rights activist Floribert Chebeya), the national police is under the leadership of Charles Bisengimana. The main police forces are the *Police d'Intervention Rapide* (PIR), which does most of the large security operations (and is known as Cobra); the Directorate for General Intelligence and Special Police Services, also known as “special services”; the loathed road traffic police (“roulages”) who spend most of their time ransoming the population; and some smaller services like the border, environmental, and mining polices. Although the police are made up of recruits from all over the country, there is a special “Simba battalion” of Katangese which has allegedly remained under the control of John Numbi despite his official suspension. Finally, an overview of Congo's security forces would be incomplete without a mention of the ANR and its leader, Katanga's Kalev Mutond. ANR is technically an intelligence agency but it has become a feared secret police.

### 3.7 CIVIL SOCIETY AND THE MEDIA

Both civil society and the media remain important potential allies for promoting democratic governance. Despite facing serious challenges, civil society and the media in the DRC are larger and more active than in most other African countries. As the state under Mobutu fell into decline in the 1980s, Congolese began to organize a number of associations in defiance of rules giving the single political party, the MPR, a monopoly on social organizing. Churches played an important role in starting many civil society organizations, and they continue to provide vital support to many groups, particularly outside large urban centers. Today, civil society groups in the DRC are numerous in nearly all spheres of action and are territorially dispersed. Groups range from the ubiquitous small-scale rotating credit associations known as *tontines* to major national human rights and anti-corruption organizations.

Congolese civil society has a number of strengths, though it faces a number of challenges as well. Umbrella groups for development, women's rights, human rights, and other issues as well as overall umbrella groups in each region and municipality provide important coordination. A strength of civil society compared to other political actors in the DRC is the greater involvement of women as members and leaders. Links between elite organizations and the grassroots are sometimes weak, and most groups struggle to find adequate funding. Perhaps in part because of their origins as inherently illegal organizations, civil society groups in the DRC have tended to remain relatively independent politically and to have an adversarial relationship with the state. More overtly political civil society groups, such as human rights organizations, face considerable harassment that sometimes inhibits their work. The assassination of the leader of *Voix des sans Voix*, Floribert Chebeya, in 2010 had a chilling effect on other human rights groups,<sup>102</sup> but harassment is not limited to overtly political groups and comes from every level of government. Since the 2006 transition, a number of groups have had difficulty shifting from an adversarial attitude toward the state to an advocacy role, which could allow them to influence policy without necessarily attacking or undermining the state.

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<sup>102</sup> Nossiter, Adam. “Lifetime of Tracking Killings Ends in Activist's Own,” *New York Times*, (June 27, 2012).



The media sector is also quite strong in the DRC, despite facing threats and harassment as well as financial challenges. During the democracy movement of the early 1990s, a number of publications emerged, reflecting a wide variety of perspectives. Most cities have at least one daily or weekly newspaper. More recently, radio and television stations have proliferated, with over 300 radio stations now across the country. The media are limited by inadequate resources, as they generally lack a feasible financial model. A number of media outlets, thus, are the personal projects of wealthy individuals who sometimes use them to promote their own political fortunes. The media also lacks professionalism, as few journalists are trained. Journalists who criticize politicians, whether at the national or local level, can face threats, and there have been attacks on several journalists and offices. The government also has shut down

**“The government turns to violence, because they lack other means of enforcing their authority.”**

*Congolese human rights activist*

publications and radio and television stations, including suspending Radio France International three times in recent years. Such harassment encourages self-censorship. Despite these challenges, radio, television, and print media continue to proliferate, and lively debates on public issues do occur. Criticisms of the regime also continue, despite risks to journalists. Much of media is politicized, but not in a single direction, as politicians from all sides create media outlets.

### **3.8 RELIGIOUS GROUPS**

The Catholic Church is the strongest social institution in the DRC outside the state, while the main Protestant body, the Church of Christ in Congo (ECC) and the Kimbanguist Church, a church that combines Christian and indigenous African beliefs but considers itself Protestant, are also powerful and influential. About 90-95% of Congolese are members of a Christian church, with another 2-5% identifying as Muslim. The Catholic Church alone counts half of the population as members. The churches have extensive programs in healthcare, education, and development, playing a vital role in providing social services.

