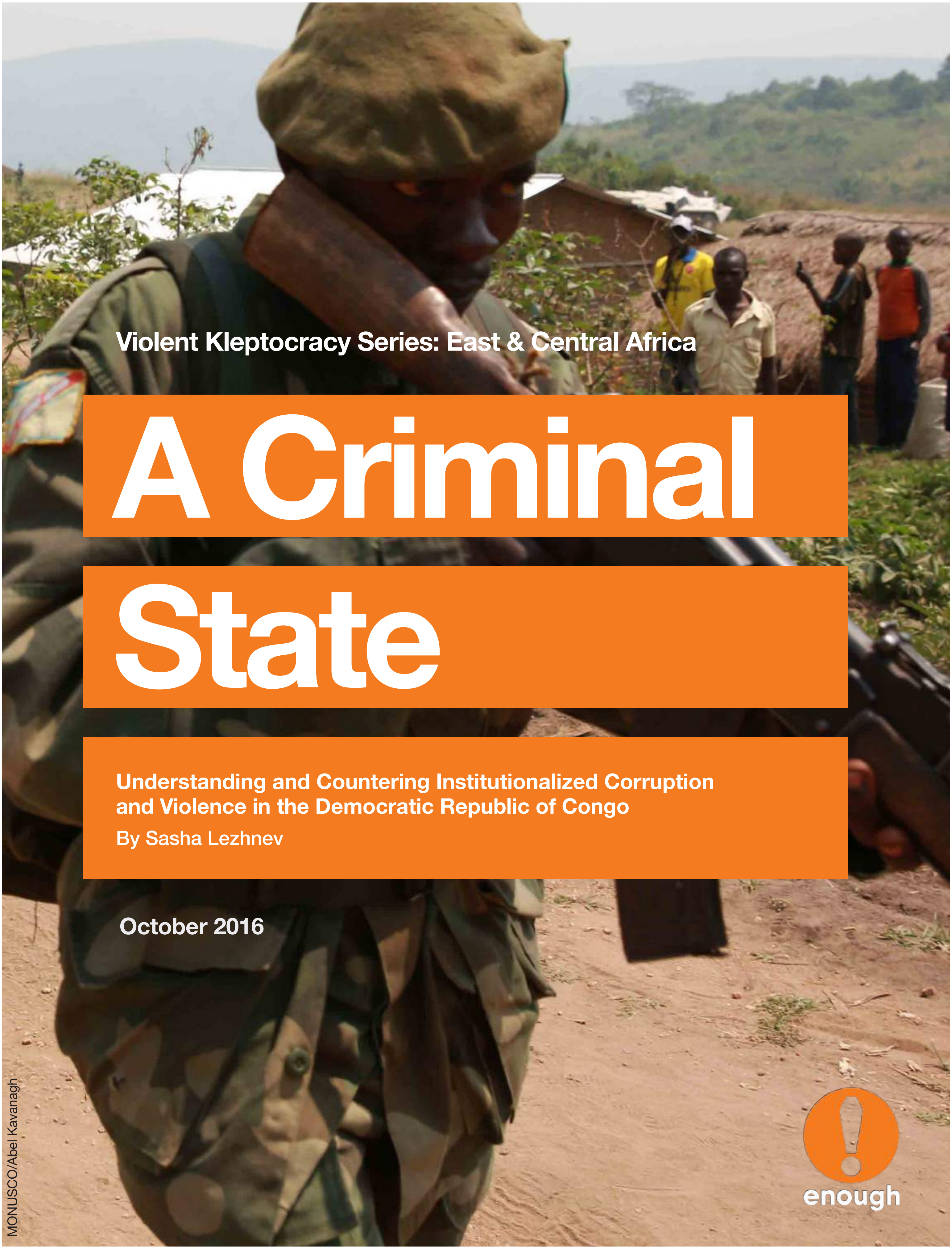

Violent Kleptocracy Series: East & Central Africa

A Criminal State

Understanding and Countering Institutionalized Corruption and Violence in the Democratic Republic of Congo

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October 2016

MONUSCO/Abel Kavanagh

enough

Executive Summary

Executive Summary and Recommendations

The Democratic Republic of Congo is not a failed state—for everyone. It is a failure for the vast majority of Congolese who suffer from abysmal security, health care, and education services. However, it is an efficient state for ruling elites and their commercial partners who seek to extract or traffic resources at the expense of Congo's development.

Over the past 130 years, Congo has had many elements of violent kleptocracy, a system of state capture in which ruling networks and commercial partners hijack governing institutions and maintain impunity for the purpose of resource extraction and for the security of the regime. Ruling networks utilize varying levels of violence to maintain power and repress dissenting voices. This system plays out today with the current regime's attempt to subvert a democratic transition. President Joseph Kabila and his associates profit from grand corruption and are trying by all means necessary to hold on to power. From King Leopold II over a century ago to Kabila today, Congo's leaders have redirected billions of dollars from the Congolese state and people, and have used brutal violence at times to gain or maintain the ultimate prize: control of the state and its vast natural resource base.

During Kabila's tenure, up to $4 billion per year has gone missing or been stolen due to the manipulation of mining contracts, budgets, and state assets.[2] This follows trends set by King Leopold, the Belgian colonial authorities, Mobutu Sese Seko, and Kabila's father who preceded him as president before his assassination. These regimes have partnered with commercial actors to rob Congolese people of their valuable natural resource assets. These leaders' international partners have also profited significantly, some of whom reportedly have paid large bribes to do so. For example, in a recent U.S. Department of Justice plea agreement, the U.S. hedge fund Och-Ziff asserted that some of its business partners, including Israeli businessman Dan Gertler according to sources familiar with the case, paid over $100 million in bribes to Congolese officials in order to receive billions of dollars worth of mineral concessions at very low prices.[3]

Violence has been the systemic companion of these regimes. It is estimated that 5.4 million people have died and hundreds of thousands have been subjected to sexual violence in conflict during the rule of Joseph Kabila and that of his father, Laurent Kabila,[4] with the active participation of neighboring states in the killing and looting inside Congo, particularly Rwanda and Uganda. This is in addition to structural violence and repression.

Based on field and historical research, this study argues that President Kabila and his close associates rely in large part on theft, violence, and impunity to stay in power at the expense of the country's development. From the days of Leopold to the present, top officials in Congo and their associates have created seven "pillars" of violent kleptocracy.[5] They are:

1. **Let the security forces pay themselves.** Mobutu said, "You have guns, you don't need a salary."[6] In order to prevent being overthrown by force, the regime allows army commanders to become wealthy by exploiting resources and citizens, thus fueling cycles of conflict.

2. **Stay in power, or possibly lose everything.** Leaving office can mean that regime-connected elites lose their ill-gotten gains and immunity from prosecution. Pro-democracy movements are thus repressed, often violently, as they are threats to the corrupt system.

3. **Ensure there is little to no accountability for regime-connected elites.** Impunity is the glue that holds the system together. Judicial systems target regime opponents or low-level figures, not high-level perpetrators of corruption or human rights abuses.

4. **Create parallel state structures and co-opt rebel groups to weaken political threats.** Parallel chains of command are set up to ensure loyalty; rebels are brought into the army without vetting or real integration. The bloated army then commits abuses and collaborates with armed groups.

5. **Ensure that high-level officials benefit from corruption.** If appointed to a military post or government office, the official is expected to pass payments up the chain. This system, "rapportage," has led the real tax burden for Congolese citizens to be around 55 percent.[7]

6. **Personally profit from natural resource deals, underspend on services, and hijack reforms.** The regime receives bribes from certain outsiders to sell resources at very low prices, then outsiders flip[8] them for large profits, depriving the Congolese state of massive revenue.[9] Transparency reforms such as the Extractive Indsutries Transparency Initiative (EITI) help a bit, but the main vehicles for corruption—state-owned companies and their foreign shell company partners—remain opaque. The government deliberately underspends on public services, as its focus is on patronage.

7. **Confuse everyone by creating uncertainty on policies in order to increase corruption.** The government creates institutions that contradict its own laws or policies, and state agencies impose and collect their own taxes, which increases predation.

These "pillars" have made the Congolese state largely an institutional façade for an enterprise of theft and predation. This is why the government resists serious reform of its army, justice sector, and state-owned companies, which are at the heart of many crises in Congo.[10] This has had devastating effects, as average Congolese citizens earn less than they did in the 1970s in real prices.[11] The system coexists with a formal side in which the state performs some functions, and some basic infrastructure financed by China has been built. However, there is a logic as to why Congo has not developed into a more peaceful, capable state. A weak state that provides few services but keeps army commanders busy, mineral wealth opaque, and impunity continuous for regime leaders serves them by allowing them to maximize profits and maintain power.

The unique networks controlling kleptocratic systems often contain the seeds of their own demise, and Mobutu's control of Congo's kleptocracy was no different. The focus on patronage led to gross economic inefficiency, divide and rule strategies created escalating opposition which spilled over into rebellion, and when Mobutu's patronage money ran low, elites and the population turned against him. As Mobutu's network frayed and began to collapse, his decision to support the former Rwandan army and militias that had committed the 1994 genocide and escaped across the border into Congo led to the decision by Rwanda and Uganda to invade Congo, in turn leading to the deadliest war in the world since World War II. Some of these seeds of demise and instability are reappearing today.

There is a logic as to why Congo has not developed into a more peaceful, capable state.

Shifting the analytical lens from failed state to kleptocratic state. The international community largely analyzes Congo as a fragile or failed state,[12] pumping in aid and peacekeeping assistance to make up for the lack of investment or interest in the provision of state services. Official aid to Congo averaged $2.6 billion annually from 2006 to 2013.[13] Meanwhile, the Kabila regime starves state services. Just one example: while his presidential cabinet received nearly triple its planned budget in 2015 ($88 million), the electoral commission received only one-third its budget ($69 million).[14]

If international policymakers are to have a real impact in helping Congolese reformers actually reform the system, they need to shift lenses. They should view the current situation in Congo as the latest iteration of a longer pattern of violence and corruption, and respond accordingly. Policies should focus on creating significant consequences for those most responsible for the system of violence, corruption, and undermining of democracy. This can be done by creating new leverage using tools of financial pressure normally reserved for countering nuclear proliferation and terrorism aimed at isolating certain leaders from the international financial system, and increasing support for Congolese civil society organizations and journalists to hold the government accountable.

Policy goals should be two-fold: to create accountability for financial and human rights crimes; and to create new leverage for peace, human rights, and governance reforms. The West has as-yet unrealized and unutilized leverage with the regime, as Congo's officials and international commercial partners use U.S. dollars for transactions, thus touching the western banking system.

This combination would much more strongly support Congolese efforts to change the system and enhance good governance.

Recommendations

1. Financial pressure: For a policy of financial pressure aimed at reforms, the United States and other actors within the international community should combine the use of anti-money laundering measures with widened, enforced targeted sanctions designations. This would comprise a new and unique financial pressure approach that would create real leverage in support of processes that can bring change in Congo. The objective would be to freeze out of the international financial system those committing atrocities and undermining peace. Congress should ensure that the U.S. Department of the Treasury has sufficient resources and direction to undertake investigations and enforcement.

- **Enacting anti-money laundering measures.** The U.S. Treasury Department and key African and European government financial intelligence units (FIUs) should work in partnership to take measures to counter money laundering activities that transit through banks in Congo and abroad. For example, the U.S. FIU, known as the Financial Crimes Enforcement Network (FinCEN), should issue a public advisory concerning the patterns used to launder the proceeds of corruption from Congo, as well as any other sets of transactions that may represent money laundering activity, such as elements of the gold trade. Such an advisory should include, where possible, discussion of the correspondent banking channels used by Congolese and regional banks to connect to the international financial system. Other FIUs should take similar advisory steps, which collectively should urge banks and other financial institutions to conduct stronger due diligence and provide more reporting on suspicious transactions. However, given the relevance of the U.S. dollar to transactions that underlie kleptocratic activity in Congo, an advisory from FinCEN would be the strongest first step. FinCEN and FIUs from African governments, such as South Africa, Uganda, and Tanzania, should collaborate on information sharing, capacity building programs, and enforcement to make these advisories and the subsequent investigations more effective.

- **Enhancing targeted sanctions.** The United States, European Union, African Union, Southern African Development Community, and the United Nations Security Council each have their own sanctions frameworks and authorities. These governments or bodies should learn the lessons of past sanctions by using these authorities to impose targeted sanctions, aggressively enforce those sanctions, and place other financial pressure on senior officials, business owners, banks, and armed commanders that comprise the leadership of the kleptocratic network that is responsible for perpetrating and/or benefiting from violence, autocracy, and corruption in Congo. Where necessary, additional sanctions authorities should be adopted, such as a new executive order in the United States and the equivalent in other countries, that enable measures that target those benefitting from public corruption or misappropriation of state assets.

2. Accountability: The International Criminal Court (ICC), the United States, Central and East African nations, and European states should use judicial tools to target the facilitators of violence, prosecute corruption-related crimes, and bolster atrocity crimes cases with a strategy to target assets stolen by those responsible for serious crimes to impose real accountability.

- **Targeting the facilitators of violence and prosecuting pillage.** The ICC and national courts with appropriate jurisdiction should investigate serious ongoing crimes in Congo including aiding and abetting atrocities perpetrated by armed groups. These courts should also investigate the war crime of natural resource pillage, particularly related to gold.

- **Seizing criminally derived assets.** The ICC's Office of the Prosecutor should seize criminally derived assets in relation to its current and future Congo cases and develop a wider strategy for asset seizures across all cases. It should revive the ICC financial crimes unit. The U.S. Department of Justice's Kleptocracy Asset Recovery Initiative should investigate and locate the proceeds of grand corruption and organized violence in Congo and use asset forfeiture provisions to recover those assets and return them to the communities from which they were stolen.

- **Prosecuting corruption-related crimes.** The U.S. Department of Justice, under the Foreign Corrupt Practices Act and other relevant statutes, as well as its European counterparts, e.g. in Belgium, the United Kingdom, and Norway, should investigate and prosecute embezzlement, extortion, and other crimes related to corruption.

3. Good governance and transparency: The overall objective of policymakers should be a reformed, functional state that is responsive to Congolese citizens' needs. While pursuing financial and legal pressure to create immediate costs for current corrupt and violent behavior, the U.S., European, African, Asian, and multilateral institutions should support long-term democratic and transparency processes, governance reforms, and needed capacities by taking the following steps:

- **Reforming Aid.** Capacity building programs in all sectors need to be reconceived so that they no longer reinforce existing corrupt institutions, as where there is no political will for reform they will not have the desired impact. Donor countries should undertake a top-to-bottom review to focus only on aiding institutions that are in the process of reform.

Donors must incorporate strong accountability and oversight measures in state capacity building and security sector programs in Congo and be willing to defund or reject projects if the government fails to include safeguards to prevent corruption. For example, an aid program should not only give equipment and training to ministry officials, but also require that the ministry pay salaries on time and its anti-corruption unit actively pursue corruption cases. Congress should play a constructive role in ensuring aid is well targeted and require oversight and reporting related to state capacity building programs.

- **Pressing for the publication of financial reports and audits of state-owned companies and the China contract.** The United States, European countries, International Conference on the Great Lakes Region (ICGLR), the International Monetary Fund (IMF), and mining companies investing in Congo should strongly encourage President Kabila and the DRC Minister of Portfolio to require that key state-owned companies such as Gécamines and SOKIMO publish detailed annual financial statements. Furthermore, there should be an independent, third-party audit conducted and published of the companies and the expenditures related to the $6.2 billion Congo-China agreement, an opaque arrangement.

- **Strengthening EITI implementation and urge completion of the Mining Code review.** The United States, the African Development Bank, European states, and the World Bank should strengthen Extractive Indsutries Transparency Initiative (EITI) implementation in Congo by pressing for EITI reports to disclose the expenditures of state-owned companies, as required by EITI, pushing for full beneficial ownership disclosure, particularly for partners of state-owned companies, and following up on contract transparency. Also, the United States, European Union, World Bank, African Development Bank, and mining companies investing in Congo should urge the Congolese government to complete the Mining Code review with the full participation of civil society.

- **Supporting civil society with increased legal aid, protection, and capacity building.** U.S. Agency for International Development (USAID), European donor agencies, the African Union, and the U.N. Development Programme (UNDP) should increase democracy support, particularly legal aid and protection support, to civil society, faith-based, and women's groups to enable them to function as a more effective watchdog on democracy and corruption. In addition, the U.N. Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and international donors should increase their **protection of human rights defenders.**

Chapter 1

Violent Kleptocracy Series:
East & Central Africa

The enduring link between violence and corruption in Congo

Corruption and violence have been at the center of the system that elites inside and outside the Democratic Republic of Congo have used to plunder the country's natural resources, abuse its people, and misuse state institutions since the 1880s. As scholars Dominic Johnson and Christiane Kayser note:

The so-called 'war economy' of the Congo … has been a constitutive part of Congo's political economy ever since the country came into existence. From the moment the first traders set foot in the area, the Congo has been regarded from outside as a reservoir of precious resources whose conditions of exploitation were more important than the living conditions of its inhabitants. Congo's natural resources have always been in the hands of private interests, even when these cloaked themselves as public ones.[15]

Various elites from Belgian colonial times to the present have exploited natural resources, often illicitly, including ivory, rubber, gold, copper, cobalt, oil, diamonds, and timber. They have used paramilitary units, armed militias, rebel groups, and violent repression to maintain power and control over these resources. Billions of dollars have gone missing, and conflict with enormous death tolls and atrocities has engulfed the east during the Kabila regimes, in addition to political and structural violence. However, responsibility for those deaths is shared with multiple local groups, as well as Rwanda and Uganda, and the militias they backed and looted resources with.

The latest death toll, which traces back to the conflict in eastern Congo from 1993 to the present, is not without precedent; it comes in the context of a history of state violence. A century ago, King Leopold stole an estimated $1.1 billion, and his colonial greed cost the lives of 5 million to 10 million people.[16] In the 1970s and 80s, Mobutu Sese Seko, personally amassed up to $4 billion in wealth while Congo's economy shrank by 60 percent.[17] Mobutu's regime, backed strongly by the United States during the Cold War, was born through large-scale violence and ended in it, largely the result of his Machiavellian divide-and-rule approach to governing.

Congo still reportedly has millions of tons of minerals left,[18] but these will continue to disappear with few if any benefits for the Congolese population if something is not done to change the system now. As political scientist William Reno asserts, successive leaders in Congo "have benefited from the concentration of portable, valuable natural resources—which have also attracted foreign enclave operations—and have regarded formal state institutions as threatening because they fear bureaucracies acquire their own interests and power."[19] In eastern Congo, where armed conflict has threatened communities for the past 20 years, elites from Congo, Rwanda, Uganda, and elsewhere have, as Michael Nest et al. assert, "adopted the same strategies: distributing resources to selected local leaders and communities in order to reduce opposition to the state while simultaneously deepening competition between communities in order to prevent the emergence of a united local opposition."[20] This helps fuel conflict, as the military benefits from insecurity and lawlessness in maximizing profits, and local populations form defense militias in response. For example, United Nations experts estimated that $400 million worth of gold mainly from the conflict-affected east was smuggled out of Congo in 2013, benefiting abusive commanders, officials, and collaborators in neighboring countries.[21]

A government office in South Kivu. The hijacked state means that government services suffer greatly.

Sasha Lezhnev/ Enough Project

The impacts of the corrupt, violent system on Congo's population have been debilitating. While Congo's official economic growth rate has averaged 7.4 percent since 2010,[22] average Congolese citizens earn significantly less than they did in the mid-1970s in real prices, and 82 percent of the population lives on less than $1.25 per day.[23] While the Kabila regime made some achievements in its early years (e.g.

through infrastructure building), it has increasingly relied on repression, particularly against civil society and democratic movements. Congo ranks 151st out of 180 countries for press freedom,[24] and it is in the "extreme" category of the Maplecroft Corruption Risk Index.[25] Decades of theft and violence have led to deep frustration among Congolese, manifesting most recently in democratic movements such as Lucha and Filimbi.

This system is also not sustainable for the regimes; it "vampirizes" the state.[26] Mobutu's plunder of the country's resources led per capita GDP to shrink by 60 percent during his rule,[27] and in the 1990s and 2000s, engendered collapse of the Mobutu network and regime. Grand corruption has continued under the current regime, with the fire sale of natural resource concessions and budget misappropriation. Social services such as health and education are severely deprived of resources, and widespread poverty persists despite unprecedented economic growth rates that benefit only those in control of the system. With major commodity price drops, a decreased ability to supply patronage, and an increasing lack of services, Congo's score on the Fragile States Index has worsened to put it in the lowest category, "very high alert,"[28] and Kabila's political coalition has crumbled, showing early signs of state collapse. Congo's governing system is also inimical to the dignity and safety of the Congolese people. While there are multiple types of violence in Congo, many of the regime's predatory practices are violent, from extortion by security agents to human rights abuses including extensive sexual violence, killings, and other manifestations of structural violence.

This system is also not sustainable for the regimes; it "vampirizes" the state.

Theory of the case: violence linked to corruption

Some scholars and policymakers argue that the cause of Congo's conflicts has been the weakness of the state.[29] This general sentiment is correct, but this analysis goes a step further here. The Congolese state's decay is not accidental or unexplained. It has partly resulted from the deliberate manipulation of the state by elites for the purpose of resource extraction both for private wealth accumulation and for maintaining power. Congo has experienced four main different regimes over the past 130 years, but a recurrent theme throughout this time in various forms has been violent kleptocracy. Violent kleptocracy is a system of mis-governance whose ruling networks and commercial partners hijack governing institutions for the purpose of resource extraction and for the security of the regime, with the ruling network utilizing varying levels of violence to maintain its hold on power.[30]

This is not to say that all of Congo is violent, that every official is corrupt or violent, or that all exploitation is organized from the top. There are some reformers in the government, and not all of Congo suffers from mass violence. Only the east currently experiences armed conflict (although there is institutional repression in most parts of the country), and most of Congo was not at war during Mobutu's time. Moreover, much corruption benefits only local leaders and not the top elites. Congo has made limited progress and incremental reforms on certain issues in recent years due to high commodity prices that bolstered the economy for the past decade, until a more recent slowdown.[31] Prime Minister Augustin Matata Ponyo set up direct deposits to pay civil servants and formalized the budget process; Congo is up 10 slots (176th from 186th) in the U.N. Human Development Index; the mortality rate for children under five has decreased by a third since 2010,[32] some basic infrastructure, mainly financed opaquely by China, has been built; and there have been limited prosecutions for human rights abuses by armed groups, including sexual violence.

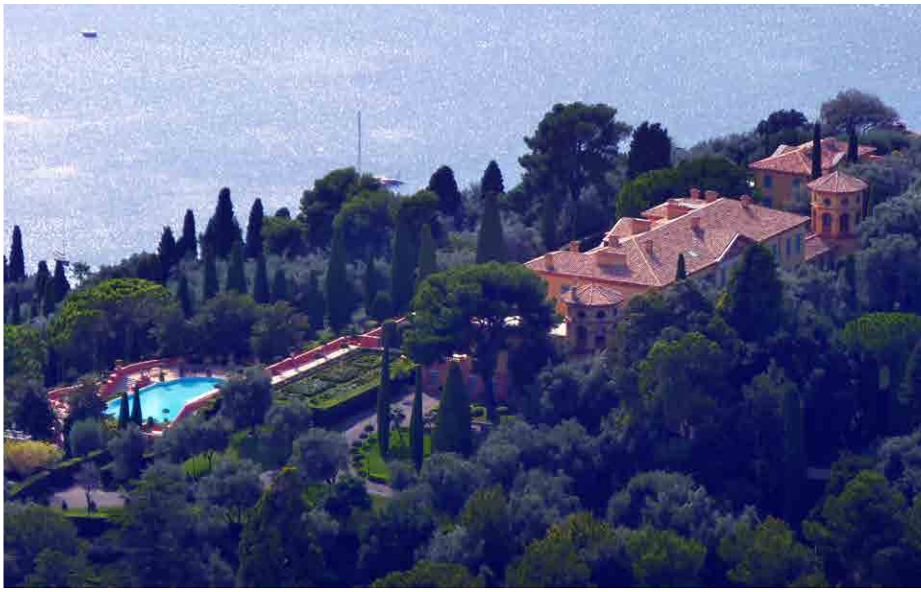
However, these achievements are minimal in the end and stand in stark contrast to continued conflict, the theft of up to $4 billion per year, and democratic repression. Institutionalized corruption, structural violence, a lack of government services, and the hijacking of state positions for personal benefit at various levels is prevalent throughout much of Congo. There is also a logic to why Congo has not developed into a more peaceful, capable state. A weak state that provides almost no public services, but that keeps army commanders busy, mineral wealth opaque, and accountability for top leaders virtually nonexistent serves the elites who have manipulated the state and the economy best by allowing them to keep their power and profits. The Enough Project is using the term violent kleptocracy as the beginning of a dialogue about how best to understand the interplay between grand corruption and systemic use of violence. This is a living concept, to be reshaped and reconsidered as further investigation and analysis dictates.

It is important for policymakers and others to understand the common theme of a hijacked state in Congo's politics and economics, since it leads to different policy solutions than if one takes the standard view of Congo as a fragile or failing state. The primary aim of government policies and aid programs for Congo should be to hold accountable the elites who manipulate the state, such that hijacking the state for personal gain results in more costs than benefits. This should include taking stronger steps to support Congolese citizens' efforts to do so. And any aid programs to build state capacity must be carefully screened and designed such that they are not inadvertently further empowering the very corrupt officials that control the criminal state system, or they should be canceled. See Chapter 3 for more detail on this.

Two factors have exacerbated violence and corruption in Congo. First, Congo is large and diverse and suffers from weak institutions and capacity, in part the legacy of colonialism. Despite a strong sense of shared national identity, the country has many strong sub-national identities, providing challenges to nation building and integration. Successive Congolese rulers have found it difficult to keep the country together in the most basic, physical sense. Instrumentalizing the state and its resources and redistributing them to buy allegiance and numb grievances have been the historically preferred default tools of Congolese politicians, irrespective of their ambitions for the country. Thus as one of several factors, the others of which include poor leadership at several junctures, Congo has a bias towards predatory governance, a fact which policymakers must remain aware of.

Second, the initial weakness of the state and the predominance of economic interests in it have promoted the rise of elites largely focused on using the country's resources for personal and political gain. Going back to the charter companies, which administered much of King Leopold's Congo to their and his own benefit first, the model has often been for ruling elites to partner with outsiders in order to exploit the country's resources in ways largely detrimental to the majority of the Congolese, and to use repression and undermine state capacity to maintain the system when necessary.[33] Mobutu bought an estate on the French Riviera just ten miles from King Leopold's estate at Cap Ferrat: that is not an irony; it is a sign of how little the system has changed.[34] This analysis is not meant to imply that there are not many economic operators in Congo, including foreign mining companies, which operate legally and non-violently. It suggests, however, that the regimes, whether past or current, have relied at least in part on violence and corruption to appropriate a large share of the country's resources.

The system's violence has also varied over time. It was widespread in the early phases of colonization



King Leopold's estate on the French Riviera was just 10 miles from the property later purchased by Mobutu Sese Seko in Cap Ferrat.

Miniwark/ Wikimedia

across the country. Since then, however, full-fledged violent conflict has not been the norm, with the major exception of the conflict in eastern Congo, which has been ongoing since 1993 and has left over 5.4 million people dead. The country also faced different forms of civil war in the 1960-67 period, particularly in former South Kasai, Katanga, and in the east (also with pockets in Bandundu), a few violent episodes in Katanga in the late 1970s, and again large-scale violence from 1993 onwards, especially in the east, some of which is still unfolding today in parts of the Kivu, former Orientale, and former Katanga provinces. However, much of Congo has not seen large-scale conflict for several years, and most of its territory has not been involved in violent conflict since the 1999 Lusaka Ceasefire Agreement,[35] with the exception of the Kivu region of eastern Congo.

Throughout Congo, however, structural and political violence have been a nearly constant foundation of the system. From Belgium's Force Publique to Mobutu's special paramilitary units and Joseph Kabila's Republican Guard and national intelligence agency, the Agence Nationale de Rensignement (ANR),[36] repression has been at the core of most Congolese regimes, even when formally democratic. It has produced arbitrary arrests, torture, assassinations, and massacres of activists, opposition leaders, and students. It has also engendered alienation, dispossession, and vulnerability. Although not all of that violence has been the result of predation, much of it is linked to Congo's kleptocratic system of rule. At the very least, rulers have often been willing to unleash violence on citizens to retain their power and protect their racket.

Congo's economy: dominated by mining

Congo is one of the world's richest countries in terms of natural resources. The country contains 1,100 minerals,[37] particularly copper, cobalt, diamonds, tantalum, tin, gold, uranium,[38] timber, as well as land and water. Congo mainly directly exports to China (39 percent), followed by Zambia (25 percent), Italy (9 percent), and Belgium (4 percent),[39] but several of these are mid-points in supply chains for refining natural resources, and the main end markets are the

West and China.

Congo's economy has grown tremendously in recent years. Its 2015 GDP was estimated at $37.9 billion,[40] real GDP growth in 2015 was 6.9 percent, down from 9.2 percent in 2014, and it has averaged a very high 7.6 percent growth since 2010.[41] This has mainly been driven by copper prices and production, and the services sector (largely trade and transport associated with mining, banking, and telecommunications). Inflation remained stable at 1 percent in 2014 and 2015,[42] in part as a result of a lack of government spending on public services and increased income from industrial mining, but is now increasing as a result of lower commodity prices and thus decreased foreign exchange reserves.[43] Total external debt stock stood at $4.6 billion in 2014, after some $12 billion was forgiven by donors in 2010.[44]

However, this growth has resulted in few benefits for the vast majority of the population. Growth rates are slowing due to falling prices for key commodities, particularly copper, cobalt, and oil, which have decreased by half over the past five years.[45] The poverty rate remains above 80 percent and has only fallen by 5 percent from 2005 to 2012, while actually increasing in both Kasai provinces and in Maniema.[46] Inequality is also rising: the Gini coefficient, which measures income inequality, rose from 0.42 in 2005 to 0.45 in 2012, though remains less pronounced than in South Africa or Namibia.[47] Congo did not meet any of the Millennium Development Goals, including having 40 percent or less of the population below the poverty line by 2015.[48]

The extractive industries of mining and oil dominate Congo's economy, with 95 percent of exports, 28 percent of current revenue, and 22 percent of GDP (but only 11 percent of employment).[49] The extractive sector's real impact on GDP is greater, however, as it also feeds substantial derived activity in transport, trade, and construction. Mining is larger than oil, making up nearly three-quarters of the extractive industries by revenues (74 percent), while oil makes up one quarter (26 percent), but as we will show later, mining's relative contribution to government revenue is much smaller than petroleum's.[50] With Congo's vast land, agriculture contributes 43 percent of GDP and most of employment: 62 percent of the population works in that sector,[51] most as subsistence farmers. There is severe poverty among 75 percent of people who work in Congo's informal agriculture sector.[52] Following years of under-investment in this sector, the IMF and World Bank have recommended revitalization of agriculture.[53]

The forestry sector is also relevant. Congo is home to the world's second-largest rainforest, and the timber sector is worth $95 million annually, with an estimated 40 million people's livelihoods linked to the country's forests.[54] Six logging companies are responsible for 70 percent of timber exports from Congo,[55] including Lebanese and European companies. Lebanese companies are also involved in the real estate business in Congo.[56]

The U.N. Group of Experts found in 2016 that gold "provides the most significant financial benefit to armed groups" and "is the most lucrative and easily smuggled of the natural resources in the eastern Congo."

Sasha Lezhnev/Enough Project

Table 1: Resources Generated from Minerals and Oil[57]

	2011	**2012**	***2013***	2014	2015
					estimates in italics
Copper (metric tons)	499,198	619,942	922,016	1,030,129	1,039,007
of which Gecamines (estimated)	17,287	36,452	40,707	15,090	16,811
of which others	481,911	583,490	881,309	1,015,039	1,022,196
copper price ($ per pound)	*3.80*	*3.60*	*3.35*	*3.00*	*2.60*
value of output (2,204.620 pounds in a metric ton)	***4,182,059,200***	***4,920,251,515***	***6,809,527,962***	***6,813,128,988***	***5,955,600,592***
Cobalt (tonnes)	99,475	86,433	76,593	74,712	83,529
of which Gecamines	715	1,522	2,263	163	..
of which others	98,760	84,911	74,330	74,549	83,529
Cobalt prices ($/tonne)	*35,000*	*30,000*	*28,000*	*31,000*	29,762
estimated value of output	***3,481,625,000***	***2,592,990,000***	***2,144,604,000***	***2,316,072,000***	***2,486,021,004***
Diamond, industrial (million carats)--MIBA, Sengamines…	0.997	0.569	0.246	0.244	1.505
Diamond, artisanal (million carat)	17.601	19.154	16.653	14.689	14.284
Diamond, Total (million carats)	18.598	19.723	16.899	14.933	15.789
Diamond prices ($/ct)	15.0	17.0	18.0	13.0	*15.0*
Estimated value of diamond output	***278,970,000***	***335,291,000***	***304,182,000***	***194,129,000***	***236,835,000***
Crude Petroleum (brls)	8,557,920	8,545,450	*8,351,000*	8,362,000	8,247,000
Oil prices ($/brl)	111	112	*109*	99	*55*
Estimated value of petroleum output	**952,496,496**	**954,526,765**	**906,918,600**	**828,005,240**	***453,585,000***
Zinc (tonnes)	14,758	10,572	12,114	20,617	12,602
Zinc price ($/t)	*2,250*	*2,000*	*1,950*	*2,150*	*1,870*
Estimated value of Zinc output	***33,205,500***	***21,144,000***	***23,622,300***	***44,326,550***	***23,565,740***
Casiterite (tonnes)	*18,200*	18,981	7,567	10,756	*9,092*
Casiterite price ($/t)	*26,000*	21,000	22,500	23,000	*19,000*
Estimated value of cassiterite output	***473,200,000***	***398,601,000***	***170,257,500***	***247,388,000***	***172,748,000***
coltan (tonnes)	*380*	586	697	1,410	*1,386*
Coltan price ($/t)	*100,000*	110,000	95,000	110,000	*98,000*
Estimated value of coltan output	***38,000,000***	***64,460,000***	***66,215,000***	***155,100,000***	***135,828,000***
Wolframite (tonnes)	*40*	*71*	*115*	*24*	*68*
Wolframite price ($/t)	28,000	25,000	26,000	27,000	*26,000*
Estimated value of wolframite output	***1,120,000***	***1,775,000***	***2,990,000***	**648,000**	***1,768,000***
Industrial Gold (kg)	414	4,529	6,112	23,937	31,791
Artisanal gold (kg)	*10,000*	*10,000*	*10,000*	*10,000*	*12,000*
Shabunda dredging (kg)				*8,000*	*8,000*
Gold prices ($/oz) (35.274 ounces in a kilo)	*1,500*	*1,700*	*1,400*	*1,300*	*1,200*
Estimated value of gold output	***551,015,154***	***871,243,108***	***795,668,563***	***1,923,071,459***	***2,192,250,881***
TOTAL ESTIMATED VALUE OF EXTRACTIVE INDUSTRIES OUTPUT	**9,991,691,350**	**10,160,282,389**	**11,223,985,925**	**12,521,869,237**	**11,634,638,347**

The mainstay of Congo's economy, the mining industry, is divided into industrial and artisanal sectors. Industrial mining is done by companies operating in demarcated concessions with large machinery, while artisanal and small-scale mining is done by individual miners, most often using shovels and other rudimentary equipment. A few work in designated artisanal mining zones, but most do not. Copper and cobalt, which account for more than 70 percent of the value of extractive output (see Table 1) are both industrially and artisanally mined, with over 100,000 artisanal miners. In contrast, the diamond sector has become completely artisanal; even Societé Miniére de Bakwanga's (MIBA) official production relies on purchasing artisanal miners' output. Gold has seen a meteoric rise in industrial mining since 2013, but also has a significant artisanal sector, as do cassiterite, wolframite, coltan (known by their metal names, tin, tungsten, and tantalum—the "3Ts"), and zinc. Artisanal mining is regulated on paper by law, with designated areas and registration of miners according to the 2002 Mining Code. But, in reality, most of it is informal and actually illegal due to gaps in Congo's mining law and very poor implementation of the law by state agencies. Although a harsh, dangerous, and largely informal activity, artisanal mining provides the lifeline (directly and indirectly) for an estimated 8 million to 10 million Congolese people.[58]

Congo produced half of the world's cobalt in 2014, and the country contains an estimated 47 percent of the world's reserves.[59] Its diamond wealth is also enormous, producing over one-quarter of the world's industrial diamonds,[60] and exporting over 20 percent of the world's diamonds annually.[61] Congo also produced 17 percent of the world's tantalum (coltan) in 2014,[62] a mineral used mainly in electronics.

Private, state-owned companies, and private-public joint ventures perform extractive services for Congo's industrial mining and oil industries. Looking only at the larger operations in the mining sector, there are at least 105 companies operating in Congo (many of which are owned by other companies), 47 of which are joint ventures between private operators and the state or state agencies (with an average state participation of 30 percent), and eight entirely owned by the state, including by other state companies. In the oil sector, there are 11 companies, all of which with at least minority state participation.[63] The largest operators are:[64]

- **Copper/cobalt:** The enormous copper/cobalt Tenke Fungurume venture. Until May 2016, it was owned by U.S. miner Freeport McMoRan (56 percent), Swedish miner Lundin Mining Corp. (24 percent) and Congolese state-owned La Générale des Carriéres et des Mines (Gécamines) (20 percent), which generated 204,000 tons of copper in 2015 worth $1.6 billion.[65] Freeport announced it would sell its stake to China Molybdenum Co., Ltd. (CMOC) in May 2016 for $2.65 billion.[66]

- **Copper/cobalt:** Mutanda Mining SARL (Mumi), owned by Glencore (69 percent) and Fleurette Group (31 percent), which generated 197,000 tons of copper and nearly 50,000 tons of cobalt in 2014.[67]

- **Copper/cobalt:** Sicomines, owned by Sinohydro Corp. and China Railway Group Limited (68 percent) and Gécamines (32 percent).

