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Democratic Republic of Congo: Overview of corruption and anti-corruption

Historically, the Democratic Republic of Congo (DRC) has experienced violence and extensive abuses of power. Protracted civil wars coupled with the continued mismanagement of state resources have placed DRC among the group of fragile states with the world's poorest infrastructure. Bribery, lack of political integrity and weak oversight institutions worsen clientele politics, rent-seeking and instability throughout the country.

AUTHOR
Krista Lee-Jones (TI)
tihelpdesk@transparency.org

REVIEWED BY
Sofie Schuette (U4)
sofie.schuette@cmi.no

Jorum Duri, Samuel Kaninda (TI), and Ernest Mpararo (Ligue Congolaise de Lutte contre la Corruption)
tihelpdesk@transparency.org

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Query

Please provide an updated analysis and general overview of corruption and anti-corruption measures in the DRC. We would appreciate a focus on public administration, government institutions as well as state-owned enterprises. In addition, we would appreciate consideration of the justice and the mining sectors.

Contents

MAIN POINTS

— Corruption permeates all levels of society from petty bribery and grand corruption to illicit financial flows.

— There are elements of a good anti-corruption framework but implementation is lacking.

— Recent research has demonstrated the negative impact corruption in the DRC has had socially, economically and on conflict in the country.

Caveat

This paper concentrates on recent literature on corruption and anti-corruption in the DRC. It is an update to the Helpdesk Answer published in 2015.

Introduction

The Democratic Republic of Congo (DRC) is one of Africa's largest and most turbulent nations. It has endured colonial occupation, dictatorships, conflict, poverty and disease, and yet it is also a repository of some of the world's richest mineral reserves. After gaining independence in 1960, the DRC was under the rule of Mobutu Sese Seko for 32 years, after he seized power in a 1965 coup. A rebellion led by Laurent Kabila, with support from

Rwanda and Uganda saw the end of Mobutu's rule in 1997 (Kodi 2008).

Laurent Kabila was assassinated in January 2001, and his son, Joseph Kabila, became head of state. Joseph Kabila finalised a peace deal in late 2002 with the differing warring factions, and he was elected president in 2006 (Kodi 2008).

In 2019, Félix Tshisekedi replaced Joseph Kabila, after the former was declared the winner of the national elections by the country's Independent National Electoral Commission (Commission électorale nationale indépendante, CENI). Despite the controversy of a rigged election, Tshisekedi's inauguration as president in January 2019 was considered important as it demonstrated the first peaceful transition of power in the past 60 years

(Kowene 2020). In his inauguration speech, he promised to take action to reduce corruption. However, to date, there have been no significant reforms (Burke 2020).

Extent of corruption

DRC has long been marred by corruption. Corruption continues across many sectors including the police, judiciary, mining sector and state-run enterprises. In addition, the restrictions faced by civil society – such as violence – and media outlets – in the form of illegitimate prosecution, harassment and attacks (RSF 2019) – allows corruption to flourish (Norman & Mikhael 2019).

In 2019, DRC ranked 168 out of 180 countries on Transparency International's Corruption Perceptions Index (CPI) with a score of 18 out of a possible 100, down from 20 out of 100 in the previous year (Transparency International 2019; Transparency International 2018). According to the 2019 Global Corruption Barometer (GCB) Africa, 85% of citizens interviewed perceived that corruption had increased in the previous 12 months, representing the highest percentage in sub-Saharan Africa (Transparency International 2019).

The 2018 Ibrahim Index of African Governance ranks DRC 47 out of 54 countries (with 54 being the worst), giving it a governance score of 32 out of a possible 100 (Mo Ibrahim Foundation 2018). The 2018 Worldwide Governance Indicators rates the rule of law in the DRC well below its regional peers (World Bank 2019). The DRC scores low on indicators of voice and accountability (7.4 out 100); government effectiveness (5.8 out of 100); regulatory quality (5.8 out of 100); rule of law (2.9 out of 100); and control of corruption (3.8 out of 100) (World Bank 2019).