The relationship between church and state has varied over time. In the colonial era, the mostly Catholic Belgian colonial administrators cooperated closely with Catholic missionaries, while Protestant missionaries were sometimes critical of colonial practices, as in the international movement against the Red Rubber Regime, which was organized mostly by Protestant churches. Under Mobutu, both the ECC (which includes all mainline Protestant groups) and the Kimbanguists were closely allied with the government, while the Catholics were often at odds with the regime. The Catholic Church provided essential support to the pro-democracy movement in the 1990s, with a bishop serving as president of the National Conference. Both Catholic and Protestant leaders have played important roles in promoting peace during Congo’s various armed conflicts.

Given their extensive social engagements, presence throughout the country, and relative probity, churches make good potential partners for promoting democratic governance. The Catholic Justice and Peace Commission organizes a network from the national to the local level that addresses important political issues and promotes human rights. Protestants sponsor similar activities, though with a less extensive network. While the Kimbanguist Church generally does not address political issues, they are interested in economic development and could partner on improving governance in agriculture and other areas.

### **3.9 FILTERING IN ACTORS AND INSTITUTIONS**

As this review suggests, despite the major problems facing the country, several actors and institutions could be potential allies in the effort to promote democracy, human rights, and good governance. Despite the weakness of the Congolese state, merely building up the executive branch is not desirable in a context in which executive power appears to be becoming increasingly concentrated. Yet limited partnerships within the government may be possible. Prime Minister Matata and several of the new ministers, for example in Justice and Agriculture, appear to be competent technocrats who might be willing to work together on specific

projects. Any work with the executive branch, however, needs to be balanced with work that will build checks on executive power without undermining the state. While the Parliament at the moment does not seem to be a viable partner, as it appears to serve little independent function, building the judicial branch remains important to promoting rule of law, fighting corruption, and promoting human rights. Regional and local governments also remain a productive venue to promote alternative centers of power and because they are key actors in the delivery of public services. Governors and local officials appear able to act with a degree of independence and act in the interests of their region. Working with provincial legislatures and provincial and local courts could also promote important checks and balances at these levels. SSR remains important, as the FARDC and the police have proven open to reform, even as they continue to be accused of human rights abuses.

Outside of government, civil society and the media remain important partners in promoting democratic governance. They serve as important watchdogs who play an essential role in exposing corruption and providing accountability. Yet they need to develop the ability to engage the government more effectively rather than merely serving as critics. Civil society and the media also need to continue to develop at the regional and local levels as political institutions at these levels continue. Religious institutions also could serve as important partners, whether in efforts to improve service delivery or in civic education and election monitoring.

Traditional political party work, however, seems unlikely to be fruitful at this time, unless Parliament becomes a more meaningful actor and significant electoral reforms are undertaken. However, work with parties at the provincial and local levels in advance of regional and local elections could be a productive means of advancing democratic goals. Innovative approaches that encourage marginalized groups (including women and youth) to become more productively engaged in political processes and politics could be useful—particularly as these underrepresented groups grow and become empowered to demand that power be attributed to them as outlined in the Constitution.

# 4.0 CONSIDERING USAID'S OPERATIONAL AND PROGRAMMATIC ENVIRONMENT

In some ways, USAID's work in the DRC is constrained by the relatively high profile of the country. Various US government (USG) agencies and actors are interested in seeing their priorities addressed in the DRC. The DRC is a focus for efforts to combat sexual and gender-based violence and the recruitment of child soldiers, to control conflict minerals, to combat tuberculosis, and to stop the spread of AIDS, among numerous other goals. Each of these government policy priorities is individually quite important, but together they require substantial commitments of resources and limit the flexibility of program design.