- **Copper/cobalt:** MMG's Kinsevere (owned 99.99 percent by China Minmetals Non-ferrous Metals Co., Ltd.), which produced 69,000 tons of copper in 2014.

- **Copper/cobalt (currently suspended):** Kamoto Copper Company (KCC), 75 percent owned by Katanga Mining Limited (whose majority shareholder is British/Swiss company Glencore), 20 percent owned by Gécamines, and 5 percent by state-owned Société Immobilière du Congo (SIMCO), generated $1.1 billion in revenues in 2014 on the production of 157,000 tons of copper.[68] In 2015, Glencore announced an 18-month suspension of production at KCC because of low copper prices, which should greatly affect government revenue in 2016.

- **Gold:** Kibali gold mine, owned by South African miners AngloGold Ashanti and Randgold Resources (45 percent each) and Société des Mines d'Or de Kilo-Moto SARL (SOKIMO), a state-owned company (10 percent). Kibali generated $700 million worth of gold in 2014[69] and is largely responsible (together with Canada's Banro Corporation) for national industrial gold output to have jumped from 400 kilograms in 2011 to nearly 32 tons in 2015.[70] Randgold announced a new gold partnership with Israeli businessman Dan Gertler's company Moku Goldmines AG and SOKIMO in April 2016.[71]

- **Oil:** Anglo-French company Perenco is the main producer, operating under its own name, as well as under Muanda International Oil Company (MIOC), and in joint venture with the state's Congolaise des Hydrocarbures (COHYDRO) (15 percent) and Lirex. The two other producers with smaller stakes are Japan's INPEX-owned Teikoku Oil Co, Ltd. and Chevron.[72]

Meanwhile, artisanal and small-scale mining is the mainstay of Congo's diamond, tin, tantalum, tungsten, and much of the gold industries. On an annual estimated basis, the artisanal gold trade was worth approximately $400 million in 2013, according to the U.N. Group of Experts, though that may have decreased with lowered gold prices. The artisanal diamond trade (99 percent of Congo's diamond production) is worth over $200 million, and the zinc, tin, tantalum, and tungsten trades total more than $400 million (Table 1).[73] Large quantities of artisanal diamonds, tantalum, tin, and tungsten are smuggled out of Congo but an increasing amount enters official commercial networks. Although artisanal mining is heavily "taxed" by local state agents, few if any of these revenues officially accrue to the state. The United Nations estimates that $64 million to $121 million from the artisanal minerals trade goes to criminal enterprises each year.[74]

The oil sector is still small but reportedly offers significant potential. Congo currently produces approximately 23,000 barrels of oil per day (78th in the world), but new reserves are being discovered offshore and onshore in both the west and east.[75] Caprikat and Foxwelp, Israeli oil companies owned by the billionaire businessman Gertler, reportedly discovered 3 billion barrels of reserves in Lake Albert on the border with Uganda in 2014.[76] And recent seismic studies by United Kingdom-based SOCO have confirmed the presence of oil in the officially protected Virunga National Park.[77] In the west, Congo has had multiple disputes with Angola over offshore oil boundaries.[78]

In sum, Congo is extremely rich in minerals, oil, and land, and nearly all of the resource concessions are taken by state-owned or foreign companies. However, the vast majority of the country's population has seen very little development from this exploitation. Basic infrastructure remains very poor, and recent lower commodity prices threaten inflation and risk a macro-economic crisis that could seriously impact the political situation.

Congo's history – violence, repression, and corruption

Exploitation under King Leopold II and Belgium: 1885-1960

The systematic exploitation of Congo began during the colonial period when King Leopold II of Belgium held Congo as his personal property from 1885 to 1908. During his reign, violence was used as an essential

The first violent kleptocrat in Congo, King Leopold II. Between 5 and 10 million people were killed during his reign, while he stole an estimated $1.1 billion.

Carolus/Wikimedia

tool in achieving the goal of maximum private wealth extraction and personal enrichment of Leopold and his inner clique.[79] An estimated 5 million to 10 million Congolese people died, as Leopold's private army, the Force Publique, waged war multiple times, implemented slave labor regimes, and starved the population repeatedly.[80] The colony's primary goal was to generate wealth as quickly as possible by establishing control over the trade in natural resources including ivory and rubber, and later gold, copper, and other minerals. Leopold established a tax system that "destroyed the traditional economy" and "essentially obliged natives to supply these products without payment."[81] According to historian Adam Hochschild, "the killing in the Congo was of genocidal proportions."[82] However, at the time it was essentially legal for him to do these things, and therefore impunity was not something Leopold had to construct. This is in contrast to today, where theft and violence are widely understood to be illegal, but current elites have constructed impunity as part of their system of governance.

Profits for Leopold and his inner circle were tremendous, with conservative estimates showing that he personally accrued $1.1 billion at today's prices from the Congo.[83] His luxurious spending, secretive companies, and external investments allegedly included:

… $6 million [on] upgrading his palace at Laeken; at least $3.5 million on other Belgian real estate; millions more for Belgian and French properties, purchased secretly through his doctor or his architects; and uncounted additional sums for a dazzling array of investments in Asia, Latin America and the Near East. He made the Congo one of the world's first 'offshore' money laundering centers. He used Congo-incorporated shell companies to quietly pursue business opportunities around the world: railway construction deals in China; fishing rights off Morocco; mines in Greece and the Philippines; and rubber concessions in Bolivia.[84]

Similar patterns of wealth extraction and violence continued during Belgium's occupation of Congo after Leopold was forced to give up the colony as his personal property, from 1908 to 1960, albeit on a less extreme scale than under the king.[85] The intensity of the abuses diminished to an extent, although Belgium continued the practice of forced labor.[86] Belgian companies were the chief beneficiaries of Congo's economy, in particular Société Générale, at the hands of exploited Congolese workers and foot soldiers. Hochschild writes that "safety conditions in the mines were abysmal: in the copper mines and smelters of Katanga, five thousand workers died between 1911 and 1918."[87] Furthermore, over 260,000 Congolese were forcibly recruited to fight in World War I.[88]

Repressive kleptocracy under Mobutu Sese Seko: 1965-1997

Congo continued down the road of violent exploitation and corruption after independence from Belgium in 1960. Congo's first democratically elected prime minister, Patrice Lumumba, was forcibly dismissed, detained, then assassinated shortly after he took office in 1961, with the close involvement of the Belgian government and U.S. Central Intelligence Agency.[89] A 2001 investigation into the assassination showed that the Belgian government colluded with Belgian banks and mining companies, whose officials feared that Lumumba would expropriate their economic assets, and the United States which feared that Congo would ally with the Soviet Union.[90]

Following a brief leadership crisis, Mobutu Sese Seko became Lumumba's main successor as head of state, and his 32-year rule became widely known as a kleptocracy, referring to "a reign of official corruption," according to the New York Times' Howard French.[91] It is important to note that Mobutu's regime was widely supported by the United States, Belgium, and other nations in the West, which bear significant responsibility for Congo's problems. After a first phase, which lasted until the early 1970s, during which he sought to build up the state and the economy, Mobutu became increasingly predatory and systematically raided public coffers while amassing enormous personal wealth and redistributing resources to clients, which significantly impoverished the country, and used repression and a patronage system to keep the opposition in check.[92] The country avoided large-scale war for much of the Mobutu era, but his corrupt policies, economic and otherwise, eventually led to state collapse in the 1990s.[93] By that point, the army and other government offices behaved as private, unaccountable, and often brutal entities. Neighboring countries invaded, sparking the conflicts known as "Africa's World Wars."

Backed by the United States during the Cold War, Mobutu stayed in power for 32 years. His policy, "débrouillez-vous," or sort yourselves out, greatly encouraged army units to loot and commit abuses against the Congolese population, a system that has continued to this day.

Daffy123/Wikimedia

Mobutu's rule turned into an organized system to consolidate his power and capture wealth for the president and those around him. In the 1970s, 15 to 20 percent of the operating budget of the state went to him, in 1977-79 Mobutu appropriated roughly half a billion dollars from the state and western aid money that was sent to the government unchecked,[94] and his family allegedly took $71 million from the national bank for personal use in 1977.[95] In addition to the French Riviera property, Mobutu purchased a $5.5 million mansion in Lausanne, Switzerland, and built lavish palaces for himself at Gbadolite that included a runway for the supersonic Concorde plane, Louis XVI furnishings, and "one of the best wine cellars of the world," according to one visitor.[96] There were many more egregious instances of Mobutu's personal theft from the state,[97] and by the early 1980s his total personal fortune including properties was estimated at as high as $4 to $5 billion, although these estimates are unreliable.[98] Yet the Congolese population became

Joseph Kabila Kabange, President of the Democratic Republic of Congo, addresses the general debate of the sixty-eighth session of the General Assembly

Ryan Brown/ UN Photo

poorer during that time: GDP per capita literally shrunk by half between 1960 and 1992.[99]

Mobutu cultivated personal patronage networks within the army, state bureaucracies, and the provinces that were loyal to him, but he constantly rotated people within this network so they would not mount a united opposition to him. According to political scientist Georges Nzongola-Ntalaja, three main elite groups profited from Mobutu's system: the political class, senior military officers, and Lebanese merchants, particularly those in the diamond business.[100] Congo was not at war for most of his rule, but Mobutu at times used repression, brutal military units, and ethnic manipulation to ensure the regime's survival.[101]

Inefficient economics lead the regime to collapse, spark conflict

However, Mobutu's patronage system was not sustainable for the regime as it exhausted the country's resources, and its collapse led to rising violence. Mineral production increased significantly—Congo became one of the world's top copper producers by the 1980s—but it was grossly inefficient.[102] Infrastructure and geological expertise were not invested in by the regime, leading to a collapse at one of the country's main mines, Kamoto, in 1990. Furthermore, Mobutu made illicit deals with local politicians and Belgian companies that bought the copper, losing an estimated $5 billion in total, according to a former Mobutu mining official.[103] To use political scientist Crawford Young's painful metaphor, Congo "self-cannibalized."[104]

The system began to fail in the late 1970s and early 1980s, as mining companies limited their investments following expropriations in the mid-1970s. Because Mobutu's patronage led to the mismanagement of the companies, they were highly inefficient, a situation compounded by collapsing world copper prices in the mid-1970s. Between 1987 and 1997, copper production decreased from 500,000 tons to 38,000 tons.[105] In addition, Mobutu's army suffered major defeats in Angola in the 1970s, inflation surged (reaching 23,000 percent in 1993), and crumbling infrastructure led to growing discontent.[106] As Mobutu lost revenues from those developments and later from the U.S. post-Cold War withdrawal, his ability to compensate the powerful loyalists in the army and government significantly decreased. Reno wrote that he controlled an estimated $3 billion in 1990, but that quickly declined.[107]

Wars and corruption under the Kabilas: 1996-present

By the end of Mobutu's regime, the state, the economy, and the military were in tatters. The main consequence of this disintegration was that it became easy for neighboring countries to prey upon different parts of the country with the collusion of local elites and international traffickers. Additionally, Mobutu also made the fatal error of backing the former Rwandan army and militias that committed the genocide, which Paul Kagame and the Rwandan Patriotic Front (RPF) reacted to by invading Congo in 1994 and thus sparking the First Congo War and mass violence.[108] The collusion between local elites, regional powers, and international traffickers occurred in the decade following Mobutu's rule and has continued to occur on and off in an evolved manner since that time. This was initially done in a centralized manner, with the governments of Angola, Rwanda, and Uganda backing rebel leader/gold and ivory trafficker Laurent Desiré Kabila[109] to overthrow Mobutu in 1997, at the end of the First Congo War. In the years following Mobutu's removal and Laurent Kabila's ascension to power in 1997, the exploitation occurred in a more decentralized manner, with 11 different countries invading Congo from 1998-2003 during the Second Congo War.[110]

Although he professed a radically different ideology, Laurent Kabila was unable or unwilling to fundamentally change the system after he took over. Although his first year in office saw an apparent decrease in corruption among frightened state agents, there was no government budget between 1998 and 2001, and inflation was above 500 percent in 2000.[111] Kabila believed that he could get large-scale mining companies to invest, and he attempted to sign deals with several of them. However, very few mining companies came in, and instead shell companies signed contracts, and individuals profited, but no large-scale mining took place. In fact, the government realized that it made deals based on very limited information, and it canceled several of them. The exceptions were Angolan company Sonangol's oil joint venture with the Kabila-controlled company Comiex in 1998, and Australian mining company Anvil's copper deal that same year.[112]

Kabila brought in a new patronage network that replaced Mobutu's, but the system of corruption continued. According to Congo expert Erik Kennes:

A crucial element was the recruitment of the new political elite by the Kabila regime. It consisted mainly of former rebels or technocrats from the Congolese diaspora. None of the new generation belonged to the patronage structure crystallised during the Mobutu regime. This would not have been dramatic if efforts had been made to create a viable state structure. The country, however, was not run in a systematic manner and Kabila often gave the impression that he ran the country as he had managed his guerrilla movement in the east during the 1970s and 1980s. The result of this very confused situation was that the major mining companies withdrew and waited for better times to come … In 1998-99 many projects consequently collapsed […] What should have been a paradise for free marketers with a virtual absence of state structure turned into a nightmare. Regional interests became predominant and the dark side of globalisation forcefully emerged with the war that started in 1998.[113]

The wars that ensued, which were about both political and economic influence, were devastating.

By 2007, an estimated 5.4 million people had died directly or indirectly war-related deaths,[114] and child soldiering, mass rape, and torture were parts of the conflict. According to the U.N. Panel of Experts in 2001, "The conflict in … Congo has become mainly about access, control and trade of five key mineral resources: coltan, diamonds, copper, cobalt and gold … The initial motivation of foreign armies to intervene in the [DRC] was primarily political and security-related in nature … the primary motive [has since become] extracting the maximum commercial and material benefits. This holds true for both government allies and rebel supporters."[115] The U.N. Panel of Experts recommended that 29 companies and 54 individuals be designated for targeted sanctions, but no sanctions were imposed due to U.N. Security Council politics.

Since the Second Congo War ended in 2003 and neighboring countries officially pulled out their troops, the Kabila regime has slowly consolidated its power in the country. After Laurent Kabila's assassination in early 2001,[116] his son Joseph Kabila assumed the presidency, was formally elected in 2006, and ever since has worked to increase his power. Some neighbors and external entities have tried to influence the center, for example Rwanda sponsored the armed group rebellions of the National Congress for the Defense of the People (CNDP) and March 23 Movement (M23). Meanwhile, others have tried to develop independent spheres of influence outside of Kinshasa's control, at times clashing with the government, e.g. the military, police, and tax structures set up by the ex-CNDP in areas of North Kivu from 2009-2012 that were parallel to the official Congolese government systems.[117] Nevertheless, corruption and violence have endured, especially in eastern Congo, where 1.7 million people were still displaced as of August 2016.[118]

Kabila has attracted Chinese and some other foreign investment, mainly in copper, cobalt, and some infrastructure. This, coupled with high commodity prices, led official economic growth to be high over the past decade—an average of 7.4 percent over the past five years.[119] This has coincided with a major run-up in copper prices (copper quadrupled in price from 2004 to 2010),[120] until a significant slowdown began in 2014.[121] However, both grand (or high-level) and widespread corruption have continued, as have widespread abuses by the army and police. Security forces and police are also responsible for carrying out political violence.

Decades of misrule have resulted in devastating effects for Congo's population, in terms of societal trauma, the tearing apart of communities in the east by displacement, and human development has stagnated over the past 35 years.[122] Congo ranked 176th out of 187 countries in the world in the U.N. Human Development Index in 2015, and its per capita income of $380 in 2014 is among the world's lowest.[123] Life expectancy is 58 years, infant mortality is in the lowest 10 percent in the world, and the primary school dropout rate is 29 percent.[124] And Congo is 147th out of 168 countries on Transparency International's annual Corruptions Perceptions Index. Similarly, the country ranks 46th out of 54 African countries on the Mo Ibrahim Foundation's annual governance index.[125]

Chapter 2

Violent Kleptocracy Series:
East & Central Africa

The Seven Pillars of Violent Kleptocracy in Congo

Congo's regimes, both today and historically, have relied in part on violence, corruption, and impunity in order to survive. This section breaks down these ruling mechanisms.

Patterns of violence emerge from the study of Congo's past 130 years, far beyond the conflict in eastern Congo and including the state's more routine violence that it uses when its elites pursue their political and material interests. The research also reveals patterns of corruption and predation. In particular, President Joseph Kabila and his associates at many levels of the state have endeavored, roughly over the past seven years, to beat back the governance restrictions donors seek to impose on them and continue plundering the country. While violence and corruption at times operate in distinct spheres, they are often linked, and kleptocratic rule often contains violence at its core and/or produces it at its periphery. Corruption, predation, and theft by the regime have been devastating to the human rights, dignity, and physical integrity of the Congolese people, who pay a high price in their daily lives.

Although many governments across Africa control and redistribute resources in order to stay in power,[126] this logic is only part of the explanation for the systems in Congo. The degree to which corruption lies at the core of the Congolese state goes well beyond the mere politics of patronage and largely serves to profit politicians, military commanders, and business associates in Congo and abroad. Many of those elites predicate their private accumulation of wealth on a system that produces significant amounts of violence.

As explained further below, many current practices of corruption and violence in Congo parallel those of Mobutu Sese Seko and King Leopold. In many ways, though not all, Kabila's government is a continuation from those regimes in terms of the appropriation of state assets and using force to stay in power. There are five parallels in particular: using the military to extract resources, receiving kickbacks through a "rapportage" system, hijacking the state for personal profit, using repression to stay in power, and employing a divide and rule strategy.

No rulebook exists for acquiring or remaining in power in Congo. However, a close study of this system suggests seven "pillars" of violent kleptocracy that are relevant to Congo's leaders, both current and past:

1. Let the security forces pay themselves: "You have guns, you don't need a salary"

Key points:

Preventing a coup is paramount. Top military commanders are both regime insiders and threats to the regime; the fear of a coup or being overthrown by military intervention is constant. Congo's regimes have always fallen by force, as have those of many of Congo's neighbors.

Commanders are allowed to get rich. Providing commanders with economic opportunities keeps them satisfied and/or busy. Top Congolese generals own soccer teams and large properties in Congo and abroad.

From top to bottom, military "pays itself" through illegal mining and extortion. The government pays the military very little but allows commanders to "pay themselves" by engaging in illicit mining or harassing and extorting civilians. Troops further down the ranks reproduce the same behavior.

Civilians are the victims and the economy is hijacked. The effect on civilians and the economy is terrible: the military unleashes violence against artisanal miners, civilians, and women, including sexual and gender-based violence and child soldiering. Integrating rebel groups makes it worse. Many investors stay away.

Mobutu Sese Seko famously told the army, "You have guns; you don't need a salary."[127] This incentive structure organized around the concept of "débrouillez-vous" made the army more likely to pillage than to create security; and it remains true today. There is a strong logic behind this violent exploitation of natural resources that negatively impacts communities. It starts with those at the top, who fear being overthrown by force (either by a coup d'état, civil war, or foreign military intervention) and take significant steps to actively prevent that by appeasing certain military commanders and allowing corrupt activities to occur. Being violently overthrown is a reasonable fear in Congo: the last two heads of state were overthrown by force, as were governments in nearly all of Congo's neighbors—Rwanda, Uganda, Central African Republic, Congo-Brazzaville, and Burundi. As a result, heads of state in Congo make it a priority to make their military commanders wealthy or busy. Given Congo's abundant natural resource wealth, the logic of "you have guns, you don't need a salary" is actually a bonus for the top military commanders who matter in Congo: it is a license to loot and commit often sophisticated criminal operations from which to profit.

Governments from Leopold to Mobutu to the Kabilas have allowed some top military brass to exploit natural resources. This makes the generals not want to overthrow the regime since they both benefit from it and are distracted from organizing a coup. By and large this has been effective—Mobutu stayed in power for 32 years, and Joseph Kabila has held on for 15 years and counting. Some of Kabila's top generals own soccer teams and/or large properties,[128] and some of Mobutu's generals, such as Gen. Philemon Baramoto Kpama Kata, flew their own private jets and owned large properties in South Africa.[129] It is important to note that rank-and-file soldiers largely do not benefit from this system and face harsh conditions.

The toll on the population has been devastating, however. More often than not, the Congolese military—the Forces Armées de la République Démocratique du Congo (FARDC)—is akin to an army of occupation on its own soil. Largely unhinged and autonomous, it is more likely to oppress local populations than to protect them and to collaborate with rebels than to fight them. Its soldiers, according to scholar Séverine Autesserre, "relentlessly commit horrific violations of human rights," engaging in looting and other forms of violence, including rapes, against civilians.[130] In the words of Emily Paddon and Guillaume Lacaille, "The FARDC is often the single greatest threat to the Congolese and routinely terrorizes civilians, extorting protection money, looting villages, raping and killing civilians."[131] A 2013 report by the Inter-Press Service found that the military and rebels were imposing an illegal tax called "sleep well" on civilians at checkpoints in North and South Kivu, Maniema, and Katanga, and Eastern provinces, in part because their salaries were so low.[132] According to Human Rights Watch, "The Congolese army is responsible for widespread and vicious abuses against its own people that amount to war crimes."[133] It also routinely works with other armed "rebel" groups to extract natural resources. Congolese army collaboration has been documented with the Democratic Forces for the Liberation of Rwanda (FDLR), the Allied Democratic Forces-National Army for the Liberation of Uganda (ADF-NALU), Mai Mai Sheka, and dozens of other armed groups.[134] This also has a negative impact on Congo's economy, as military involvement discourages large-scale investment in Congo's minerals sector. For example, investors found it impossible to invest in the Bisie tin mine until army units and armed groups moved out of the mine in 2010-11, but now that mine is the site of large-scale investment.[135]

Largely unhinged and autonomous, it is more likely to oppress local populations than to protect them and to collaborate with rebels than to fight them.

Troops paid next to nothing

The Congolese military acts largely as a predator on Congolese society, in large part because its soldiers are only paid nominal official salaries. Analysts believe this is a deliberate regime strategy, reflecting its willingness to have the military forage and profit off of the natural resources and population. As of August 2015, a Congolese army colonel officially made $98 a month, while an army private officially earned $83 a month.[136] Higher-level commanders make operational "prime" payments but those only go to commanders. And, whether through mismanagement, theft, or deliberate action by higher officers, there are few guarantees that these measly payments actually reach the troops on a regular basis. Although recent payment system reforms requiring direct deposit of many salaries into bank accounts has helped improve this somewhat, rank-and-file salaries for soldiers remain very low.[137]

There are many causes of low salaries and their irregular payments, including insufficient government revenue and reallocation of budgeted amounts to other unbudgeted uses. One particularly insidious cause lies in the deliberate non-payment of troops by officers or government agents as a means to test their loyalty. A study by Grant Gordon shows that "non-payment [of soldiers] is used as a form of trial and tribulation that reveals commitment by driving disloyal soldiers to defect and loyal soldiers to weather challenging times. Non-payment causes unpaid soldiers to engage in extortion and violence against civilians, which is managed by commanding officers and used to cultivate internal cohesion."[138] As a result, Gordon shows that extortion and human rights abuses rise with non-payment. When faced with such non-payments, 22 percent of soldiers use extortion against civilians, 31 percent force people to pay illegal taxes, and 34 percent use forced civilian labor.[139] Particularly troubling here is the fact that it is commanders themselves who organize such extortions and abuses to verify troop loyalty.[140]

As a result, it is not surprising that a 2013 survey based on more than 5,000 randomly selected respondents in eastern Congo found that only 37 percent felt safe when they met a soldier.[141] In contrast, only 20 percent of them felt that the FARDC provided them with protection, while 32 percent responded they received protection from no one or only from God.[142] As a 30-year old Congolese woman put it, "During the night, if you meet a soldier, you may be lucky and nothing happens. If you're unlucky, they'll take everything in your pockets."[143]

Army engages in economic activities

A major focus of the Congolese army is making business deals in areas where it deploys, which often involves violence or extortion of the local population. As Hugo de Vries makes clear, "The armed forces hold the means of coercion, and need to be 'fed' so their political sponsors do not lose control over them. An effective way to do so is to give the army a role in controlling lucrative terrain in the eastern provinces" where "military commanders do not answer to civilian authorities."[144] In this case, widespread corruption and violence are paired, partly of a centralized strategy and partly of a failure by the state to directly exercise control over the means of violence.

When the government declares an area "militarily operational," it provides room for officers to engage in illegal economic activities. For example, the U.N. Group of Experts found in 2015 that "FARDC officers deployed for the Sukola I military operations against ADF were involved in the exploitation and sale of timber in Beni territory."[145] As a result, many economic activities become militarized, from minerals to agriculture to roadblocks to timber.146

The U.N. Group of Experts has reported year after year that armed groups and army units have profited from the minerals trade,[147] and as far back as 2001 the

Virunga National Park: The FDLR and Congolese army and police units collaborate to chop down trees in the park and make and sell charcoal. The trade is worth as high as $32 million per year, according to a UN report.

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United Nations found that companies trading "minerals [were] the engine of the conflict."[148] In 2007, the Pole Institute noted "minerals are a major source of income and of conflict in North Kivu as in the whole of the DRC." Two years later, in 2009, the Enough Project estimated that armed groups and units of Congo's army made approximately $185 million from the conflict minerals trade the prior year.[149] Then, a large 2015 U.N. study found that anywhere from $72 million to $426 million from Congo's natural resources trade goes to organized criminal networks.

Several commercial deals made by FARDC officers involve collaborations with the rebel groups which they are tasked with combating. For example, according to the U.N. Group of Experts, General Jean-Claude Kifwa, who was until 2014 in charge of the Ninth Military Region in then-Orientale Province, was engaged in business deals with Mai Mai Morgan, a group guilty of horrendous violence in the region, before he was reassigned.[150] According to the U.N. Group of Experts, "Three Congolese officials and several civil society leaders told the Group that Kifwa enjoys impunity because he is President Kabila's cousin."[151] As Peer Schouten notes, that region is technically considered a FARDC "operational zone" but few military operations actually take place there, aside from trafficking in cigarettes, weapons, and ivory.[152] Other reports have documented collaboration between the FDLR and the FARDC on tin, tantalum, gold, and charcoal.[153] Moreover, there is evidence that the FARDC, including some of its top officers, are involved in criminal mining activities, including smuggling with Rwanda.[154] This makes the FARDC work both with Rwanda and its sworn enemy, the FDLR. They also regularly sell their weapons and equipment to local rebels. For example, former FDLR combatants told the U.N. Group of Experts in 2011 that 95 percent of the weapons used by the FDLR, the group that ostensibly justifies the deployment of the FARDC in eastern Congo, come from the FARDC.[155] The most recent U.N. Group of Experts report alleges that FARDC military officers provided support to the ADF rebel group.[156]

Several commercial deals made by FARDC officers involve collaborations with the rebel groups which they are tasked with combating.

Top Congolese military commanders derive significant income from these activities, keeping them placated and in the main not interested in threatening the regime. Several generals and other army and intelligence commanders engage in such side businesses.[157] For example, the U.N. Group of Experts and the BBC gathered evidence that Gen. Gabriel Amisi Kumba, aka "Tango Four," profited from several gold mines and tin mines in eastern Congo.[158] According to the BBC, Amisi "refused to answer questions about his role and the firm involved, Geminaco, denies there was a deal."[159] Amisi also reportedly owns a major soccer team, AS Vita Club, and the airplane company Maniema Aviation.[160] Another U.N. Group of Experts report alleged that Gen. Pacifique Masunzu was a business partner in 2009 with a major gold exporter who was purchasing from conflict-affected mines controlled by the FDLR and other armed groups.[161]

In addition, other senior Congolese military officers own large properties. Gen. François Olenga, who is close to President Kabila and chief of staff of land forces, reportedly owns "Safari Beach," a resort and hotel complex in Nsele, Congo. In 2009, he purchased a $900,000 property in Swakopmund, Namibia.[162] The regular salary for a general in the FARDC was under $200 per month, as of April 2015.[163] This does not necessarily mean that the source of income was illicit, but large holdings by senior army officers undermine Congolese citizens' trust in their public institutions.[164]

Army abuses and extorts artisanal miners

The Congolese army and associated armed groups extort and abuse artisanal miners in the east, one area where FARDC's violent, self-serving nature has particularly grievous consequences over a large and vulnerable population. The FARDC is present at more than one out of three artisanal mines in eastern Congo, according to a survey of 1,088 mines in Congo by the International Peace Information Service (IPIS), most heavily concentrated in the gold sector. They found that at least one armed group or FARDC unit was present at 591 of them. IPIS notes that they "have installed various systems of illegal taxation" and that "illegal taxation by the Congolese army is more frequent than armed group interference in artisanal mining."[165] Similar systems exist in Ituri's gold mines, where both FARDC and police units "demand part of their production in cash, sand or gold, or claim a hole [a mine shaft] for their own exploitation."[166] The FARDC or other armed units sit at the entrance of sites and exact a "right of entry" in addition to the multiple roadblocks they have throughout the site and region.

Other sources have documented similar practices.[167] Other security services alleged to be practicing extortion of artisanal miners include the national police, the Mines and Hydrocarbons Police, the security guards of state-owned enterprises, the Republican Guard, and the General Directorate of Migration (DGM). The FARDC and these services are present across the Kivus, even outside conflict zones "where their presence cannot be justified."[168] Daniel Rothenberg and Ben Radley also note the use of the notion of "ration" by the FARDC to describe payments it demands from artisanal miners, suggesting the extent to which the government transfers the responsibility of caring for its armed forces to miners. Schouten and the United Nations also note the illegal taxation of mines in the east by FARDC.[169] When people refuse to pay, they can be detained. They then have to pay "exit fees" to the

A gold mine in Walungu, South Kivu. Artisanal miners are routinely harassed by the army, unpaid government officials, and armed groups, and gold mines in particular have many child miners.

Sasha Lezhnev/ Enough Project

FARDC to get out of "jail."[170]

Women and men in artisanal mining communities, particularly in eastern Congo, face constant human rights abuse, including sexual violence and extortion, from Congo's security services, government agencies, and armed groups, several of whom are allied with the government. One such category of abuses perpetrated mainly by Congolese army units and armed groups, but also now committed by civilians, and particularly prevalent in mineral-rich eastern Congo, is sexual and gender-based violence (SGBV).[171] SGBV has played a major role in the conflict. A 2011 study in the American Journal of Public Health estimated that as of 2009, 1.92 million people had been raped in Congo at some point in their lifetime, 462,293 had been raped in 2010, and 3.58 million Congolese women across all provinces had been victims of sexual violence perpetrated by their spouse or partner.[172] Other reports reveal that rebels and the Congolese army continue to use sexual violence as a weapon of war in Congo.[173] The 2013 U.N. Group of Experts reported rapes committed by numerous armed groups, including the Front for Patriotic Resistance in Ituri (FRPI), the FDLR, M23, and the FARDC.[174] It found that during five days in November 2012, Mai Mai Morgan forces raped over 150 women in a gold mining area south of Mambasa.[175] The U.N. Group of Experts also asserts that, "FARDC soldiers raped dozens of women and girls during the course of their operations in 2013 against [the] Kata Katanga [rebels] in Mitwaba territory."[176] As Enough Project Senior Congo Analyst Holly Dranginis noted:

Rape and other forms of sexual violence can be strategic military tools because they manipulate group psychologies and weaken community networks by instilling fear, distrust, and shame at multiple levels of a community, sometimes with a single act. These crimes often traumatize and debilitate the victims as well as the relatives and community members made to commit or observe the acts. Crimes involving SGBV also undermine authority figures traditionally meant to protect women and children in the community.[177] *Furthermore, sexual violence both drives and stems from forced displacement: when soldiers and rebels rape civilians, civilians often flee out of fear of repeat attacks or stigmatization. Internally displaced persons and refugees are in turn disproportionately vulnerable to sexual violence in part because they tend to lack support networks or live in IDP and refugee camps that lack security and rule of law.*[178]

Other abuses by the army and armed groups relate to artisanal miners. Many of the miners make more income than subsistence farmers, but these threats make their lives very difficult. Security and other agencies acting in the name of the state intervene in the course of artisanal mining production and extract a heavy material and physical toll on the miners and others associated with the sector, in a manner at times reminiscent of the colonial labor system if not of slavery. It is a hard life but one that at times provides better opportunities than many other options in Congo, although this is dependent on the fluctuating price of the mineral.[179] In a country where per capita GDP is about $400, gold diggers can make between $60 to $210 a month,[180] though this can vary greatly with the price of gold.

Women and men in artisanal mining communities, particularly in eastern Congo, face constant human rights abuse, including sexual violence and extortion.

However, these miners are heavily extorted and taxed by the army and state agents, so they receive much less. Rothenberg and Radley estimate that military actors deployed in or near artisanal mines take about half of the income of miners through "substantial illegal taxation and extortion."[181] A 2014 study found gold miners receive only about $75 to $105 in monthly income.[182] "Taxes" imposed upon miners include payments to enter and leave mines, to be allowed to work in the pits, to register minerals, police fees, industrial guard fees, and tributes to traditional chiefs. In Ituri the chiefs call the informal tax they extract "my turn."[183] For women, taxes also include "in kind" payments, as discussed above.[184] Taxes are levied by security agents at many artisanal mines and at some barriers to industrial mines (where many artisanal miners work illegally for lack of legally designated spaces), by the FARDC, agents of the Ministry of Mines, the Service for Assistance and Organization of Artisanal and Small-Scale Mining (SAESSCAM), the Centre for Evaluation, Expertise and Certification (CEEC), the regular police, the ANR, the Direction Générale des Impôts (DGI), provincial authorities, and others.[185]

In addition to monetary extortion, artisanal miners are subject to widespread violence given the militarization of the areas where they work and of mineral production itself. According to PACT, security actors are "intrinsically embedded in the daily operating of a mine's' supply chain … [They impose] harsh control mechanisms of exiting products."[186] Rothenberg and Radley note that in the Kivus, 16 percent of miners in their case studies were threatened with, or victims of, violence on the job, mainly by FARDC soldiers, of whom they note the "widespread presence … in mines outside the conflict zones of the Kivus where their presence cannot be justified."[187] It is important to note here that all violence in Congo is not necessarily conflict-related, although armed conflict can be part of the system; as in the time of Leopold, it has also become a structural part of the mode of production.

Although its contribution to national output is hard to estimate, artisanal mining represents an enormous sector of the Congolese economy and possibly the largest "employer" after subsistence agriculture. Despite this, the Congolese government budget derives minimal official revenue from artisanal mining. There is no mention of artisanal mining revenue in the official government budget or execution of the budget, but there is some revenue that accrues through taxes on cooperatives, traders (negociants), and exporters (entités de traitement).[188] In the Kasai provinces, artisanal miners from diggers to traders are responsible for almost all of the country's diamond output since the collapse of the industrial diamond mining parastatal MIBA around 2006. Diggers sell their diamonds to traders (previously comptoirs, now entités de traitement) and thereby enter the formal economy. In the east, however, where artisanal miners are mainly engaged in gold mining, but also in tin, tungsten, and tantalum (the 3Ts), a large portion of their production is smuggled out of the country or leaks into the informal economy. However, this has changed for the 3Ts, thanks to global mineral reforms, U.S. legislation, the regional ICGLR certification process, and the iTSCi minerals process. Artisanal gold production alone is estimated at about 8 to 12 tons a year.[189] Using data from multiple sources, the value of artisanal mining is estimated at about $1.4

Life for Congolese artisanal gold miners is still very difficult, but there have been improvements in the artisanal tantalum, tin, and tungsten sector, as 79% of those miners now work in conflict-free mines thanks to reforms and a certification process.

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billion in 2014, or almost 14 percent of the total output of the extractive sector.[190] Nationwide, it is estimated that artisanal mining indirectly supports some 8 million to 10 million Congolese people.[191] It is a local mode of production, where people make do with limited resources and thereby invent institutions, hierarchies, and markets without state support.

Bonuses for military operations

What are the practical consequences of low or no pay for the military? First, as with positions in the civil service, the largest share of military payments comes not from salaries but from multiple bonuses, which the Congolese call "primes" or premiums. In the military the payment of these bonuses, which exceed salaries multiple times, depends in large part on being officially involved in operations. Thus officers and troops have an incentive to continue operational deployment and not to defeat opponents, and also because they often run lucrative businesses in their area of operations. The government shares this incentive to the extent that it wishes to provide patronage to officers and keep them far away from Kinshasa. As of 2016, according to a Congo analyst specialized in military issues, the monthly allowance for generals was between $2,000 and $2,500 per month.[192] Senior military officers also generate money by embezzling funds destined for operations and the day-to-day functioning of military units, such as the "fonds de ménage" (for provisioning) or the "fonds spéciaux de renseignements" (for gathering intelligence).[193]

Violence is linked to the government's strategy of peacemaking, which itself results from its overall weakness.

As a result, the FARDC tend to be quasi-permanently deployed, and their operations go on indefinitely, with the consequence that large segments of Congo's territory, particularly in the east, find themselves under constant military occupation. A local activist interviewed for this study joked that current operations against a rebellion in northeastern Congo would not end until the FARDC commander had built a roof over his house. The operation premiums provide incentives to "fight" but not to finish operations, so that income keeps accruing to military actors. At a tense, pre-electoral time when President Kabila might need reinforced support in the military, continued military operations in the east are likely to provide the necessary patronage.