The DRC's economic freedom score of 49.5 out of 100, (with a score of 80-100 classified as free, and 0-49.9 classified as repressed) ranks the DRC 39 out of 47 countries in the sub-Saharan Africa region and 162 out of 180 countries ranked. Its score is below both the regional (55.1) and world (61.6) average (The Heritage Foundation 2020). The Open Budget Survey scored the DRC 33 out of a possible 100 for its budget transparency in 2019, similar to the score it received in 2017. While the country has increased the availability of budget information by increasing the information provided in the executive's budget proposal, it has decreased the availability of budget information by failing to publish the pre-budget statement and citizens budget online in a timely manner, and reducing the information provided in the enacted budget (Open Budget Survey 2019).

In 2018, Reporters Without Borders (RSF) revealed that the DRC had the most registered abuses against journalists in sub-Saharan Africa (Reporters Without Borders 2019). The DRC's World Press Freedom Index ranking increased from 154 in 2019 (Reporters without Borders 2019) to 150 with a score of 49.09 (Reporters Without Borders 2020) The RSF noted that although press freedom violations (including arrests, attacks, threats and ransacking or closures of media outlets) continued at an alarming level, they eased slightly when Tshisekedi took office in January 2019. Freedom House scored the DRC 18 out of a possible 100 on its Global Freedom Score – which measures political rights and civil liberties – a slight improvement from a score of 15 in 2019, but still regarded the DRC as not free (Freedom House 2020).

Nature of corruption challenges

The scale of corruption in the DRC has been staggering and permeates all levels of society. It ranges from small-scale to grand corruption.

Petty corruption

Petty corruption is widespread. It is often the only means of survival for public service employees, and it is largely considered normal by citizens (IMF 2019). Bribery is widespread and a routine part of business operations (GAN Integrity 2016).

The DRC has the highest overall bribery rate in sub-Saharan Africa as the GCB showed that 80% of respondents said they needed to pay bribes for public services such as the police, water supply and identification documents (Transparency International 2019). The country's 10 million market sellers are some of the many who are asked for bribes on a regular basis. For example, market sellers' drives to pick up their goods typically involve three corruption incidents, such as a traffic police officer demanding a bribe, an army run roadblock taking some of those goods and then a local government official requiring an unofficial tax to let the market seller trade (Transparency International 2019c).

In addition, it is reported that local and regional governments in the country frequently deduct hundreds of different taxes from citizens (often for services that citizens never receive), and tax officials take some of the money for themselves and then bribe their superiors with the taxes they have collected. Congolese citizens are taxed at very high rates (up to 40% to 50% of their income) to enable tax officials to both generate sufficient tax revenues to government accounts as well as corruptly lining the pockets of tax officials (Transparency International 2019c).

Political patronage and clientelism

Rent-seeking and patronage plague the business community. Often seen in the extractive industry sector, political patronage and clientelism is used to secure licences and contracts for valuable resources. For example, a report by the Congo Research Group (2017) found that Kabila's family "invested in almost every part of the Congolese economy, including farming, mining, banking, real estate, telecommunications and airlines". Even though Kabila no longer holds the presidency, his Common Front for Congo coalition controls both houses, thus providing Kabila with substantial political power in the national legislature (Freedom House 2020).

Electoral corruption

Corruption concerns in the DRC electoral system extend beyond vote rigging and lack of transparency during the vote tabulation process. With independent election observers having only restricted access to polling places and vote tabulation centres (Human Rights Watch 2019), voters are subject to intimidation, and there are violent crackdowns on opposition candidates' rallies during the campaign period (Human Rights Watch 2019).

During the December 2018 elections, voters in eastern Congo's North Kivu province were intimidated by state security forces and armed groups to vote for certain candidates (Human Rights Watch 2018; Human Rights Watch 2019). In addition, more than a million Congolese were unable to vote when voting was postponed until March 2019 in three pro-opposition areas (Human Rights Watch 2018).

Prior to the December 2018 and March 2019 elections, the incumbent president, national legislature and provincial assemblies had exceeded their electoral mandates by at least two years (Freedom House 2020), depriving citizens of their ability to elect or remove their leaders.

A number of irregularities were found in the 2018 elections. CENI did not publish the voter lists within the required 90 days before elections to facilitate verification. Further, an independent inquiry found discrepancies including 500,000 missing blank electoral cards and voter registration kits. The campaign and electoral period was marred by numerous protests alleging tampering with voting machines and unfair electoral processes (Freedom House 2019; Human Rights Watch 2018; Human Rights Watch 2019).