Perhaps the greatest constraint for DRG work comes from the tendency for concerns over ongoing insecurity to overwhelm all other priorities. Efforts to promote peace, address humanitarian concerns, and prevent future conflict absorb both substantial resources and attention. Many Congolese we interviewed complained that international support was going overwhelmingly to the conflict zones in the east, despite pressing needs in the rest of the country. While recognizing the importance of security sector reform (SSR), we also note that a number of other donors are active in this area. It is, in fact, the primary focus of MONUSCO's democracy and governance work, and a major focus for the European Union. In addition, the USG already has successful programs in SSR, such as the Defense Institute for International Legal Studies (DIILS) program.

Clearly bringing security to the country is important, as the continuation of armed conflict has dire consequences for the population, undermines economic development, and prevents democratic consolidation. Yet we firmly believe that resolving core democracy and governance issues in the DRC is a key to bringing security back to the country. If the Congolese people felt that their government were responsive to their needs and provided effective services, they would be much more engaged as citizens. If people felt that there were reliable democratic means for their voice to be heard, they would be less inclined to take up arms to gain attention.

Overall, our analysis does not suggest the need for a radical change from USAID's current DRG programming. The current emphasis on governing justly and democratically focuses on promoting citizen engagement in the democratic process, and targeting the justice sector, local government, civil society, and the independent media. We heard very positive feedback on current DRG programs, with many Congolese expressing hopes that they will be continued and expanded. Compared to other donors, such as DFID and the European Union, USAID's DRG budget is relatively small. Yet by targeting a few regions where various programs are coordinated and limiting programs to a few specific areas, USAID is able to make an important contribution. USAID has a long track record of working with civil society and the media, as well as in the justice sector, and we believe that continuing work in these areas remains important.

One major change that we would suggest, however, is the need for greater emphasis on democratic governance in other areas of USAID intervention in the DRC. The lack of democratic governance affects all

areas of Congolese social, economic, and political life, and improved democratic governance in areas such as health, education, and economic development could have major impacts. For example, USAID does vital work in healthcare, yet without addressing the DRG issues that cripple the country's healthcare system, our work is unsustainable. If we were to end our programs tomorrow, what legacy would be left? Addressing some of the democratic governance issues in the health sector could allow the Congolese government and society to provide some of the services we are currently providing, allowing us to move on to other issues.

# 5.0 STRATEGIC APPROACH AND PROGRAMMATIC RECOMMENDATIONS

## 5.1 STRATEGIC RECOMMENDATIONS

### **INCLUDING DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE CONSIDERATIONS IN ALL SECTORS OF USAID ENGAGEMENT IN THE DRC, INCLUDING CONFLICT MITIGATION AND MANAGEMENT WILL IMPROVE THE DELIVERY OF PUBLIC SERVICES**

We have argued in this analysis that the core challenge to democratic governance in the DRC is that declines in checks and balances and in public accountability and the failure to deliver public services have led to a breakdown in the social contract that was established with the 2006 transition. The practice of using government offices to serve private interests frustrates the population and starves the state of resources needed to provide public services. Limitations on political and civil rights and the concentration of executive power prevent both the public and other state institutions from ensuring that the state acts in the general public interest. Failures in democratic governance lie at the root of the DRC's persistent economic stagnation and ongoing insecurity and conflict.

The linkages among governance, development, and security carry at least three fundamental strategic implications. First, establishing basic political legitimacy, security and justice, and effective economic governance institutions is a necessary condition for any long-term sustainable development and lasting security. Our analysis suggests that a weak state, illicit governance, and pronounced insecurity are a core development challenge in the Congo. These are not only problems in their own right but hinder development in other areas. Thus, economic growth will only take hold when the political, legal, and security regime is improved. Democratic governance and institution-building considerations should be mainstreamed into other aspects of the development portfolio. This finding is consistent with an emerging international consensus on principles of effective international engagement in fragile and conflict-affected states.<sup>103</sup> Fortunately, we have found positive examples of where USAID/DRC is already doing this, for example, in one of the mission's core education programs.