Rebel groups "integrated" into the army as their own military units, increasing violence and leaving genuine grievances unaddressed

FARDC recruitment derives from the policy of the Kabila regime to co-opt armed groups into the military, then either fail to pay them or start with the understanding that they will take care of themselves. The M23 rebellion in 2012-13, for example, resulted in part from the failure of Kinshasa to honor commitments it made to CNDP rebels in 2009 on salaries and promotions. The Kabila regime's approach to peacemaking is one that puts emphasis on material co-optation of violent actors as opposed to the more difficult tasks of addressing grievances, punishing abuses, and promoting alternative opportunities for violent actors. This co-optation results in a bloated, patchwork military composed of roughly 130,000 troops of multiple origins (from Mobutu's old forces to contemporary Mai Mai militias). These units are nearly impossible to control and have significant room to commit acts of predatory abuses.[194] Violence is thus linked to the government's strategy of peacemaking, which itself results from its overall weakness. Kinshasa is both unwilling and largely incapable of doing much more in terms of peace. Once such a large military is put together, it is nearly impossible for the government to provide for it. In 2014, more than half of the national defense budget, executed at about $322 million, went to salaries, leaving very little for serious training or operational work.[195]

The government's strategy of clientelistic co-optation of rebel groups also promotes the perpetuation of violence, as it encourages the fragmentation and multiplication of armed actors. At the beginning of the Second Congo War in 1998, there were three main armed factions: the military, the Rassemblement Congolais pour la Démocratie (RCD) and the Mouvement de Libération du Congo (MLC). As of 2015, there were approximately 70 armed groups,[196] although most of them were factions of previous groups and are much smaller.

Their rise follows a clear logic: if past rebel groups are co-opted by the military, it pays to start a rebel group, or restart one if someone is not satisfied with the terms of co-optation offered by the government.[197] Many of the current groups are splinters of previous ones, often composed of defectors from previous deals. Others are new groups that have since arisen to capitalize on opportunities for integration. Thus, the regime's co-optation strategy increases violence, as it becomes a means of access to the bounties of the state.

This pattern is further reinforced by the absence of credible representative institutions and the stalled progress of decentralization reforms, which leaves few ways for communities or local elites to participate in the system. In this context, having an armed group can be a way to speak out and to protect one's interests. Many Mai Mai militias follow this logic, as have the multiple Tutsi-led insurgencies over the years, such as the CNDP. Causing sufficient violent disturbances will usually guarantee a group or its leaders to be invited (back) to the table in one form or another. Multiple U.N. reports highlight the commercial benefits that many politicians and military brass derive from the conflict in the east.[198] These benefits work against a forceful military solution to the conflict. Failure to obtain expected positions in government or sufficient representation for one's region can also lead to violence to warn the regime of one's nuisance capacity. Many observers believe the sidelining of several politicians from Katanga was behind the rise of the Bakata Katanga militia in 2013 and the alleged coup attempt in December of that year.[199]

Military allowed to "débrouillez-vous" or "fend for yourselves."

Today's system of military predation carried out in mines and communities in Congo has strong parallels to Mobutu's system, despite the promises of a new, reinvented Congo under the Third Republic. Mobutu's declaration of "You have guns; you don't need a salary," corresponded to the broader slogan that applied to all of society (and which many Congolese called "Article 15" of a constitution that had 14 articles): "débrouillez-vous" or "fend for yourselves."

As his regime decayed into the 1990s, Mobutu gave military units new powers to profit from illicit trade, a pattern which haunts the state to this day.

During Mobutu's time, "soldiers lived off the civilian population, [and] the uniform was a necessary arsenal for extorting money and goods from innocent people," according to Nzongola-Ntalaja.[200] For Mobutu, one main advantage of letting his troops loose upon his people and their resources was to create a climate of insecurity and vulnerability, which reinforced his bureaucratically weak regime. According to Reno, Mobutu "encouraged units to commit acts of violence against opponents to create a climate of distrust and instigate local conflict."[201]

As his regime decayed into the 1990s, Mobutu gave military units new powers to profit from illicit trade, a pattern which haunts the state to this day. In the military as in other domains, "no clear boundary [could] be drawn between state activity and the pursuit of private interest."[202] Military units turned into exclusive self-aggrandizement rings that fought against each other rather than protect the state's interests.[203] As Mobutu's rule weakened, these rackets became more self-interested rather than solely passing money back to Kinshasa. Many top brass became involved in gold, diamond, and arms trafficking, engaged in extensive looting in 1991 and 1993, and military units clashed with one another over various spoils.[204]

For example, Gen. Baramoto ran the 10,000-man Garde Civile's gold and diamond smuggling operations in eastern Congo and imported weapons, and intervened on behalf of Sudanese and Angolan interests.205 Baramoto's soldiers also protected LIZA, a diamond mining venture that was owned by Mobutu's son, Félix Manda Mobutu.[206] According to a former U.N. Group of Experts member, "Baramoto's looting sprees [were] legendary, particular[ly] during the last months of the Mobutu presidency. He is reported to have stolen his own soldiers' pay, and to have rented his soldiers as private security guards in Kinshasa. He even sold his force's last remaining fighter jets to arms dealers."[207] In 1997 Baramoto left Congo on his private jet to seek refuge in South Africa, and began to enjoy life in a posh Johannesburg suburb, though he has reportedly returned again to Congo bankrupted.[208]

Mobutu, unwilling and incapable of developing a genuine administration, encouraged a system in which the Congolese turned on each other for survival. In Michael Schatzberg's apt terms, "extraction, exploitation, and oppression" became pervasive, as all "Zairians in positions of authority [used] their parcels of power to extract what they [could] from those in contextually inferior positions," leading to a "society where corruption, dishonesty, and inhumanity have become all too common."[209] The subsequent Sovereign National Conference (1992-94), Inter-Congolese Dialogue (2001-03) and Transition (2003-2006) meant to right the course of the Congolese state, to lay new foundation from which Mobutu's "anti-values" would be banned. Yet, contrary to the hopes laid on it by the Congolese, the Kabila administration has reverted to Mobutuism, and Congo has largely regressed to Zaire.

FARDC local headquarters, Walikale. While top commanders do well for themselves, the pay and conditions for most Congolese soldiers are poor, which encourages pillage.

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2. Stay in power or possibly lose everything; crack down on groups that pose challenges; manipulate peacekeepers

Key points:

Power pays. Power has great economic payoffs for elites in Congo and some of their business partners who make highly lucrative deals.

But new regimes will cut out the established cliques, so violence pays. Transfers of power can lead to immediate loss of financial resources and immunity from prosecution, as elites have often been cut out of subsequent regimes. The risk of losing power and money greatly increases elites' willingness to use violence to retain and consolidate economic gains.

Crush democracy activists and intimidate opponents. Democracy groups who call for leaders to be held accountable for human rights abuses and corruption, as well as rival elites are nuisances and even threats to the regime. Those in power use intimidation, repression, and violence to quash dissent, democratic aspirations, and the influence of rival elites.

History repeats itself. The Kabila regime employs a repressive system similar to Mobutu's and Leopold's.

The government manipulates peacekeeping and security assistance. Congo hosts the world's largest peacekeeping mission but prevents it from engaging in real security sector reform or targeting the country's most violent armed groups, e.g. the FDLR, because they collaborate with the Congolese army.

Taking political power or being close to it is the main way to benefit economically in Congo. Political power brings major economic benefits, and there have been few opportunities for financial advancement other than being in control of or closely connected to the state, at least until recently. Congolese rulers and their close commercial allies have largely unmitigated access to the country's resources and economic opportunities through the wielding of executive privilege and sovereignty of the regime. This is true in many African countries, but it is particularly true in Congo. Presidents, their families, and some foreign and domestic elite businesspersons who work with the presidents have become very rich from the spoils of controlling Congo's political economy. Although the era of nationalized diamond, copper, and gold is over, the regime can now control state-owned companies, hand out contracts in a non-transparent manner, sell resource assets to allies at very low prices, and then receive kickbacks when they are sold to investors at much higher prices, and more.

However, Congo still has a winner-take-all approach to politics, meaning that the next regime tends to bring on an entirely different set of elites when they come to power. "Le pouvoir se mange entier," or "power is consumed without sharing," as Africanist Jean-François Bayart stated, referring to African politics.[210] Some elites are able to negotiate their survival from regime to regime but generally Congo's elites cling to power for fear of losing everything.

Violence is a crucial element for gaining and holding on to power. Again, it was force that brought Mobutu and Laurent Kabila to power, and Joseph Kabila has used it repeatedly to maintain his control over Congo's political economy. Both democracy groups that attempt to hold leaders accountable for human rights abuse and corruption, and rival elites represent significant threats to power, and so the Kabila regime uses repression and violence to quash dissent, democratic aspirations, and the influence of rival elites. Mobutu and Leopold used very similar repressive systems, although so far on a larger scale (see below). Finally, the government attempts to manipulate the U.N. peacekeeping force by only allowing it to target the armed groups not allied with the Congolese government but not the militias it collaborates with.

Power and patronage used for economic gain

Heads of state in Congo and their close political, family, and military associates have used political power to extract resources from Leopold to Kabila. The president directly approves many mining deals, for example. It is impossible to know precisely how much Kabila has benefited from these deals as the information is not publicly shared. Public scrutiny of Kabila's wealth was also not helped by the fact that the Congolese parliament declined to open up, review, and make public his constitutionally required declaration of assets in 2011.[211]

Heads of state in Congo and their close political, family, and military associates have used political power to extract resources from Leopold to Kabila.

It comes as no surprise, therefore, that the Kabila regime is intent on staying in power. This desire is reinforced by the likelihood that stepping down would significantly jeopardize the incumbent's assets, as regime predation undermines all property rights short of the president's. Thus, no potential successor can credibly commit to preserving the current ruling class's wealth. As a result, for Kabila & Co., i.e. his close family and top allies, there is no Plan B. Power must be preserved. In general, patronage represents the default technique to maintain power and deflate opposition. For example, envelopes with cash were said to circulate among provincial representatives in 2007 to prevent the election of opposition governors,[212] and among national representatives in 2011 to change the constitution and make presidential elections a one-round plurality affair in favor of Kabila. However, when push comes to shove and material redistribution is not sufficient or possible, the Kabila regime does not hesitate to unleash violence. It has done so repeatedly and often disproportionately, since the early days of Kabila's first term. And all signs point that the regime is increasingly doing so in the waning days of his last legally mandated term.

State Used for Personal Profit

Practices under the Kabila regime by heads of state and their very close associates that allow them to personally profit from state assets echo the Leopoldian system. Under Leopold, one law stated that all "vacant land" in Congo (i.e. not exploited by foreigners) belonged to the king, and Leopold took an area larger than the size of Oregon for himself—100,000 square miles—from which all revenue went directly to him.[213] Leopold then granted lucrative rubber and other concessions to private companies controlled by friends of his. This system enabled them to generate vast sums of money. In a move reminiscent of Congo's current regime, Leopold appointed two-thirds of the board members of the company that controlled Katanga's copper mines.[214] Similar patterns were visible after Belgium took over. Belgian colonial administrators rotated back and forth to mining companies, and there was no clear line between politics and economics. "The whole structure of colonial development … was governed by the requirements of the mining companies."[215] Belgian company Société

Générale took over Leopold's lucrative Katanga copper mining company Union Minière du Haut Katanga (UMHK). The company accounted for between 60 to 70 percent of private investment in Congo, and four conglomerates, including considerable British shareholders, controlled 75 percent of capital in the country.[216] All profits went to the Belgian and British shareholders, not to the Congolese people.[217]

Violence or threat thereof used to crush dissent and challengers

When faced with dissent, the Congolese government's default action is to interpret challenges as threats to its power, view them as possible conspiracies of a coup d'état, and resort to repression. This trend has been visible since the early days of the Kabila regime and even goes back to the period preceding the transition, but it has worsened over the past two years. Opponent Jean-Pierre Bemba's residence was bombed by Kabila's troops in 2007, and he fled to Portugal afterward.[218] In Bas-Congo, more than 200 militants and sympathizers of the Bundu dia Kongo (BDK) sect, who were challenging the outcome of their provincial elections, were killed by security forces in 2007 and 2008.[219] In Equateur in 2009, inter-community skirmishes linked to fishing rights—the Enyele incident—were met with significant government force, including deployment of the feared "Cobras," Kabila's Rapid Intervention Police, displacing thousands of civilians and sending the leaders into exile across the river to Congo-Brazzaville.[220] In Kinshasa, more than 100 people died at the hands of government forces during a December 2013 ramshackle alleged coup attempt, although the plotters reportedly were only armed with knives and spears.[221] There have been many similar cases.[222]

Repression is a key tool of the regime's response to critical activists and media outlets. Peaceful but demanding criticism of the government by independent journalists and human rights activists has resulted in several alleged assassinations since 2006, as with journalist Serge Maheshe in 2008[223] or human rights activist Floribert Chebeya who was killed in 2010.[224] In the 2011 elections, the government used violence to silence the democratic expression of political preferences, referring to opponents and human rights activists as unpatriotic. In addition to the several dozen casualties at the hands of government security forces, MONUSCO also documented:

[[T]he arrest of at least 265 civilians, most of whom have been detained illegally and/or arbitrarily, mainly due to their real or alleged affiliation to a political opposition party or for coming from Mr. Etienne Tshisekedi's home province or to other provinces where he enjoys significant support. These human rights violations were attributed mainly to elements of the Garde Républicaine, officers of the National Congolese Police and its specialized units, the criminal investigation brigade and the Groupe Mobile d'Intervention, and to a lesser extent, to soldiers from the FARDC. Moreover, agents of the National Intelligence Agency ANR were also allegedly responsible for several cases of arbitrary arrest and illegal detention.[225]

Democratic aspirations repressed

As the Kabila regime nears the end of its constitutional term limit and pressure for holding timely, free, and fair elections mounts, it has increasingly used repression to stifle democratic aspirations. And the regime has not shied away from silencing critics. In October 2014, it expelled Scott Campbell, the director of the U.N. Joint Human Rights Office in Congo, after his office published a report documenting Congolese police abuses of civilians during a crackdown on gangs.[226] In 2016, the regime also expelled researcher Jason Stearns after his Congo Research Group published a report criticizing the FARDC in Beni,[227] and later Global Witness researchers Jules Caron and Reiner Tegtmeyer, and

A Congolese citizen at a community meeting held by the electoral commission CENI. Citizens across Congo have been troubled by the fact that elections will not be held on time and that CENI has been underfunded.

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Human Rights Watch's Ida Sawyer, all of whom had published reports critical of government human rights abuses and/or corruption.[228] The public criticism is bad for the regime in what is supposed to be an election year, and so it attempts to silence dissent to maintain control of information and power.

Repression has increased since the beginning of 2015, as tensions have mounted in the face of Kabila's silence about his future plans and his government's multiple attempts to find ways to keep him in power past December 2016. In January 2015, after the government tried to pass a law in parliament to require holding a census before the next presidential elections—a move that would have delayed them by several years since Congo has not had a census since 1984—people took to the streets of Kinshasa in protest and frustration. Unable to co-opt the demonstrators who did not have the usual opposition political affiliation, the government reacted ruthlessly. Security forces killed 38 demonstrators and arrested over 400 others.[229]

A broader, pro-democracy movement developed in the wake of the January 2015 events. A group named Lutte pour le Changement (Lucha)[230] arose in Goma. In Kinshasa, a loose association of activists named Filimbi—"the whistle"—was launched in March 2015.[231] And the Congolese diaspora followed suit with the establishment of Telema—"stand up" in Lingala.[232] These movements were inspired by similar initiatives in Senegal (Y'en a Marre—"We have had enough")[233] and in Burkina Faso, where the Balai Citoyen, or "citizen broom," movement[234] successfully pressured long-standing authoritarian ruler Blaise Compaoré into exile in 2014. Particularly interesting is the fact that these groups are not directly associated with any political party, which shows more widespread dissatisfaction with the regime and injects fresh blood into Congolese politics.

This trend, together with the success of the inspiring movement in Burkina Faso, has created significant anxiety for the Kabila regime, which has responded with increased repression and violence. In March 2015, Congolese ANR intelligence agents burst into a Filimbi workshop in Kinshasa and arrested 30 people, including the U.S. Agency for International Development (USAID) director of democracy programs in Kinshasa, Kevin Sturr, accusing the Filimbi and Lucha leaders of planning "terrorist activities."[235] Although most people were subsequently released, Filimbi and Lucha leaders Yves Makwambala and Fred Bauma, have not had charges dropped against them, along with 11 other political activists who were later arrested in 2016.[236] This pattern has continued, for example in September 2015, when dozens of demonstrators at an opposition rally on the outskirts of Kinshasa were injured by youths reportedly hired by the regime.[237] According to Human Rights Watch, the assailants included martial artists and thugs paid by the government, members of the ruling party People's Party for Reconstruction and Democracy (PPRD) "youth league," as well as from AS Vita Club, one of the soccer teams owned by FARDC Gen. Amisi, with over 100 youth allegedly paid $64 each to "start attacking the demonstrators and create disorder."[238]

There have also been many other arrests of opponents and pro-democracy activists by the regime over nearly the past two years, which have further served to keep the regime from being held accountable to its citizens.[239] The Kabila regime has also manifested its wrath at the defection of seven parties—the "G7"—from the presidential majority in the fall of 2015. Some of the defectors were fired from their positions in the government and their supporters dismissed from their civil service positions.[240] And the radio station owned by of one of them, Christophe Lutundula, was forcibly shut down.[241] President Kabila seems particularly bothered by the alliance between the G7 and former governor of Katanga, Moïse Katumbi, who also quit the PPRD ruling party and declared his candidacy for the presidency in May 2016. Katumbi, long seen as a serious threat to the regime even when he was nominally part of it, claims that he has been the target of attempts to poison him and sabotage his airplane. The government denies these claims.[242] Between April 22 and May 7, 2016, police arrested 27 of his supporters and collaborators,[243] and Katumbi himself was indicted for recruiting mercenaries on the very day he declared for the presidency, a claim that Human Rights Watch and the U.S. Embassy in Kinshasa contested.[244] He was later sentenced in absentia to three years in prison, on trumped up, separate charges, according to human rights groups, of allegedly illegally selling a property.[245] A Congolese judge later stated that she was pressured by the Congolese intelligence services to convict Katumbi for political reasons, an accusation the intelligence services deny.[246]

Ironically, President Kabila's security forces have reportedly continued repressing democratic demonstrations while he publicly calls for the opposition and civil society to join in a dialogue for the organization of elections.[247] It is worth noting that the right to peacefully demonstrate is recognized by Congolese and international law.

Use of repression to ensure a lack of democratic accountability

The Kabila regime's repressive strategy traces its origins to Leopold II and Mobutu. However, it does so with more nuance and restraint than both its predecessors, suggesting that acute oversight and finger-pointing by civil-society organizations and both domestic and international watchdogs can mitigate the degree of abuse committed by the regime and the physical vulnerability Congolese activists and opponents risk.

Although one should steer clear of deterministic interpretations of Congo's politics, it is worth pointing to the violent and repressive origins of Congo as a state. Leopold's army enforced his enrichment project with over a dozen brutal military campaigns, looting food from Congolese people to feed soldiers along the way. For example, the Force Publique violently took control of copper-rich Katanga, decapitating local chief Msiri and putting his head on a pole.[248] In another conflict in Katanga, the Force Publique starved 178 people to death in a cave for refusing to yield to Leopold's rule and then triggered landslides to eliminate traces of the bodies.[249] The Force Publique regularly tortured individuals, took hostages, killed families of rebels, engaged in sexual violence, burned villages, and cut the hands of the Congolese, including children. It collected the hands as trophies in order to prove that bullets were not wasted. These brutal methods were used to spread fear and pacify the Congolese population.[250]

Mobutu also made generous use of repression to stay in power for 32 years.[251] In his first year as head of state, Mobutu had four former ministers executed at a public hanging. During the first decade of his rule, one in four high-ranking officials were jailed or removed on grounds of disloyalty, with penal sanctions.[252] Mobutu regularly used force "with ferocity and regularity that in addition to corruption, gross violations of human rights, including assassinations, extrajudicial executions, massacres of unarmed civilians, and banishment to remote penal colonies became the defining characteristics" of his regime, notes Congo historian Nzongola-Ntalaja.[253] Mobutu formed seven major independent security service units, which perpetrated massacres against students and Christian demonstrators, imprisoned democratic activists, assassinated opposition leaders, and regularly looted civilian areas.[254] One of his units, the Special Action Forces, were known as the Owls because they perpetrated assaults mainly at night.[255] As journalist and foreign policy analyst Mvemba Dizolele writes, "The message of fear registered in the national psyche, and the show of force terrified people into submissiveness."[256] Mobutu also used army units, militias, and other security organs to foment local disorder and prevent rising political opposition.

The system of violent kleptocracy began under King Leopold II of Belgium. Here a colonial Belgian official documents to the king that no bullets were wasted in enforcing law and order.

Wikimedia

Peacekeeping force does not target regime allies

Congo is home to the world's largest peacekeeping operation, the U.N. Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO), which has over 19,800 troops and a budget of nearly $1.4 billion per year.[257] Stationed in Congo for the past 17 years, the U.N. force first assisted with implementing the 1999 Lusaka peace agreement that ended Congo's Second War. Increasing in size and budget since then, a Force Intervention Brigade (FIB) empowered with greater freedom of action was added in 2013. This brigade was a test case for the United Nations to more aggressively combat rebel groups that are spoilers to peace processes.[258]

MONUSCO contributed to Congo's reunification after the wars and continues to help keep the country together, but it has had significant issues. The Kabila regime does not always agree with the U.N. peacekeeping operation, but MONUSCO does serve two main purposes that enable the regime's corrupt systems to continue. First, it allows the government to curry favor with the international community. MONUSCO has been one of the biggest policy priorities of the international community in Congo for the past several years. The United Nations wants to be seen to be taking action to prevent atrocities in the post Rwandan-genocide world, with up to 5.4 million people dead from the conflicts in Congo. Kicking out MONUSCO would make western governments seriously question whether Congo is a pariah state. Keeping it there makes it look like the government is committed to civilian protection and security sector reform—mandated priorities of MONUSCO.[259]

Second, keeping MONUSCO in Congo allows the government to fight armed groups that oppose it, such as the Rwandan-backed M23. In 2013, Congo successfully convinced the international community to beef up MONUSCO with the FIB that had a special offensive mandate and immediately deployed it to combat the M23 rebellion. M23 posed a threat to the regime, as it was backed by heavy military equipment from Rwanda and an elite structure that was very different from President Kabila's, as Bosco Ntaganda, et al. were mainly loyal to Rwanda. The new offensive U.N. brigade, the FIB, made up mainly of elite forces from Congo allies South Africa and Tanzania, were instrumental in defeating the M23 in late 2013.

However, when the peacekeepers' mission is not politically suitable for the Congolese government, it actively prevents the U.N. peacekeepers from doing their jobs engaging in comprehensive peacekeeping, security sector reform, or playing a large role in supporting the "creation of an environment conducive to

MONUSCO was effective against the M23 rebels, but the Congolese government manipulates the peacekeeping mission when it does not want to fight against groups that its army units collaborate with.

Sasha Lezhnev/ Enough Project

peaceful, credible, and timely elections."[260] For example, the government has blocked the peacekeepers' efforts to target the FDLR rebel group, which has an economic relationship with units of the Congolese army in trading gold, charcoal, minerals, and other natural resources.[261] After more than a year of wrangling with the United Nations, regional governments, and the international community over operations against the FDLR, President Kabila finally appointed two generals, who were known human rights abusers, that the United Nations could not work with due to human rights restrictions.[262] There have thus been essentially no significant joint U.N.-Congolese operations against the FDLR since then.[263] MONUSCO has also made very little progress on security sector reform, in large part because there is an "absence of progress by the Government towards the development of a comprehensive national security sector reform strategy," a refrain repeated in U.N. and NGO reports over the past several years.[264] Similarly, the United Nations notes that the government has not dedicated resources to police reform.[265] In short, the Kabila regime has not shown political will to reform its army or police despite allowing MONUSCO to officially have a mandate of security sector reform.

When the peacekeepers' mission is not politically suitable for the Congolese government, it actively prevents the U.N. peacekeepers from doing their jobs.

In the words of one MONUSCO official who spoke on condition of anonymity, "It [MONUSCO] also assisted Kabila and helped him objectively to stabilize his own regime, including the maintenance of a system of insecurity in the East which allows the army officers to have their playground. The fundamental target of MONUSCO was to replace the bullet by the ballot as a legitimate entry point to political power, and on the basis of a constitution that wanted to avoid a relapse into a personal dictatorship. This objective now is seriously in danger and the last one to protest seems to be MONUSCO, in contrast to the United Nations in New York and the Security Council. If the current situation continues, MONUSCO will have failed in its mission and will objectively have helped Kabila to establish his dictatorship."[266]

Finally, Kabila's government has tried to reduce the size of MONUSCO during elections when it does not want international observers present. MONUSCO could play a larger role in elections, in terms of monitoring human rights violations, setting up an election abuse team, help with voter registration, training police in crowd management, etc.[267] After all, it is the largest international presence by far in Congo. However, the Kabila regime has attempted to reduce MONUSCO's size before elections both ahead of the 2011 elections and the upcoming ones, as well as successfully lobbying the United Nations not to play a large role in the 2011 elections, which it agreed to.[268] In 2009 Kabila called for the United Nations to begin withdrawing ahead of the 2011 election cycle, and in 2015 his government lobbied to cut the number of peacekeepers by 6,000.[269] The U.N. Security Council declined the request in both instances, although it agreed to "intend" to cut troops by 2,000 at a future date. Nonetheless, the Congolese government's repeated attempted manipulation of the United Nations for its own political purposes remains a reminder of its overall strategies on appearing to reform while actually hijacking those reforms for its benefit.

3. Ensure there is little to no accountability for regime-connected elites

Key points:

The system is based on a rejection of accountability for regime-connected leaders. Exercise of power and authority in Congo tolerates little if any oversight, opening the door to a range of abuses.

The justice system ensures impunity for high-level officials. One way accountability is denied is by ensuring that none of the key elites in government, the military, or business are prosecuted for corruption or human rights abuses through botched investigations, dropped cases, etc. The government has also effectively blocked the specialized mixed courts.

The regime pretends to care about corruption. No senior official has been prosecuted for corruption despite an allegedly strong government policy against corruption.

International justice has largely prosecuted regime opponents. Of the seven International Criminal Court cases against Congolese individuals, five have been against Kabila opponents, including one major political opposition leader, Jean-Pierre Bemba.

Sexual violence and human rights abuse is tolerated. Kabila also has a "zero tolerance" policy on rape, but the mobile courts set up on sexual violence have not prosecuted senior officers. In fact, some of the most abusive generals have been promoted to higher ranks.

Mobutu used the same approach. Senior officials and officers were not prosecuted.

One overarching theme that runs through this analysis is the absence of accountability for state elites and many state agents at lower levels. Despite some prosecutions here and there, this system endures in large part because of the near impunity that prevails for the Kabila regime and state agents in Congo. Elites in the regime have perpetually worked to ensure that the system's top beneficiaries are not held accountable for corruption or violent crimes, unless they fall out with the regime. In that case, there has been some justice served against former regime allies, for example the ICC case against Jean-Pierre Bemba[270] and Thomas Lubanga,[271] but not against current regime leaders or their business partners. If the regime leaders were held accountable, their system of violence and corruption would fall apart.

Despite the painful lessons of the Mobutu period and the broad popular endorsement of democratic principles in the 2006 constitution, Congolese rulers continue to practice power as something both absolute and personal, as opposed to adhering to the rule of law. In Congo, the regime frequently corrupts the justice sector through dropped cases and poor investigations regarding human rights crimes, corruption, sexual violence, and other crimes. Meanwhile at the international level, ICC cases have ended up largely indicting and prosecuting opponents, not allies or elites of the regime.

Promises of domestic justice not delivered

Accountability for the crimes committed by high-level commanders in Congo is severely lacking. President Kabila declared a "zero tolerance" policy for both sexual

Congo's military justice has been selective and largely ineffective, with generals getting let off the hook and many cases dropped through botched investigations.

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violence and corruption in June 2008.[272] However, so little has been done on both of these issues that many Congolese people refer to these policies as "zero tolerance, zero consequence." For example, the documented rape of 76 women by Congolese army soldiers at Minova in 2012 only resulted in convictions of two low-level soldiers, missing accountability for the "commanders [who] failed to control their troops and to prevent, stop, or punish crimes."[273] As Human Rights Watch stated, "The Minova rape trial was a huge disappointment for victims of one of the worst mass rapes in the country in recent years."[274] It further noted that, "Grave crimes continue in Congo in large part because commanders order or tolerate atrocities committed by troops under their control. While there has been some progress with prosecutions in recent years, these are only likely to be effective as a deterrent when high-ranking commanders are also held to account. This is important so that the army hierarchy recognizes a true sense of responsibility to ensure that these crimes do not continue. Trials such as the one on the Minova crimes reinforce the perception that justice only applies to low-level soldiers and that officers are protected."[275]

In fact, some notorious human rights abusing military commanders have been promoted instead of prosecuted. For example, Gen. Amisi was suspended from duty in 2012 after the U.N. Group of Experts and the BBC reported allegations that he distributed weapons and ammunition to illegal armed groups and profited from the conflict minerals trade.[276] However, instead of being prosecuted for these crimes, Amisi was promoted in 2014 to head of the First National Defense Zone (of 3 zones), in charge of security for Kinshasa and western Congo.[277] Another example is former FARDC and later M23 commander Innocent Zimurinda. Over 50 human rights organizations working in eastern Congo alleged that Zimurinda was responsible for human rights abuses involving the murder of numerous civilians, including women and children, between February and August 2007.[278] Despite these allegations, Zimurinda was promoted in the army to full colonel in 2009.[279] A different example that relates to corruption involves the declaration of assets required of the president at the beginning of his term. In 2011, as provided by the law, Kabila supposedly submitted such a declaration to parliament. It was, however, in a sealed envelope, and parliament declined to open it, refusing thereby to fulfill its constitutional obligation of oversight.[280] With such checks and balances, the envelope may as well have been empty.

Political interference is a significant issue in Congo's domestic judicial system. There is a structural issue that military court judges in eastern Congo do not have a high enough rank to judge high-level military officers. Furthermore, as Dranginis notes, direct intimidation of investigators, human rights activists, and defense attorneys is frequent.[281] As one of her Congolese interviewees, a local lawyer, said regarding the Minova trial, "I got anonymous calls, and they asked if I appreciated the danger of the case. It terrified me … The message was clear: this is high politics that shouldn't be investigated."[282] There is also reportedly administrative interference, with dossiers of evidence reportedly disappearing, cases moved, and other types of intimidation.[283]

Some other cases involving charges of gender-based violence and other human rights violations have fared somewhat better, but high-level regime-connected elites have not been prosecuted for these crimes.[284] See below for more detail. This impunity does not only hold at the top. There have been a few criminal cases against perpetrators of rape in the east, but there are very few legal actions against the routine violence that the FARDC deploys against civilians, from artisanal miners to farmers.

Regarding corruption issues, there is no accountability for disappearing payments made by mining companies to SOEs and the state, or for the multiple commercial deals that state agents engage in opaquely. The Economy and Finance Commission of Parliament occasionally hold hearings but they do not lead to prosecutions for corruption. There is corruption in parliament, provincial, and local governments. Their translation of power and authority into personal wealth generally goes unpunished. As we have shown, patronage networks are one way in which power is exercised without real oversight.

International justice fails to prosecute regime elites

Five of the ICC's seven indictments of Congolese individuals have been against opponents or former allies jettisoned by the regime.[285] There are likely many complex reasons for this. Some of the reasons include the ICC jurisdiction only covering crimes after July 1, 2002, so crimes linked to the regime's ascent to power are not included; lack of evidence; and other armed groups committing heinous crimes during that period. Although they have generously wielded violence over the years, Kabila, his allies, and allied armed groups have never been prosecuted, apart from potential regime allies associated with the FDLR. The ICC has helped serve justice on important cases, but the cases have also helped eliminate some of Kabila's political and military opponents. See below in Chapter 3 for further detail.

The government has also paid lip service to the proposed courts that would mix international and domestic prosecutors and systems, the specialized mixed chambers, but has effectively delayed this policy proposal. The chambers were first proposed in 2004 by Congolese and international civil society. They would have international and local prosecutors and judges, to try individuals for serious crimes, including war crimes and crimes against humanity, committed in Congo since 1990.[286] With mixed participation, the courts could have an impact on prosecuting grave crimes in Congo. Since then, Kabila and some senior government officials have stated that they support the idea but then the parliament, controlled by a Kabila majority, has effectively ensured that it has not been instituted.[287]

4. Create parallel state structures and co-opt rebel groups to weaken political threats

Key points:

A parallel state and military hierarchy is set up alongside the actual government. There is a parallel power structure emanating from presidential circles that controls much from the army to justice to the economy. The army is formed of a patchwork of units that are deliberately poorly integrated in order to maintain divisions. Many military and business patronage networks are directly loyal to the president, although their loyalty needs to be fed regularly.

The regime strives to appear to be legitimate. The regime must have some legitimacy among the population, e.g. having ethnic and regional representation. So it sets up a government that looks like it functions and is representative of different regions of the country. It also sets up an apparently technocratic government to look legitimate to donors.

Disorganization and Dualism in the Military

Another critical part of the Kabila regime's strategy to prevent being toppled by force is to maintain divisions in the military. By maintaining various elite units, different command structures, and former rebel groups within the army that are not truly integrated within it, the regime can manipulate one unit against another. This ensures that key commanders and units do not rise up in a unified manner against the regime. Such an approach follows the wisdom of medieval Italian political realist Niccolò Machiavelli. As he instructed, "[A] Captain should endeavor with every art to divide the forces of the enemy, either by making him suspicious of his men in whom he trusted, or by giving him cause that he has to separate his forces, and, because of this, become weaker."[288] This is closely linked with the practice of dualism, that is, setting up parallel structures in the government to ensure that the president maintains direct control over the key instruments of violence; in this case the military. This is one area that Mobutu actually employed more[289] but that Kabila employs to some extent.

Congo's military is divided and disorganized, which has served to increase conflict and serious human rights abuse against the population and prevent effective security sector reform.[290] The FARDC is an institutional hodgepodge that results from the blending of Mobutu's Forces Armées Zairoises with Laurent-Désiré Kabila's Alliance of Democratic Forces for the Liberation of Congo (AFDL) troops, including the Kadogo child soldiers, as well as remnants of the Katangese Tigers, soldiers from Jean-Pierre Bemba's MLC and from the Rally for Congolese Democracy (RCD)-Goma, integrated during the 2003-2006 transition, as well as members from many rebel groups.[291] Jason Stearns has argued, "What has failed almost completely is creating a professional army corps."[292] Indeed, the lack of a professional republican army is one of the core roots of conflict and poverty in Congo. Not only is the Congolese military a patchwork of different units with a history of conflict among themselves, but its command structure is also divided and confused, which gives increased personal leverage to the president. However, this is a fragile control, as it relies on politico-ethnic balancing, as the president attempts to make the army look representative of different parts of Congo by appointing people from different regions and ethnicities to positions of authority.[293]

There is also a dualism of structures within the military

There are approximately 70 armed groups in eastern Congo active today. They, along with units of the Congolese army, have recruited thousands of child soldiers.

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hierarchy. The Congolese army (FARDC) has about 130,000 troops (some 30,000 of which are not operational) and functions under a general headquarters and the defense ministry. In reality, the ministry does not have much power or influence. The president has direct control over the elite Republican Guard, which has some 15,000 troops (but fewer of which are operational now because of a recent wave of desertions), which have much better equipment with artillery, tanks, and heavy weapons, and the Maison Militaire. The Maison Militaire, or Military House of the President, led by Gen. Olenga, operates a more informal system of appointments and commands that crisscross and overlap the formal command structure.[294] This dual structure is, however, further divided in practice, as the FARDC has two overlapping structures. On the one hand, the country is divided into 10 military regions, with which regiments and brigades operate. On the other hand, it is also divided into three "defense zones," each with its own operational sectors. The result is that little effective command can be exercised by the chief of staff or the ministry of defense, and little oversight is possible by parliament. The president frequently deals with defections and the neutralization of potential threats, leaving little time for effective defense policy.

The problem at times is not of institutional multiplication but of hiding certain practices or arrangements behind formal institutions, creating a de facto dualism of structures. This was the case, for example, with the failed integration—"mixage"—of the CNDP rebellion into the armed forces in 2009 in eastern Congo. The CNDP was put together by a group of military officers and Rwandan government officials who had felt they lost out during the 2002 political transition in order to keep their political and economic spheres of influence active in Congo.[295] Although the CNDP rebellion officially ended in 2009, it never properly integrated into the army. While officially part of the FARDC, the CNDP ran its parallel command structure within it. CNDP troops were involved in minerals smuggling and illegal taxation, ran their own police, redistributed land away from indigenous groups in the areas they controlled, engaged in serious human rights abuses, and its leaders were immune from prosecution during that period.[296] And although up to 6,000 CNDP had joined the FARDC in 2009, about 1,700 of them remained unintegrated in three "hidden" battalions under Bosco Ntaganda's protection.[297] It is possible that Rwanda negotiated with Kabila to achieve this parallel command structure, in order for it to maintain a sphere of influence in eastern Congo for economic, political, and land reasons. In the 1970s and 1980s, Mobutu used virtually the same strategies, showing a strong tie back to present-day Congo and current Machiavellian strategies.[298]

The problems of the Congolese army are not new. By 2002, it was already a destabilizing collection of units "divided against itself, with Kinyarwanda speakers poised to fight members of other ethnic groups and to fight among themselves according to the Tutsi-Hutu line of cleavage," according to scholar Gerard Prunier. [299] These divisions led to further conflict and

The former Rwanda-backed rebellion CNDP was integrated into the Congolese army on paper, but in reality acted as its own army from 2009 to 2012, flying its own flag and collecting its own taxes separate from the state. This photo was taken in 2010.