Leaked results from CENI and results compiled by the Catholic Church election observation mission showed that the opposition coalition candidate, Martin Fayulu, had won the election, not Félix Tshisekedi (Paravicini, Lewis & Ross 2019). Also, a number of candidates withdrew from the March 2019 Senate elections amid concerns of bribery, widespread vote buying (Paravicini 2019).

Sectors affected by corruption

Public administration

Even though President Kabila prioritised the fight against corruption, public administration in the DRC remains one of the most corrupt in the world (Bertelsmann Stiftung 2020). There is constant interference in the affairs of government and public administration. State affairs, notably economic and financial matters, are conducted in a manner that lacks transparency. "Public services are weak, underfunded and poorly run, making anti-corruption efforts severely challenging" (Transparency International 2019b).

Official salaries are almost never paid in full. Rather, they are often "topped-up" in a variety of forms. Some of these top-ups are considered legitimate, while others not (Titeca & de Herdt 2019). This is particularly true of top-ups extracted from ordinary citizens. A survey of informal taxes estimated that informal income generated 85% of total officially registered state income occurring in the form of broadly accepted fees for services, including extortion (Paler et al. 2017).

Although these practices help maintain the public service infrastructure, by, in effect, paying civil servants in a bottom-up manner, it erodes the authority of the administrative hierarchy and can have damaging effects. For example, parents pay a variety of school fees to send their children to school which are used, in part, to pay for teachers' salaries, school buildings and other infrastructure. Although this has led to more children attending school (and consequently led to more schools opening as each child brings additional revenue) it has had a detrimental effect on the quality of education (Titeca & de Herdt 2019).

State-owned enterprises

State-owned enterprises play a central role in the management of the extractive industry in the DRC. The state-owned Générale des Carrières et des Mines (Gécamines) holds a number of mining concessions outside the reach of the mining code. In addition, the lack of transparency in Gécamines' transactions and joint ventures are significant corruption challenges in the mining sector (OECD 2019b).

There has been no published independent third-party audit of Gécamines' accounts as the law does not require publication of audit reports for state companies. According to reports by the Carter Center and Global Witness, hundreds of millions of United States dollars went missing from Gécamines accounts between 2011 and 2014 (The Carter Center 2017; Global Witness 2017; Callaway 2018). In addition, a National Resource Governance Institute report claimed that some of Gécamines' mining concessions were sold at a price eight times less than the market value and with no public tendering process (NRGI 2015).

The Carter Center's analysis of Gécamines contracts and finances found that half a billion dollars in infrastructure loans from Chinese banks were unaccounted for. The Carter Center's report also documented how government officials circumvented the mining code and regulations governing state-owned enterprises to divert revenue (The Carter Center 2017). After the Carter Center's report was released, Gécamines chief executive officer, Albert Yuma, stated that all revenues were appropriately accounted for and denied the allegations (US Department of State 2019).

Gécamines has published only a small number of contracts, insisting that it is not required to disclose them as a commercial enterprise (The Carter Center 2017). In the absence of such information, it is difficult for the public to know how much money the DRC should be receiving for these minerals, or who is the ultimate beneficiary (Callaway 2018).

Justice sector

Transparency International's Global Corruption Barometer and the World Bank Doing Business and Enterprise surveys both point to the judiciary as corrupt (Transparency International 2019b; World Bank); 74% of citizens interviewed for the GCB thought that most judges and magistrates were corrupt (Transparency International 2019b). The judiciary is often seen to show bias against the opposition and civil society. In comparison, the government and its allies seem to enjoy impunity for abuses (Freedom House 2020). The private sector has highlighted problems in contract enforcement and the protection of property rights as well as the lack of independence of the courts (IMF 2019).

In practice, the executive, the legislature and the judiciary do not operate independently (Bertelsmann Stiftung 2020). The president appoints all members of the judiciary, and it is reported that the "judicial system is totally controlled by the presidency" (Bertelsmann Stiftung 2020), and many institutions are unable to fulfil their mandate of holding the executive branch to account (Africa Center for Strategic Studies 2016).