Second, programs and policies typically organized under the mantle of democracy, human rights, and governance are critical elements in any strategy to promote health, education, and economic development, peacebuilding, or conflict mitigation. For this reason, USAID/DRC should recognize the fundamental thematic and strategic linkage between those programs related to democratic governance and to economic development, stabilization, so-called "conflict" minerals, sexual and gender-based violence, and human trafficking. Achieving sustainable solutions to these issues will require a mix of diplomatic pressure combined with development of a more capable, accountable, responsive, and proactive Congolese state. Protection of children and women's human rights, for example, requires security forces that are themselves accountable and capable of preventing or responding to calls for help, as well as a legal and judicial system capable of

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<sup>103</sup> Fourth High Level Forum on Aid Effectiveness. Outcome Document, in particular paragraph 26, available at <http://www.unwomen.org/wp-content/uploads/2011/11/HLF4-OUTCOME-DOCUMENT-FINAL-EN.pdf>; OECD-DAC. Guidance on Statebuilding in Situations of Conflict and Fragility (2011); World Bank, *World Development Report 2011: Conflict, Security, and Development*, (Washington, DC: 2011).

prosecuting offenses when they do occur. Similarly, thwarting the illicit trade in minerals requires border and security services that are capable of and interested in monitoring the border, less susceptible to bribery, and politically and financially empowered to confront those violating the law. Such efforts also require that there indeed be a *licit* market for minerals, i.e., one that is adequately regulated and conducive to investment, in which at least some portion of the revenue flows ultimately go to benefit the Congolese people.

Third, because the issues of development, conflict management, democracy, rights, and governance are so clearly linked, USAID should be wary of interventions addressing only one aspect without due consideration for the other dimensions. Strengthening a legitimate and effective state in the DRC should be the primary objective of all DRG assistance; activities that do not contribute to this end are less likely to yield sustainable results and may even risk doing harm. For example, providing healthcare to the Congolese population is absolutely essential and responds to important public needs, but without addressing the democratic governance issues within the Congolese health sector, the system will remain permanently dependent on international interventions and financing. Promoting greater popular involvement and control in the healthcare system and combating corruption and inefficiency could ultimately allow the Government of the DRC to take full charge of providing healthcare to its population. As many people pointed out to us, the DRC has the resources to support itself—if only they were effectively managed and directed toward the public good.

## **5.1 PROGRAMMATIC RECOMMENDATIONS: BALANCING POWER, INCREASING ACCOUNTABILITY, AND IMPROVING SERVICE DELIVERY WILL STRENGTHEN THE SOCIAL CONTRACT**

- Establishing greater checks and balances, increasing government accountability, and improving the provision of public services will help strengthen the social contract.
- Promoting decentralized institutions and the judicial system will help rein in the unchecked power of the executive, thereby improving oversight and accountability without weakening the state.
- Empowering the Congolese population to demand government accountability and insist on their rights to such things as security, health, and education will help restore the social contract, thereby improving government functioning while eliminating the appeal of violent and extralegal approaches.
- DRG considerations must be integrated into all areas of USAID intervention.
- Diplomatic pressures may be needed to overcome resistance to change by those who benefit from the status quo.

Our assessment suggests that, for all the democracy, governance, and human rights shortcomings of their political system, the Congolese nevertheless share a social contract whose essential values are embedded in the 2006 Constitution. The need to establish popular accountability and to build checks and balances among state institutions are key components to this social contract that the Congolese have reasserted on several occasions since the *Table Ronde* negotiations of 1960. Nearly everyone we interviewed for this report indicated that the principles laid out in the 2006 Constitution are sound but they have either never been realized or have deteriorated since 2006. Because of the concentration of power; growing problems in the electoral system (including both flawed and long postponed elections); repression of freedoms to speak, publish, and organize; and the failure of the government to provide development, security, and basic services, the Congolese population feels increasingly that the government is not respecting this social contract.

The social contract provides a strong basis for promoting Congo's development, not only in the area of democracy, human rights, and governance but also in economics and security. USAID programming in all sectors should work to honor and strengthen this social contract by promoting popular accountability, diversification of power among state institutions, and improved delivery of public institutions.