Sasha Lezhnev/ Enough Project

mass violence. Many local militias were opposed to the CNDP, "bankrolled by local business and political elites who shared those fears [of being in the CNDP's sphere of influence] and also by the national army, which kept getting routed on the battlefield."[300]

Parallel Structures Create a Veneer of Legitimacy and Competence

The parallel structure strategy is also regularly used in other parts of the government. This tactic helps regimes, including Congo's, achieve two goals: 1) continue the politics of patronage and predation, and 2) make it look like the government is competent. What historian Winsome Leslie noted about the Mobutu regime in the 1980s continues to be largely true today: "What is considered to be simply bureaucratic disorganization and economic mismanagement by external actors such as the [World] Bank and the IMF, is to Zaire's ruling elite a rational policy of 'organized disorganization' designed to maintain the status quo."[301]

Today, this dualism is replicated by Kabila (along with his personal networks) and Congolese Prime Minister Augustin Matata Ponyo. Matata has been prime minister since 2012, having served as finance minister for over two years prior to that. Matata is seen by some as a technocratic leader, intent on pushing through certain reforms. He has been credited with some improvements in fiscal transparency, keeping inflation low, and making civil servant salary payments through bank transfers instead of cash.[302] Those reforms have been helpful to some degree but have not eliminated major corruption.

However, the president and other officials seek to keep reforms limited to non-strategic areas that do not affect the ruling elite. Some argue that Matata is more of a technocratic decoy for the benefits of donors than a real reformer. One observer recently remarked, "The prime minister does not weigh much; he is there for the donors." Either way, the president and senior officials control patronage networks that operate largely in the margins of state institutions, such as the Ministry of Portfolio, which in part oversees state-owned companies. Presidential prerogatives such as the approval by decree of oil concessions and the appointment of the heads of SOEs provide the sovereign foundation to these parallel networks. This is where opaque mining deals take place despite formal transparency requirements, as with the COMIDE deal in 2012 and the large copper and cobalt deal in July 2015 between Gécamines and China Nonferrous Metal Mining Co., neither of which have released any details of the venture.[303] A recent example is Kabila's blocking of Matata's attempted reform of the Congolese bank Banque Internationale Pour L'Afrique Au Congo (BIAC) in early/mid-2016 after BIAC reportedly gave multiple bad loans to Congolese government entities and companies owned by the bank's owner, according to Africa Confidential.[304] Matata attempted to stop Congolese central bank bailout payments to BIAC but Kabila personally intervened and restored the bailout.[305]

These presidential networks echo the "elite networks" run as a parallel state system during the wars of the late 1990s and early 2000s, as documented by the U.N. Group of Experts. The Group noted:

The elite networks ensure the viability of their economic activities through control over the military and other security forces that they use to intimidate, threaten or carry out selected acts of violence. They derive financial benefit through a variety of criminal activities including theft, embezzlement and diversion of 'public' funds, undervaluation of goods and assets, smuggling, false invoicing, non-payment of taxes, kickbacks to public officials and bribery. The elite networks form business companies or joint ventures that are fronts through which members of the networks carry on their respective commercial activities. They draw support for their economic activities through the networks and 'services' (air transport, illegal arms dealing and transactions involving natural resources of the Democratic Republic of Congo) of organized or transnational criminal groups.[306]

Machiavellian Divide and Rule

Another parallel between the Kabila and Mobutu regimes is divide and rule, though Mobutu used this more frequently. Mobutu, who reportedly kept a copy of Machiavelli's The Prince on his nightstand,[307] used a Machiavellian divide and rule strategy frequently throughout his reign and took it to the extreme on occasion. In the 1990s the regime incited violence among the population by using commanders and militias to incite local rivalries and prevent critics from gaining power.[308] According to Will Reno:

Mobutu realized that his best chance for survival lay in also using opposition among factions of his patronage network to neutralize the network's threat to him. … Divide-and-rule strategy [within the army] gave considerable leeway to military organizations to act as private armies. While unable to reward allies directly, Mobutu encouraged units to commit acts of violence against opponents to create a climate of distrust and instigate local conflict… This minimalist strategy fragmented political authority… Cheap and easy to employ, it created a stability based on balancing contending forces without the need for a bureaucratic military organization. It also shows how disorder in Zaire was not anarchy, but rather the result of deliberate strategy designed to preoccupy, destroy and disorganize rivals, rather than seize territory or control institutions, which Mobutu's regime would have been incapable of holding and administering in any case.[309]

In one major case, Mobutu's forces fomented violence in Shaba to undermine a united opposition against the president and continued to profit from the copper and cobalt trades. The strategy was to turn the population against each other, rather than against the central government. Mobutu's presidential division (DSP) under Gen. Nzimbi Ngbale Kongo shipped cobalt from the Shaba province in Katanga to Zambia, in coordination with Mobutu's governor of the province, Kyungu wa Kumwanza.[310] Mobutu benefited from ties between the governor and another loyalist from the area, Nguza Karl-I-Bond, as he used them to deny his rivals access to Shaba's valuable natural resources. Kyungu allegedly enlisted South African militias to protect mines in the area.[311] Kyungu, the army, and their allies also targeted immigrants who shared Tshisekedi's Luba-Kasai origins, seizing their property, distributing it to local supporters and displacing 200,000 people, as Kyungu's militias ethnically cleansed the area of people from neighboring Kasai, doing Mobutu's bidding to undermine Tshisekedi, who was then opposition prime minister.[312] Mobutu's forces also encouraged attacks by "local" people against immigrants of Rwandan origin in North Kivu in the early 1990s.[313] That was one spark for the First Congo War.

5. Ensure that high-level officials benefit from corruption

Key points:

Officials and their partners take full advantage of Congo's natural resource wealth. As people and companies extract all kinds of natural resources, those at the top benefit by having people pass payments up the chain.

Everything is taxed. Authorities interpret sovereignty as a license to tax, imposing a multitude of taxes, fees, and levies, some legal and some illicit, on their citizens. Counting both formal and informal taxes, whether they accrue to the treasury or not, the real tax burden for Congolese is estimated to hover around 55 percent of income.

Workers pay up the chain. Heavy illegal taxation derives from the practice of "rapportage" or the obligation to pay one's superior in exchange for an appointment to a remunerative position. Rapportage reinforces a common understanding of public office as a matter of personal loyalty to the chief rather than accountability to citizens.

A fifth key component of the system is that elites set up a mechanism to receive kickbacks up the chain from different revenue streams that range from the trade in natural resources to unofficial government bribes. While official taxes that count toward the government budget may be low, unofficial taxes, fees, and bribes are very high on virtually every good and service in Congo. Some of these illicit payments stop with the political or military bosses at the provincial level, but some of the more valuable ones, for example payments for minerals, go all the way up to the capital. This system is known as "rapportage" in Congo, i.e. paying portions of the proceeds from corruption to elites in Kinshasa and/or those in provincial capitals. In this system, people are placed in positions of authority from where they can command resources and must return a portion of these resources back up the chain of command to those who appointed them in a continuous chain.

For the trade in natural resources, this often links closely with the military. Military commanders will take control of natural resource trades, either by controlling mines, taxing the trading routes, or through other means, and then pass up a portion of the profits that they receive from the trade to higher commanders and/or politicians who give them cover to operate. There is an implicit deal between the higher-level politicians and military generals in Kinshasa and provincial capitals, and the mid-level officers, who have operational control in resource-rich areas. The deal is that the commanders allow the officers to remain in the resource-rich areas and make money from illicit natural resource trading and extorting the local population, as long as they agree to pass a portion of the money up the chain of command. Another part of the deal is that they will stay loyal to the regime and elites. If the operational officers stop passing funds up or become disloyal, they are reassigned to other non-lucrative areas of Congo.

This practice occurs frequently in mineral-rich areas of eastern Congo or Katanga, whereby colonels, generals, or heads of mining cooperatives stationed in Walikale, Fizi, Katanga, and other mineral-rich areas pass up funds to Kinshasa and/or local governors. According to knowledgeable observers, these commanders send large amounts of cash in U.S. dollars on planes back to Kinshasa for payment to their military and political patrons. This has also been a contested area between Kinshasa elites and those from neighboring countries. For example, according to researchers, Rwanda made between $150 million and $250 million off of the armed group that it sponsored in eastern Congo, the RCD, whereas total RCD revenues were an estimated $280 million.[314]

Tax Everything and Everyone

The Congolese face hundreds of taxes and fees. Many are legal but excessive, based on laws and openly collected, such as the "116 different taxes, fees, licenses and other charges" that apply to the import and export of goods[315] or the 52 taxes, adding up to 55 percent of profits.[316] On top of these, there is also widespread informal or illegal taxation. Some are collected without any legal basis, others are based on taxes that were canceled, others are legal but their collection is the subject of bargaining, and some are pure extortion, usually by members of the security services. Thus it is no surprise that companies report that the real tax rate on profits is about 300 percent if not negotiated down. As the NGO Pact notes, "Industrial mining companies complain of excessive taxes levied on those companies who aim to act in a legal and transparent way."[317] The education sector is another example. When the official education budget was slashed, a wide range of school fees emerged. Schools then transformed into de facto tax collection units on communities, with school fees trickling up to the national government level. Studies have found more than 70 different school fees imposed on students and parents.[318]

When the official education budget was slashed, a wide range of school fees emerged.

Ironically, recent reforms such as decentralization, have worsened the tax burden on the population. Provincial authorities have used their new legal prerogatives to develop revenue agencies and adopt fiscal legislation. By 2009, one year after parliament's adoption of decentralization laws, all provinces had established revenue agencies, and provincial assemblies churned out new tax decrees. In Bas-Congo, for example, the provincial assembly adopted 74 different taxes, and as of 2013, Kinshasa had adopted more than 100 different taxes.[319]

As new taxes were rapidly developing and confusion reigned, the government published a tax nomenclature in 2013 to clarify legal taxes at the provincial and local levels.[320] The nomenclature lists four provincial income taxes, 135 different "common interest" taxes to be shared with municipalities, and 61 province-specific taxes. These taxes reach deeply in the daily lives and activities of the Congolese. For example, there is a tax on charcoal, on the "destruction of expired medicine," or on the "transfer of human cadavers from one province to another." The nomenclature also identifies 53 town-specific taxes, including a head tax and daily taxes on market stalls, 48 municipal taxes and 13 chiefdom or sector taxes. Altogether, not including national taxes, the nomenclature lists some 314 provincial and local taxes. In contrast, in 1998, there were "only" 62 such taxes.

Because of the multiple layers of government, there is significant competition among taxing agencies, with frequent disagreements as to who is entitled to collect what. Double taxation is a common consequence. The government held a meeting about it in 2010 but it seemed to have little impact as the Kinshasa provincial finance minister heard the same complaints about double taxation from the Fédération des Entreprises du Congo (FEC) in 2013.[321] As recently as May 2014, a Congolese business lawyer complained about the "unhealthy competition among different administrative levels who raise the same taxes."[322]

More than half of Congolese citizens' meager income is appropriated by the agents of a state that provides virtually no services in return.

Taxes are not limited to large enterprises. Most often, people at the grassroots level endure the greatest burden. The government budget monitoring agency Observatoire de la Depense Publique (ODEP) gives an idea of the tax burden faced by the estimated 15,000 operators at Kinshasa's central market.[323] There is a "daily tax" of FC200, the business license (average FC25,000/year), a cleanliness tax (FC100/day) although there is little evidence of cleaning services, a possibly illegal "economy tax" (FC500/year), a display tax (FC200/day or week), a "finance tax" (FC300/day or week), a storage tax (FC1,000/daily or weekly for those using storage), and a police "tax" which is apparently a "voluntary" contribution (FC150/day or week). Although payment rates for these taxes vary from 99 percent (daily tax) to 18 percent (police tax), conditions at the market suggest that operators are suffering from such extractions. As a rough estimation, these taxes (far from the only ones these people face) add up to at least $150 per year, in a country with a per capita income of $479.[324]

Because of massive leakage, relatively little of what gets collected in taxes actually makes it to the government treasury. In the trade sector, for example, "69 [of the 116 import-export taxes] do not enter the government budget."[325] Similarly, ODEP estimates that nearly 30 percent of government revenue from the Kinshasa market went missing after it was collected and less than 20 percent of those revenues actually made it into the treasury accounts, meaning that 80 percent disappeared.[326]According to official Congo government data, the national tax rate hovers at around 20 percent of GDP, which is fairly average compared to other countries. Yet, the widespread evidence of leakage suggests the real tax burden must be higher. Batamba Balembu, for example, estimated the loss from 2007 leakages in tax collection at 55 percent of potential budget revenue.[327] And a 2014 survey of Kinshasa traffic police calculated a rate of accrual to official accounts over expected payments of traffic citations of about 4 percent.[328]

Thus, official tax revenues represent between 4 percent and 50 percent of actual "tax" payments. Based on these studies, Englebert and Kasongo estimate that the overall rate of extraction by state agents at both the national and provincial levels amounts in reality to about 55 percent of GDP.[329] In other words, more than half of Congolese citizens' meager income is appropriated by the agents of a state that provides virtually no services in return. A recent study carried out for the United Kingdom development agency Department for International Development (DfID) also found that the overall real tax burden (including all legal and illegal taxes and fees) in eastern Congo amounts annually to 40 percent of the assets of low-income households.[330] In the words of a Kasai-Oriental Catholic nun, "people here have become slaves to taxes."[331]

Pay up the Hierarchy: “Rapportage”

Given the prevailing taxation frenzy and the gap between official state revenue and extraction by state agents, many Congolese state institutions function as rackets. It is common for state agents to privately extract resources from citizens, without any tax justification, simply because positions of authority are understood to be opportunities for private appropriation. It is fairly common that school teachers and university professors demand payments for grades; municipal employees do not deliver birth certificates without a bribe; and judges rule in favor of the best-paying party.

This systematic abuse of authority stems in large part from the practice of rapportage described above. The work of Albert Malukisa and Kristof Titeca on the national traffic police provides stunning illustrations of this practice.[332] The authors show that traffic police have an obligation to impound a daily number of vehicles, usually between five and ten a day, which they must bring to their commander, who will then negotiate with the owner for the vehicle's release. If the negotiations fail, the impounding becomes official, and the owner must jump through multiple, costlier bureaucratic hoops. As a result, the police are more aggressive in the morning, until their chief's quota has been met. The rest of the day, they can provide for themselves, but they lose some leverage over drivers who know that they have already met their rapportage duties and can afford to be less greedy.

As of 2014, payments then moved up the chain of command.[333] Malukisa and Titeca note: “Saturdays are [then] set aside for the commanders to bring envelopes to the colonels at headquarters.[334] One of the captains from the Kinshasa-East police battalion has received the nickname of ‘blood donor’ because of his devotion to these [pay-up] operations to safeguard his position.”[335] Sometimes, local officers bypass the commanders above them and directly bring envelopes to the colonels to avoid further leakage. Malukisa and Titeca estimate the weekly amount of these envelopes at $500 to $800 per commander at the time. Given a monthly salary of about $100, we can see here that rapportage practices can multiply a colonel's income 30-fold at the expense of citizen, minibus, and taxi drivers, who are all victims of extortion.[336]

The traffic impound system was reformed in 2015, but the rapportage captured prior to then is just one example in a litany government and public agencies that Congolese are forced to negotiate and navigate daily.

Kickbacks Across the Government: Rapportage Under Mobutu

Rapportage, the system whereby one is appointed to a position with the expectation of sending payments for illicit extortion up the chain of command, is another parallel to Mobutu. During Mobutu's time, managers of water and electricity parastatal companies would pass on portions of their revenues on a monthly or quarterly basis to the president.[337] Some government ministers and other officials used to visit the president and bring briefcases full of cash to ensure they kept their positions. One minister, for example, reportedly brought $1 million in cash to Mobutu's wife Bobi Ladawa in 1996, and he was subsequently promoted to deputy prime minister.[338]

This was part of the system of Mobutu's patronage network, which worked both to secure loyal allies throughout the government but also to collect rents. As Kennes notes, “The Zairian state transformed gradually into a conglomerate of personal and patronage networks.”[339] Mobutu doled out funds strategically to various loyalists through informal mechanisms, instead of to state institutions. According to Kennes, there were different kinds of patrons, “on the one hand, the legitimate, redistributing example, who necessarily command[ed] a large informal clientele network, and

A system of rapportage runs throughout Congo. As people and companies extract all kinds of natural resources, those at the top benefit by having people pass payments up the chain.

Sasha Lezhnev/ Enough Project

on the other, the pure plunderer, appointed by the president, whose network [was] limited to patrons at a lower level but who are members of the governing elite."[340]

Official Mining Taxes Less, but Bribes Still Prevalent

A related strategy has been to place fairly low official taxes on companies but in practice extract hundreds of informal payments in order for the company to secure concessions and continue operating. In the oil sector, the effective tax rate (government revenue from the sector divided by the value of output) is a high 56 percent.[341] In contrast, the effective tax rate on mining companies was only 15.8 percent in 2014, small compared with the effective tax rate of over 50 percent on artisanal miners.[342] Of the $1.77 billion earned from mining in 2014, $1.14 billion made it to the treasury. State-owned enterprises, which are both production partners and tax collectors kept $280 million (mostly copper-cobalt giant Gécamines, with $265 million). Katanga provincial authorities collected and kept $162 million of their own taxes, while multiple national taxing agencies—Directorate General of Customs and Excise (DGDA), Directorate General of Taxes (DGRAD), and Directorate General of Taxes (DGI)—retained a total of $84 million for their own functioning costs; $54 million accrued to "other beneficiaries."[343]

Of the $1.14 billion that accrued to the budget in 2014, the mining sector's net contribution was $760 million, while oil's net contribution was $380 million, down from $445 million in 2013 because of declining oil prices.[344] While mining revenue is twice that of oil, the value of mining output is more than 10 times that of oil. This in part suggests the milder tax treatment of industrial mining by the government, in part because the 2002 Mining Code is lenient, especially in the first years of exploitation.[345]

What the government treasury does not officially collect, individual officials often do. Publications of the Congolese Chamber of Commerce, the Fédération des Entreprises du Congo (FEC), complain of allegedly endless requests for extra payments by state agents. World Bank data also suggests that 57 percent of small- to medium-sized businesses operating in Congo reported experiencing at least one bribe request in

2013, down from 69 percent in 2006 but still very high, and well above the continental average. In 51 percent of public transactions, a "gift" or informal payment was requested (64 percent in 2006). On average, the value of the gift necessary to secure a government contract amounted to 4 percent of the contract value (8 percent in 2006).[346]

Moreover, some businesses are also believed to allocate considerable resources to buy protection from politicians and the military. For example, Global Witness has alleged that the British oil company SOCO made illicit payments to abusive, corrupt army commanders and government officials, including 30 years worth of salary to one commander.[347] Furthermore, SOCO deputy CEO Roger Cagle is on record saying that, "We can't tell the army to go and kiss off."[348] SOCO also said that it had never denied paying for the work of the Congolese army in "providing a security escort," but it added that, "We strongly refute any suggestion that this funding was in any way improper or connected with alleged acts of intimidation or violence,"[349] and it later said an independent legal review done by Clifford Chance LLP found the allegations were "substantially inaccurate," though it said that the firm had not seen the information compiled by Global Witness.[350]

Opaque contracting

Finally, the regime also has opaque contracting processes that may benefit government officials who control contracting companies. Contracting in construction, mining operations, telecoms, and other sectors is well known as a way for officials to skim money, as 57 percent of OECD bribery cases prosecuted related to obtaining government contracts.[351] As a former corporate officer at a mining company in Congo told Enough, "Kabila learned a lesson from the asset flipping: don't use the profits and losses side of the business, use the operating costs. They get companies to hire friendly contractors to 'big people'—the Kabila family especially—and inflate contracts by 20 percent or more. That's the new game." Various sectors appear to have opaque contracting processes in Congo. A Media Map Project report notes that, "The advertising sector is completely disorganized and is characterized by unregulated competition and an opaque contracting system. Advertising revenue is very often seized by the owner of the media or by the staff members who negotiated the contract."[352] A former mining executive for a different company that operated in Congo told Enough, "We were told on two different occasions to use a certain mining contractor that was not the best one according to price and performance. When we asked why, we were told that the company was controlled by the president's family." Global Witness has analyzed the opaque contracting system regarding implementation of the large China-Congo Sicomines contract:

Any contractor needs to be managed and overseen to make sure they deliver on the promises and that their natural inclination to boost profits by inflating costs is reigned in. It is not clear how this challenge will be managed in the Congo deal. Indeed, the contract risks being on a "cost-plus" basis whereby a contractor is paid all its allowed expenses, typically up to a set limit, as well as an additional payment allowing them to make a profit. However, cost-plus contracts have a poor reputation for value for money and for incentivising private sector partners to be efficient and economical. Moreover, it is in the financial interest of the Chinese construction partners to inflate costs. If the infrastructure costs were inflated, more of the mineral resources would be required to repay the debt. This, in turn, could lead to additional mineral resources being granted so that the joint venture meets the guaranteed internal rate of return. At the moment, tenders are run for three elements within each infrastructure project – feasibility study, construction and final inspection. These tender processes are all launched by the Agence Congolaise des Grands Travaux (the Congolese

Agency for Large-scale Works or ACGT) which was created in November 2008 specifically for the Congo-China deal and is overseen by the Ministry of Infrastructure. After the ACGT launches the tenders, the Public Roads and Drainage Office scrutinises the responses. An interdepartmental commission, including representatives from the Prime Minister's Office, Presidency and Ministries, then makes the final decision on who should be awarded the contract. A clause in the April 2008 agreement states that only companies affiliated to the Chinese parties to the deal are able to tender for the construction projects.[353]

6. Personally profit from natural resource deals, underspend on services, and hijack reforms

Key points:

The regime wants to appear legitimate. To access aid and the western banking system necessary for international commercial deals, the regime strives to be in the relative good graces of the international community, so it is not labeled a pariah or put on comprehensive sanctions lists.

The anti-corruption struggle is largely fake. The Kabila government has implemented EITI and stated a "zero tolerance" policy for corruption. But one of the main vehicles for corruption, state-owned and shell companies, remain opaque and no senior official has been prosecuted for corruption.

Elites and foreign business partners collaborate to sell assets and profit. The Kabila regime has sold off enormous natural resource concessions but at fire-sale prices, which foreign entities have profited heavily from but the Congolese treasury has lost out on.

The government hardly spends on services. The regime's priority is patronage, not services for the population. Government spending on public health as well as primary and secondary education is low, but high on opaque items such as the president's cabinet. The budget process is fairly transparent, but the government severely deviates from its budget, a trend that is worsening.

A sixth rule of Congo's kleptocratic system is to appear to undertake reforms because it allows the country to not be an international pariah and avoid sanctions. As a result of not being a pariah state such as Zimbabwe, North Korea, or Sudan, Congolese state elites and some key banks can still access international banking systems, aid, and several global markets. It still has trouble accessing the international debt market and there is additional scrutiny in foreign countries on opening bank accounts. That aside, not being a pariah continues to net regime elites in Congo access to the global banking system, as all its commercial deals are done in U.S. dollars. It also allows the country access to foreign aid, which is beneficial. Successive regimes in Congo have mastered the art of significantly manipulating reforms of the economic, judicial, and security sectors such that they in fact use the reforms to target their opponents and not go after their own elites or allies. The Extractive Industries Transparency Initiative (EITI) does not require audits or ownership disclosures of the state-owned or shell companies where the regime probably profits heavily. Finally, "zero tolerance" anti-corruption efforts only are used against regime opponents.

Mining companies' payments are published, but the business ownership and what ends up happening with the money are not disclosed

The Kabila regime's introduction of financial transparency reforms for the mining and oil sectors has increased information available to the public on how much companies are paying in taxes to the government, an important first step toward accountability. The data inside EITI reports in Congo over the past four years stand in stunning contrast to the near complete opacity that prevailed for decades.[354] However, matching payments from companies with receipts from the government is only a very partial step towards effective transparency. The Congolese government has so far shown little enthusiasm for taking the next steps. Specifically, what happens to payments that do not directly accrue to the treasury? What does the regime spend its budget on? And who owns the key companies that the regime and its business allies make their real money from?

A very large amount of government mining revenue, $580 million, or 27.8 percent of all mining revenue, never made it to the treasury in 2014.[355] Some of these funds may have been allocated to the functioning costs of government agencies, but there is no information or publicly available audits on the accounts of these agencies. What happened, for example, to the $265 million that stayed with Gécamines, a company that claims insolvency? According to Bloomberg correspondent Michael Kavanagh, Gécamines is "the biggest black box in all of Congo."[356] Gécamines has liabilities and it might allocate resources to payments of ex-employees, pensions, and social charges, but there is little evidence that this is the case on a large scale. Where do these funds go once inside Gécamines? How are they used? The fact is that President Kabila appoints all directors of state-owned enterprises, just as King Leopold did.

Officials and elites also appear to make money from non-transparent government agencies. The three main Congolese tax agencies retain a proportion of the funds they raise from the sector: $10 million for the DGI, $42 million for the DGDA, and $33 million for the DGRAD. These agencies collect funds from companies, but there is no indication as to where these funds go. Nor is it clear why they would need them since they already receive allocations for their functioning costs and salaries from the regular government budget. In the 2015 budget, government payments to the DGI amounted to $500 million and the DGDA received about $80 million, and payments to the DGRAD were about $55 million. Nor is there any information on the internal functioning and finances of the Office Congolais de Contrôle (OCC), the "Comité de Suivi," and other agencies receiving payments. Where do the funds in these offices end up? The Fonds Social de la République[357] also show up as a common destination of payments not accruing to the treasury. It is a social intervention fund but its management is opaque.

President Kabila appoints all directors of state-owned enterprises, just as King Leopold did.

State-owned enterprises in Congo are even more opaque and are in a state of affairs that can facilitate corruption. They generate the most money. Fourteen state-owned enterprises (SOEs) receive payments from foreign companies as partners in joint ventures. Congolese industries are no longer under the monopoly control of the state, as most of them were under Mobutu (one exception was SOMINKI, which was 70 percent owned by Belgian interests until 1997). However, the state is nonetheless thoroughly present as a producer (in addition to its role as regulator, property rights adjudicator, etc.), either through SOEs active in both oil and mining, or as a junior partner in joint ventures with foreign companies. SOEs are partners in ten oil joint ventures and as many as 47 mining joint ventures. Tables 2 and 3 list the principal ones.

Table 2. State Participation in the Oil Sector (main companies)

Name	State participation
COHYDRO	100 percent
KINREX	15 percent (Cohydro)
LIREX	15 percent (Cohydro)
ENERGULF	10 percent (Cohydro)
SOCO	15 percent (Cohydro)
Caprikat	15 percent
Foxwhelp	15 percent

Source: EITI 2014.

Table 3 State Participation in the Mining SectoState-Controlled Companies

Name	Sector	State participation
COMINIERE	Tin	90 percent (10 percent INSS)
Gécamines	Copper/cobalt	100 percent
MIBA	Diamonds	80 percent (20 percent Mwana Africa)
SAKIMA	Tin	99.94 percent; 0.06 (Gécamines)
SCMK/Mn	Manganese	100 percent
SIMCO	Real Estate	99 percent (Gécamines); 1 percent (SCMK-Mn)
SODIMICO	Copper/cobalt	100 percent
SOKIMO	Gold	100 percent
SACIM	Diamond	50 percent

Main Joint Ventures

Name	Sector	State participation
Boss Mining	Copper/cobalt	30 percent (Gécamines)
Kamoto Copper Company	Copper/cobalt	20 percent (Gécamines)
Kibali Gold Mine	Gold	10 percent (Sokimo)
Kipushi Corporation	Copper/cobalt	32 percent (Gécamines)
Ruashi Mining (RUMI)	Copper/cobalt	25 percent (Gécamines)
SICOMINES	Copper/cobalt	32 percent (Gécamines)
SODIMIKA	Copper/cobalt	30 percent (Sodimico)
STL	Copper/cobalt	23 percent (Gécamines)
Tenke Fungurume Mining[358]	Copper/cobalt	20 percent (Gécamines)

SOEs appear to accrue significant profit, but they are not transparent and do not publish annual financial reports or audits, so it is very difficult to tell what is happening behind closed doors. It is hard to estimate the SOEs' total revenues, but their total EITI payments in 2013 amounted to $849 million. If one prorates each company's payment by the percentage ownership of the state (or the relevant SOE), the state's share of their total tax bill is $217 million. If one assumes the overall tax rate of the mining sector is 13 percent, then the state companies' share of total output value is about $1.67 billion. In the case of Gécamines, Kavanagh estimates that it must make "hundreds of millions of dollars in partnership revenue."[359] However, execution figures for the 2013 government budget indicate a paltry $369,000 of total dividends from Gécamines. Total dividends from all state enterprises and joint ventures, or sociétés d'économie mixte, in that budget amounted to $8.5 million.

Several companies operating in Congo are owned by multiple layers of other companies, making their real owners—those who benefit from the natural resource trade—hidden.

Another weakness of the EITI transparency system is that key shell companies are not identified, as EITI does not require that companies fully reveal their ownership structure. Several companies operating in Congo are owned by multiple layers of other companies, making their real owners—those who benefit from the natural resource trade—hidden. Altogether, out of 105 companies identified as of sufficient size and active in Congolese mining by EITI in 2014, at least 33 lack sufficient information on real ownership.[360] The question that arises from this opaque ownership structure is whether some Congolese politicians might not actually be among the hidden owners and benefit thereby personally from the allocation of state assets to these companies.

Officials force state-owned companies to sell assets at a deep discount, flip them, and at times receive large bribes

Another way that the regime-connected elites can get around EITI reforms is to use state-owned companies. Officials get the SOEs to sell natural resource assets at fire-sale prices in order to have those assets be sold such that personal profits come back to them. President Kabila personally appoints the heads of these state-owned companies and thus exercises direct presidential control over them. These companies have controlled vast mining concessions across Congo, from Gécamines (copper and cobalt) to Sakima (tin) to several others, though most of these assets have been sold off by the Kabila regime. As a result, a key way foreign companies can operate in Congo is to buy concessions or shares of them from the SOEs. The SOEs' presidentially-appointed directors have often sold the assets to companies with non-transparent beneficial ownership structures, including some shell companies. As the U.S. Department of Justice's guilty plea agreement for Och-Ziff Africa Management GP, LLC suggests, regime elites can profit from these deals through payments relating to the transactions of the SOEs.[361] Because of their presidential appointments, the directors of the state-owned companies are in a relative dependence with Kabila, which make them vulnerable to presidential demands.

Some experts believe this method is a way for the ruling elite to acquire rapid and discrete cash, possibly in order to prepare for elections or to motivate members of parliament to vote for one law or another. In other cases, it might involve selling the assets to a company in which a member of the political elite might have business interests, including co-ownership. This is not usually verifiable because many such companies are registered in countries where this information need not be released. But it often seems to be the only explanation that could make sense of transactions that are otherwise rather irrational and against the best interests of the state and its companies.

There have been multiple deals made between SOEs and companies in Gertler's Fleurette Group. The Israeli billionaire is involved at many levels in Congo's economy: sales, joint ventures with the state, and joint ventures with other producers. His companies conduct transactions, exploration, and production, across various minerals and oil sectors. Fleurette Group is registered in Gibraltar and is the parent company of hundreds of companies incorporated around the world "in offshore tax havens such as the British Virgin Islands," which does not require revealing the identity of owners.[362] As of 2013, Fleurette reportedly participated in at least 60 holdings in Congo.[363]

Gertler, whose name appears 200 times in the leaked Panama Papers (which describe offshore entities) and whom the law firm Mossack Fonseca stopped doing business with due to "alleged investigations into his companies,"[364] has been particularly controversial in Congolese mining and oil. The U.S. hedge fund Och-Ziff, which had loaned Gertler over $100 million, plead guilty in a settlement with the U.S. Department of Justice in September 2016 for Foreign Corrupt Practices Act violations. The plea agreement states that its partners, including Gertler according to sources familiar with the case, paid $100 million in bribes to Congolese officials in order to obtain access to natural resource concessions, particularly copper and cobalt.[365] Gertler and his parent company Fleurette Group deny that they were involved in corruption.[366] In the United Kingdom, the Serious Fraud Office is currently investigating the company Eurasian Natural Resources Corporation Ltd. (ENRC), which purchased mining assets from Gertler-controlled companies, for allegations of corruption, and critics have questioned why ENRC was willing to pay high prices for a Gertler-controlled mining asset.[367] Gertler asserts that he, in fact, deserves the Nobel Prize for being one of Congo's "greatest benefactors," that his companies produce minerals and do not simply flip assets, that the Fleurette Group has invested over $1.5 billion in Congo, and that it is one of Congo's biggest taxpayers.[368]

Gertler's companies have found themselves several times in deals whereby they have acquired cheap mining assets from state-owned companies, which they have then been able to resell to other companies or even to the state itself for large profits. For example, Gertler sold the oil company Nessergy for a 29,900% profit after a series of opaque transactions, which Global Witness accused the Congolese government of breaking its own laws.[369] The Fleurette Group said this transaction was legitimate because of "new oil finds in the region, higher oil prices, and the advent of the common-interest zone, which it says it helped create."[370] In another example, in 2009, Société Minière de Kabolela et Kipese (SMKK) was half-owned by Gécamines and half-owned by ENRC, yet ENRC wanted to acquire all of it. It made a deal with a company owned by a Gertler family trust, Emerald Star Enterprises Ltd. (registered in the British Virgin Islands) and paid it $25 million for an option to buy

It is hard to imagine why the state would engage in such losing deals short of either incompetence or the possibility that its elites benefit from these deals.

Gécamines' share despite the fact that Emerald did not own it. In February 2010, Gécamines sold its shares to Emerald Star for $15 million. ENRC then bought it back four months later for $50 million, having paid a total of $75 million for what Gécamines had valued at $15 million (for the Congolese state).[371] It is hard to imagine why the state would engage in such losing deals short of either incompetence or the possibility that its elites benefit from these deals. Global Witness has alleged many similar examples worth billions of dollars.[372]

Table 4. Fleurette/Gertler Extractive Companies currently operating in the DRC[373]

Name	Sector	Ownership
Foxwhelp (Oil of DR Congo)	Oil (Lake Albert)	85 percent (15 percent state)
Caprikat (Oil of DR Congo)	Oil (Lake Albert)	85 percent (15 percent state)
Mutanda Mining (MUMI)	Copper /Cobalt	31 percent (69 percent Glencore)
Katanga Mining	Copper/Cobalt	Minority stake (publicly listed co.)
Moku Beverendi	Gold	65 percent
Orama	Manganese	100 percent

While EITI has given significant new data to the public about mining in Congo, mine deals continue to skirt transparency in several key ways in Congo. Officially, foreign investors must now follow the 2002 Mining Code and apply to the state for exploration and/or exploitation rights over mining concessions. However, the vast majority of Congo's mining concessions are either being mined already or are owned on paper by SOEs or other large dealers who hold on to the mines without significantly investing in them in hopes that foreign investors will come along.

As a result, SOEs have become the main brokers of mining deals, though the SOE-foreign deals do not go through the transparent, open bidding processes as they should per international best practice on tendering mining concessions.[374] As one high-level administrator said, "[W]hen investors came, we first sent them to the mines registry. But they came back and said they wanted well-known deposits, so we told them to get in touch with Gécamines and negotiate a partnership."[375] In such cases, the SOE provides little more than the concession and geological maps. SOEs have signed over 100 such deals since 2002.[376] Furthermore, by creating new joint ventures with SOEs, investors are able to further hide the ownership structure of their joint venture and to reduce effective transparency requirements.

The financial and governance results of Gécamines suggest that it is indeed used more to extract and redistribute resources from its permits than to promote actual production and development. According to the Natural Resource Governance Institute, "most of the company's revenues come from awarding exploitation licenses and managing its portfolio of shares in the mining sector. … Gécamines received a score of 29/100 on [SOE] indicators in the 2013 Resource Governance Index, signifying 'failing governance.'"[377] Gécamines retains the power to select company partners for the projects in its portfolio, and contracts are awarded without a transparent, open bidding process, leading, as NRGI notes, "to cases of sub-optimal selection of partners and intermediary companies making huge profits by flipping their assets to major international players."[378] Despite all of these opportunities for revenue, Gécamines directors claim that it is an estimated $1.6 billion in debt,[379] leaving one to wonder where the revenues have actually gone.