Disciplinary boards created under the High Council of Magistrates rule on corruption and malpractice cases each month, including on issues such as the dismissal, suspension or the fining of judges and magistrates (US Department of State 2019). One judge on the high council said its investigation into corruption concluded that "250 magistrates were guilty of counterfeiting, including fake diplomas, and failure to pass the recruitment test" (US Department of State 2019).

The judicial system is also one of the least financed services in the DRC, with the majority of operating expenses borne by litigants. Working conditions are poor, which facilitates the multiplication of informal fees and exposes litigants to ransom, racketeering and corruption. These conditions pose

two major problems: the high cost to access justice and a lack of credibility of judgments (Bertelsmann Stiftung 2020). In October 2018, Bambi stated that jurisprudence in countering corruption in the DRC was non-existent (Bertelsmann Stiftung 2020).

In 2015, former President Kabila appointed a former minister of justice, Luzolo Bambi Lesa, as Special Advisor on Good Governance, Combating Corruption, Money Laundering and Financing of Terrorism. Bambi estimated in 2015 that the DRC was losing up to US$15 billion a year, about twice the country's annual budget, to fraud. The advisor referred acts of corruption involving ministers, governors and managers of state companies, public establishments and services to the public prosecutor in 2015 and 2017, but without any legal consequence. Commentators suggest that such moves were likely made to garner favourable public opinion rather than to ensure justice was done (Fombad & Steytler 2020).

The new government has reportedly started to enforce some laws against Kabila's loyalists. In December 2019, for example, a Kabila loyalist named Albert Yuma, was accused of diverting US$200 million in funds. He was prevented from leaving the country and was forced to appear in person before the court of appeals in Kinshasa (Englebert 2020).

In March 2020, former health minister, Oly Ilunga, and his financial adviser were sentenced to five years in prison for embezzling funds provided to the DRC as part of the Ebola response (Bujakera 2020). This judgment marked the first time a minister from the former president's government has been convicted for corruption since Tshisekedi took power in 2019 (Bujakera 2020).

In addition, Tshisekedi's chief of staff, Vital Kamerhe, has been accused of embezzling more

than US$50 million. This case is part of a broader investigation that is perceived by reporters as marking the "renewal" of the Congolese justice system in the fight against corruption among the elite" (AFP 2020). While some view Kamerhe's arrest as a strong signal in the anti-graft fight, others remain sceptical, viewing the case as merely score-settling among the governing coalition (AFP 2020).

Police

According to the latest GCB for Africa, the bribery rate for the police in the DRC is the highest of all the countries surveyed, with 75% of people who had engaged with the police having paid a bribe in the previous 12 months (Transparency International 2019b). Eighty-one per cent of DRC citizens think the police are corrupt (Transparency International 2019b).

Extractive industries

Cobalt and copper are essential metals for rechargeable batteries – a growing market due to the demand for electric vehicles. The DRC plays an important role in the supply chain for the metals, with the DRC providing over 60% of the global production of cobalt, and being the fifth largest producer of copper in the world (OECD 2019a).

Cobalt is mined on both large-scale and artisanal concessions in the DRC, each presenting its own set of challenges, from small-scale bribery, to extortion through to elaborate and opaque contracting deals between the country's elite and their international partners. While large-scale mining (LSM) is the main type of copper and cobalt production in the DRC (OECD 2019b), a significant number of LSM companies source from artisanal and small-scale mining (ASM), and this cobalt is blended with their own production which, in turn, blurs the supply chain (De Brier 2020).

The main corruption risks for LSM relate to the acquisition and negotiation of mining rights, and the role of middlemen and subcontractors. Bribery used to acquire assets in the LSM sector has been widely reported, which has resulted in the sale of DRC mines allegedly at significantly undervalued prices (OECD 2019b).

Subcontracts entered into by mining companies – such as for blasting and construction – can be worth hundreds of millions of dollars. Very little or non-existent levels of due diligence are used in subcontracting or consulting firms with beneficial owners who are politically exposed persons (PEPs), thereby raising concerns of questionable transactions (OECD 2019b).