Most of the problems facing the DRC today are not the unique fault of the Kabila regime but are deeply rooted in the country's history, and thus, are challenging to resolve. Efforts to strengthen the social contract must remain realistic about the nature of power and of the political system in Congo. The DRC has a long history of concentrated executive power, so merely building up the national executive is more likely to facilitate corruption than to improve service delivery. However, finding ways to promote a balance of power between state institutions and between the state and local communities could counteract the regime's authoritarian drift. USAID's goal should be to empower the local population and certain state institutions to hold all state institutions accountable to the ideas and structures of the Constitution.

Four broad focuses (and one crosscutting) for USAID DRG programming could support efforts to strengthen Congo's social contract:

### **I. FURTHERING DECENTRALIZATION WILL STRENGTHEN CHECKS AND BALANCES**

Power will be returned to the Congolese people if other state institutions balance the power of the executive. Decentralized institutions at the provincial and sub-provincial levels appear to be the most promising point of entry, both because they are closer to the population and because they already show a somewhat greater degree of autonomy than other state institutions.

The most important step to take in this respect is to hold the government to its legal commitment to organize provincial and local elections. Several intermediary steps are necessary for this to take place. They include holding a census (the Congo has not had one since 1984) to have a reliable voter registry; and formally identifying rural "groupements" and urban communes, which are the voting districts, but many of which exist only *de facto* without legal recognition; and reforming CENI.

Second, it is essential to help strengthen provincial and local decentralized institutions to improve their effective governance. These institutions suffer from very low levels of human capital which hamper their effectiveness. Training in budgeting, in procedures for proper oversight of local executives, and in the legal responsibilities of local government, particularly toward local populations, are badly needed.

Finally, working with provincial and local governments to strengthen their capacity to provide public services will tangibly improve peoples' lives, and as a result, improve their perceptions of government. Many public services, including health and education, are now legally the prerogative of decentralized entities. Yet it is common for provincial and local leaders to not know what their domains of competence are. Even when they do know their responsibilities, they often lack the capacity to actually deliver services. Promoting the local supply of these services has a democracy and governance dimension as they stand to strengthen the bond between people and their institutions and favor accountability.

### **2. BUILDING UP THE JUDICIARY WILL STRENGTHEN CHECKS AND BALANCES**

Along with working with local and provincial governments and legislatures, improving the delivery of justice is important. Working with lower-level courts seems particularly necessary. There can be little effective governance and rule of law if people are deprived of access to the most local level of courts and tribunals. It should be a priority to develop *Tribunaux de Paix* across the territory, to staff them, and to create incentives for magistrates not to desert these jobs. These tribunals are necessary to adjudicate widespread land disputes and conflicts over customary chiefdoms. Stronger lower-level courts will also be important for ensuring that provincial and local elections are more credible, as they will have authority to provide oversight and settle disputes in these elections. As such, developing these tribunals also has beneficial multiplier effects toward effective decentralization.

Strengthening the capacity of court staff and increasing the number of lower-level courts will be essential for providing greater access to justice and improving security. They also help to check the power of local and provincial governments and help guarantee that human rights are respected. Since the Constitution does not provide for a decentralization of the judicial branch, continuing work with the High Council of Magistrates and other national judicial bodies will likely be necessary to ensure effective reform at the local and provincial levels.

### **3. EMPOWERING LOCAL COMMUNITIES TO DEMAND ACCOUNTABILITY WILL STRENGTHEN THE STATE AND IMPROVE ITS CAPACITY**

Increased empowerment of the population through improved public participation in strengthened civil society and media advocacy is necessary to ensure that strengthened state institutions serve the public good rather than merely enjoying increased capacity for predation and abuse of rights. Successful changes are more likely to come from below from an empowered population than through mere institutional reform imposed from above. As local and provincial governments become increasingly important, the citizens of the DRC will need to learn to engage with these governments and hold them accountable. Institutional capacity building has to be balanced with increased empowerment of the population through improved public participation, media oversight, and enhanced lower-level judicial control.