Gécamines chairman Albert Yuma tells a different story: "We inherited in 2010 a bankrupt company. The government was committed to take into account the company's liabilities, but did not. And bankers who were to accompany us did not get government guarantees. But we have prepared the future by recovering assets that serve us today. We have done a very good job."[380] In response to criticisms about the company's opaque dealings, Yuma denies the company was involved in any wrongdoing. He told The

Independent, "Seriously talking? I don't care about the criticism from NGOs. The things we have done were good for the company at the time."[381]

Even so, opaque deals and asset discounting practices have cost the Congolese state and people dearly. In 2013, the Africa Progress Panel estimated the losses from such practices at about $1.36 billion in 2010–2012.[382] Earlier, British Member of Parliament Eric Joyce identified a loss of $5.5 billion over 2008–2011 from similar deals.[383] As former Kabila minister and now opposition politician Olivier Kamitatu said, "The state today is the property of certain individuals."[384] The Economist concurs: "Mr. Kabila's allies control the state-owned companies."[385]

The Inga III hydroelectric dam project on the Congo River, which would be the world's largest dam according to electricity production if it goes forward, is at risk of following a similar path.[386] Particularly now during the commodity price slump, the Kabila regime is very actively searching for foreign currency reserves, and Inga III could provide a major source. In 2014 the World Bank estimated the total project cost of the Grand Inga dam to be $50 billion to $80 billion, however later estimates ballooned to $100 billion.[387] The Inga III dam project entails the completion of a third dam and the third stage out of eight in total.[388] While environmental activists have criticized the project's threatened displacement of 60,000 people and destruction of the local eco-system,[389] "the real elephant in the room is corruption," according to a an article in The Guardian.[390] Inga III would bring in a major influx of foreign contractors, which critics fear would "cause widespread malpractices over contracts and tender," since the country already struggles with corruption.[391] South Africa is currently slated to be closely involved in the deal, as much of the dam's electricity is planned to be transferred to South Africa.[392] Corruption already undermined the development goals of Inga I and Inga II dams.[393]

These concerns are heightened because "the parties to Inga III offer no guarantee to combat corruption, push for transparency and assure good governance,"[394] according to local civil society groups. The fact that Inga III is a highly centralized project with minimal oversight and managed directly by a special presidential agency exacerbates these concerns.[395] Moyagabo Maake of the Institute for Democracy in South Africa said that "The various foreign investors plying the project with funding could reduce it to a minefield of corruption in

The Inga III hydroelectric dam project on the Congo River, which would be the world's largest dam if it goes forward, is at risk of following a similar path of corruption.

Alaindg/Wikimedia

a state infamous for state and political manipulation of contracts and tenders."[396] Many of these concerns were outlined by a recent World Bank report. The World Bank is providing a Technical Assistance Loan for feasibility studies on Inga III, and it is charged with monitoring corruption during the execution process.[397] Its most recent report from June 2016 assesses both "Political and Governance" and "Institutional Capacity for implementation and sustainability" to be high-risk at Inga III.[398] According to the criteria, the project has an absence/lack of enforcement of "anti-corruption and public sector ethics regulations."[399] Politicians involved in the project are also "suspected of fraud, corruption, conflict of interest or other ethical misconduct," according to the Bank report, and similar projects have resulted in "large scale high-level corruption."[400] Moreover, the assessment indicates that "oversight and control mechanisms are non-existent or weak, and serious fraud and corruption are pervasive in the implementing agencies."[401] According to the head of Office for the Development and Promotion of the Grand Inga Project, Bruno Kapandji, two Spanish consortiums and one Chinese consortium remain in the bidding process for developing the dam.[402]

Furthermore, the gradual rise of China's involvement in Congo's economy has increased the overall lack of transparency. China has been Congo's largest direct export market since 2008,[403] and the majority of large-scale mining concessions in Congo are now controlled by Chinese companies, particularly copper and cobalt.[404]

The gradual rise of China's involvement in Congo's economy has increased the overall lack of transparency.

As of 2008, at least 60 out of Katanga's 75 processing plants were Chinese-owned.[405] Chinese FDI in Congo has increased significantly since then. In January 2016, Chinese mining project COMMUS announced a new $578 million investment while other companies such as Glencore and ERG were scaling back,[406] in addition to the China Molybdenum purchase of the enormous TFM mine in May 2016. China does not have an equivalent of the U.S. Foreign Corrupt Practices Act that forbids U.S. companies from paying bribes to foreign officials, which is worrying for Congo. While some roads and a national stadium have been built, civil society has already raised concerns about several roads and other projects supposed to be financed by China that have not been built (see below).

Officials pass a government budget but ignore it and provide very few public services

As the Congolese government is proud to announce, there have been advances over the last few years in terms of budget and mining transparency in Congo, yet the reality is that these do not amount to significant progress overall. While the country scored a measly 1/100 on the Open Budget Survey in 2008, it improved to 39/100 by 2015.[407] And after EITI initially rejected Congo for non-compliance, EITI finally certified it as compliant in 2013. The Carter Center then created a registry to publish many mining contracts.[408] The prime minister initiated direct deposits of salaries into bank accounts for large segments of the public sector, a new public finance law was enacted in 2010 which, according to DFID, "provides a comprehensive and ambitious legal framework for the management of public finances, including deconcentration to line ministries, a shift to program budgeting and medium term budgeting and a strong emphasis on budget transparency and accountability."[409]

However, upon closer scrutiny, these achievements remain quite limited and at times more decorative than real. The transparency of the budget process hardly matters to the extent that the formal budget has very little bearing on the reality of government spending, and it appears that budget transparency has become worse. Furthermore, a budget openness score of 39/100 is still considered only "minimal" by the Open Budget Survey. It reflects progress in terms of the formulation and approval of the budget, but not in terms of execution or oversight. And while the payments of mining companies match the receipts of government agencies in the latest EITI report, it is not clear what happens to many of these payments afterwards (or to the profits of state-owned companies). Finally, while some laws have been passed to clarify fiscal policy, they deal with only a limited formal side of the Congolese system, as described earlier, and seem to leave largely untouched the practices of more informal networks around the presidency.

Focusing on 2015, total expenditure in the budget approved by Parliament amounted to almost $8.2 billion.[410] By the end of the year, however, actual expenditure amounted to less than $4.8 billion, almost all of it from domestic sources, as the government seems to routinely overestimate external resources in its budget. These observations reveal a first finding regarding the budget: its rate of execution falls well short, at some 58 percent of budgeted amounts.

Second, the government severely underspends on services for the population and greatly overspends on the offices of its high-level officials. The president's cabinet alone (not including many institutions related to the presidency such as the presidential guard, etc.) received $88 million (all figures are in U.S. dollars), despite only $35 million budgeted. Prime Minister Matata Ponyo's cabinet received $31 million instead of the budgeted $12 million, and the presidential farm at Nsele, which remains an economic failure,[411] received $10 million instead of the $830,000 budgeted. In contrast, the National Independent Electoral Commission (CENI) only received $69 million of its $244 million budget (and hence the government largely engineered its own incapacity to deliver elections on time); the technical committee of support for decentralization received less than 3 percent of the funds budgeted for it ($16,000 of its $579,000 budget); and the National Citizen Center for Ethics (CNEC) did not see a single dime of its $227,000 allocation.[412]

The government severely underspends on services for the population and greatly overspends on the offices of its high-level officials.

Moreover, the Ministry of Gender and Family received just 12 percent of its budget; provinces only received 23 percent of their constitutional entitlements; the Ministry of Rural Development 40 percent; Public Health 61 percent; Agriculture 67 percent and Justice 68 percent. The primary and secondary education sector received 86 percent; this is still a relatively large figure that mostly capture salaries—yet an audit carried out for the World Bank in 2010 revealed that only 58 percent of teacher salaries paid in November 2008 were deemed "eligible."[413]

As a result, spending on education and health is very low, around half of what it is on average in sub-Saharan Africa (just above 3 percent of GDP compared with the sub-Saharan Africa average rate of around 6 percent).[414] When taking all poverty-reduction spending into account, including agriculture and rural development spending as well, Congo's spending has hovered around 6 percent of GDP, much lower than the average.[415] For example, neighboring Rwanda spends 12 percent of its GDP on these priority service sectors and Mozambique spends 15 percent.[416] And spending was set to worsen because of commodity price drops, and the government announced it would cut spending by 22 percent overall in 2016.[417] Although public investment has climbed to 5 percent of GDP[418] (largely thanks to donors and Chinese contracts), the execution rate of government capital spending was still no more than 2.6 percent in 2014.[419] The latest IMF consultations confirmed Congo is not spending enough on social and other public investments: "DRC still faces many challenges in achieving broad-based and more inclusive growth. These include … allowing adequate investment in social sectors… ."[420] For example, the government education budget fell from $160 to $4.50 per pupil between 1982 and 2002.[421] In 2010, only 11.5 percent of domestically financed spending was allocated to priority sectors.[422]

The government uses many tricks to deviate from the official budget. "Emergency expenditures," which allow ministries to bypass budgetary guidelines, accounted for 33 percent of government spending in 2011, while another 14 percent was simply "managed outside the [expenditure] chain."[423] In the words of a local NGO, "normally, if you exceed the budgeted amount, the computer refuses. But you can go 'off chain.' You instruct the Ministry of Budget to execute. You go to the Ordonateur des Dépenses and you order the bank to pay, de facto removing funds from other line items. You invoke emergency procedures so as not to follow the process." Many payments also fail to be properly recorded. According to the Cour des Comptes, out of total domestic revenue of about $4.6 billion in 2014, public accountant records verifying payments were only available for about $2.8 billion worth of expenses.[424]

"Emergency expenditures," which allow ministries to bypass budgetary guidelines, accounted for 33 percent of government spending in 2011.

Despite appearances of greater transparency, budgetary cheating has worsened. A recent report by the Cour des Comptes indicated that as many as 191 public projects were listed in the budget execution data but had not been part of the original approved budget for a total amount of about $1 billion or nearly a quarter of government spending.[425] According to one media report, "mafia network" was discovered in 2015 that allegedly siphoned off $11.8 million in salaries from the ministries of higher education, health, and secondary education.[426] In addition, the large new government office building on Boulevard du 30 Juin in Kinshasa, the purchase of the two airplanes for the new Congo Airways company, and the Bukanga Lonzo Agricultural Project appear neither in the original budget nor in execution figures. In other words, these expenses, which are likely considerable, appear to have been managed entirely off budget with no oversight or accountability despite their high public profile.

Sadly, similar if not worse practices exist at the provincial level, where decentralization reforms had hoped to improve transparency and accountability. Provinces do not always adopt budgets. Equateur went without one from 2010 to 2014 and Bandudu did not have one for 2012.[427] When budgets are adopted, they also tend to differ greatly from actual revenue and spending. In Bas-Congo, the 2012 budget indicated $20 million for equipment and $58 million for construction and rehabilitation, but the actual expenditures on these two items were respectively $4.3 million and $2.4 million. In Orientale, 5 percent of budget spent on capital was allocated to the partial implementation of 20 out of 70 planned projects. A project for the provision of school benches, blackboards and lockers had an execution rate of 0.27 percent.[428] For 2009-10, the Cour des Comptes noted "numerous anomalies" and "unjustified expenses" in Bandundu, where 90 percent of functioning costs go to the governor's office, and "irregular financial advantages" are granted to members of the provincial assembly, while provincial expenses face "recurrent absence of receipts," and public investments lack contracts and evidence of completion. Very similar trends were true in provinces across the country.[429]

Provincial administrations appear to be using a significant portion of their resources for their own benefit, not that of the local populations. In Bandundu, 100 percent of personnel expenses went to the governor's cabinet. All of the $18 million received by Bas-Congo in retrocession went to the functioning costs of the provincial cabinet and assembly.[430] In contrast, the Bas-Congo provincial commission for investments and development received 0.02 percent (less than $5,000). Similarly, fertilizer allocations for the provincial ministry of agriculture were spent at about 16 percent of budget while the governor's communications budget was overspent by 1,253 percent, and his publicity budget by 3,119 percent.[431] Similar trends were true in many other provinces.[432]

Regarding corruption, Congo's legal framework on anti-corruption is good on paper, but it is very poorly and selectively implemented in practice. As the NGO Global Integrity notes, "There has never been a serious and independent investigation against senior level politicians and/or civil servants, especially those close to the ruling party."[433] President Kabila has declared a strong "commitment to fight corruption" on numerous occasions but to little effect. In 2009, Kabila launched a "zero tolerance" campaign against corruption, which led to the creation of a financial intelligence unit to fight money laundering, but it has no funding.[434] Then in June 2015, Kabila sent a list of senior government officials accused of corruption to Congo's attorney general, "demonstrating a commitment to root out corruption," according to Information Minister Lambert Mende.[435] However, extremely few officials have actually been prosecuted or convicted in courts. In fact, the government's anti-corruption efforts have reportedly been manipulated against governors that the regime has battled against.[436] There was a Commission on Ethics and the Fight against Corruption established in 2004, but it is no longer functioning.[437]

Congo's legal framework on anti-corruption is good on paper, but it is very poorly and selectively implemented in practice.

Fiscal asphyxiation sabotages the state, starves the judiciary, and cripples other public sectors

While these fiscal practices suggest a contempt for transparency and a propensity by some state agents to use public resources for their own benefit, they also have far reaching consequences in terms of welfare, governance, reform, and even violence. When the government fails to allocate resources to line ministries, institutions, or programs, it undermines its own capacity and governance by asphyxiating their functioning.

The underspending on the military directly affects insecurity, thereby showing the nexus of corruption and conflict. Although the Ministry of Defense is not too badly treated with a 79 percent budget execution, its overall budget is still limited as discussed above. The official neglect of the military leads to low salaries, bad working conditions, and poor equipment, all of which make it improbable that the FARDC could successfully defeat the multiple insurgencies in the east. In this manner, budgetary recklessness and lack of transparency by the government in Kinshasa affects the degree of violence faced by citizens in the east. For example, government spent one-tenth of one percent of its planned $700 million stabilization program in the east in 2013.[438] Moreover, faced with poverty, the military itself produces violence as it feeds off local populations. In sum, when President Kabila or Minister Lambert Mendé appropriate resources beyond their budget, people die.

The justice, education, and other public systems are also highly negatively affected by the under-resourcing, which incentivizes corruption and the passing of payments up the chain to Kinshasa. With an already meager judiciary budget spent at less than 50 percent its budget allocation, courts and tribunals go unstaffed and unequipped, and justice goes undelivered. As a result, magistrates are highly vulnerable to corruption. Worse, the perpetrators of violent crimes often go unpunished, creating a de facto system of impunity. The International Center for Transitional Justice notes that, "The Congolese state has not provided the essential resources needed by military courts to undertake key actions in the investigation of cases, including paying for office supplies, transport, and communication … The lack of organizational oversight in the national judiciary has undermined professional competence and the quality of performance."[439] Here again, the corruption of the central government lets perpetrators run free. Moreover, the lack of access to justice by citizens at the local level (either because of the need to bribe judges or because of the lack of actual courts in many locations) prevents them from peacefully adjudicating disputes and from contesting government actions. While people cannot use justice to challenge state abuses, the state in turn uses its corrupt justice system to repress individual freedoms, as in the case of the detention of Filimbi activists.[440]

Corrupt budget allocations penalize social sectors and violate human rights.

Corrupt budget allocations also penalize social sectors and violate human rights. In 2014, the government acknowledged that it only spent 45 percent of its budget allocated for improving the social conditions of Congolese populations. Moreover, although this figure included expenditures on the rehabilitation of schools, power lines, and basic medicines, it also covered agricultural material for the government's Bukanga Lonzo agricultural project, payment of bank fees, and the purchase of office supplies.[441] An ODEP report on the education sector found that the government only built or renovated 176 schools out of the 1,000 it had promised.[442] With social sectors neglected, people lack access to health care and education, which violates their constitutional rights.[443] For some people, these conditions incentivize them to join armed groups.

As a result, the "help yourselves" theme extends to government agencies—i.e. they go and collect their own off-budget, often illicit "taxes" from civilians. It is actually legal in Congolese law for many revenue agencies to raise their own funds as part of their activities. These revenues and their allocation within the agency take place off budget and beyond mechanisms of oversight and accountability. The system encourages the state to deploy its agencies in an extractive capacity rather than deliver services. SAESSCAM, for example, an agency created by the 2002 Mining Code to support artisanal miners, has become little more than another layer of financial extraction. Rothenberg and Radley note that SAESSCAM does little for miners and has been criticized for "its direct implication in violating the rights of artisanal miners," representing just "another level of extortion and harassment."[444]

Finally, the reallocation of resources implicit in these budgetary malpractices creates severe inequality. Members of parliament make more than $6,000 a month (160 times national income), and some governors more than $15,000 per month (400 times national income),[445] suggesting that their own welfare comes ahead of that of the majority of Congolese people. These inequalities indicate that the system is fixed and deprive the majority of hope. Such despair also represents the potential ferment of violent grievances.

7. Confuse everyone by creating uncertainty on policies in order to increase corruption

Key points:

Confusion favors predation. Uncertainty and lack of transparency, which derive in part from institutional multiplication, are used as a tool of control, profit, and opacity for the regime.

Mine deal lacks accountability. The $6.2 billion China minerals-for-infrastructure Sicomines deal, while having built some infrastructure, is largely non-transparent. The deal created multiple entities, making it difficult to track, and the management of its implementation is controlled by a special entity that only reports to the president, not to government ministries.

Uncertainty increases opacity in government

Widespread features of Congo's political economy are uncertainty and confusion, either as a result of deliberate policy, weak state capacity, or both. What rules and laws apply, or even exist, are rarely clear. Also unclear are the roles of multiple government or quasi-government bodies and agencies with overlapping responsibilities. The government organizes various national dialogues (concertations), or conferences on policy issues that result in government commitments, but these often contradict laws, decrees, or agreements concluded with the World Bank or IMF. Furthermore, it organizes one workshop after another on topics it fundamentally disagrees with, which result in technical support committees, schedules of action, implementation agencies, but which in reality are starved of resources, uncertain of their true remit, and unable to achieve their goals. In other words, the actual reform never takes place. At the local level, land rights are frequently indeterminate, particularly when it comes to artisanal mining zones. Customary chiefs play a role, but so do mayors, territorial administrators, provincial authorities, and multiple national agencies.

Some of this confusion derives from the intrinsic difficulty of ruling a country like Congo with limited resources, but the Kabila regime nonetheless actively promotes and produces uncertainty. For example, as of October 2016, Kabila had yet to say whether he would abide by the constitution and not seek to stay in office. He, however, called for another "national dialogue" to address issues that are already provided for by law, like the voting system. This management style favors the regime, as it undermines the focus and unity of opponents. It also greatly undermines transparency and accountability in economic affairs.

Artisanal mining is another area of great uncertainty and vulnerability. The 2002 Mining Code recognizes artisanal mining and provides for the establishment of Artisanal Mining Zones (ZEAs, as they are known in Congo). However, nearly 15 years later, despite over 22,500 artisanal mines in the country, there are only 64 official artisanal mining zones,[446] and there is significant confusion among artisanal miners about their rights under the mining code. Moreover, artisanal miners are not allowed to apply for a mining license, unlike in Uganda, Brazil, and many other countries. IPIS has identified some 1,500 artisanal mines in eastern Congo alone, meaning that the vast majority of artisanal miners operate illegally (as when their site lies on a concession belonging to someone else). The uncertainty of artisanal mining favors predation by security forces, as miners have limited legal recourse against them. If the government created sufficient ZEAs or allowed artisanal cooperatives to apply for mining licenses and properly communicated the mining code without confusion,

Artisanal gold miners earn between $2 and $7 per day, but they are subject to heavy extortion and taxation by the military and government officials.

Sasha Lezhnev/ Enough Project

miners would be less vulnerable, but opportunities for decentralized extractions would be fewer and the government would have to provide more for the military or actively demobilize more of them.

Some actors do better under uncertainty than others, but in each case the uncertainty benefits multiple state agents and armed groups. For example, the Chinese business that has mined alluvial gold with dredges in the Ulindi and Lulingu rivers of Shabunda, South Kivu—Kun Hou Mining—allegedly paid the Mai Mai militia Raia Mutomboki for access to the river and produced over one ton of gold, worth $38 million.[447] However, they reportedly were charged 10 percent by SAESSCAM ($1.14 million a month). Apparently they reportedly paid $1.6 million in "taxes" to chiefs and local authorities.[448] Kun Hou did not respond to several of Global Witness' or the International Business Times' requests for comments.[449]

At the national level, uncertainty and confusion play a slightly different role, one that favors a lack of transparency in governance. One common technique is for the regime to favor the creation and overlap of institutions. The resulting pattern of institutional multiplication contributes to uncertainty and favors predation by obfuscating reality.

A prominent example is the large minerals-for-infrastructure China deal of 2009. In the deal, China and Congo agreed on a $6.2 billion plan that created the copper and cobalt company Sicomines, and in which China agreed to loan Congo $3.2 billion for infrastructure projects, to be repaid through Sicomines' revenues.[450] The deal has been marked by its lack of transparency in several respects.[451] Important information such as the pricing of the minerals was not released.[452] As Global Witness noted:

"[T]he terms of the deal and the process through which it came about are causes for concern in Congo -a country renowned for its poor judicial record and widespread corruption. To minimise the risk of corruption and to ensure Congo gets the best deal it can, clarification is sorely needed over issues including:

– the price of minerals;

– the cost of infrastructure;

– and the "internal rate of return."[453]

A commission set up by Congo's parliament accused the Congolese government of stealing $23 million worth of signature bonuses paid by China at the start of the Sicomines deal.[454]

Second, the deal has led to a multiplicity of organs, making it difficult to track their progress. For one, Sicomines is a joint venture of five entities, including two Congolese SOEs (Gécamines, 20 percent and SIMCO, 12 percent).[455] In addition to Sicomines, the government created a Bureau de Coordination et de Suivi du Programme Sino-Congolais (BCPSC) which oversees the Sicomines projects and infrastructure deals, with a subsidiary body called the Agence Congolaise des Grands Travaux (ACGT). The head of the BCPSC bureau Moïse Ekanga allegedly reports exclusively to President Kabila and does not disclose information to the minister of mining.[456]

Third, while some Chinese-built roads are visible, various civil society studies have shown that others have not been built.[457] According to one civil society report, several projects were still unfinished in 2014 even though their finish dates in the contracts were between 2010 and 2013.[458] For example, in the instance of one road, the NGO found that only a few hundred meters of the 2.8km road were asphalted, in spite of the declaration that the road was finished on television and online.[459] Chinese press had also reported on the Congolese government's reception of the road before the NGO report found it to be incomplete.[460] Furthermore, the NGO found that the projects are of poor quality and badly monitored.[461] In 2014 there was no published information about used materials, and no available reports on techniques used in the construction.[462] Based on comparisons with similar projects and interviews with professionals in the construction industry the report also asserts that the Kinshasa projects were overpriced.[463] In addition, laws regarding the award of public contracts were reportedly ignored during the contracting process, which reflects the overall opacity in the Sicomines project.[464] Fourth, the deal effectively stalled negotiations for debt relief, since the DRC could not take on millions of dollars in non-concessional debt from a Chinese bank and simultaneously enroll in a new IMF aid program.[465]

Similar ad hoc institutions remove oversight from normal ministries and parliament. For example, a high-level Bureau Central de Coordination (BCeCo) that does not report to any government ministry but instead only to the president and prime minister has been set up to oversee investments in the Inga III dam project. This opaque bureau that does not publish annual financial audits is likely to see billions of dollars in infrastructure deals and lucrative contracts. In cases like this, institutional creation seems to have at least the partial result of hiding transactions.

Chapter 3

Violent Kleptocracy Series:
East & Central Africa

Policy Tools to Change the Violent Kleptocractic System

The primary lesson from this study is that violence and continued poverty in Congo partly result from a system of state manipulation.

That system enables those elite Congolese and foreign individuals, who are tied closely to the regime, to personally profit from Congo's valuable natural resources and allows the regime to stay in power. Democracy activists across Congo demand that the system change because they are tired of being exploited by it. To help Congo's population create this lasting change, policymakers must focus on helping transform the key elements of the system itself rather than addressing its symptoms.

Transforming the system requires focusing on a different set of policy tools than is normally employed by the international community in Congo. The focus should be on creating costs for the elites that orchestrate and profit from the violent kleptocratic system in Congo. The international community spends enormous amounts of money on peacekeeping and humanitarian aid, yet very little of it is directed at dismantling the primary catalyst for ongoing conflict and corruption: the predation and violence of the regime. Building the leverage to be able to influence these systems is the most important missing ingredient of international policy efforts.

With that new lens, policymakers should focus on three main areas to change the system: financial pressure, accountability, and good governance and transparency. Officials from the United States, European Union, and European member states should focus on pressuring the individuals who benefit from illicit activity and cutting off the financial vehicles used most by the regime to siphon money, particularly state-owned and shell companies. That includes accountability for human rights and economic crimes, transparency in government and business, and protection for civil society. The objectives should be to change "the rules of the game" in Congo, i.e. to create serious costs for the elites in government, business, and the military, who are responsible for this system and then to build incentives for a new, democratic, and accountable system in Congo.

Western governments have made initial pushes in this direction and already do some work in these areas. For example, in 2012 the IMF cancelled aid payments because key mining contracts were not disclosed. Several donors aid the EITI process, and in June and again in September of 2016 the United States placed targeted sanctions on Gens. Célestin Kanyama, Gabriel Amisi Kumba, and John Numbi for "threatening the stability of and undermining democratic processes in the DRC."[466]

However, in general, policymakers are still reluctant to create policies to respond commensurately to the widespread theft of natural resources and state-affiliated human rights abusers. Financial pressure, transparency, accountability, and protection are still only minor parts of international policymakers' agendas for Congo, and piecemeal approaches will not create the necessary leverage for real reform. Policymakers have to attack the system root and branch and change the cost-benefit calculations of the leaders from violence to peace, from grand corruption to transparency. A powerful way to do that is through biting financial pressures that freeze the top offending officials out of the international financial system that is denominated in dollars and euros. The international community spends over $1 billion per year on the U.N. peacekeeping mission MONUSCO but has only just started to place targeted sanctions on some members of Kabila's inner circle for corruption or obstruction of democratic processes, and that has only been done by the United States, not the European Union or U.N. Security Council.

Moreover, some accountability policy tools might have backfired as they became manipulated by regime elites. For example, ICC prosecutions are helpful steps but have mainly designated or indicted opponents of the regime. EITI has made some progress, but the elites' main avenues for generating corrupt revenues, state-owned enterprises, and budget misallocation, are left untouched by the initiative. Furthermore, the Congolese government continually obstructs the expensive U.N. peacekeeping mission from targeting eastern Congo's rebel groups that are allied with Kabila regime elites, e.g. the FDLR. It is little wonder that the International Crisis Group described the international stabilization strategy for eastern Congo as "building on sand."[467] Similarly, a former U.N. official in Congo who attempted to work on reforms reflected:

In short, something was off. We were speaking a polite language—prosecuting warlords, demobilization and retraining of combatants, efficient civil administration—in an environment that was considerably more anarchic. Local leaders … relied on linkages with hugely unreliable armed factions and a thoroughly criminalized economy for any real influence. Our efforts to train them in record-keeping and budget execution were … a little beside the point… .[468]

A paradigm shift in policy thinking on Congo is needed. This section will discuss some of the policy tools needed to change the system of grand corruption linked to violence in Congo, including lessons learned from recent policy initiatives. Recommendations suggesting how those tools can be implemented are included.

Tools of Financial Pressure

For a policy of financial pressure aimed at reforms, the United States and other actors in the international community should combine the use of anti-money laundering measures with widened, enforced targeted sanctions designations. This would comprise a new and unique financial pressure approach that would create real leverage in support of processes that can bring change in Congo.

Recommendation: Enhance targeted sanctions*. The United States, European Union, African Union, Southern African Development Community, and the United Nations Security Council each have their own sanctions frameworks and authorities. These governments or bodies should learn the lessons of past sanctions by using these authorities to impose targeted sanctions, aggressively enforce those sanctions, and place other financial pressure on senior officials, business owners, banks, and armed commanders that comprise the leadership of the kleptocratic network that is responsible for perpetrating and/or benefiting from violence, autocracy, and corruption in Congo. Where necessary, additional sanctions authorities should be adopted, such as a new executive order in the United States and the equivalent in other countries, that enable measures that target those benefiting from public corruption or misappropriation of state assets.*

Targeted sanctions and other financial pressure, particularly if implemented effectively and used in combination with other policies, can be effective in creative leverage to support processes that can bring change. By freezing the assets of senior associates of a regime and preventing them and their families from traveling or studying abroad, U.N., U.S., and/or E.U. targeted sanctions can place financial pressure on the individuals most responsible for certain policies and systems, and build leverage that can help them weigh in to help change a regime's detrimental policies. They could prove highly useful in helping facilitate the democratic transition and in fighting repression and corruption in Congo.

There are several instances where targeted sanctions have been used successfully. In Burma/Myanmar, enhanced use of targeted sanctions between 2007-10 helped to contain the ruling military junta's activities and contribute to an internal process that led to change. The United States also implemented a unique reporting requirement for companies starting to do business in the newly opened Myanmar to ensure that their investments contributed to positive development.[469] Similarly, several Western countries redoubled efforts over several years, particularly between 2010 to 2013, to ensure that sanctions on Iran had a direct impact on the country's rulers, and this prompted Tehran to come to the negotiating table to work out the landmark nuclear deal signed in 2015.[470] Finally, with respect to Burma, sanctions helped create the leverage needed for a democratic election.[471] In Russia, U.S. and E.U. targeted sanctions against elites linked to Russian President Vladimir Putin's regime have had a significant impact on Russia's economy and constrained some of its aggressive policies in the region.[472]

For Congo, there is an international sanctions framework in place—at the U.N. Security Council, in the U.S. government, and the European Union[473]—but it has never been directed at the regime. The U.N. sanctions regime places an arms embargo on the country and states that individuals or entities may be designated for sanctions if they impede the disarmament of armed groups, recruit child soldiers, commit serious violations of international law, obstruct humanitarian aid, or support armed groups by illegally trading natural resources.[474] The U.N. Group of Experts for Congo investigates violations of the sanctions regime and reports annually to the Security Council, and the United Nations has designated 31 individuals and nine entities (armed groups and businesses) for targeted sanctions over the past 10 years.[475] The U.S. sanctions regime, updated in 2014, is principally based on the U.N. program but does go further; for example, the U.S. sanctions program establishes that individuals may be targeted for sanctions if they "undermine democratic processes or institutions," in addition to the criteria for the U.N. sanctions.[476] The E.U.'s framework is also based on that of the United Nations.

Targeted sanctions in Congo: Five key lessons

To be effective, policymakers should seek to improve the impact of five targeted sanctions related to Congo, which have led to some progress over the past decade but have not come close to changing the overall system. There are five key areas for improvement.

First, the sanctions should focus on the elites who run the system. None of the 31 individuals or nine entities placed on international sanctions lists is a close ally or connection of President Kabila; all of the designees are either opponents, competitors, or marginally important entities to the government.[477]

Second, targeted sanctions should focus on those who have demonstrable and significant assets and/or travel abroad, such as officials in Congo, Rwanda, or Uganda, who have been the major beneficiaries and backers of the armed groups, or any international traders and companies that are found to have conducted significant business with the regime. If necessary, additional legal authorities, such as a new executive order, should be considered in order to ensure such sanctions are possible.

Targeted sanctions against those who profit most from the violence and corruption in Congo and who refuse to change the system, as well as against those who are found to conduct major business with those elites in a corrupt manner, would place major pressure on the system. Many of the officials, businesspersons, and military generals who benefit most from Congo's grand corruption do travel abroad, have properties and/or send their children to study overseas, and have international bank accounts. Sanctions against those individuals would thus have significantly greater impact than those against armed warlords who rarely, if ever, leave the country. For example, conflict gold traders in Congo sell their gold in Uganda and Dubai,[478] senior Congolese generals have sizable properties in southern Africa,[479] and asset flipping traders move back and forth between Congo and other countries. Those traders and businesses also have financial leverage over the regime, and if it appears that they might be put on an international sanctions list, they could weigh in with the regime to change policies. Alternatively, they could defect from the regime, which would hurt it, as the regime needs certain loyal "enforcers," financial allies, and others to maintain power. Designating those types of elites or businesses could put significant pressure on the Congolese government.

Third, in order to be effective, targeted sanctions should be deployed in a broad-based manner hinged around "anchor" designations, not simply against one or two disconnected individuals. They should also be escalated with time—i.e. with initial sanctions against mid-level targets and then followed with sanctions against higher-level elites and/or other types of sanctions, if the initial tranche does not put enough pressure on the system. This would send strong signals to the regime and its elites that their time is up, and that greater sanctions would be forthcoming if they do not enact necessary reforms. Where sanctions have worked most effectively, it has generally been when significant actions are taken on a consistent basis, so key actors understand the stakes over a period of time. When sanctions actions are episodic and not followed up, the impact and overall efficacy diminishes.

Such targets would move beyond "naming and shaming" and toward having real financial impact and linkage with broader illicit networks. Designating an individual or entity that serves as a link to a broader network is often referred to as an "anchor" designation, where one step enables others to be built around it through the use of the criteria in Section 1(a)(ii)(F)-(G) of U.S. Executive Order 13671.[480] This covers individuals providing support to a designated person, or companies owned or controlled by a designated person. Focusing on the anchor targets enables not only demonstrable financial impacts, but also allows for leverage to be built over time. Fourth, sanctions against any companies must extend to the beneficial owners of the business, otherwise the owners will simply set up new companies overnight under different names.

Finally, the sanctions must be followed up with diplomacy and direct engagement with banks to ensure that accounts are actually frozen and travel bans are enforced. There has been a very mixed track record on this to date in the Congo context. The vast majority of transactions by elites in Congo are denominated in U.S. dollars, which means that the United States has leverage to stop them because the transactions will likely transit through correspondent banks in New York. There is often concern that sanctions against individuals with assets outside the United States means that nothing can be done to enforce sanctions. As large penalties against major international banks in recent years have shown, this is incorrect, and designations can be more vigorously enforced in programs like Congo once more is known about the banking channels involved. In sum, a designation of a target with assets outside the United States can have significant impact because:

Local traders transact conflict gold in South Kivu in U.S. dollars. The vast majority of business deals in Congo are done in U.S. dollars, meaning that the U.S. has jurisdiction over them and can institue anti-money laundering and other measures.

Sasha Lezhnev/ Enough Project

A. It means that the person can no longer transact in U.S. dollars, which drastically limits what kind of business they can do. If they do try to transact in U.S. dollars, the U.S. correspondent bank processing the transaction should block it.

B. If that does not happen, and the target continues transacting because important customer data is removed (which it may, because of how hard an individual transaction can be to track), then the U.S. Treasury Department or other agencies can pursue a penalty against the intermediary bank that sent the money into the United States.

Combat financial crimes through use of anti-money laundering authorities

Recommendation: Enact anti-money laundering measures*. The U.S. Treasury Dept. and key African and European government financial intelligence units (FIUs) should work in partnership to take measures to counter money laundering activities that transit through banks in Congo and abroad.*

Further financial pressure on high-level elites can and should be exhibited through the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN), which serves as the U.S. financial intelligence unit. Because Congolese elites use U.S. dollars to transact, FinCEN advisories can have a strong impact on combating money laundering in Congo. The Financial Action Task Force and other global initiatives have established standards and best practices for combating money laundering and other financial crimes, both through the adoption of robust legal frameworks and by placing due diligence requirements on banks. In the United States, FinCEN implements its authorities through issuance of guidance to the financial sector, assessing penalties, and even, imposing sanctions-like prohibitions on entities believed to be involved in money laundering. For example, Section 311 of the USA Patriot Act allows FinCEN to declare that a foreign country, city, financial institution, or type of account is a "primary money laundering concern."[481] Once such a declaration is made, FinCEN can, among other steps, require information collection about the beneficial owners of accounts and prohibit or impose conditions on opening or maintaining correspondent accounts. This can effectively block an individual or bank from using the U.S. financial system. That would have major consequences for high-level corrupt individuals or banks, given that any international wire transfers done in U.S. dollars have to go through U.S. banks.[482] FinCEN also has the power to issue advisories, which are issued periodically to inform U.S. financial institutions in its network (22,000 banks and financial institutions) about the risk of possible money laundering associated with particular jurisdictions, types of transactions, or financial institutions. These advisories can trigger banks to provide more information about these transactions to FinCEN and, in turn, potentially help the U.S. Treasury determine if any institution or activity should be declared a primary money laundering concern.[483]

FinCEN should use these powers to identify banks, institutions, and classes of transactions used by elites to loot and launder state assets. Once identified, FinCEN should make effort to prohibit these transactions. Congo's kleptocratic elites mainly conduct business deals in U.S. dollars, almost exclusively have U.S. dollar accounts, and send wire transfers in U.S. dollars, i.e. they use the U.S. financial system.[484] This means that FinCEN and other U.S. agencies can follow up on these transactions and further investigate those involved in laundering the proceeds of corruption. FinCEN could send out a request to U.S. financial institutions inquiring about senior Congolese officials, considered to be "Politically Exposed Persons" (PEPs) for anti-money laundering purposes, and their business partners suspected of grand corruption. FinCEN could also issue an advisory to all U.S. financial institutions regarding the risk of possible money laundering activity related to the laundering of the proceeds of corruption from Congo. This would trigger U.S. banking and financial institutions to collect and possibly provide information about potential indicators of money laundering to the Treasury Department. A FinCEN advisory could be issued with respect to the laundering of proceeds of corruption and/or illicit gold trading.

Accountability: Judicial Tools

While targeted sanctions can be an important tool, legal action against corrupt or violent elites also has significant potential impact. Much more could be done in this area to target the kleptocratic system's leaders and their networks, for war crimes, financial crimes, and the war crime of pillage. The United States, European states, and the International Criminal Court (ICC) should use judicial tools to target the facilitators of violence, prosecute corruption-related crimes, and bolster atrocity crimes cases with a strategy to target assets stolen by those responsible for serious crimes to impose real accountability.