Fleurette Properties – a company headed by Dan Gertler (an Israeli businessman with close links to Kabila) – has been linked to transactions in which top Congolese officials personally received millions of dollars in exchange for allocating mining rights. This was made possible through deals in which the state-owned company, Gécamines, would sell mining assets to Fleurette at prices assessed by outside groups as below market value. Fleurette would then flip and sell at a profit, netting a loss for Congolese citizens and a profit for political leaders and their international collaborators (Callaway 2018).

Corruption risks related to ASM include illegal payments to government officials, beneficial ownership of cooperatives and buying depots, and the non-transparent documentation of production and export data (Congo Research Group 2017). For example, some PEPs are heads of cooperatives, including a relative of a governor, national politicians and members of Kabila's family (OECD 2019b).

DRC's forestry industry is also subject to corrupt practices with the DRC being home to one of the world's largest rainforests. Although logging is a source of income for many citizens, the cost of a licence is expensive, and bribery and corruption is widespread across the sector (Mulumba 2018). Global Witness reports "the legally questionable allocation of logging titles and widespread illegalities in terms of forest management and logging operations" (Global Witness 2015). The DRC's 2002 forestry code imposed a moratorium on new concessions. It also limited the number of trees that could be chopped down under existing permits. However, enforcement is difficult due to a lack of resources (CGTN Africa 2019).

The oil and gas sector also fares poorly. The Natural Resource Governance Institute scored the DRC's oil and gas sector 25 out of 100 points, ranking 84 among 89 assessments in the 2017 Resource Governance Index (NRGI 2017).

Impact of corruption

Social and economic impact

The private sector in the DRC, and the country's natural resources, have for years been exploited by the political elite and foreign nationals, with the Congolese people and local communities receiving very little benefit (Govt UK 2017). Despite its significant natural resources – oil, gas and mineral deposits, in particular – the DRC is one of the poorest countries in the world. The United Nations' Human Development Index ranks it 179 out of 189 countries, with 74% of the population living in multi-dimensional poverty (UNDP 2019).

An investigation by Global Witness shows that as little as 6% of the DRC's annual mining export revenue reach the national budget (Global Witness 2017). According to Global Witness, between 2013 and 2015, mining revenue of up to US$1.3 billion –

twice the annual amount spent by government on health and education – did not reach the treasury. The shortfall was blamed on a "dysfunctional state-owned mining company and opaque national tax agencies" as well as "corrupt networks linked to President Joseph Kabila's regime" (Global Witness 2017).

According to the OECD, revenue lost because of the sale of undervalued assets and non-payment of taxes makes it harder for the DRC to address key human rights issues such as child labour. Such lost revenue could otherwise be spent on free education and services for vulnerable children and families (OECD 2019). In addition, "collusion between public officials and private actors facilitate corrupt practices, including the misappropriation of funds and actions that reduce the efficiency of public investment, with potentially damaging macro-fiscal consequences" (OECD 2019).

A direct link between corruption and the enjoyment of human rights by Congolese has been demonstrated through the closure of the Kingamyambo Musonoi Tailings (KMT) mine. A company official told the workers the Congolese government had unlawfully stripped First Quantum Minerals (a Canadian company which owned the mine) of its mining licence. The licence was subsequently awarded to Gertler's entity in 2010 for a fraction of its value, and then sold on to ENRC for a substantial profit (RAID & AFREWATCH 2020). The International Finance Corporation (IFC), the private banking arm of the World Bank, was a key investor. The IFC required First Quantum to provide social and environmental opportunities for the communities surrounding the mine, including higher standards for local workers, such as clean water and access to healthcare and education. The project was also to contribute towards the clean-up of the toxic air and water

pollution at a nearby river that adversely affected people's daily lives. Immediately following the cancellation of First Quantum's mining licence, all development projects ended and around 700 Congolese workers lost their jobs. IFC was forced out of the KMT mine project, and with its departure, social and environmental commitments, safeguards and monitoring ended (RAID & AFREWATCH 2020).

ERG did not operate the KMT mine until 2017 when some development projects restarted. RAID and AFREWATCH identify two groups of victims from the closure of the mine as a result of the corrupt dealings. The first were the 32,000 residents living on or near the KMT mining concession who were subsequently denied access to health and social care, and left to live in a polluted environment without access to clean water (RAID & AFREWATCH 2020). The second group consists of an estimated 700 Congolese workers who lost their jobs when the mine shut. Overnight, these workers lost not only their paid employment, but also free healthcare for themselves and their families (RAID & AFREWATCH 2020).