Many Congolese at the grassroots level do not have sufficient knowledge of their rights and of the laws passed since 2003 that have expanded and guarantee these rights. Simple interventions to teach people their rights might go a long way to help them enforce them. Many grassroots and religious associations (the bar association, human rights NGOs, and the Catholic Church to name a few) are already involved in this type of work and can benefit from support.

Local communities can also be empowered for more active and productive involvement in elections and electoral supervision. The Congolese cannot forever (or successfully) rely on outside observers to preserve the integrity of their elections. Citizens must be trained to be their own observers. Strengthening domestic observer organizations to provide oversight and protection is as important as the strengthening of the lower-level courts that will have authority to settle disputes in these elections. Parallel structures of electoral oversight and accountability, such as *Agir pour des Elections Transparentes Appaisées* (ATEA), can benefit from support.

In this respect, promoting local and community media can act as a safety net to reduce abuse by local authorities. Civic education can also help citizens engage with their government rather than only attacking it. Work with local and regional civil society groups to lobby provincial legislatures and work with courts and provincial and local governments will be important.

Focus on empowering local and regional Congolese civil society and media must include a significant focus on gender. The attitudes and customs excluding women from social, economic, and political power and exposing them to abuse and violence are deeply entrenched and will take time and effort to transform. Working on empowering women at the grassroots level and improving their access to government offices and government services could have an important effect at all levels of public life in the DRC, providing a basis from which women could gain a stronger foothold in the political system.

**“For actions to succeed, civil society needs to be strong and involved, but they need to reinforce the state. If you work only with civil society, the state will disappear.”**

*Catholic Church leader*

### **4. ADDRESSING DEMOCRATIC GOVERNANCE ISSUES IN ALL SECTORS WILL IMPROVE SERVICE DELIVERY**

Helping the government ensure the population has access to healthcare, education, economic development, justice, and security will increase the legitimacy of the state and strengthen the social contract between citizens and their government. The goal must not be simply providing services in place of the state but improving governance to help the state itself—in cooperation with the Congolese society—provide the services. Strategic partnerships with ministries focused on health, education, agriculture, justice, etc., will likely be necessary, along with work at the local and provincial levels.

The process of decentralization presents substantial opportunities for fruitful cross-fertilization between DRG interventions and other areas of USAID activity. As decentralization transfers many government responsibilities to local and provincial state institutions, addressing DRG concerns will prove key to improving the delivery of public services. Improving service delivery requires not only improving governance



in state institutions but also empowering the population. Democratic participation is necessary for improved governance in state institutions. Developing local civil society in diverse sectors of state activity can serve to engage the public not simply to demand their rights to health, education, employment, justice, and security but also to work with the decentralized institutions to guarantee these rights are realized. By working with grassroots associations to help deliver social services, relationships of accountability and citizen ownership can be developed which can also enhance the DRG dimensions of these other sectors and provide virtuous reinforcing mechanisms across USAID interventions. The active role that parents have taken in funding and managing schools in the absence of effective state action is a model for social engagement in service delivery, though improving the state's cooperation with such social organization remains important.

#### **5. DIPLOMATIC PRESSURE MAY BE NECESSARY TO ENSURE REFORMS ARE ALLOWED**

Although we find that localized interventions are likely to be more productive than attempts to directly affect central power, the success of these reforms will necessarily imply some diplomatic pressure at the national level. While people almost universally condemn the current situation in the DRC, the Congolese elites who are benefiting from the status quo are likely to resist changes. Successful changes are thus more likely to come from below from an empowered population than through mere institutional reform imposed from above. However, reforms will ultimately require acquiescence from higher state authorities. The executive branch in particular is likely to resist attempts to create alternative centers of power. Diplomatic pressure will be needed to push the government to follow through on the creation of the decentralized institutions named in the Constitution and timely electoral reform. This is particularly true with the necessity to reform CENI, to shore up the judiciary, and to make the government follow through on its constitutional commitment to decentralization. To be effective, such diplomatic pressure will require coordination among Congo's foreign partners.

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