War crimes – Putting Kabila loyalists in the dock

Recommendation: Target the facilitators of violence and prosecute pillage. *The ICC and national courts with appropriate jurisdiction should investigate serious ongoing crimes in Congo including aiding and abetting atrocities perpetrated by armed groups. These courts should also investigate the war crime of natural resource pillage, particularly related to gold.*

Regarding war crimes and crimes against humanity, there has been progress on accountability with the ICC, but it has been one-sided. Perpetrators on the government side—i.e. those who have been running the criminal state—have not been investigated or indicted. While the ICC has made progress on four Congolese cases—Thomas Lubanga, Jean-Pierre Bemba, Germain Katanga, and Bosco Ntaganda—all of these cases relate to opponents of the Kabila regime. Two cases potentially relate to regime allies, that of Sylvestre Mudacumura and Callixte Mbarushimana, who as leaders of the FDLR, have been either allied to or had ties to the Congolese government at various times. The cases, while establishing worthy legal precedent and justice for war crimes, in part politically in Congo, serve to reinforce President Kabila rather than pressure him, as they helped remove political and security threats to the regime. For example, Bemba was the leading opposition candidate in the 2006 presidential elections, receiving 42 percent of the vote in a run-off with Kabila, a figure his party says was in fact higher. Many Congolese say that Bemba, despite his conviction for war crimes, would represent a much bigger political threat to Kabila in an election if he returned from The Hague, as he has wide popular appeal.[485] Ntaganda was also loyal mainly to Rwanda, not Kinshasa, until his final split with Rwanda in late 2013, and the M23 rebellion which he led threatened to overthrow the Kabila regime.

Furthermore, the mobile courts in eastern Congo that the international community has pushed for486 have largely targeted low-level perpetrators or regime opponents. As Human Rights Watch notes, "Of the 187 convictions handed down by military courts for sexual violence between July 2011 and December 2013, recorded by the United Nations, only three were senior army officers at lieutenant colonel rank."487 The one high-level conviction was against someone who led a rebellion against the Congolese government and was only "reintegrated" into it for a few weeks, "General" Jerome Kakwavu.[488]

Courts should investigate and prosecute the facilitators of violence, in particular the aiding and abetting of atrocity crimes committed by armed groups. The ICC, as well as some national courts, should thus investigate the commanders of armed groups that have received support from the Congolese government such as Mai Mai Sheka, or Nduma Defense of Congo

(NDC), which has been involved in several massacres against civilians, as well as Mai Mai Morgan, Nyatura, and Raia Mutomboki, and indict them on charges of war crimes and/or crimes against humanity.[489] Known alleged human rights perpetrators and/or facilitators of illegal armed groups such as Gen. Gabriel Amisi[490] or Kinshasa Police Commissioner Célestin Kanyama[491] should also be investigated. ICC Chief Prosecutor Fatou Bensouda should also announce that her office is watching the electoral process carefully for war crimes violations associated with political violence, as she did for Burundi and the Central African Republic.[492] Finally, the proposed specialized mixed chambers represent a potentially very helpful tool for war crimes accountability as well. The chambers were conceived of in 2004 by Congolese and international civil society and would have international and local prosecutors and judges, to try individuals for war crimes committed in Congo since 1990.[493]

Pillage: The war crime of natural resource theft

A second promising but highly under-utilized legal area is pillage, that is, theft in the context of armed conflict, a war crime under the Rome Statute.[494] Pillage charges can be brought against individuals or corporate entities that steal natural resources or aid or abet the theft of natural resources in the context of armed conflict, relevant for Congo in the context of the conflict in the east. Both domestic Congolese courts and the ICC can prosecute individuals and corporations for natural resource pillage. As Enough Project Senior Analyst Holly Dranginis notes, prosecuting such cases can help cut off revenue streams for perpetrators of atrocities, help end the impunity of illegal financial networks in conflict zones, and strengthen violent atrocity crime cases by uncovering information about command responsibility and criminal intent.[495] Prosecutions can thus be a way to "disrupt conflict financing and improve accountability for economic crimes—like trafficking and money laundering—and as the atrocities they fuel."[496] Both actors within Congo and the region, as well as foreign traders and businesses, could be investigated and, where appropriate, prosecuted for pillage crimes.

The ICC and national courts with appropriate jurisdiction should begin prosecuting natural resource pillage, for example in Switzerland, Canada, and the United States, where conflict minerals from Congo have been trafficked over the past 15 years. Policymakers, including from the U.S. Office of Global Criminal Justice at the U.S. Department of State, should also urge prosecutors at the ICC and in relevant national jurisdictions to begin investigating and prosecuting pillage, particularly large-scale theft of natural resources and wildlife trafficking. There was an investigation involving allegations of gold pillage brought against the Swiss gold refiner Argor Hereaus in 2013 for alleged pillage of Congolese gold from an armed group in 2004-05, but Swiss prosecutors dropped the investigation in 2015 citing that the company did not know the gold came from conflict areas.[497]

There is also more legal education work to be done on natural resource pillage, since most war crimes prosecutors' offices have done little work in this area. The United States, as well as ICC states parties, should encourage ICC Chief Prosecutor Fatou Bensouda to revive the court's financial crimes unit as part of a comprehensive approach to investigating and prosecuting widespread pillage.[498] The ICC prosecutor's office should appoint special advisors on financial forensics and natural resource theft to work in the financial crimes unit. The U.S. State Department capacity building program for Congolese prosecutors on economic crimes is a helpful step[499] and should be built on by the European Union.

Prosecuting corruption-related crimes and asset recovery and forfeiture

Recommendations: Seize criminally derived assets. *The ICC's Office of the Prosecutor should seize criminally derived assets in relation to its current and future Congo cases and develop a wider strategy for asset seizures across all cases. It should revive the ICC financial crimes unit. The U.S. Department of Justice's Kleptocracy Asset Recovery Initiative should investigate and locate the proceeds of grand corruption and organized violence in Congo and use asset forfeiture provisions to recover those assets and return them to the communities from which they were stolen.*

Prosecute corruption-related crimes. *The U.S. Department of Justice, under the Foreign Corrupt Practices Act and other relevant statutes, as well as its European counterparts, e.g. in Belgium, the United Kingdom, and Norway, should investigate and prosecute embezzlement, extortion, and other crimes related to corruption.*

The U.S. Department of Justice (DOJ) and European national prosecutors' offices should increase use of anti-corruption legal actions against elites who run Congo's violent kleptocratic system. DOJ cases against officials of the world soccer body FIFA for corruption and racketeering[500] have become famous, as have other DOJ cases as against large banks HSBC[501] and BNP Paribas.[502] Additionally, the U.S. Kleptocracy Asset Recovery Initiative investigates money laundering, racketeering, embezzlement, and extortion crimes, all of which are highly relevant in Congo.[503] Normally, anti-corruption cases target past regimes, but there is precedent for prosecuting current officials. For example, the son of the president of Equatorial Guinea, Teodorin Obiang, was prosecuted by DOJ and French courts for stolen assets including a $30 million Malibu mansion, a Ferrari, and one of Michael Jackson's sequined gloves. The case was settled in 2014, and Obiang agreed to relinquish $30 million in assets.[504] French courts have also seized properties of the family of the president of Congo-Brazzaville as part of an ongoing investigation into ill-gotten gains.[505] The United States, along with the European Union, the United Kingdom, Belgium, Norway, and Canada, should lead efforts to disrupt and dismantle the elite networks that steal wealth from Congo and other conflict-affected African countries.

Good Governance and Transparency Tools

The overall objective of policymakers should be a reformed, functional state. While pursuing financial and legal pressure to create costs to current corrupt and violent behavior, the United States and Europe should support democratic and transparency processes, governance reforms, and needed capacities.

Public financial management: ensure aid does not boost kleptocrats, audit state-owned companies, promote spending transparency

The overall objective of policymakers should be a reformed, functional state that is responsive to Congolese citizens' needs. While pursuing financial and legal pressure to create immediate costs for current corrupt and violent behavior, the U.S., European, African, Asian, and multilateral institutions should support long-term democratic and transparency processes, governance reforms, and needed capacities.

Recommendation: Improve financial transparency. *Donor governments must incorporate strong accountability measures in state capacity building aid programs in Congo. Donors should undertake a top-to-bottom review to focus only on aiding elements of the system that are in the process of reform.*

Capacity building programs in all sectors need to be reconceived so that they no longer reinforce existing corrupt institutions, as where there is no political will for reform they will not have the desired impact. State capacity building cannot be thrown out the window in Congo but it must be done such that corrupt officials are not inadvertently boosted by aid programs. Donors must incorporate strong accountability and oversight measures in state capacity building and security sector programs, and be willing to defund or reject projects if the government fails to include safeguards to prevent corruption. For example, a mining support program should not only give equipment and training to ministry officials, but also require that the ministry pay salaries on time and its anti-corruption unit actively pursues corruption cases. Congress should play a constructive role in ensuring aid is well targeted and require oversight and reporting related to state capacity building programs.

Recommendation: Press for the publication of financial reports and audits of state-owned companies and the China contract. *The United States, European countries, International Conference on the Great Lakes Region (ICGLR), the International Monetary Fund (IMF), and mining companies investing in Congo should strongly encourage President Kabila and the DRC Minister of Portfolio to require that key state-owned companies such as Gécamines and SOKIMO publish detailed annual financial statements. Furthermore, there should be an independent, third-party audit conducted and published of the companies and the expenditures of the $6.2 billion Congo-China agreement, an opaque arrangement.*

Sunshine is said to be the best disinfectant. Following this logic, financial transparency is an important tool to combat corruption and a first step toward accountable management of natural resources. One transparency area that deserves more policy attention in Congo is public financial management (PFM), which includes transparent government budgeting and spending, audits of public institutions, and public procurement transparency. Research on anti-corruption work worldwide has shown that PFM tools are far more effective in combating corruption than anti-corruption commissions, anti-corruption laws, and technical justice sector reforms.[506]

As key steps under the PFM framework, policymakers should press the Congolese government much harder in the key areas where corruption is most likely to occur: state-owned enterprises (SOEs) and government spending. Specifically, the United States and European Union should press to have independent, third-party audits conducted of the key SOEs such as Gécamines and SOKIMO and have the audits be made publicly available. They should also advocate to make government spending more transparent. These two steps are of high interest to Congolese civil society and would have a significant impact in fighting grand corruption, as billions of dollars appear lost in SOEs and in non-transparent government spending. For example, while the Congolese government releases its budget, parliament only began to debate the spending plan in 2015; nor are budget recommendations implemented by the government, and individual government agencies do not publish their expenditures. Additionally, legislation addressing the public procurement code, which was adopted and promulgated in 2010, is not being scrupulously respected.[507]

Improving EITI and addressing other corruption loopholes

Recommendation: Strengthen EITI implementation and complete the mining code review. *The United States, the African Development Bank, European states, and World Bank should help strengthen EITI implementation in Congo by pressing for EITI reports to disclose spending by state-owned companies, as required by EITI, and pushing for full beneficial ownership disclosure, particularly for partners of state-owned companies. Also, the United States, European Union, World Bank, African Development Bank, and mining companies investing in Congo should urge the Congolese government to complete the mining code review with full participation of civil society.*

By making data public about where money generated from the country's valuable natural resources ends up, transparency mechanisms such as the Extractive Industries Transparency Initiative (EITI), laws prohibiting conflict of interest, and budget and spending transparency systems can all provide citizens with the information they need to hold their government leaders to account for this wealth. This is the basis of global civil society's "Publish What You Pay" movement that pushes for greater transparency in the extractives sector, which now has over 800 member organizations, including 23 in Congo.[508] EITI, an international transparency process, makes public tax and royalty payments by oil, gas, and mining companies to official government coffers, as well as the government receipts for those payments.[509] To date, 51 countries are implementers of EITI, including the United States. All European countries should endeavor to implement and eventually become EITI compliant. As of 2016, one European country, Albania, was classified as EITI compliant. Germany, Ukraine, and the United Kingdom were listed as implementers.[510]

Enhancing EITI in Congo

EITI has helped make some improvements in the extractives sector in Congo but needs to be taken further to close major avenues for corruption. It was implemented in Congo in 2011 with some positive results but also some significant loopholes. There has been increased transparency regarding official tax and revenue payments for extractive industries, and civil society can access a lot more information about how much money the government is receiving. However, there are still other major avenues for corruption to take place with SOEs, money collected by individual government agencies, and government spending. NGOs also highlighted that the first EITI reports did not incorporate payments by exporters of artisanally mined gold or other minerals to the government, as well as the payments of two oil companies, South Africa Congo Oil in the west (now majority owned by Total) and the block in the east operated by Tullow, Heritage DRC Ltd., and Cohydro.[511]

Since October 2013, Congo has also implemented a new EITI pilot project to disclose the owners of extractive companies. This resulted in the publication of the names of beneficial owners of 31 percent of private mining companies, the highest number of disclosures of all EITI pilot projects worldwide.[512] However, significant funds often disappear with state agencies that receive revenues from extractive companies, such as state-owned companies, tax and customs authorities like DGDA, DGRAD and DGI, which do not report their spending to the public. Together, these agencies took in a total of $412 million in 2014, and it is entirely unclear where the money went.[513] Finally, several of Congo's neighbors that re-export its resources do not implement EITI.

The international community should do more to strengthen EITI implementation in Congo. Donors should push for full beneficial ownership disclosure of all companies involved in mining and oil extraction in Congo, not merely 31 percent of companies. They should also press for EITI to require the disclosure of the spending of the government agencies that receive extractive revenue payments. As Global Witness highlights, "it is clear that a disclosure requirement – whether via local law or EITI – is needed to end the cycle of secrecy in which anonymous companies profit at the expense of Congo's citizens."[514] There is currently an international push to have EITI require beneficial ownership disclosure in all EITI implementing countries.[515] Donor governments should also urge neighboring Uganda, Rwanda, and Burundi to implement EITI.

Safeguarding anti-corruption efforts in extractive laws

Policymakers should also carefully watch and advise on the revision of key laws that relate to the extraction of natural resources, particularly those dealing with corruption and conflict of interest aspects, and vigilantly press for the implementation of key anti-corruption provisions. Congo's 2002 Mining Code is under revision, and the latest proposed version included a provision that would eliminate conflict of interests, i.e. which would then make it legal for officials or army officers to own mines, trade minerals, etc.[516] The revision was suspended in 2016 on account of difficulties in the sector related to deflated commodity prices. U.S. and European policymakers should press the Congolese government to ensure that the mining code revision resumes and that the final version includes robust conflict-of-interest safeguards and requires disclosure of the beneficial owners of all companies that own mining permits or who bid for future ones.[517] The United States, United Kingdom, and other board members of the World Bank should similarly urge World Bank officials to press Kinshasa on these issues, given that the World Bank supports the mining code revision.

Similar vigilance should be paid to other extractive laws, such as the oil law. The new oil law increases state-owned companies' stakes in oil and gas projects—to a minimum of 20 percent.[518] This is worrying, given that SOEs are one of the main avenues for corruption in Congo at present. However, the new law does include some key transparency requirements that were pushed for by NGOs and members of parliament, such as public tenders for exploration and exploitation permits, and publication of the names of bidding companies.[519]

Ensuring contract transparency

Recommendation: Follow up on contract transparency. *International donors should press the Congolese government to disclose remaining natural resource contracts.*

Another transparency tool relates to the disclosure of extractive contracts. Contract transparency is important because it allows citizens to monitor whether the terms agreed to between companies and the government are favorable, whether environmental and social aspects are taken into account, and if inappropriate, corrupt payments are included.[520] A 2011 ministerial decree stipulates that all natural resource extraction contracts must be publicly disclosed, but in practice, many important contracts are left secret. Moreover, this requirement is not in the new draft mining code. The IMF canceled the last of its payments of a $530 million loan program in 2012 after the government failed to provide details on the sale of the COMIDE mining concessions by state-owned Gécamines to the Gertler-owned British Virgin Islands-registered company Straker.[521] That contract has not been published, and other key contracts remain hidden. The Carter Center discovered in February 2015 that 62 contracts for 17 mining projects had not been published, including part of the large Mutanda copper and cobalt mine owned by Gertler's Fleurette Group and Glencore.[522] Continued demanding of accountability by donor governments on contract transparency—particularly for large deals and incorporation into the new mining code—is needed.

Protection: Supporting civil society

Recommendation: Support civil society with legal aid, protection, and capacity building. *U.S. Agency for International Development (USAID) and European donor agencies, the African Union, and the U.N. Development Programme should increase democracy support, particularly legal aid and protection support, to civil society, faith-based, and women's groups to enable them to function as a more effective watchdog on democracy and corruption. In addition, the U.N. Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO) and international donors should increase their protection of human rights defenders.*

Congo's problems will ultimately be solved by Congolese people themselves, not donors. It is therefore imperative to involve local civil society and/or parliamentarians at every step in the development and implementation of transparency and accountability processes, so that there is full local ownership. There have been many brave democracy activists, Catholic and other church leaders, women's groups, protestors, and civil society groups that have tried to fight the corrupt system in Congo, many times with success on individual policies. That said, civil society in Congo working on freedom of information, transparency, anti-corruption, and justice issues, e.g. groups such as associations for the defense of collective interests, commissions of justice and peace, etc., which are heavily monitored and harassed by the government and sparsely funded. As Freedom House notes, "Journalists and human rights advocates continued to face threats, unlawful detention, and beatings by state security forces and rebel groups around the country. In some cases, opposition lawmakers were arrested and imprisoned for speaking out against the government."[523] Moreover, civil society is composed of many different actors, some with greater resolve and autonomy than others, and it suffers from rigid structures and a significant degree of dependency on donors.

The international community should increase democracy and governance support to such watchdog and justice-oriented civil society groups and similar non-state actors, such as faith-based institutions, in targeted ways to enable them to function as a much more effective government. Donors should channel support to legal aid and protection programs in particular, not simply more computers or training that many civil society groups have already received. As the government and elites crack down on activists trying to hold their leaders to account for economic and human rights crimes, they need shielding from the repression. The United States has longstanding commitments to empowering those who advocate together for democratic political transformation, participatory governance, participation in peace processes, and greater government transparency, but funding for these efforts has fallen in recent years. USAID, the European Union, and other donor agencies can support these communities by expanding legal assistance and protection programs to strengthen civil society's ability to expose mass corruption and the misappropriation of the country's natural resource wealth. The U.S. government has begun to do so through its new $11 million program to support human rights and electoral justice, implemented by Freedom House, but this must be buttressed in critical ways by other donors.[524]

Conclusion

The manipulation of the state, its abandonment of citizens, its empty promises and failure to fix most real problems of daily governance, and its corrupt self-dealing inevitably lead to exasperation and potential explosions of violence. For the millions of Congolese people on the receiving end of a relentlessly predatory and violent state benefiting from corrupt exploitation of natural resources, those in Congo and in the international community can and must do better to transform this system. Despite corruption and violence, there is remarkable human and social capital across Congo eager to steer the country to a better future. Many Congolese citizens are demanding that the government adhere to the constitution, allow for Congo's first peaceful democratic transition, protect them from the atrocities of armed groups, and reduce corruption. If policymakers use these new tools and create leverage, they can help constrain the Congolese state's reckless use of power against its own people, and the irresponsible activities of some of its external partners, and help the Congolese unleash their democratic and developmental potential.

Acknowledgments

This report could not have been published without incredibly hard work from a number of people. Dr. Pierre Englebert, H. Russell Smith Professor of International Relations and Professor of African Politics at Pomona College, provided significant input to this report. An extra special thank you to Steve Lannen, Enough Project Editor/Researcher, who did heroic work in line editing and copyediting. Thanks also to the legal team of Praveen Madhiraju (Senior Counsel, Enough Project) and Lee Levine (Partner, Levine, Sullivan, Koch & Schultz), who did painstaking work on the report.

The report benefited from very helpful external review from Michael Kavanagh, Theodore Trefon, Gregory Mthembu-Salter, Kristof Titeca, Stephen R. Weissman, Ben Radley, Dennis Tull, Erik Kennes, and Congolese analysts who cannot be named for safety reasons. None of them are responsible for the contents of the report.

Important internal review and analytical contributions were also provided by the Enough Project team, including Holly Dranginis (Senior Policy Analyst), Brad Brooks-Rubin (Director of Policy), J.R. Mailey (Senior Policy Analyst), Rachel Finn (Advocacy Manager), Annie Callaway (Advocacy and Activist Manager), and Ian Schwab (Advocacy Director). Tireless research assistance was provided by Enough Project interns Harry Green, Sarah Gerber, Adam Finestone, Kendal Jones, and Sophie Haggerty. Layout, production and outreach were undertaken by Jennifer Lonnquest (Digital Communications Associate), Greg Hittelman (Director of Communications) and Megha Swamy (Media Relations Specialist). Proofreading was done by Marissa Sandgren (Educational Outreach Associate) and Anuli Mefor (Intern). Last but not least, John Prendergast (Founding Director) provided strategic direction and editing.

Endnotes

[1] Professor Pierre Englebert, H. Russell Smith Professor of International Relations and Professor of African Politics at Pomona College, provided significant input to this report.

[2] This is as of 2011 and based on African politics and development scholar Pierre Englebert's combination of three factors. First, A. Batamba Balembu's study of corruption in Kinshasa estimated at 55 percent of potential budget revenue, is extrapolated to a $2 billion loss in taxes and fee revenues overall in Congo. Second, the losses from mining and oil are estimated based on production and price of approximately $500 million (see p. 9 of Englebert study below). Third, Englebert estimates that $1.5 billion per year is lost from the under-valuation of mining rights, extrapolated from the Africa Progress Panel and Eric Joyce estimates of losses of $1.36 billion from 2010-2012 and $5.5 billion from 2008-2011. Together, total losses for the state might have reached up to $4 billion in 2011-2012. However, commodity prices and the sale of assets have decreased in years since then, so the figure is likely lower now. A. Batamba Balembu cited in Oasis Tedika Kodila. "Corruption en République Démocratique du Congo: Tyrannie des nombres," Congo-Afrique, (Vol. 51, No. 464, April 2012); Pierre Englebert, "Democratic Republic of Congo: Growth for All?" p.10 (Johannesburg: The Brenthurst Foundation, September 2014), available at https://pierreenglebert.files.wordpress.com/2014/11/brenthurst-paper-2014-06-final.pdf

[3] According to the Plea Agreement between the U.S. Department of Justice and OZ Africa Management GP, LLC, a company called "DRC Partner, together with others, paid more than one hundred million U.S. dollars in bribes to DRC officials to obtain special access to and preferential prices for opportunities in the government-controlled mining sector in the DRC." According to a published report by Bloomberg, DRC Partner is Dan Gertler. In the plea agreement, DRC Partner is described as "an Israeli businessman… [who] had significant interests in the diamond and mineral mining industries in the Democratic Republic of Congo (the DRC)." Plea Agreement Cr. No. 16-515 (NGG), United States vs. OZ Africa Management GP, LLC, U.S. District Court, Eastern District of New York, September 29, 2016; Franz Wild and Keri Geiger, "Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions," Bloomberg, September 30, 2016, available at http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions Global Witness, "Out of Africa," May 4, 2016, available at https://www.globalwitness.org/documents/18357/Out_Of_Africa_final_EN.pdf; Michael Kavanagh, Franz Wild, and Jonathan Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest Country" Bloomberg Markets, December 5, 2012 available at http://www.bloomberg.com/news/articles/2012-12-05/gertler-earns-billions-as-mine-deals-leave-congo-poorest In response to one Global Witness report, Gertler's spokesman, the UK's Lord Mancroft, said that any suggestion "that Glencore offered Mr Gertler preferential treatment is wholly misconceived" and that "there are legitimate commercial reasons for every transaction we are involved in." Global Witness, "Glencore unfazed by muddy deals," May 20, 2014, available at https://globalwitness.org/en/blog/glencore-unfazed-muddy-congo-deals/

[4] International Rescue Committee, "Mortality in the Democratic Republic of Congo," 2007, available at http://www.rescue.org/sites/default/files/resource-file/2006-7_congoMortalitySurvey.pdf

[5] This is based in part on Sarah Chayes, Thieves of State: Why Corruption Threatens Global Security, (New York: W.W. Norton, & Company, Inc., 2015).

[6] Mobutu's quote is attributed to MGMichael G. Schatzberg, "The

dialects of oppression in Zaire," (Bloomington: Indiana University Press, 1988) found in Jason K. Stearns, Dancing in the Glory of Monsters," (New York: Public Affairs, 2012), p. 116.

[7] The World Bank Group, "Paying Taxes in Congo, Dem. Rep" found in "Doing Business: Measuring Business Regulations," available at http://www.doingbusiness.org/data/exploreeconomies/congo-dem-rep/paying-taxes (last accessed July 2016).

[8] The terms "flip assets" or "flipping" is primarily used in the United States to describe the purchase of a real estate asset with the goal of reselling for a profit. However, it can be used for the purchase of assets besides houses, including cars or business. For more, see, Investopedia, "Flipping" definition, available at http://www.investopedia.com/terms/f/flipping.asp. (last accessed September 2016). Plea Agreement Cr. No. 16-515 (NGG), United States vs. OZ Africa Management GP, LLC, U.S. District Court, Eastern District of New York, September 29, 2016; Franz Wild and Keri Geiger, "Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions," Bloomberg, September 30, 2016, available at http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions Global Witness, "Out of Africa," May 4, 2016, available at https://www.globalwitness.org/documents/18357/Out_Of_Africa_final_EN.pdf; Michael Kavanagh, Franz Wild, and Jonathan Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest Country" Bloomberg Markets, December 5, 2012 available at http://www.bloomberg.com/news/articles/2012-12-05/gertler-earns-billions-as-mine-deals-leave-congo-poorest In response to one Global Witness report, Gertler's spokesman, the UK's Lord Mancroft, said that any suggestion "that Glencore offered Mr Gertler preferential treatment is wholly misconceived" and that "there are legitimate commercial reasons for every transaction we are involved in." Global Witness, "Glencore unfazed by muddy deals," May 20, 2014, available at https://globalwitness.org/en/blog/glencore-unfazed-muddy-congo-deals/

[9] Plea Agreement Cr. No. 16-515 (NGG), United States vs. OZ Africa Management GP, LLC, U.S. District Court, Eastern District of New York, September 29, 2016; Franz Wild and Keri Geiger, "Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions," Bloomberg, September 30, 2016, available at http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions

[10] For more information on the wider context of this phenomenon, see Patrick Chabal and Jean-Pascal Daloz Africa Works: Disorder as Political Instrument (Bloomington: Indiana University Press, 1999).

[11] HDI was at its lowest in 2000 at .274 but since has improved, albeit minimally. In 1980 the score was .336 but in 2014 it was .333. United Nations Development Programme ", "Human Development Reports: Congo (Democratic Republic of the)," available at http://hdr.undp.org/en/countries/profiles/COD (last accessed June 2015).

[12] Crisis States Workshop, "Crisis, Fragile and Failed States Definition Used by the CSRC," London School of Economics (March 2006), available at http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/drc/FailedState.pdf; World Bank, "International Development Association, International Finance Corporation, and Multilateral Guarantee Agency Country Assistance Strategy for the Democratic Republic of Congo for the Period FY2013-FY2016," (April 12, 2013), Report No. 66158-ZR, available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/05/16/000350881_20130516171004/Rendered/PDF/661580CAS0Box30C0disclosed050160130.pdf; International Rescue Committee, "This Week's Voices: Congo, 'a fragile state, not a failed state,'" March 2, 2012, available at http://www.rescue.org/blog/weeks-voices-congo-fragile-state-not-failed-state;(Nohttp://www.rescue.org/blog/weeks-voices-congo-fragile-state-not-failed-state, (No authorized access to page); Woodrow Wilson Center for International Scholars, "The Congo: Working to rebuild a failed state," March 30, 2006, available at http://reliefweb.int/report/democratic-republic-congo/congo-working-rebuild-failed-state; Theodore Trefon, "Failed State: Can DR Congo recover?," BBC News, November 21, 2011, available at http://www.bbc.com/news/world-africa-15775445; Fund for Peace, "Fragile States Index 2015," available at http://fsi.fundforpeace.org/; Jeffrey Herbst and Greg Mills, "It's time we admit the Democratic Republic of Congo does not exist," Foreign Policy, June 24, 2013, available at http://foreignpolicy.com/2013/06/24/the-invisible-state/; Organisation for Economic Co-operation and Development, "Democratic Republic of Congo: Monitoring the Fragile States Principles," available at http://www.oecd.org/countries/democraticrepublicofthecongo/monitoringthefragilestatesprinciples.htm

[13] This does not include peacekeeping assistance. This is from 2006 to 2013. World Bank, "World Development Indicators," (last accessed January 2016).

[14] CENI received $69 million of its budgeted $244 million. Government of DRC, Ministry of Budget. Etat des Dépenses par Administration et Chapitre: Execution au 31/12/2015, available at (www.budget.gouv.cd).

[15] Dominic Johnson and Christiane Kayser, "Democratic Republic of Congo: Shadow Economies in the "Heart of Darkness." In Matthias Basedau and Andreas Mehler, eds., Resource Politics in Sub-Saharan Africa, vol. 14 (Hamburg: Institute of African Affairs, 2005), p. 151.

[16] For Leopold, Forbath estimates 5 million deaths, while Hochschild puts the number of deaths at 10 million. See, Peter Forbath, The River Congo: The Discovery, Exploration, and Exploitation of the World's Most Dramatic River, (New York: Harper and Row, 1991). Adam Hochschild, King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa, (Boston: Mariner Books, 2006), p. 171. The theft by Leopold is attributed to Belgian scholar Jules Marchal, a leading historian of this period. Marchal cites the following sources: Loans to the Congo state not invested in the Congo but spent by Leopold in Europe (Jean Stengers, «La dette publique de l'État Indépendant du Congo (1879–1908),» in La dette publique aux XVIIIe et XIXe siècles: son développement sur le plan local, régional et national (Brussels: Crédit Communal de Belgique, 1980), p. 309). "Estimated off-the-books rubber profits for the peak boom years, 1898–1908, mainly from rubber gathered on state land, and also including profits from the state's share of the major concession companies (A.B.I.R., the Compagnie du Kasai, and the Société Anversoise du Commerce au Congo). Not included in the calculations are profits from earlier rubber harvests or from the state share in more than half a dozen smaller companies." Jules Marchal, letter to Adam Hochschild, July 30, 1997, found in Hochschild's book.

[17] Historian Adam Hochschild cites that "his personal peak was estimated at $4 billion." The sources for this are Jimmy Burns and Mark Huband, "How Mobutu built up his $4 billion fortune," Financial Times, May 12, 1997; and Mark Milner, Chris McGreal, and Chris Barrie, "The $4 billion ripoff," The Guardian, May 13, 1997. Found in Adam Hochschild, King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa, (Boston: Mariner Books, 2006), p. 303.

[18] The Congolese oil and mining ministries estimate 1 billion tons of iron, 75 million tons of copper, 206 million tons of diamonds, and 30 million tons of niobium, but it is difficult to independently verify the accuracy of these figures. See, RDC Ministeres des Mines et Hydrocarbeures, "Potentialités," (last accessed October 2016).

[19] William Reno, Warlord Politics and African States (Boulder, CO: Lynne Rienner, 1999), p. 147.

[20] Michael Nest et al., The Democratic Republic of Congo: Economic Dimensions of War and Peace, (Boulder, CO: Lynne Rienner, 2006), p. 21.

[21] This consolidated figure is based on estimates from the U.N. Group of Experts on the DRC, the International Peace Information Service (IPIS), and Enough Project calculations. The U.N. Security Council Group of Experts report from 2014 estimated that 9.78 metric tons of gold, valued at between $383 and $409 million, was smuggled from Congo in 2013. A 2015 U.N. Group of Experts report indicated the illicit trade and smuggling had continued in 2014 with "virtually no progress." Field research conducted by IPIS and published in May 2014 indicated that artisanal gold mines IPIS had surveyed produced an estimated 8 to 10 metric tons of gold per year. See, International Peace Information Service (IPIS), "Analysis of the interactive map of artisanal mining areas in Eastern DR Congo," (2014), p. 12, available at http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-drc-may-2014-update/. A January 2015 U.N. Group of Experts report noted that "There was virtually no progress in addressing gold smuggling in 2014 in the Democratic Republic of the Congo and Uganda, and scant evidence of interest in traceability and due diligence by those Governments or by the Government of the United Arab Emirates." U.N. Security Council, "Final report of the Group of Experts," S/2014/42, January 23, 2014, p. 171, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_42.pdf; U.N. Security Council, "Final report of the Group of Experts," S/2015/19, January 12, 2015, p. 3., available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_19.pdf. See Fidel Bafilemba and Sasha Lezhnev, "Congo's Conflict Gold Rush" (Washington: The Enough Project, April 2015), available at http://www.enoughproject.org/files/April%2029%202015%20Congo%20Conflict%20Gold%20Rush%20reduced.pdf

[22] The World Bank, "DRC GDP Growth (annual percent)," available at http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG/countries/CD?display=graph (last accessed 2015).

[23] HDI was at its lowest in 2000 at .274 but since has improved, albeit minimally. In 1980 the score was .336 but in 2014 it was .333. United Nations Development Programme, "Human Development Reports: Congo (Democratic Republic of the)," available at http://hdr.undp.org/en/countries/profiles/COD (last accessed June 2015).

[24] Reporters Without Borders "World Press Freedom Index 2014," available at https://rsf.org/index2014/en-index2014.php (last accessed June 2015). Furthermore, Congo is "not free" with respect to civil liberties and political rights, according to Freedom House. See, Freedom House, "Freedom in the World 2015: Congo, Democratic Republic of (Kinshasa)," available at https://freedomhouse.org/report/freedom-world/2013/congo-democratic-republic-kinshasa#.VYLoeflVhHw (last accessed June 2015).

[25] Maplecroft "Corruption Risk Index," available at http://maplecroft.com/portfolio/new-analysis/2013/09/24/corruption-risk-index-reveals-long-term-lack-will-tackle-corruption-brics/, (last accessed June 2015).

[26] Jonathan H. Frimpong-Ansah, The Vampire State in Africa: The Political Economy of Decline in Ghana (Lawrenceville: Africa World Press, 1991).

[27] This was from 1974 to 1997. GDP per capita, using 2005 prices, was $755 in 1960 and $384 in 1992. World Bank, "World Development Indicators," available at http://data.worldbank.org/country/congo-dem-rep?display=default#cp_wdi (last accessed July 2015).

[28] Fund for Peace, Fragile States Index 2016, available at http://fsi.fundforpeace.org/ (last accessed July 2016)

[29] For example, Congolese political scientist Georges Nzongola-Ntalaja suggests that "The major determinant of the present conflict and instability in the Great Lakes region is the decay of the state and its instruments of rule in the Congo." Georges Nzongola-Ntalaja, The Congo From Leopold to Kabila: A People's History, (New York: Zed Books, 3rd ed., 2007), p. 214.

[30] See also Sarah Chayes, Thieves of State: Why Corruption Threatens Global Security, cited above.

[31] The prices of the three commodities that Congo earns the most foreign exchange from—copper, cobalt, and oil— have been generally high over the past 10 years. Copper started to increase in 2004 from $1/lb to $4.5/lb in 2010 but has been on a gradual decline since then, and at the time of writing is at $2.17/lb. Cobalt began to rise in 2005 from $15/lb to $52/lb in 2007, and has been on a steady decline since 2010 and is now at $10.75/lb. Crude oil began to increase in 2001 from $26/barrel, spiked in 2008 to $151/barrel, and has declined since mid-2014. It was as low as $28.50/barrel in January 2016 and is now back to $48/barrel (June 29, 2016). See also, InfoMine's Investment Mine for charts displaying a general decline in commodity prices in recent years. InfoMine "Commodity and Metal Prices," Investment Mine charts depicting the information described above, available at http://www.infomine.com/investment/metal-prices/ (last accessed July 2016); For copper, see InfoMine "Charts and Data," InvestmentMine, charts and data depicting copper price during the first weeks of July, available at http://www.infomine.com/ChartsAndData/ChartBuilder.aspx?z=f&gf=110563.USD.lb&dr=max&cd=1(last accessed July 2016); For cobalt, see InfoMine, "Historical Cobalt prices" Prices and Price Chart, available at http://www.infomine.com/investment/metal-prices/cobalt/all/ (last accessed July 2016); and Crude and Macrotrends, "Crude Oil Prices – 70 year Historical Chart," interactive charts of West Texas Intermediate crude oil prices per barrel back to 1946, available at http://www.macrotrends.net/1369/crude-oil-price-history-chart (last accessed July 2016).

[32] United Nations Development Program, "Human Development Reports Congo (Democratic Republic of the)," available at http://hdr.undp.org/en/countries/profiles/COD (last accessed June 2015).

[33] Outsiders remain, however, vulnerable to Congolese sovereign authorities in this scheme. Union Minière and other foreign investors were nationalized by Mobutu in the late 1960s. Similarly, the successive Kabila regimes have reneged on multiple international commitments over time, revisited contracts, and expropriated some investors (such as suddenly nationalizing the First Quantum Minerals copper and cobalt mines in 2009).

[34] Steve Askin and Carole Collins, "Kick-backs and Kleptocracy," New Internationalist 259, (September 1994), available at http://newint.org/features/1994/09/05/kick/#sthash.jUc62oK7.dpuf.

[35] U.N. Security Council, "Letter Dated 23 July 1999 from the Permanent Representative of Zambia to the United Nations Addressed to the President of the Security Council," S/1999/815, July 23, 1999, available at http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_990710_LusakaAgreement.pdf.

[36] See, for example, Amnesty International, "Democratic Republic of Congo: Torture And Killings By State Security Agents Still Endemic," (December 2007), available at https://www.amnesty.org/download/Documents/60000/afr620122007en.pdf; Human Rights Watch, "DR Congo: Crackdown on Presidential Aspirant," May 9, 2016, available at https://www.hrw.org/news/2016/05/09/dr-congo-crackdown-presidential-aspirant; Issa Sikiti da Silva, "The ANR: a threat to DR Congo's media freedom," Doha Center for Media Freedom, February 20, 2013, available at http://www.dc4mf.org/en/content/anr-threat-dr-congos-media-freedom.