Conflict

The DRC has been marred by wars and conflicts since its independence. According to the United Nations Economic Commission for Africa (UNECA), the DRC's conflicts are better described as primarily "distributional conflicts". In other words, the wars were fuelled by poor management and unequal distribution of benefits from the DRC's natural resource sector: "It is the failure to establish strong institutions and an effective regulatory framework to manage the natural resource sector that has both made the country vulnerable to conflicts and prevented it from taking

full advantage of its massive natural resource endowment" (UNECA 2015).

Although natural resources may not be the direct cause of conflicts in the DRC, without strong institutions ensuring effective oversight, the exploitation of natural resources can be both "an incentive for rebellion against the state as well as a fuel of the war machinery" (UNECA 2015). For example, past development strategies have enabled the country's natural resources to be sold to foreign commercial interests at a great profit to political and economic elites. This has contributed to a system that enables global economic interest groups to exert substantial control over the DRC's natural resources, thereby alienating the state from its people: "a recipe for conflict" (UNECA 2015).

As a result of poor economic performance, the government's capacity to build a strong security sector to provide law and order and protect the country's borders has been significantly hindered. The resulting environment of insecurity is conducive to the mobilisation of rebellions in two main ways. First, by reducing the opportunity cost of joining rebellions for unemployed youth; and second, reducing the capacity of the government to counter rebellious attacks (UNECA 2015).

Anti-corruption framework

A number of national, regional and international mechanisms make up DRC's anti-corruption framework.

International and regional anti-corruption mechanisms

DRC acceded to the UN Convention against Corruption (UNCAC) on 23 September 2010 (UNODC 2020), and signed the Southern African

Development Community Protocol against Corruption in August 2001 (SADC 2001). Despite being a signatory to the UNCAC, DRC is yet to undergo a review of its implementation. In 2003, it signed the African Convention for the Prevention and Combating of Corruption (AUCPCC); however, it has never ratified it (African Union 2020). The DRC has also signed the African Charter on Democracy, Elections and Governance in 2008 and the African Charter on the Values and Principles of Public Service and Administration but has not ratified either of these charters.

The DRC is a member of the Task Force on Money Laundering in Central Africa (Groupe d'Action contre le blanchiment d'Argent en Afrique Centrale, GABAC), a body of the Economic and Monetary Community of Central Africa established in 2000. It is mandated to counter money laundering, assess compliance against the Financial Action Task Force standards, provide technical assistance to members and facilitate international co-operation. The DRC has yet to undergo a peer evaluation.

Legislative framework

The DRC has established legal anti-corruption instruments; however, their enforcement is very weak (Transparency International 2014), often politically motivated, and there are elements missing.

The Anti-Corruption Law of 2004 provides a good legal foundation for countering corruption and addresses many key issues. The penal code criminalises corruption, and article 147-150 contains provisions for sentencing corrupt officials with prison sentences for receiving bribes. Furthermore, the penal code requires any civil servant to report any bribery attempt that they have witnessed to their superior (article 17). The

law does not protect high-ranking officials and the head of state against investigations or prosecution while in office. Moreover, it guarantees an independent judiciary (Bak 2019). The country's constitution, promulgated in 2006, prohibits corruption and embezzlement (The Sentry 2018).

Money laundering is also criminalised under the Law on the Fight Against Money Laundering and Financing of Terrorism, (Loi Portant Lutte Contre Le Blanchiment Des Capitaux et le Financement du Terrorisme) of 2004, but it is inadequately implemented (The Sentry 2018). Under this law, the DRC has issued three decrees to create a financial intelligence unit (FIU), an advisory committee and a fund to counter organised crime. The FIU, established in 2009, is the Cellule Nationale des Renseignements Financiers (CENAREF), and the advisory committee is the Committee Against Money Laundering and Terrorism Financing (COLUB). Although established in 2008, the COLUB did not hold a meeting until November 2017 (The Sentry 2018).

The president and political appointees to government are constitutionally required to declare their assets upon entering and departing office. The constitution authorises criminal prosecution for failure to make such declarations. However, declarations are not made public nor are declarations required of members of the legislature or the judiciary. According to the IMF, it remains unclear whether verification of the declarations and sanctions for non-compliance are properly conducted (IMF 2019).

