ISSUE BRIEF

Congo Blues

Scoring Kabila's Rule

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A decade ago, in 2006, the Democratic Republic of the Congo (DRC or the Congo) appeared poised to break free of a nightmarish history: ruthless colonization, post-independence chaos, thirty-two years of erratic dictatorship under President Mobutu Sese Seko, and more than a decade of savage war. A three-year transition to democracy, under the auspices of the United Nations and Western donors, was ending. A new democratic constitution, adopted by referendum, was designed to promote transparency, accountability, and good governance. Civil society was thriving. And the Congo witnessed its first ever free and fair elections for president, parliament, and provincial assemblies. It was a moment of optimism.

Ten years down the road, one is hard put to find much hope or any optimism remaining. The Congo's president, Joseph Kabila, has turned the democratically elected government into an increasingly authoritarian and repressive regime and is apparently intent on staying in power beyond the limits set by his own constitution. Parliament is little more than a rubber stamp, and provincial assemblies are largely dysfunctional. Civil society activists are routinely repressed, and many opposition parties are co-opted or intimidated. And the government almost systematically evades the transparency and accountability requirements of its own laws.

Though Kabila has been in power for fifteen years, he has done painfully little to improve the lot of the Congo's citizens. At best, his tenure has been characterized by willful neglect, and at worst, by adverse and bloody manipulation of the country's political system. Now, though ineligible for another term as president, Kabila is attempting to employ administrative technicalities to delay the scheduled election of his successor in November 2016. These maneuverings are dangerous and lay the groundwork for renewed civil unrest led by frustrated political opponents—at potentially catastrophic cost.[1]

Across Africa, leaders are tinkering with term limits. A number of them, including Rwanda's Paul Kagame and Burundi's Pierre Nkurunziza, have argued that it is the voters' will that they remain, as they alone are

The **Africa Center** promotes dynamic geopolitical partnerships with African states and redirects US and European policy priorities towards strengthening security and promoting economic growth and prosperity on the continent.

1 See Gérard Prunier, "Why the Congo Matters," Atlantic Council, March 2016, http://www.atlanticcouncil.org/publications/issue-briefs/why-the-congo-matters.

capable of ensuring continued peace and stability in their countries. Whatever the merits of these claims, such a defense cannot be credibly applied to Joseph Kabila. This piece provides a scorecard on Kabila's tenure and highlights his regime's inept leadership, massive corruption, and frequent resort to violence in the face of criticism.

Overview

The governance record of the Kabila regime is abysmal, even by the rather low standards of sub-Saharan Africa. In the 2015 Mo Ibrahim Index of African Governance, the Congo was ranked forty-eight out of fifty-four countries, below such catastrophes as Zimbabwe, and ahead only of the worst instances of state failure, such as Somalia or South Sudan. Its score of 33.9/100 has barely budged since 2007.[2] Its 2015 Corruption Perceptions Index from Transparency International was 22/100, earning Congo 147th place out of 167 countries.[3] And the World Bank ranked Congo 184th out of 189 economies in its 2016 "Ease of Doing Business" index.[4]

Corruption is so rampant that it defines governance more than it affects it. According to a 2013 Enterprise Survey, Congolese firms were asked or expected to pay a bribe when soliciting public services, permits, or licenses about 44 percent of the time. For sub-Saharan Africa as a whole, the proportion was 20 percent. Moreover, about 54 percent of Congolese firms are expected to give gifts in meetings with tax inspectors (18 percent for the rest of Africa), and some 52 percent in meetings with government officials to secure contracts (30 percent for the rest of Africa).[5] Worse, Congolese governance shows, by and large, no improvement over time. As a result, government effectiveness and rule of law have flat-lined under Kabila.

Poor governance exacts a high price. Despite a decade of unprecedented macroeconomic growth—during which Congo's gross domestic product (GDP) increased at an average annual rate of 6.6 percent[6]—public welfare has not improved, as income inequality increased from a Gini coefficient of 0.42 in 2005 to 0.45 in 2012.[7] The average Congolese citizen remains pathetically poor, with a per capita income of only $380/year. More than 80 percent of Congolese remain below the $1.25/day poverty line, and the government failed to meet any of the Millennium Development Goals in 2015. Life expectancy is fifty-eight years. In rural South Kivu, the typical journey time to a water source is between twenty-six and fifty-two minutes, according to surveys, and 86 percent of residents still get their water from a public tap or a natural spring. Not surprisingly, people trust village chiefs much more than local or national state officials. On a scale of zero to five, in rural South Kivu, the average response to whether the provincial or national government or the president acts in the interests of the respondents was a one.[8]