[37] World Bank, "Overview: Democratic Republic of Congo," available at http://www.worldbank.org/en/country/drc/overview (last accessed October 2015).

[38] Some of Congo's uranium was used to make the atomic bombs that were dropped on Japan in World War II. Patrick Marnham, "Tracing the Congolese Mine that fuelled Hiroshima," The Telegraph, November 4, 2013, available at http://www.telegraph.co.uk/culture/10416945/Tracing-the-Congolese-mine-that-fuelled-Hiroshima.html.

[39] Central Intelligence Agency, "CIA World Factbook: Democratic Republic of Congo," available at https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html

[40] Banque Centrale du Congo, (BCC), Notes Hebdomadaires, 2016, available at http://www.bcc.cd/downloads/pub/bulstat/bul_stat_juin_2016.pdf.

[41] See The International Monetary Fund, "IMF Staff Concludes Visit to the Democratic Republic of the Congo," Press release, June 8, 2016, available at http://www.imf.org/external/np/sec/pr/2016/pr16268.htm; International Monetary Fund, "Democratic Republic of the Congo," IMF Country Report 15/280, available at http://www.imf.org/external/pubs/ft/scr/2015/cr15280.pdf; The World Bank, "DRC GDP Growth (annual percent)," available at http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG/countries/CD?display=graph (last accessed June 2015); BCC, 2016.

[42] International Monetary Fund, "Democratic Republic of the Congo," IMF Country Report 15/280, October 2015; International Monetary Fund, "Press Release: IMF Staff Concludes Visit to the Democratic Republic of the Congo," June 8, 2016, available at http://www.imf.org/external/np/sec/pr/2016/pr16268.htm.

[43] "Fiscal policy might not be enough to contain Congo inflation – IMF," Reuters, June 2, 2016, available at http://www.reuters.com/article/congodemocratic-economy-imf-idUSL8N18U287

[44] In nominal value terms. International Monetary Fund, "Democratic Republic of Congo: Staff Report for the 2015 Article IV Consultation," Washington, DC, August 17, 2015, p. 2, available at https://www.imf.org/external/pubs/ft/dsa/pdf/2015/dsacr15280.pdf; and Africa Confidential, "Congo-Kinshasa," available at http://www.africa-confidential.com/browse-by-country/id/53/CONGO-KINSHASA

[45] The Congolese government has now lowered 2016 growth estimates from 9 percent to 6.6 percent, but the revisions could go even lower given low copper, cobalt, oil, and other commodity prices. Geraldine Boechat, "Copper Rich DRC Cuts Budget, Warns of Hyperinflation," MedAfrica, May 17, 2016, available at http://medafricatimes.com/9304-copper-rich-drc-cuts-budget-warns-of-hyperinflation.html

[46] IMF, 2015: 4-7.

[47] IMF, 2015: 4-7. There are signs, however, that the macroeconomic context is be deteriorating in the wake of declining commodity prices. See Congo Research Group, "Just What Kabila Did Not Need: A Bad Economy," April 19, 2016, available at http://congoresearchgroup.org/just-what-kabila-did-not-need-a-bad-economy/.

[48] UNDP, "Rapport OMD 2000 – 2015: Evaluation des progrès accomplis par la République Démocratique du Congo dans la réalisation des Objectifs du Millénaire pour le développement," September 2015, available at http://www.undp.org/content/dam/dem_rep_congo/docs/MDG/UNDP-CD-RNOMD%202015%20RDC.pdf?download

[49] Extractive Industries Transparency Initiative, "Democratic Republic of Congo," available at https://eiti.org/DRCongo (last accessed December 2015); Initiative pour la Transparence des Industries Extractives, "Rapport ITIE-RDC 2014" (Kinshasa: December 2015), p.10, available at https://eiti.org/sites/default/files/documents/2014_drc_eiti_report_fr.pdf

[50] Initiative pour la Transparence des Industries Extractives, "Rapport ITIE-RDC 2013" (Kinshasa: July 2015), available at https://eiti.org/sites/default/files/documents/2013_drc_eiti_report_fr.pdf.

[51] USAID, "Agriculture and Food Security," last updated August 3, 2016, available at https://www.usaid.gov/democratic-republic-congo/agriculture-and-food-security (last accessed October 2016).

[52] International Monetary Fund, "Democratic Republic of the Congo: Poverty Reduction Strategy Paper," para. 19, p. 24 (Washington: July 2013), available at https://www.imf.org/external/pubs/ft/scr/2013/cr13226.pdf.

[53] International Monetary Fund, "Democratic Republic of the Congo: Poverty Reduction Strategy Paper," p. 15 (Washington: July 2013), available at https://www.imf.org/external/pubs/ft/scr/2013/cr13226.pdf.

[54] "Exporting Impunity," Global Witness, June 3, 2015, available at https://www.globalwitness.org/en/campaigns/democratic-republic-congo/exporting-impunity/

[55] These "are the NST group of companies (SODEFOR, SOFORMA and FORABOLA), SIFORCO, SICOBOIS and COTREFOR according to export data analyzed by Global Witness." Found in Ibid, endnote 19, pg. 28.

[56] The Congo and Hezbollah, Congo Siasa, December 21, 2010, available at http://congosiasa.blogspot.com/2010/12/congo-and-hezbollah.html

[57] The sources for this table are: Fédération des Entreprises du Congo, (FEC), Chambre des Mines, "Industrie Miniere en RDC : Rapport Annuel 2015," available at http://www.congomines.org/system/attachments/assets/000/001/086/original/CdM_annual_Report_2015_FR_-_0902_2016_-_web.pdf?1455110717; Banque Centrale du Congo, Condensé statistique, August 2015, available at http://www.bcc.cd/index.php?option=com_content&view=section&id=9&Itemid=58; Sara Geenen, African Artisanal Mining from the Inside Out, (Abington, UK: Routledge, 2015), pp. 5, 9; The annual average commodity prices are estimates from different sources and graphs published by FEC.

[58] Daniel Rothenberg and Ben Radley, "We Miners Take Our Lives In Our Hands Save Nothing And Believe Only In Luck: The Lived Experience of Human Rights and Labor Violations in Selecting Artisanal Mining Sites in North and South Kivu, (Heartland International, Arizona State University, 2014), p. 6, available at file:///C:/Users/User/Downloads/Metis_203122.pdf.

[59] 2015 cobalt production was 69,328 tons, giving an annualized growth rate of 3.6 percent on 2014. 2014 estimated production: Congo produced 56,000 tons, and 112,000 tons were produced globally. As for reserves, Congo is estimated to hold 3.4 million tons, whereas there are an estimated 7.2 million tons of cobalt reserves worldwide. Chambre Des Mines, "2015 DRC MINING INDUSTRY ANNUAL REPORT" (February 2016), available at http://chambredesminesrdc.com/wp-content/uploads/2016/03/CdM-annual-Report-2015-EN-0902-2016-web.pdf U.S. Geological Survey, "Cobalt," available at http://minerals.usgs.gov/minerals/pubs/commodity/cobalt/mcs-2015-cobal.pdf (last accessed January 2015).

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[61] The United States is one of the world's leading markets for industrial diamonds, according to the U.S. Geological Survey. Kimberley Process, "Democratic Republic Congo Annual Rough Diamond Survey: 2014," available at http://www.kimberleyprocess.com/en/democratic-republic-congo#2014

[62] U.S. Geological Survey, "Tantalum," available at http://minerals.usgs.gov/minerals/pubs/commodity/niobium/mcs-2015-tanta.pdf (last accessed January 2015).

[63] Extractive Industries Transparency Initiative (EITI), 2014 report, pp. 14-18, available at http://www.itierdc.net/wp-content/uploads/2016/03/rapport-ITIE-RDC-2014-Final-sign%C3%A9.pdf.

[64] Other significant joint ventures include Boss Mining (70 percent Eurasian National Resource Corp—ENRC—and 30 percent Gécamines), Frontier (95 percent ENRC and 5 percent Government of Congo), Ruashi Mining (75 percent Chinese company Jinchuan and 25 percent Gécamines).

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[84] Steve Askin and Carole Collins, "External Collusion with Kleptocracy: Can Zaïre Recapture Its Stolen Wealth?" Review of African Political Economy, No. 57: 72-85, The Politics of Reconstruction: South Africa, Mozambique & the Horn (July, 1993), pp. 73-4.

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132 Taylor Toeka Kakala, "Local Communities Forced to Pay Salaries of DRC Army and Rebels," Inter-Press Service, March 15, 2013, available at http://www.ipsnews.net/2013/03/local-communities-forced-to-pay-salaries-of-drc-army-and-rebels/

133 Human Rights Watch, "DR Congo: Hold Army to Account for War Crimes," Press release, May 19, 2009, available at https://www.hrw.org/news/2009/05/19/dr-congo-hold-army-account-war-crimes

134 The U.N. Group of Experts has alleged many such cases. For example, one case relates to a Col. Nakaba according to the Group: "FARDC Colonel Nakabaka, previously a Mai Mai fighter, is widely recognized by FDLR former combatants in South Kivu as having been an important ally to FDLR in the past. The Group also established from analysing telephone records that in 2009 Colonel Nakabaka was in telephone communication with Major Fudjo Zabuloni, the commander of the Mai Mai Zabuloni in Uvira territory. In the same time period, Colonel Nakabaka was also in contact with Major ìMazuruî, an FDLR intelligence officer, consistently described in dozens of interviews with FDLR former combatants as being involved in recruitment and the gold trade on behalf of FDLR. Both Fudjo and Mazuru have separately been in telephone contact with Bande Ndagundi, a Congolese citizen who is involved in arms trafficking and recruitment activities on behalf of non-State armed groups in the Democratic Republic of the Congo, according to evidence gathered by the Group" U.N. Security Council, "Final Report of the Group of Experts on the Democratic Republic of the Congo submitted in Accordance with paragraph 8 of Security Council Resolution 1857 (2008)" November 23, 2009. S/2009/603, paragraph 33, p.12. Another case relates to Col. Rugayi: "... According to several military sources, Colonel Rugayiís 14th brigade was also heavily infiltrated by FDLR fighters when it was deployed in mining-rich zones in the territory of Kalehe. The Group gathered several consistent testimonies from FDLR former combatants of Colonel Rugayiís involvement in exploiting cassiterite and gold in mining areas under the control of FDLR in Kalehe, before FDLR were pushed out of these areas by newly integrated FARDC units mainly composed of former CNDP elements. " U.N. Security Council, "Final Report of the Group of Experts on the Democratic Republic of the Congo submitted in Accordance with paragraph 8 of Security Council Resolution 1857 (2008)" November 23, 2009. S/2009/603, paragraph 36 and 37, page 12-13. Another: "The Group further notes that, according to MONUC and FARDC sources, the 115th brigade, active in the Kilembwe zone since 2007, includes a number of FDLR elements in its ranks and that its members have previously been involved in commercial activities, such as the sale of gold, on behalf of FDLR. " paragraph 42, p.13-14. "NDC [Nduma Defence of Congo, an illegal armed group in eastern Congo led by Ntabo Ntaberi Sheka, who is under U.S. sanctions] has also established close collaboration with FARDC [Congolese army] officers in charge of the FARDC base of Biruwe, known as "BAWA." The BAWA Commander is Colonel Abiti Albert, who, according to other senior officers, reports directly to General Amisi, the Commander of FARDC land forces. According to NDC sources, BAWA has consistently provided arms and ammunition to Sheka's rebels from its own stock. FARDC sources stated that, on multiple occasions, they had seen Sheka personally bring gold to Abiti in exchange for weapons." U.N. Security Council, "Final report of the Group of Experts on the DRC submitted in accordance with paragraph 5 of Security Council resolution 1952 (2010)," S/2011/738, December 2, 2011, p. 62, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738. "Transfers of weapons and uniforms from FARDC officers: 69. The final report of the Group of Experts for 2009 (S/2009/603, para. 233) presented findings of contacts between FRF and former CNDP officers loyal to Laurent Nkunda. The Group has obtained reports from five credible independent sources of a clandestine meeting near Lulambo in late June between FRF commander Colonel Makanika and the deputy commander of FARDC Amani Leo operations in South Kivu, Colonel Sultani

Makenga (see S/2009/603, paras. 184, 190 and 366 and annex 124, S/2008/773, paras. 21, 36, 168 and 176, S/2008/772, paras. 25 and 29, and S/2008/43, paras. 54 and 63). 70. According to several eyewitness accounts reported by a credible local source (who was not himself present) and confirmed by a senior military intelligence official, Colonel Makenga concluded the meeting by giving Colonel Makanika 12 AK-47s, at least 1 machine gun, a rocket-propelled grenade launcher and several boxes of ammunition. Two sources with good access to FRF confirmed the handover of weapons, one alleging that Colonel Makenga had also given FRF an unknown quantity of new VHF radios in April. The Group received reports from several independent sources that FRF continues to purchase weapons and ammunition from sympathetic contacts within FARDC battalions in the high plateaux area. The Congolese authorities have implicated several FARDC officers in similar weapons and ammunition transfers, but the Group has not been able independently to verify those allegations. The Group received credible reports from Congolese officials that on 25 May, an FARDC captain (ex-FRF) was arrested for selling army uniforms to FRF. On 24 July another FARDC captain (ex-CNDP) was arrested by members of the 10th military region for having provided weapons and military uniforms to FRF" U.N. Security Council, "Final Report of the Group of Experts on the Democratic Republic of the Congo submitted in Accordance with Paragraph 6 of Security Council Resolution 1896 (2009)" S/2010/596, November 29, 2010, para 69-71, p. 21-22. "In certain mining areas, FARDC disputed control over strategic positions with FDLR, while in others, the economic interests of the 51st Sector led to cohabitation. According to United Nations sources, FDLR in Shabunda territory was based very close to FARDC positions around mines, and the two groups allegedly even taxed mineral traders on different days in the mines of Kamulila, Kalekwa and Kagolomba. According to local civil society members, FARDC appeared uninterested in attacking FDLR. FARDC officers informed the Group that when a Mai Mai group repeatedly attacked Shabunda centre in June, the 51st Sector units did not return from their deployments in mining areas to defend the territorial capital." UNSC 2010, para 228, p.63. "The Group has received testimony from multiple sources regarding the participation of FDLR in the timber trade, particularly in the forest surrounding Pinga in North Kivu. The planks are reportedly often transported and taxed by FARDC troops on their way to Goma." UNSC 2010, para 248, 67. "The armed groups often receive military goods and weapons from the civilian population in exchange for sacks of charcoal. The populations surrounding the park in places such as Kibumba and Rugari transport clothes, food and even ammunition to FDLR-Mai Mai in exchange for sacks of charcoal. FARDC officers provide military uniforms and weapons to these middlemen to be traded. At both Sake and Kingi markets, FARDC are known to collaborate with FDLR. During a visit to Kingi, local FARDC soldiers informed the Group that Colonel Kaina had recently departed following a negotiation with FDLR regarding charcoal prices. According to local environmentalists, at Kahumiro, FARDC Lieutenant Colonel Claude Mosala collaborates closely with FDLR in the production of charcoal. " UNSC 2010, para 256, 69.

135 The Economist, "The richest, riskiest mine on earth," August 27, 2016, available at http://www.economist.com/news/middle-east-and-africa/21705860-can-ambitious-mine-make-difference-eastern-congo-richest-riskiest

136 This was reported to increase in 2016 slightly. Grant Gordon, "Payment and Predation: The Politics of Wages and Violence in the Congolese Army," November 3, 2015, Ph.D. candidate, Columbia University Department of Political Science, available at http://grantmgordon.com/wordpress/wp-content/uploads/2010/06/GG-FARDC.pdf.

137 Ibid.

138 Ibid, p. 2.

139 Ibid, p. 19.

140 Ibid, p. 27.

141 Patrick Vinck and Pham Phuong N. "Searching for Lasting Peace, Population-Based Survey on Perceptions and Attitudes about Peace, Security and Justice in Eastern Democratic Republic of the Congo."," Harvard Humanitarian Initiative, and United Nations Development Programme, p. Ii, (Cambridge, MA: July, 2014), pp. ii and 45, available at http://www.peacebuildingdata.org/sites/m/pdf/DRC2014_Searching_for_Lasting_Peace.pdf.

142 Ibid, p. 50.

143 Heidi Vogt, "Low Pay Jeopardizing Congo's Military," Washington Post, November 22, 2006, available at http://www.washingtonpost.com/wp-dyn/content/article/2006/11/22/AR2006112200329_pf.html

144 Hugo de Vries, "Going around in circles: The challenges of peacekeeping and stabilization in the Democratic Republic of the Congo" (Netherlands: Clingendael-Netherlands Institute of International Relations, August 2015), p. 26, available at http://www.clingendael.nl/sites/default/files/going_around_in_circles.pdf

145 U.N. Security Council, "Midterm Report of the Group of Experts on the Democratic Republic of the Congo," S/2015/97, October 16th, 2015, p.18, available at http://www.securitycouncilreport.org/atf/cf/ percent7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9 percent7D/s_2015_797.pdf

146 Ian D. Quick, Follies in Fragile States: How International Stabilization Failed in the Congo. (London: Double Loop, 2015), p. 19.

147 The UNEP study cites that armed militias generate an estimated $13.4 million from natural resources, but this does not include the revenues that accrue to Congolese army units. The Enough Project Team and the Grassroots Reconciliation Group, "A Comprehensive Approach to Congo's Conflict Minerals," Appendix 2, p. 17 (Washington: April 2009), available at http://www.enoughproject.org/publications/comprehensive-approach-conflict-minerals-strategy-paper; U.N. Environmental Programme et al., "Experts' background report on illegal exploitation and trade in natural resources benefitting organized criminal groups and recommendations on MONUSCO's role in fostering stability and peace in eastern DR Congo," April 15, 2015, pp. 3, 32, available at http://postconflict.unep.ch/publications/UNEP_DRCongo_MONUSCO_OSESG_final_report.pdf U.N. Security Council, "Final report of the Group of Experts submitted in accordance with paragraph 5 of Security Council resolution 2136 (2014)," S/2015/19, paras. 79, 80, 116, 124, 125, 193-198, 200, 201; Annex 36, January 12, 2015, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/19.

148 Aloys Tegera and Dominic Johnson, "Rules for Sale: Formal and informal cross-border trade in Eastern DRC," p. 40 (Goma: Pole Institute, May 2007), available at http://www.pole-institute.org/sites/default/files/regard19_anglais.pdf; U.N. Security Council, "Final report of the Group of Experts submitted in accordance with paragraph 5 of Security Council resolution 2136 (2014)," S/2015/19, paras. 79, 80, 116, 124, 125, 193-198, 200, 201; Annex 36, January 12, 2015; U.N. Security Council, "Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo," April 12, 2001, S/2001/357, para. 118, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/DRC%20S%202001%20357.pdf.

149 The Enough Project Team and the Grassroots Reconciliation Group, "A Comprehensive Approach to Congo's Conflict Minerals," (2009).

150 According to the U.N. Group of Experts, "Despite his record of human rights violations, Morgan persists in his activities because he has close relationships with senior leaders in the FARDC ninth military region (Kisangani), including Maj. Gen. Jean Claude Kifwa. Throughout its investigations of the relationship between Morgan and Kifwa, the Group has noted that people who know about Kifwa's actions are reluctant to speak openly about Kifwa. As one Congolese official told the Group: "People are afraid to talk about him because of his methods." Nonetheless, five officials of the Government of the Democratic Republic of the Congo, including an FARDC officer, confirmed to the Group that Kifwa provides Morgan with logistical support and hinders government efforts against Morgan. These officials stated that through loyal FARDC officers Kifwa provides arms and ammunition to Morgan in exchange for gold; in the past, they traded arms for ivory (see S/2012/843, para. 129). In January 2013, a joint operation by FARDC, the intelligence agency of the Government and the national police raided Morgan's house in Kisangani (at Plot 42, 7th route, Kabondo) and arrested several people suspected to be members of Morgan's family. The following day, FARDC officials in Kisangani freed those who had been arrested. Three Congolese officials and several civil society leaders told the Group that Kifwa enjoys impunity because he is President Kabila's cousin." U.N. Security Council, "Final report of the Group of Experts on the Democratic Republic of the Congo," S/2014/42, paras 66-67, January 23, 2014, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/42&referer=/english/&Lang=E

151 Ibid, para. 67.

152 Peer Schouten, "Exploitation (dans) le Desordre: Cartographie securitaire du Secteur Aurifiere a Mambasa occidental." PAX Pays-Bas, Commission Diocésaine Justice et Paix du diocèse de Wamba, and leréseau Haki na Amani Wamba. (Buna and Utrecht: 2015), p. 28, available at http://www.academia.edu/16598199/Exploiter_dans_le_d%C3%A9sordre_Cartographie_s%C3%A9curitaire_du_secteur_aurif%C3%A8re_%C3%A0_Mambasa_occidental.

153 Hugo de Vries, 2015, 13.

154 In 2015, the U.N. Group of Experts stated that "The Group has confirmed that minerals from Rubaya [eastern DRC] are smuggled with the involvement of Congolese army officers, and that smugglers take minerals from Rubaya to Rwanda, despite Rwanda's recent efforts to improve transparency in its mineral sector. … The Group met with people involved in the minerals trade in the Democratic Republic of the Congo and Rwanda, businessmen, Congolese mining agents, a senior official at the North Kivu ministry of mines, officers of the mining police in Goma and representatives of civil society organizations in the Democratic Republic of the Congo, all of whom said that minerals from Rubaya were being smuggled to Rwanda. Such smuggling is facilitated by the availability of Rwandan tags and associated documents on the black market, which can be purchased and used to insert smuggled or stolen minerals into the international supply chain." U.N. Security Council, "Letter Dated 12 January 2015 from the Chair of the Security Council Committee Established Pursuant to Resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," S/2015/19, paras 158-173, January 2015, available at https://

www.un.org/sc/suborg/en/sanctions/1533/work-and-mandate/expert-reports.

155 United Nations Security Council, “Letter Dated 29 November from the Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo Addressed to the President of the Security Council,” S/2011/738, p. 41, December 2011, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738

156 U.N. Security Council, “Final report of the Group of Experts on the DRC submitted in accordance with paragraph 5 of Security Council resolution 2198 (2015),” S/2016/466, May 23, 2016, paras. 198-204, available at https://www.un.org/sc/suborg/en/sanctions/1533/work-and-mandate/expert-reports

157 Jason Stearns et al., “The National Army and Armed Groups in Eastern Congo: Untangling the Gordian Knot of Insecurity,” Rift Valley Institute, 2013, p. 50, available at http://riftvalley.net/publication/national-army-and-armed-groups-eastern-congo#.V8hEqpMrJE4http://riftvalley.net/publication/national-army-and-armed-groups-eastern-congo#.V8hEqpMrJE4

158 “The Group obtained evidence that FARDC criminal networks from the BAWA military base at Biruwe, which reports directly to General Amisi, control and tax heavily the production at Obaye [an illegal tin mine]. According to local authorities in Obaye, Colonel Abati Albert and his deputy Colonel Dido Jacques deploy a unit from the base at Obaye, led by Captains Franck and Augustin, to enforce a tax of 5 kg per pit per day as well as to enforce collective workdays, or “salongo”, for the military in which they can gather more than 100 kg per pit.” United Nations Security Council, “Letter Dated 29 November from the Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo Addressed to the President of the Security Council,” S/2011/738 para. 453, p. 116. “the Group found evidence of illegal FARDC involvement in mining in Punia territory, specifically in the mines surrounding Kasese. An FARDC unit commanded by Captain Salung Christophe Nestor and responding directly to the regional command in Kindu, is deployed in the area to prevent FDLR incursions. According to several sources, including one within the governorate, the unit was deployed under the protection of General Amisi, Commander of FARDC land forces. Having been deployed in the area since 29 July 2008, they also periodically (up to twice per month) enter mining sites and extort 1 kg of tin ore from each miner, which is apparently sufficient to fill several planes each month.” GOE S/2011/738 para. 469, p. 120-1. “[A] ccording to mineral traders and mining authorities, General Amisi Kumba, commander of FARDC land forces, is also actively involved in mineral exploitation at Bisie [a large tin mine], where he has deployed Adjutant Tchiza to oversee at least three pits. The former commander of Zone 2, Colonel Chuma, also invests in Bisie through his younger brother, commonly known as “Major B52”, based at Ndjingala.” U.N. Security Council, “Midterm Report of the Group of Experts on the Democratic Republic of Congo,” S/2010/596, Nov 29, 2010, para. 196, Page 53, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/596; “The BBC has evidence that Gen Gabriel Amisi Kumba installed a mining firm at the Omate [gold] mine in return for a 25% cut…. In February, the general wrote to the regional army commander in North Kivu, telling him to evict a rival company, Socagrimines, in favour of Geminaco.” “Following a mining ban in September, production is continuing at the mine under direct military control.” “They struck a deal to exploit Omate gold mine, which would give Amisi 25% of the monthly production of the raw gold.” “A source at Socagrimines said the company had tried and failed to do a deal with Gen Amisi itself. He said it was impossible to mine in the area without military support.” Thomas Fessy, “Congo general ‘profits from blood gold’”, BBC, November 10, 2010, available at http://www.bbc.com/news/world-africa-11722142 “The gold mine at Omate (also known as Umate) has been the subject of considerable attention throughout Walikale. According to multiple credible sources and extensive documentation, General Amisi has inserted himself into an ongoing conflict over the rights to Omate in exchange for a percentage of the production. According to mining authorities and mineral traders, the rights to Omate have historically been held by the local mining company, Sozagremines, later to become Socagrimines, owned by Dimanche Katengura.” “When Katengura returned to Walikale in 2009 intending to reassert Socagrimines’ control over Omate, Rene Mwinyi, the director of Geminaco, solicited support from General Amisi, who was a close friend of his, according to other Geminaco representatives interviewed by the Group. The Group obtained documents showing that Amisi subsequently ordered General Mayala (Annex 4) to instruct a platoon of the 212th brigade to vacate the Omate mine and for Geminaco to be installed there.” “Representatives of Geminaco in Goma admitted to the Group that Mwinyi had indeed asked Amisi for support in this conflict over the rights to Omate. They claimed that Amisi had simply studied both sides of the case and, realizing that Geminaco was suffering an injustice, decided to assist it without any payment, even though such arbitration falls far outside his competence.” “Amisi has reportedly been allotted his own mining pit, and Mboneza has instructed that his soldiers be given access to productive pits for a certain number of hours each week.” “Representatives of Socagrimines informed the Group that they believed that Geminaco was not fulfilling its original agreement with the military commanders, which requires that the company allocate 25 per cent of production for General Amisi and 10 per cent each for General Mayala and Colonel Bindu. According to FARDC sources, Major Katembo and Major Aloma went to Omate from 7 to 25 August in order to collect General Amisi’s percentage, but left disillusioned. Katengura informed the Group that he planned to propose the same percentages to

Amisi, Mayala and Bindu as well as adding something for the zone commander, Colonel Chuma." "According to official sources, on 14 October Shabani Manala, a Geminaco manager, was arrested by the Military Prosecutor's Office in Walikale for illegally mining gold at Omate. According to a taped interview obtained by the Group, Shabani claimed that Amisi had requested his arrest, but denied that it had anything to do with the failure to provide the General with a percentage of the production." GOE S/2010/596, paras. 197-205, pages 54-55. "Local officials informed the Group that General Amisi used several subordinate officers to oversee his mineral investments. Government officials cited five separate officers who were working for Amisi while deployed at the mining sites of Irumu, Aru, Mambasa and Mongbwalu. The recently appointed 11th Military Region commander, Colonel Fall, has attempted to suspend or rotate many of those officers in order to limit their involvement in the mineral trade. According to FARDC sources, however, Amisi intervened to ensure that the 13th brigade commander, Masudi Esperant, was not moved from the mines around Mongbwalu. The Congolese authorities alleged Major Willy Nyangezi was smuggling Amisi's minerals across the border to Uganda. According to mining officials, at least 80 per cent of mineral traders in Bunia sell their gold to Kampala." GOE S/2010/596, para. 67

159 Thomas Fessy, "Congo General," general 'profits from blood gold'," November 10, 2010, available at http://www.bbc.com/news/world-africa-11722142.

160 Jason Stearns, "Congo Army Chief Caught in Gold Deal," Congo Siasa, November 10, 2010, available at http://congosiasa.blogspot.com/2010/11/congo-army-chief-caught-in-gold-deal.html; "Disqualification de Vclub : Gabriel Amisi appelle au calme," Radio Okapi, May 25, 2016, available at http://www.radiookapi.net/2016/05/25/actualite/sport/disqualification-de-vclub-gabriel-amisi-appelle-au-calme.

161 "The Group also established that General Masunzu and Colonel Nakabaka, the commanders of the tenth military region, cited earlier in the present report for their role in the diversion of military equipment to non-governmental armed groups (see paras. 23-35 above), are significantly involved in the gold trade in South Kivu. The Group has obtained a written complaint by the mining company Samiki citing Colonel Nakabaka's control over mining areas in the company's concession, and the refusal of military elements under his command to withdraw despite the recommendations from the governor of the province to do so (annex 50). Several traders interviewed by the Group in the course of the current and past mandates, reported that mining areas controlled by Colonel Nakabaka are known as the ìtenth military regionî, and much of the gold is laundered on his behalf by Mange and Mr. Shamamba, referred to above as suppliers of Mr. Mutoka. … The Group has also obtained a document detailing a request by Colonel Nakabaka made to Mr. Shamamba's company, Etablissement Namukaya (otherwise known as Congocom), for cement to complete the construction of his house in Uvira (annex 51). The Group has also directly observed General Masunzu in August 2009 discussing matters with a company agent of Etablissement Namukaya in Bukavu. According to several traders, Colonel Nakabaka handles the gold trade in FDLR and Mai Mai areas, and General Masunzu controls the flow of gold from the Hauts Plateaux area, where FRF and FDLR cohabitate. … According to Congolese intelligence services, General Patrick Masunzu, commander of the 10th Military Region (see paras. 114 and 215), and his deputy, Colonel Nakabaka (see paras. 114, 218 and 230), are business partners of Shamamba. All of the mineral traders consulted by the group in Mwenga territory informed the Group that they sell to agents of Shamamba. Établissement Namukaya also operates New Congocom Air, one of two air transport services in South Kivu that gathers gold and other minerals for Shamamba's wide network of field-based agents throughout the Kivus (see annex 62). Based on the reported production levels of mineral traders in Mwenga alone, the Group estimates that Shamamba purchases over 60 kilos of gold per month. Credible testimony which indicates that gold trafficking, including that which is orchestrated by Shamamba, has increased along the routes from Bujumbura and Bukavu to Kampala through Kigali in order to take advantage of tax incentives for exports from Uganda." (see paras. 158, 159, 294). All found in U.N. Security Council, " U.N. Group of Experts, "Final Report of the Group of Experts on the Democratic Republic of Congo submitted in accordance with paragraph 6 of Security Council resolution 1896 (2009)," S/2010/596, November 29, 2010, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/596.

162 Tshitenge Lubabu, "RDC: Francois Olenga, chef, oui chef!" Jeune Afrique (December 11, 2012), available at http://www.jeuneafrique.com/139083/politique/rdc-fran-ois-olenga-chef-oui-chef/; "DRC General Still Seeks his Millions," Namibian Sun, February 19, 2016, available at http://namibiansun.com.85-214-47-219.nmhhost.com/local-news/drc-general-still-seeks-his-millions.87084

163 Generals receive 10,000 Congolese francs more than Colonels. See, Gordon, "Payment and Predation: The Politics of Wages and Violence in the Congolese Army," 2015, p. 54.

164 Tshitenge Lubabu, "RDC: Francois Olenga, Chef, Oui Chef!" Jeune Afrique (December 11, 2012); "DRC General Still Seeks his Millions," Namibian Sun, February 19, 2016, available at http://www.namibiansun.com/local-news/drc-general-still-seeks-his-millions.91550

165 IPIS 2014, pp. 9, 11.

166 Pax for Peace, "Le potentiel de l'or: Y a-t-il potentiel de con it dans le secteur aurifère dans la concession 40 en Province Orientale?" 2014, p. 39, available at http://www.paxforpeace.nl/stay-informed/news/potential-for-artisanal-gold-mining-in-ituri-dr-congo

167 PACT, "Promines Study: Artisanal Mining in the Democratic Republic of the Congo" (June 2010), p. 58, available at http://congomines.org/system/attachments/assets/000/000/349/original/PACT-2010-ProminesStudyArtisanalMiningDRC.pdf?1430928581

168 Ibid, p. 60.

169 Schouten, 2015, p. 39; U.N. Security Council, "Letter Dated 12 January 2015 from the Chair of the Security Council Committee Established Pursuant to Resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," S/2015/19, p.18, January, 2015.

170 Pax for Peace, 39.

171 Holly Dranginis, "Interrupting the Silence: Addressing Congo's Sexual Violence Crisis within the Great Lakes Regional Peace Process," (Washington, DC: Enough Project, March 2014), available at http://www.enoughproject.org/reports/interrupting-silence.

172 Amber Peterman, Tia Palermo, and Caryn Bredenkamp, "Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo," American Journal of Public Health 101 (6) (June 2011), p. 1065, available at ajph.aphapublications.org/doi/abs/10.2105/AJPH.2010.300070hits=10&andorexactfulltext=and&FIRSTINDEX=0&searchid=1&author1=Bredenkamp&resourcetype=HWCIT&RESULTFORMAT=&sortspec=relevance&maxtoshow=&.

173 "Portraying rape as a weapon is important but does not suffice to give attention the problem. The use of sexual violence in warfare is complicated and not adequately understood. It is used with differing levels of premeditated strategy, and sometimes none at all to quickly intimidate and humiliate victims and observers. It does at times occur opportunistically, in a vacuum of accountability or state authority or clear direction." Found in Dranginis, "Interrupting the Silence," p. 12, Endnote 7.

174 U.N. Security Council, "Final report of the Group of Experts on the Democratic Republic of the Congo," S/2014/42, para. 139, January 23, 2014, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/42&referer=/english/&Lang=E.

175 U.N. Security Council, "Midterm report of the Group of Experts on the Democratic Republic of the Congo," S/2013/433, para. 76.

176 U.N. Security Council, "Final report of the Group of Experts on the Democratic Republic of the Congo," S/2014/42, para. 56.

177 Human Rights First, "Dr. Denis Mukwege: Fighting Sexual Violence in the Democratic Republic of Congo," video, October 23, 2013, available at https://www.youtube.com/watch?v=r-OrOE4eq2w#t=74

178 Megan Bradley, "Sexual and Gender-based Violence in the Democratic Republic of the Congo: Opportunities for Progress as M23 Disarms?" The Brookings Institution, November 13, 2013, available at http://www.brookings.edu/blogs/africa-in-focus/posts/2013/11/12-sexual-gender-based-violence-congo-bradley#.

179 Sara Geenen, "Dispossession, displacement and resistance: Artisanal miners in a gold concession in South-Kivu, Democratic Republic of Congo," Resources Policy Vol. 40 (June 2014): 90-99, available at http://www.sciencedirect.com/science/article/pii/S0301420713000172.

180 Geenen 2014, IPIS 2014, Enough Project calculations based on research at Nyamurhale gold mine, South Kivu, where miners earned between $2 and $5 per day, January 2016.

181 Rothenberg and Radley, 71.

182 IPIS 2014, p. 12.

183 Schouten, 2015.

184 Rothenberg and Radley, 2014.

185 PACT, 2010, 87.

186 PACT, 2010, 58.

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300 Quick, p. 17.

301 Leslie, 1987, p. 6.

302 Congo Siasa, "Kabila's Choice : Reforms or Survival ?" November 2013, available at http://congosiasa.blogspot.com/2013/11/kabilas-choice-reforms-or-survival.html

303 Michael Kavanagh, "Congo Signs Mine Deals With Two Chinese Companies"," Bloomberg, July 13, 2015, available at http://www.bloomberg.com/news/articles/2015-07-13/-signs-congo-deals-with-huayou-cobalt-china-nonferrous;.

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305 Ibid.

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308 According to Human Rights Watch, "Under the guise of promoting the interest of Shaban natives—or "Katangese" as they call themselves—Mobutu's regional representatives have demonized the substantial Kasaien community, singled out prominent Kasaiens for attacks and raised a youth militia to reclaim the wealth of the region for its "original" inhabitants … Although there are historical roots to the animosity between Katangese and Kasaiens, the recent explosion of violence is largely explained by President Mobutu Sese Seko's continuing struggle to hold on to power. Throughout his nearly 28 years of rule, President Mobutu has promoted himself as the peacemaker and held out the threat of chaos if he were forced to depart. It is no coincidence that the recent violence in Shaba came at precisely the moment when the President was forced to accept the appointment of an opposition prime minister. The reaction was all the more violent since the prime minister—Etienne Tshisekedi—belongs to the Luba ethnic group of Kasai, who are the objects of the violence in Shaba." The violence left nearly 200,000 people displaced from their homes. See, Human Rights Watch, "Zaire Inciting Hatred: Violence Against Kasaiens in Shaba," (June 1993), Vol. 5, No. 10, p. 2, available at http://www.hrw.org/sites/default/files/reports/ZAIRE936.PDF

309 Reno, Warlord Politics, 49.

310 For more information on this and the rest of the paragraph, see Reno, William, "Sovereignty and Personal Rule in Zaire," African Studies Quarterly | Volume 1, Issue 3 | 1997, pp. 39-64 available at http://asq.africa.ufl.edu/files/Reno-Vol-1-Issue-3.pdf

311 This and the subsequent info here is from Human Rights Watch, "Zaire Inciting Hatred," pp. 1-2; and Reno, Warlord Politics, 49-50.