At the 18 September 2019 swearing in ceremony, each member of the newly installed government signed an "Acte d'Engagement", a one-page letter to Prime Minster Ilunga Ilunkamba containing an ethics code each agrees to observe (Messick 2019).

There are very few legal protections for whistleblowers. Those protections that do exist are weak in terms of both legislation and enforcement. Consequently, whistleblowing in the DRC is rare (PPLAAF no date).

Congolese law does not provide for citizen's access to government information, and records on public expenditures and state operations are often hard to obtain (Freedom House 2019). There is, however, a bill before parliament on access to information (Human Rights Council 2019).

The Congolese government is also working to amend a 2002 law that provides the government with powers to take control of communication facilities in the interest of national security or public defence. The law has been instrumental in the many internet shutdowns and intentional disruptions of access to networks and mobile or fixed-line connectivity. However, the proposed bill still grants officials the power to intercept communications and conduct surveillance (Access Now 2018).

Congolese law only requires companies to disclose their legal owners, not their beneficial owners (IMF 2019). After six years of negotiations, in March 2018, the Congolese mining code was amended to include changes to mining permit terms, royalties and taxes, and transparency in the award of mining rights (OECD 2019). A number of transparency measures aimed at improving transparency, such as through the publication of contracts, information related to beneficial owners and PEPs, and production and export statistics, are planned as part of secondary legislation (OECD 2019).

Anti-corruption institutions

Agency for the Prevention and Combatting of Corruption

In March 2020, an Agency for the Prevention and Combatting of Corruption (APLC) was created by presidential decree (Mwarabu 2020). The agency is part of the Office of President, and it is headed by a coordinator who reports to the head of the state. This may not be ideal set-up for purposes of independence from possible political interference, particularly from the executive. The APLC is yet to be operationalised.

There seems to be a push-back from the Congolese national assembly that is now discussing a bill on the creation of an anti-corruption agency more in line with the relevant provisions of the UNCAC and the AUCPCC (Mfundu 2020; Yakitenge 2020).

Hence, unless the presidential decree creating the APLC is revisited, the country may end up with two anti-corruption agencies with overlapping mandates with the risk for power struggles and pressure on limited resources. This would be counterproductive to the anti-corruption agenda.

Corruption and Ethics Monitoring Observatory

To monitor corruption in the public service, in 2016, the prime minister established the Corruption and Ethics Monitoring Observatory (OSCEP). Its mandate includes ensuring ethical behaviour in public administration and coordinating anti-corruption activities across government agencies, including the financial intelligence unit (CENAREF) and the Bureau of the Special Advisor of the Head of State in Charge of Good Governance (OSCEP). Although CENAREF undertook some anti-money-laundering activities,

OSCEP remained largely inactive (US Department of State 2019).

Office for Behavioural Change

On 8 August 2019, President Tshisekedi, established an office for behavioural change (the Coordination pour le changement de mentalité). Further, during a speech on 11 July marking the African Anti-corruption Day, he reiterated his determination to reform the justice system and called for the ratification of the African Union Convention on Preventing and Combating Corruption (UN Security Council 2019).

Supreme audit institution

The Cours de Comptes, the DRC's supreme audit institution, is responsible for carrying out external audits of state, provincial and decentralised territorial entities' finances. Over the past nine years, the government's audit report has either not been published or has been published late (Open Budget Survey 2019).

Financial intelligence unit

CENAREF is was established in 2004 to aid the DRC in its fight against money laundering and terrorism financing. It receives information from government agencies, conducts periodic studies and advises government on how to advance its anti-money laundering and counter-terrorism financing regime. However, there is a "strong perception" that the CENAREF is unable to investigate high-level officials and political elites involved in certain transactions (The Sentry 2018).

Limited resources and a weak judicial system have also hindered the CENAREF's ability to enforce money laundering regulations (US Department of State 2019).