312 Ibid.

313 Katanga declared some degree of autonomy at the time. Mobutu was weakened by the national conference and encouraged this local violence to undermine Tshisekedi but he was losing control of the repressive apparatus at the time. Correspondence with Pierre Englebert, June 2016.

314 Stephan Marysse and C. Andre, "Guerre et pillage economique en Republique Democratique du Congo," in L'Afrique des Grands Lacs; Bjorn Willum, "Purely Beneficial or Contributing to War," PhD diss., October 21, 2001, University of Copenhagen. Willum estimates that Rwandan army and business associates made an estimated $250 million annually at the height of the war. Cited in Stearns, Dancing in the Glory of Monsters, p. 300. The total RCD

revenues estimate comes from Sweet. Rachel Sweet, presentation at Pomona College Congo Day, Claremont, CA, November 23, 2015.

315 Gareth Williams and Ephrem Ghonda, "Democratic Republic of Congo—The Political Economy of Public Financial Management," (Brighton, UK: The Policy Practice, August 2012).

316 The World Bank Group, "Doing Business, Congo, Dem. Rep." available at http://www.doingbusiness.org/data/exploreeconomies/congo-dem-rep/paying-taxes (last accessed July 2016).

317 PACT, 2010, p. 87.

318 Johan Verhaghe, "School Fee Practice and Policy in the DRC," study for UNICEF/USAID, 2007. Cited in Tom De Herdt and Kristof Titeca, "Governance with Empty Pockets: The Education Sector in the Democratic Republic of Congo: Governance with Empty Pockets in the DRC," Development and Change 47(3):472-494: March 2016, available at https://www.researchgate.net/publication/301316914_Governance_with_Empty_Pockets_The_Education_Sector_in_the_Democratic_Republic_of_Congo_Governance_with_Empty_Pockets_in_the_DRC

319 Pierre Englebert and Emmanuel Kasongo, "Misguided and Misdiagnosed: The Failure of Decentralization Reforms in the DR Congo," African Studies Review, Volume 59, No. 1. April 2016. pp. 5-32, available at https://muse.jhu.edu/article/614568/pdf.

320 The information in this paragraph comes from Ibid.

321 Emery Mukendi Wafwana and Associates, "Avancées fiscales de la République Démocratique du Congo face aux reports Doing business relatifs au paiement des taxes et impots," May 15, 2013, http://www.lexology.com/library/detail.aspx?g=efd3e5ce-bded-4cd0-be42-809e810e3043 (last accessed December 2013).

322 Stephane Ballong, "RD Congo: Le ras-le-bol des patrons," Jeune Afrique, May 27, 2014, #2784, p.113, available at http://www.jeuneafrique.com/9902/economie/rd-congo-le-ras-le-bol-fiscal-des-patrons/.

323 Observatoire de la Dépense Publique (ODEP), "Rapport de l'enquête sur l'évaluation participative de la transparence dans la collecte et l'utilisation des taxes pour l'amélioration du marché central de Kinshasa." (October 2013)

324 U.N. Data/United Nations Statistics Division, "Democratic Republic of Congo," Data for 2014 based on World Statistics Pocketbook, available at http://data.un.org/CountryProfile.aspx?crName=democratic%20republic%20of%20the%20congo

325 Gareth Williams and Ephrem Ghonda, "Democratic Republic of Congo—The Political Economy of Public Financial Management" (2012).

326 ODEP, 2013. ODEP estimated that government revenues from the market should amount to about $2.1 million. However, during their survey, payment receipts produced by traders added up to only $1.5 million, suggesting a loss of $600,000 in collection, and only $280,000 made it to the Treasury.

327 Found in footnote 2 within Oasis Tedika Kodila, "Corruption en République Démocratique du Congo: Tyrannie des nombres," Congo-Afrique, (Vol. 51, No. 464, April 2012); ODEP, 2013.

328 Albert Malukisa Nkuku, *Régulation du trafic et redevabilités multiples de la police de circulation routière dans la ville de Kinshasa: Les amendes de contraventions routières comme objets de négociation* (Antwerp: Institute of Development Policy and Management, University of Antwerp, 2014).

329 Pierre Englebert and Emmanuel Kasongo, "Misguided and Misdiagnosed: The Failure of Decentralization Reforms in the DR Congo," African Studies Review, Volume 59, No. 1. April 2016. pp. 5-32. Furthermore, these figures do not take into account other fees and duties which many Congolese must pay, such as school fees or for the delivery of many vital documents such as birth and death certificates.

330 "Total Tax Burden and Revenue Leakage in the DRC: First Data Analysis Report," March 3, 2016, unpublished document produced for DfID made available to the author.

331 Interview, Mbuji-Mayi, August 2012.

332 Albert Malukisa Nkuku. "Régulation du Trafic et redevabilités multiples de la police de circulation routière dans la ville de Kinshasa: Les amendes de contraventions routieres comme objets de negotiation." (Antwerp : Institute of Development Policy and Management, University of Antwerp, October 2014); Kristof Titeca, Jolino Malukisa,

"Real taxation practices among the Congolese traffic police," (forthcoming, 2016).

333 According to Titeca, in 2015 the system changed and became less organized. Email correspondence with Kristof Titeca, June 30, 2016.

334 Malukisa, 2014, p.16; Titeca and Malukisa, 2016.

335 Malukisa, 2014, p.16. Some commanders also send their wives to the policemen to collect their share without directly implicating themselves.

336 Similar research by Maria Eriksson Baaz and Ola Olson (2011) has also shown how property violations by Congolese police forces "are highly organized with large portions flowing upward in the chain of command." Baaz and Olson. "Feeding the Horse: Unofficial Economic Activities within the Police Force in the Democratic Republic of the Congo," African Security, (Vol. 4, No. 4, 2011). pp. 223–241

337 Nzongola-Ntalaja, 2007, p. 159.

338 Nzongola-Ntalaja, 2007, p. 158.

339 Kennes, 2002, 605.

340 Ibid, 605.

341 Of the total output value of the extractives sector in 2014 at $12.3 billion. Of this amount, crude oil contributed $827 million. In 2013, the oil subsector contributed $466 million in total government revenue, $446 million of which accrued to the Treasury (the rest being kept by various government agencies), an impressive 56 percent tax rate. See, Extractive Industries Transparency Initiative/ITIE RDC "Rapport ITIE-RDC 2013," (Kinshasa: July 2015), available at https://eiti.org/sites/default/files/documents/2013_drc_eiti_report_fr.pdf.

342 EITI, 2013. Revenue figures include VAT.

343 Initiative pour la Transparence des Industries Extractives, "Republique Democratique du Congo - Comite Executif de L'iniative pour la Transparence dans les Industries Extractives- Rapport ITIE RDC 2014," (December 2015).

344 Ibid.

345 To some extent, this also reflects the higher operating costs of mining, which is in an earlier phase of its development. Actual profits might represent a much smaller proportion of turnover than it does in the oil sector where current production has been ongoing for longer (of course, mining predates petroleum production in Congo but formal mining had all but stopped by the early 2000s). Furthermore, the different nature and/or levels of maturity of the two sectors can be seen in the composition of their tax payments. The 2013 EITI report lists all government revenue by the nature of the "financial flow" for both the oil and mining sectors (EITI 2013:100-101). Using the definitions in Annex 20 (234-250), one can infer which of these flows derive from production (e.g., "taxes on benefits and profits") and which ones derive from transactions not necessarily involving any output (e.g., import duties or signing bonuses). For the petroleum sector, we estimate that 98 percent of revenue comes from production activities. For mining, however, we estimate that at least 67 percent of revenue comes from transactions instead. That might be in part due to the fact that more operators are at an early stage of production, but it also may suggest the extent to which the state's revenue strategy is predicated on extracting resources from transactions and its property rights (a derivative of its sovereignty) instead of maximizing output. Deals seem higher on the government's priority list than production.

346 World Bank Group, "Enterprise Surveys -What Businesses Experience," no date, available at http://www.enterprisesurveys.org/Custom-Query (last accessed October 2016).

347 Global Witness, "Virunga: UK Company Bankrolled Soldiers Accused of Bribery and Violence in Quest for Oil in Africa's Oldest National Park," June 10, 2015, available at https://www.globalwitness.org/campaigns/democratic-republic-congo/soco-in-virunga/

348 Martin Fletcher, "Congo troops guarding British firm 'killed peaceful protesters'", September 6, 2014, available at http://www.telegraph.co.uk/news/worldnews/africaandindianocean/democraticrepublicofcongo/11079001/Congo-troops-guarding-British-firm-killed-peaceful-protesters.html

349 Marc Santora, "SOCO Oil Company Paid Large Sums to Officer in Congo, Activists Say," New York Times, June 9, 2015, available at http://www.nytimes.com/2015/06/10/world/africa/soco-oil-company-paid-large-sums-to-officer-in-congo-activists-say.html?_r=0

350 Thomas Wilson, "Congo Activists Urge U.S. Support to Investigate Soco Oil Search," Bloomberg, October 29, 2015, available at http://www.bloomberg.com/news/articles/2015-10-29/congo-activists-urge-u-s-

support-to-investigate-soco-oil-search

[351] "Why Open Contracting," Open Contracting Partnership, available at http://www.open-contracting.org/why-open-contracting/ (last accessed October 2016).

[352] Marie-Soleil Frère, "The Democratic Republic of the Congo: Case Study on Donor Support to Independent Media, 1990-2010," The Media Map Project, 2011, available at http://www.mediamapresource.org/wp-content/uploads/2011/04/DRC2.pdf

[353] Global Witness, "China and Congo: Friends in Need," (London: Global Witness, March 2011), available at https://www.globalwitness.org/sites/default/files/library/friends_in_need_en_lr.pdf.

[354] Carter Center, "Carter Center Applauds Democratic Republic of Congo's Recognition as Member of Extractive Industries Transparency Initiative; Calls for Sustained Commitment to Transparency and Accountability," Press release, July 27, 2014, available at https://www.cartercenter.org/news/pr/drc-072814.html

[355] EITI report 2014, p12.

[356] Jason Stearns, "Interview with Michael Kavanagh," Congo Research Group blog, May 2, 2016, available at http://congoresearchgroup.org/interview-with-michael-kavanagh/.

[357] Fonds Social de la Republique Democratique du Congo, available at http://www.fondsocial.cd/ (last accessed October 2016).

[358] In May 2016 it was reported that Freeport-McMoRan had agreed to sell Tenke Fungurume to China Molybdenum for more than $2.665 billion, Thomas Biesheuvel and Danielle Bochove, "Freeport Selling DRC Mine to China Moly for $2.65 Billion," Bloomberg, May 9, 2016, available at http://www.bloomberg.com/news/articles/2016-05-09/freeport-to-sell-interests-in-tf-holdings-to-china-molybdenum

[359] Jason Stearns, "Interview with Michael Kavanagh," on the Congolese Economy," Congo Research Group blog, May 15, 2015, available at http://congoresearchgroup.org/podcast-interview-with-michael-kavanag/.

[360] "Under Requirement "3.11 real property" of the EITI standard, it is recommended that countries implementing EITI maintain a public register of real owners of companies bidding, operating or investing in extractive assets, including the identity of their (s) owner (s) reality (s) and their degree of participation. If this information is already public (for eg. via the archives of auditors or scholarships), the EITI report should indicate how to access it. However, in the course of our work, we identified the absence of such a register. Moreover, the Democratic Republic of Congo is among the 11 countries participating in the pilot and must disclose the identity of the real owners who are behind extractive companies operating in their countries. As stated at Section 3.6.1 This report, the Executive Committee adopted its own definition of beneficial owners and decided to ask companies included in the scope of disclosure of conciliation 2013 information on the real owners following a specific declaration form. However, we found that some companies have not submitted the information requested on the capital and the actual ownership structure. Furthermore, the review of information collected on the actual property, has allowed us to find that some companies did not submit complete data as required by the terms of reference of the pilot requesting disclosure of the names, nationality, address, date of birth, country of residence and ways to contact the actual owners and information on how real property is exercised. We recommend to set up the necessary arrangements for the holding and publication of a public register of real owners of companies bidding, or operate investing in extractive assets, including the identity of their owner (s) (s) reality (s) and degree of participation." See, EITI 2014, p. 109.

[361] The Och-Ziff bribes related to asset sales of Gécamines. Plea Agreement Cr. No. 16-515 (NGG), United States of America vs. OZ Africa Management GP, LLC, U.S. District Court, Eastern District of New York, September 29, 2016, pp. 7-19, available at https://www.justice.gov/opa/file/899316/download.

[362] Michael J. Kavanagh, "Gecamines of Congo Studies Selling Stake in Glencore Mine," Bloomberg, October 7, 2013, available at http://www.bloomberg.com/news/articles/2013-10-06/Gécaminesgecamines-of-congo-studies-selling-stake-in-glencore-copper-mine.

[363] Michael Kavanagh, Franz Wild, and Jonathan Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest Country"," Bloomberg Markets, December 5, 2012, available at http://www.bloomberg.com/news/articles/2012-12-05/gertler-earns-billions-as-mine-deals-leave-congo-poorest

[364] According to Haaretz, "Gertler is mentioned in connection to a number of companies, and registered as a beneficiary for some of them. Mossack Fonseca's

internal correspondences includes a draft of a contract between Gertler and a company called Callery Resources, seemingly for consultation on a mining deal in Congo. Haaretz's investigation has found that this company is controlled by Yitzhak Abuhatzeira, son of millionaire Rabbi David Abuhatzeira and apparently one of Gertler's closest associates. The leaked documents also show that the Panama-based law firm had stopped representing Gertler due to alleged investigations into his companies. In 2011 Gertler was at the center of an extensive correspondence between various figures in Mossack Fonseca. According to the files, the law firm failed to carry out a due diligence examination before registering two Panamanian companies, Burford Commercial S.A. and Norseville Estates S.A. The two companies were registered at an unusual request of a Swiss law firm. Only after registration did Mossack Fonseca find out that the beneficiaries of both companies were "Anat Gertler, her husband Dan and their children." Gertler is mentioned in connection to a number of companies, and registered as a beneficiary for some of them. Mossack Fonseca's internal correspondences includes a draft of a contract between Gertler and a company called Callery Resources, seemingly for consultation on a mining deal in Congo. Haaretz's investigation has found that this company is controlled by Yitzhak Abuhatzeira, son of millionaire Rabbi David Abuhatzeira and apparently one of Gertler's closest associates. The leaked documents also show that the Panama-based law firm had stopped representing Gertler due to alleged investigations into his companies." Uri Blau and Daniel Dolev, "Israeli Diamond Tycoons Listed in Leaked Panama Papers," Haaretz, April 7, 2016, available at http://www.haaretz.com/israel-news/1.713130

365 According to the Plea Agreement between the U.S. Department of Justice and OZ Africa Management GP, LLC, a company called "DRC Partner, together with others, paid more than one hundred million U.S. dollars in bribes to DRC officials to obtain special access to and preferential prices for opportunities in the government-controlled mining sector in the DRC." DRC Partner is Dan Gertler, according to Bloomberg's source who is "a person familiar with the matter." DRC Person is described as "an Israeli businessman… [who] had significant interests in the diamond and mineral mining industries in the Democratic Republic of Congo (the DRC)." Plea Agreement Cr. No. 16-515 (NGG), United States vs. OZ Africa Management GP, LLC, U.S. District Court, Eastern District of New York, September 29, 2016; Franz Wild and Keri Geiger, "Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions," Bloomberg, September 30, 2016, available at http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions; Global Witness, "Out of Africa," May 4, 2016, available at https://www.globalwitness.org/documents/18357/Out_Of_Africa_final_EN.pdf; Michael Kavanagh, Franz Wild, and Jonathan Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest Country" Bloomberg Markets, December 5, 2012. In response to one Global Witness report, Gertler's spokesman, the United Kingdom's Lord Mancroft, said that any suggestion "that Glencore offered Mr Gertler preferential treatment is wholly misconceived" and that "there are legitimate commercial reasons for every transaction we are involved in." Global Witness, "Glencore unfazed by muddy deals," May 20, 2014, available at https://globalwitness.org/en/blog/glencore-unfazed-muddy-congo-deals/. Thomas Wilson, "Gertler's Congo Oil Companies Part of U.S. Probe Into Och-Ziff," Bloomberg, May 6, 2016, available at http://www.bloomberg.com/news/articles/2016-05-05/gertler-s-congo-oil-companies-part-of-u-s-probe-into-och-ziff

366 A spokesman for Gertler's Fleurette Group said that the firm "vigorously contests any and all accusations of wrongdoing in any of its dealings in the DRC including those with Och Ziff. The Fleurette Group and Dan Gertler strongly deny the allegations announced today, which are motivated by a hedge fund trying to put behind it problems sparked by people that have nothing to do with Fleurette." Wild and Geiger, "Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions," Bloomberg, September 30, 2016.

367 Caroline Binham and Tom Burgis, "UK awards extra funds for SFO probe into ENRC's mining deals," Financial Times, July 3, 2016, available at https://www.ft.com/content/edb2760e-3fb3-11e6-9f2c-36b487ebd80a

368 Tom Burgis, The Looting Machine: Warlords, Oligarchs, Corporations, Smugglers, and the theft of Africa's Wealth (New York: Public Affairs, 2015), p. 59; Fleurette Group, "At a Glance," available at http://fleurettegroup.com/business-projects/at-a-glance (last accessed October 2016).

369 Michael Kavanagh, "Congo's Failure to Publish Oil Deal Breaches Law, Group Says," Bloomberg, January 23, 2014, available at http://www.bloomberg.com/news/articles/2014-01-23/congo-s-failure-to-publish-gertler-deal-breaches-law-group-says.

370 Ibid. According to the Fleurette Group, "Despite Nessergy making considerable efforts to find development partners, it has not been able to progress the development of the block for over seven years… In order to aid the progression of the block and prevent further delay, Nessergy has agreed to hand the rights back in return for a fee to compensate it for not being able to progress development."

Statement available from
Michael Kavanagh, "Congo's Failure to Publish Oil Deal Breaches Law, Group Says," Bloomberg, January 23, 2014.

371 Franz Wild, Michael J. Kavanagh and Jonathan Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest," Bloomberg, December 5, 2012, available at http://www.bloomberg.com/news/articles/2012-12-05/gertler-earns-billions-as-mine-deals-leave-congo-poorest.

372 Global Witness revealed in January 2014 that in 2012 the Congolese government purchased oil rights from Nessergy, a company owned by Gertler, to which the government had sold the very same rights in 2006. The 2012 contract was not published, despite commitments by the Congolese government to do so. Global Witness suggests that the rights were sold to Nessergy for $500,000 in 2006 and that they were bought back in 2012 for at least $150 million or 300 times the initial amount. Fleurette claimed that no Congolese politician was involved in the deal or had any interest in Nessergy, but such statements have little value coming from a company that hides its ownership structure. In another case, at Mutanda, one of Gertler's British Virgin Island companies bought Gécamines' 20 percent stake for $120m in March 2011. Its value has been estimated at $849 million, found in Franz Wild, Michael J. Kavanagh and Jonathan Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest," Bloomberg, December 5, 2012. In May 2012, Gertler sold his 20 percent to Glencore for $340m "plus $140m in assumed debt." Kavanagh et al, 2013: 69 also recounts that "companies affiliated with Gertler bought shares in five mining ventures from three state-owned firms" before the 2011 elections, suggesting again a link between such sale and "campaign" financing. COMIDE, a joint venture between Gertler and ENRC, was one of them. Gertler bought Gécamines' 25 percent in COMIDE in 2011 through Straker International Corp, "one of at least six assets the state sold to him that year" (76). The government failed to publicly reveal the amount of the transaction, which led the IMF to suspend its program in Congo in 2012. And in June 2010 and March 2011 SODIMICO "sold more than 30 mining licenses, including those for two copper projects, to Gertler-linked companies based in Hong Kong and the British Virgin Islands" Kavanagh et al, 2013:76 for a total of $60m. The two copper projects alone (but with their ore-processing plants as well as licenses) were valued at $1.6 billion by securities firms. SODIMICO then transferred $10m to the general election fund. See, Global Witness, "Congo fails to reveal loss-making oil deal with controversial businessman's offshore firm," (January 2014), available at https://www.globalwitness.org/documents/17948/Nessergy_briefing_EN_23_Jan_2014.pdf

373 EITI, 2014; Fleurette Group web site, available at www.fleurettegroup.com (last accessed September 2016).

374 Natural Resource Governance Institute, "Granting Rights to Natural Resources," (March 2015), available at http://www.resourcegovernance.org/sites/default/files/nrgi_Granting-Rights.pdf

375 Andrew Bauer, Paul Shortell, Lorenzo Delesgues, "Copper Giants: Lessons from State-Owned Mining Companies in the DRC and Zambia," Natural Resource Governance Institute, (April 2015), p. 20, available at http://www.resourcegovernance.org/sites/default/files/nrgi_NMC_English.pdf.

376 Gécamines also ranks in the bottom ten of the 45 [SOESOEs] assessed by the index. See, Andrew Bauer, Paul Shortell, Lorenzo Delesgues, "Copper Giants: Lessons from State-Owned Mining Companies in the DRC and Zambia," pp. 6, 21, Natural Resource Governance Institute, (April 2015) available at http://www.resourcegovernance.org/sites/default/files/nrgi_NMC_English.pdf NRGI

377 Bauer et al, "Copper Giants," p. 14.

378 Ibid, p. 14.

379 "Congo State Miner Gecamines Debt Stands at $1.6 Billion- Chairman," Reuters, June 8, 2016, available at http://af.reuters.com/article/drcNews/idAFL8N1902HD.

380 "Albert Yuma Mulimbi : "À la Gécamines, nous avons fait du très bon travail," Jeune Afrique, September 12, 2016, available at http://www.jeuneafrique.com/356236/economie/a-gecamines-avons-tres-travail/. Yuma further elaborates on this strategy: "We were heading towards bankruptcy. It is fair to say that less than 10 years ago, Gécamines was literally at a standstill. So, to try and kick-start the mining sector, the government decided to let foreign companies manage the assets of Gécamines as joint ventures (JVs) with Gécamines as minority partner. When I came to Gécamines and we looked at this structure, we agreed that this was not the right strategy, as it was not providing Gécamines with sufficient funds to enable the company to reinvest and grow. So we decided that, going forward, we would no longer enter into partnerships where the group would be a minority shareholder. And from there we are starting to buy back assets. Today we have managed to buy back four major assets – Deziwa, Kalumines, Mutoshi and Cmsk. This was not a straightforward process and was received with hostility by some partners. We put in place a

new strategy: going forward, we ourselves would develop the assets, increase efficiency partly by reducing the workforce, and invest in new equipment, slowly decommissioning the older machines. We decided to conduct an audit on all the joint ventures that had been previously signed, to ensure that Gécamines is getting a fair share of the bargain. It has not been easy, and it caused its fair share of disgruntlement but that is the strategy we agreed on, and which formed the basis of the business plan I presented to the Mining Indaba last year. The strategy was to prospect and auditing mineral reserves, modernise and buy new equipment." Also, see, "Interview with Albert Yuma Mulimbi, President of Gécamines," African Business Magazine, November 7, 2013, available at http://africanbusinessmagazine.com/uncategorised/albert-yuma-president-of-g%C3%A9camines/#sthash.kEq64PYi.dpuf

381 In an interview with The Independent reporter Jim Armitage, Yuma continued, "The Africa Progress Panel [report] was written by enemies of Dan Gertler. The panel – Kofi Annan – they just gave a signature without any serious investigation of the allegations of the NGOs." … He commented that NGOs such as Global Witness base all their cases on wrongheaded calculations. "They take the number of tonnes of reserves and multiply it by the market price. But that's not the value of the mine! You have to invest in the plant, you have to process. The only value is net present value, and that's it. That's the big difference." Jim Armitage, "The boss of the DRC's state-owned mining operation remains defiant despite uncomfortable questions over its controversial asset sales," The Independent, April 18, 2014, available at http://www.independent.co.uk/news/business/comment/jim-armitage-the-boss-of-the-drc-s-state-owned-mining-operation-remains-defiant-despite-9270350.html

382 The Africa Progress Panel, "Equity in Extractives," (2013) pp. 55–58 & 100–106.

383 Eric Joyce: MP for Falkirk, "Congo Shell companies reported to Serious Fraud Office," November, 24, 2011, available at http://ericjoyce.co.uk/2011/11/ congo-fire-sale-4//.

384 Tom Burgis, "Finance: Cash, oil and blood," The Africa Report, April 29, 2015, available at http://www.theafricareport.com/North-Africa/finance-cash-oil-and-blood.html

385 The Economist, "Murky Minerals-How Bad Is It?" May 8, 2013, available at http://www.economist.com/news/business/21578076-how-bad-it-murky-minerals

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487 Anneke Van Woudenberg, "Dispatches: First Congolese General Convicted of Rape," Human Rights Watch, November 10, 2014, available at https://www.hrw.org/news/2014/11/10/dispatches-first-congolese-general-convicted-rape

488 Kakwavu led the Forces Armées du Peuple Congolais (FAPC), or People's Armed Forces of Congo, in Ituri district in the late 1990s and early 2000s. Kakwavu's armed group was integrated into the Congolese army in January 2005 but Kakwavu was arrested just weeks afterward. See, Trial International, "Jerome Kakwavu," available at https://trialinternational.org/latest-post/jerome-kakwavu/ (last accessed October 2016).

489 According to the U.N. Group of Experts, "During the attacks carried out late in August and early in September 2012 by Raïa Mutomboki, senior Congolese armed forces officers, including the land forces commander, Gen. Gabriel Amisi (see GOE S/2011/738, paras. 191, 205, 453, 469, 471 and 514), instructed the Congolese armed forces units in Masisi to work with the Nyatura. Congolese police and local authorities informed the Group that, in July 2012, Gen. Amisi had sent a Congolese armed forces truck to deliver around 300 AK-47 rifles to Nyatura militia members. Several Congolese armed forces officers, including Lt Col. Nkunduwera, distributed weapons and ammunition to Nyatura militias on behalf of Gen. Amisi." GOE S/2012/843 para. 121, p. 33. "NDC [Nduma Defence of Congo, an illegal armed group in eastern Congo led by Ntabo Ntaberi Sheka, who is under U.S. sanctions] has also established close collaboration with FARDC [Congolese army] officers in

charge of the FARDC base of Biruwe, known as "BAWA." The BAWA Commander is Colonel Abiti Albert, who, according to other senior officers, reports directly to General Amisi, the Commander of FARDC land forces. According to NDC sources, BAWA has consistently provided arms and ammunition to Sheka's rebels from its own stock. FARDC sources stated that, on multiple occasions, they had seen Sheka personally bring gold to Abiti in exchange for weapons." U.N. Security Council, "Final report of the Group of Experts on the DRC submitted in accordance with paragraph 5 of Security Council resolution 1952 (2010)," S/2011/738, December 2, 2011, p. 62.http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738

[490] Ibid.

[491] United States Department of the Treasury, "Treasury Sanctions High-Ranking Government Security Official for Role in Violence in the Democratic Republic of the Congo" Press release, June 23, 2016 available at https://www.treasury.gov/press-center/press-releases/Pages/jl0496.aspx

[492] Agence France Presse, "ICC Prosecutor Warns Against War Crimes in Burundi," Yahoo News, November 6, 2015, available at http://news.yahoo.com/icc-prosecutor-warns-against-war-crimes-burundi-214033388.html

[493] Human Rights Watch, "DR Congo: Establishment of a Specialized Mixed Court for the Prosecution of Serious International Crimes: Common Position Resulting from the Workshop Held in Goma on April 6-8, 2011," April 15, 2011, available at https://www.hrw.org/news/2011/04/15/dr-congo-establishment-specialized-mixed-court-prosecution-serious-international.

[494] For more information on pillage and recommendations for prosecuting this war crime, see Holly Dranginis, "Grand Theft Global," 2015; Open Society, "Why Corporate Pillage Is a War Crime," last updated November 2013, available at https://www.opensocietyfoundations.org/explainers/why-corporate-pillage-war-crime (last accessed July 2016), and James G. Stewart, "Corporate War Crimes - Prosecuting the Pillage of Natural Resources," (New York: Open Society Foundations, 2011), available at https://www.opensocietyfoundations.org/reports/corporate-war-crimes-prosecuting-pillage-natural-resources.

[495] Holly Dranginis, "Grand Theft Global," (Washington DC: The Enough Project, January, 2015) p. 2, available at http://www.enoughproject.org/files/GrandTheftGlobal-PillageReport-Dranginis-Enough-Jan2015.pdf.

[496] Ibid, 2.

[497] For more information, see Business and Human Rights Resource Centre, "Argor-Heraeus Investigation (re Dem. Rep. of Congo)," July 2, 2015, available at http://business-humanrights.org/en/argor-heraeus-investigation-re-dem-rep-of-congo.

[498] Holly Dranginis, "Grand Theft Global," (Washington DC: The Enough Project, January, 2015), p. 4.

[499] The State Department Bureau of International Narcotics and Law Enforcement and the U.S. Institute of Peace are supporting a program to aid Congolese military prosecutors to investigate economic crimes and prosecute cases.

[500] U.S. Department of Justice, "Sixteen Additional FIFA officials Indicted for Racketeering Conspiracy and Corruption," Press release, December 3, 2015, available at https://www.justice.gov/opa/pr/sixteen-additional-fifa-officials-indicted-racketeering-conspiracy-and-corruption.

[501] U.S. Department of Justice, "HSBC Holdings plc and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement," Press release, December 11, 2012, available at https://archives.fbi.gov/archives/washingtondc/press-releases/2012/hsbc-holdings-plc-and-hsbc-bank-usa-n.a.-admit-to-anti-money-laundering-and-sanctions-violations-forfeit-1.256-billion-in-deferred-prosecution-agreement.

[502] U.S. Department of Justice, "BNP Paribas Agrees to Plead Guilty to Conspiring to Process Transactions Through the U.S. Financial System for Sudanese, Iranian, and Cuban Entities Subject to U.S. Economic Sanctions," Press release, June 30, 2014, available at https://www.justice.gov/usao-sdny/pr/bnp-paribas-agrees-plead-guilty-conspiring-process-transactions-through-us-financial.

[503] See, for example, "International Corruption: U.S. Seeks to Recover $1 Billion in Largest Kleptocracy Case to Date," FBI News, July 20, 2016, available at https://www.fbi.gov/news/stories/us-seeks-to-recover-1-billion-in-largest-kleptocracy-case-to-date

[504] According to the court documents, Obiang "received an official government salary of less than $100,000 but used his position and influence as a government minister to amass more than $300 million worth of assets through corruption and money laundering, in violation of both Equatoguinean and U.S. law. Through intermediaries and corporate entities,

Nguema Obiang acquired numerous assets in the United States that he is agreeing to relinquish in a combination of forfeiture and divestment to a charity for the benefit of the people of Equatorial Guinea. Under the terms of the settlement, Nguema Obiang must sell a $30 million mansion located in Malibu, California, a Ferrari automobile and various items of Michael Jackson memorabilia purchased with the proceeds of corruption. Of those proceeds, $20 million will be given to a charitable organization to be used for the benefit of the people of Equatorial Guinea. Another $10.3 million will be forfeited to the United States and will be used for the benefit of the people of Equatorial Guinea to the extent permitted by law." See, Department of Justice, Office of Public Affairs, "Second Vice President of Equatorial Guinea Agrees to Relinquish More Than $30 Million of Assets Purchased with Corrupt Proceeds," Press release, October 10, 2014, available at http://www.justice.gov/opa/pr/second-vice-president-equatorial-guinea-agrees-relinquish-more-30-million-assets-purchased.

[505] That case appears to be still under investigation. See, "French court orders seizure of properties tied to Congo president's family," Reuters, September 29, 2015, available at http://www.reuters.com/article/us-france-congo-corruption-idUSKCN0RT2HL20150929; and "Simo Shuh, "France Seize Properties of President Sassou Nguesso Family," All Afrikan Network, October 4, 2015, available at http://www.alafnet.com/france-seize-properties-of-president-sassou-nguesso-family/.

[506] According to an extensive study by the Chr. Michelson Institute, "Multiple strong research studies and donor evaluations … show that PFM reforms can have a positive effect on curbing corruption, and the evidence benefits from good measurement tools. Overall, there is therefore strong evidence that budget management reforms can help to curb corruption … Cross-country studies show that countries with strong budget management systems and with greater participation of external stakeholders in public spending (i.e., through participatory budgeting) have lower CPI scores." Found in Jesper Johnson, Nils Taxell and Dominik Zaum," "Mapping Evidence Gaps in anti-corruption," (Bergen: Chr. Michelsen Institute, October, 2007) available at http://www.cmi.no/publications/file/4624-mapping-evidence-gaps-in-anti-corruption.pdf.

[507] The African Development Bank, AfDB. "Democratic Republic of Congo: African Economic Outlook 2012," (2012), p. 11, available at http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Congo%20Democratic%20Republic%20Full%20PDF%20Country%20Note.pdf.

[508] Publish What You Pay, "Democratic Republic of Congo," Financial information for 2014, available at http://www.publishwhatyoupay.org/members/democratic-republic-of-congo/ (last accessed July 2016)

[509] For more information, see Extractive Industries Transparency Initiative "Homepage," available at https://eiti.org/ (last accessed July 2016).

[510] Extractive Industries Transparency Initiative, Interactive map with list of countries, available at https://eiti.org/countries (last accessed July 2016).

[511] The Carter Center, "TCC Notes et Commentaires sur le Projet du Rapport de Cadrage pour le Rapport ITIE-RDC 2015," available at http://congomines.org/system/attachments/assets/000/001/141/original/TCC__Notes_et_Commentaires_sur_le_Projet_du_Rapport_de_Cadrage_pour_le_Rapport_ITIE-RDC_2015_VF.pdf?1465290322 (last accessed July 2016)

[512] Global Witness, "Assessment of the EITI beneficial ownership pilots," (March 2015) available at https://www.globalwitness.org/documents/18014/Beneficial_Ownership_Report_MarchMarch_24_FINAL.pdf

[513] Initiative pour la Transparence des Industries Extractives, "Republique Democratique du Congo - Comite Executif de L'iniative pour la Transparence dans les Industries Extractives- Rapport ITIE RDC 2014," (December 2015) p. 7.

[514] Global Witness, "How to Lose $4 Billion": Credibility Test for the Global Transparency Standard as Shadowy Companies Gain Billions in Oil and Mining Deals," (October 2015), available at https://www.globalwitness.org/documents/18094/How_to_lose_4_billion.pdf

[515] Global Witness is calling for EITI to "Require disclosure of the beneficial owners of companies, not simply a company's legal shareholders, which could be another company whose owners are hidden; Include all direct or indirect owners or controllers of the company, applying a low threshold of ownership interest, or no threshold at all; Require disclosure of all interests held by Politically Exposed Persons (PEPs), regardless of size of holdings; A politically exposed person is a person who holds a prominent public function or is connected to such a person, as defined by the Financial Action Task Force." Global Witness, "How to Lose $4 Billion" (October 2015), and Charles Feinstein, "EITI Agenda Advances Despite Divergent Views," World Bank Voices, November 2, 2015, available at http://blogs.worldbank.org/voices/eiti-agenda-advances-despite-divergent-views

[516] Global Witness, "Democratic Republic of Congo Plans to Water Down Laws Against Mining Corruption," Press release, October 15, 2015, available at https://www.globalwitness.org/en/press-releases/democratic-republic-congo-plans-water-down-laws-against-mining-corruption/

[517] Global Witness, "How to Lose $4 Billion" (October 2015).

[518] Aaron Ross, "Congo's President Approves New Oil Code," Reuters, September 15, 2015, available at http://af.reuters.com/article/investingNews/idAFKCN0RF0VK20150915?sp=true

[519] Global Witness, "Last Chance to Fix Congo's Flawed Oil Bill," Press release, January 14, 2014, available at; https://www.globalwitness.org/archive/last-chance-fix-congos-flawed-oil-bill/

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[521] Michael J. Kavanagh, "IMF Halts Congo Loans Over Failure to Publish Mine Contract," Bloomberg, December 3, 2012, available at http://www.bloomberg.com/news/articles/2012-12-03/imf-halts-congo-loans-over-failure-to-publish-mine-contract-2-

[522] Aaron Ross, "CORRECTED-Report Criticises Secrecy in Congo's Sector," Reuters, February 2, 2015, available at http://uk.reuters.com/article/2015/02/02/congodemocratic-mining-idUKL6N0VB0SS20150202

[523] Freedom House, "Congo, Democratic Republic of (Kinshasa)," Freedom in the World scores, available at https://freedomhouse.org/report/freedom-world/2015/congo-democratic-republic-kinshasa (Last accessed July 2016)

[524] According to USAID, the three-year, $11 million Human Rights and Electoral Justice Activity implemented by Freedom House will protect and promote universally recognized human rights in the DRC by bolstering the capacity of civil society actors and human rights defenders to monitor, report, and document human rights abuses; providing legal assistance to those seeking legal remedies and raising citizens' awareness of their rights and how to seek those legal remedies; and advocating authorities for reform through evidence-based policy recommendations. Freedom House will implement this program with core partners the American Bar Association Rule of Law Initiative (ABA-ROLI) and The Carter Center (TCC). It will focus on civil society organizations, including human rights organizations, lawyers and the legal community, to bolster their abilities to design and carry out effective monitoring, public outreach, and advocacy activities that are targeted, evidence- and issue-based, and informed and supported by the DRC citizenry. Information from Enough interview with USAID staff member, May 6, 2016.