Sectoral initiatives

In 2008, the DRC signed the Extractive Industries Transparency Initiative (EITI), "a global standard to promote the open and accountable management of oil, gas and mineral resources" (EITI 2019a). Following a one-year suspension in 2013, the DRC is now recognised as a compliant member of the EITI after the implementation of a set of corrective actions. The last report for the DRC was for 2016, published in 2018 where the EITI board determined that "the DRC has made meaningful progress overall in implementing the 2016 EITI Standard". However the board expressed "concern that corruption and mismanagement of funds in the extractive sector persist" (EITI 2019a).

The EITI reports demonstrate a small divergence between tax revenues paid by the resource sector and the amounts received by the treasury. However, some public enterprises' revenues, which are not provided to the treasury, fall outside of the EITI reconciliation exercises. In addition, the EITI does not determine whether the revenue received from the resource sector is a fair amount (IMF 2019).

Other actors

Civil society

Civil society in the DRC is one of the most active on the continent due to weak state institutions and the state's failure to deliver social services, meaning that civil society often steps in. However, civil society is rarely involved in the state's determination of development objectives, or the implementation or evaluation of development programmes (Bertelsmann Stiftung 2020).

Many non-governmental organisations face violence and other obstacles to their work. For example, in September 2018, more than 30 activists from the Struggle for Change (LUCHA) organisation were arrested for demanding an audit of voter lists (Freedom House 2019). HFreedom House reported in 2020 that such repression has "receded somewhat" since Tshisekedi took office, and opposition and civil society groups have been able to operate more freely since the election period concluded (Freedom House 2020).

Media

Freedom of expression is guaranteed by the constitution, and the opposition uses both newspapers and other media to openly criticise the government. However, freedom of expression is in practice constrained by political interference and technical barriers. Journalists and media outlets that report on protests or controversial events face illegitimate prosecution, harassment and attacks. Journalists in Danger and its partner organisation, Reporters Without Borders (RSF), identified 121 attacks on journalists between November 2017 and November 2018, including 54 arrests, 37 cases of censorship and threats against another 30 journalists. More recently, a journalist was murdered, journalists were threatened and a radio station was set on fire for broadcasting programmes about Ebola prevention measures (RSF 2019).

Anti-defamation laws, with criminal punishments, have been used by both government authorities and individuals to intimidate, supress and discourage media investigations of government corruption (US Department of State 2019).

More recently, the government has shut those media outlets that have links to the opposition, most notably in the recent presidential elections. According to Freedom House, such pressure adversely affected election coverage (Freedom

House 2019). For example, in 2016, when President Kabila did not step down from power, social media platforms were shut down in what has been reported as an intentional disruption of access to information to obstruct protests as well as media coverage of the demonstrations (Tackett 2018). Similarly, on 30 December 2018, in response to organised demonstrations to protest President Kabila's refusal to leave office, the government ordered a nationwide shutdown of internet and SMS services. During the shutdown, security forces reportedly shot and killed at least seven protesters and arrested dozens more (AFEX & JED 2018).

International community

Grand corruption in the DRC is found in the management of the DRC's natural resources, and stretches across international borders with the involvement of US, Canadian and European firms (Titieca & De Herdt 2019). For example, illicit financial flows leaving the DRC are estimated to be the same size as the flow of official development assistance that enters the country (Global Financial Integrity 2020). Foreign governments have enforced domestic anti-corruption measures where they have jurisdiction.

A major US Foreign Corrupt Practices Act case involving hedge fund Och-Ziff included counts of bribery in the DRC. Further, the US Treasury's Office of Foreign Asset Control has placed a number of Congolese officials and businesspeople under sanctions (RAID 2020).

Since 2013, Eurasian Natural Resources Corporation (ENRC) has been under criminal investigation by the UK's Serious Fraud Office "focused on allegations of fraud, bribery and corruption around the acquisition of substantial mineral assets". Documents filed as part of related litigation allege payment of US$40 million to Dan Gertler by ENRC (OECD 2019).

In 2019, the UK's Serious Fraud Office also launched an investigation into suspicions of bribery at mining and commodity trading group Glencore and its operations in the DRC (RAID 2020). Earlier in 2017, Gertler was placed under US Global Magnitsky sanctions after being identified as a corrupt actor "who has amassed his fortune through hundreds of millions of dollars' worth of opaque and corrupt mining and oil deals." He allegedly had used "his close friendship with DRC President Joseph Kabila to act as a middleman for mining asset sales in the DRC" (RAID 2020).

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