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To be sure, there have been governance improvements. Budget transparency, as measured by the Open Budget Survey's transparency index, for example, has gone from a score of 1 percent in 2008 to 39 percent in 2015.[9] The country was certified as compliant by the Extractive Industries Transparency Initiative in 2013. Government contracts are more routinely published than before, and payments to civil servants are processed more openly through the banking sector. Yet, most improvements do not cross a threshold of quality and remain within the range

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2 Mo Ibrahim Foundation, "2015 Ibrahim Index of African Governance: Scores and Rankings," October 8, 2015, http://mo.ibrahim.foundation/news/2015/the-2015-ibrahim-index-of-african-governance-key-findings/.

3 Transparency International, "Corruption by Country," 2015, http://www.transparency.org/country/#COD.

4 World Bank Group, "Doing Business: Ease of Doing Business in Congo, Dem. Rep.," http://www.doingbusiness.org/data/exploreeconomies/congo-dem-rep.

5 World Bank/International Finance Corporation, *Enterprise Surveys: Congo, Dem. Rep. Country Profile 2013* (Washington, DC: World Bank, October 2015), p. 9.

6 Data on file with author from Banque Centrale du Congo. Numbers reflect real GDP frowth from 2005 to 2015.

7 International Monetary Fund, "Democratic Republic of the Congo," *IMF Country Report 15/280*, http://www.imf.org/external/pubs/ft/scr/2015/cr15280.pdf.

8 C.W.J. de Milliano, A. Ferf, J. Oude Groeniger, and M. Mashanda. "Surveying livelihoods, service delivery and governance: baseline evidence from the Democratic Republic of Congo" (Wageningen University/Secure Livelihoods Research Consortium, Working Paper #30, March 2015), pp. 23 and 44.

9 Open Budget Survey 2015, "The Democratic Republic of Congo," www.openbudgetsurvey.org.

of failed governance. As this report will show, most budget practices remain subpar, and the extractive industries are highly opaque. Some mining contracts (probably the most compromising ones) still have not been published. As recently as the end of 2015, an inquiry from the Ministry of Budget revealed that $14.8 million from a payroll for civil servants in the health and education sectors of five provinces had disappeared before reaching its intended beneficiaries.[10] Despite this, the employees in charge of delivering the pay, who used fictitious names and those of deceased individuals to appropriate it, were not prosecuted.

What has gone wrong? To a large extent, Congo's dysfunctional politics have proven immune to reform, and Kabila's regime has proven more the successor of Mobutu than the pioneer of a new era. While the Congo has a well-written, democratic constitution and many decent laws on the books, actual governance practices have undermined legal and constitutional requirements for transparency and accountability, denying the aspirations of Congolese citizens. Despite the best efforts of civil society reformers and some aid donors, Kabila's Congo has, by and large, regressed to Zaire (as Congo was called from 1971 to 1997 under Mobutu).[11] Moreover, Kabila's weak and uninspired leadership has produced problems of its own. Ineffectiveness prevails, largely the result of confusion (intentional or not), dithering, a profusion of unproductive "dialogues," absentee leadership, and the use of non-governmental organizations (NGOs) and other private actors in the provision of public services. Theft and patronage are the dominant modes of economic and political management, and the regime has been increasingly willing to resort to repression and violence to stay in power.

Governance by Confusion

One of the first dimensions of Congolese governance to strike the observer is how hard it is to discern the law and policies of the land. Some policies are endlessly discussed but never adopted. Some are announced but not, or only partly, implemented. Some are turned into laws, others into presidential decrees, still others derive from agreements with donors. Many bills sit in commissions for years, and many laws wait as long for presidential promulgation. When promulgated, it is not uncommon for laws to contradict previous ones or to clash with provincial edicts, and for these contradictions to remain unaddressed, as a weak judiciary fails to clarify parameters and jurisdictions.

No doubt some of this confusion comes from the overall weakness of the state, and its incapacity to properly design and implement policies (due, in part, to insufficient resources in the face of broad and complicated governance requirements).[12] But, it is hard for the frequent observer of Congolese politics not to see also a willful element in it. It serves a weak government that its citizens and own agents are not entirely clear on what the rules are, especially if that government is predicated, in large part, on informal resource extraction and redistribution. It is hard to properly enforce transparency requirements, for example, if the requirements are themselves unclear or contradictory. Confusion also facilitates citizen disengagement and passivity, and it reduces their capacity to use representative institutions.

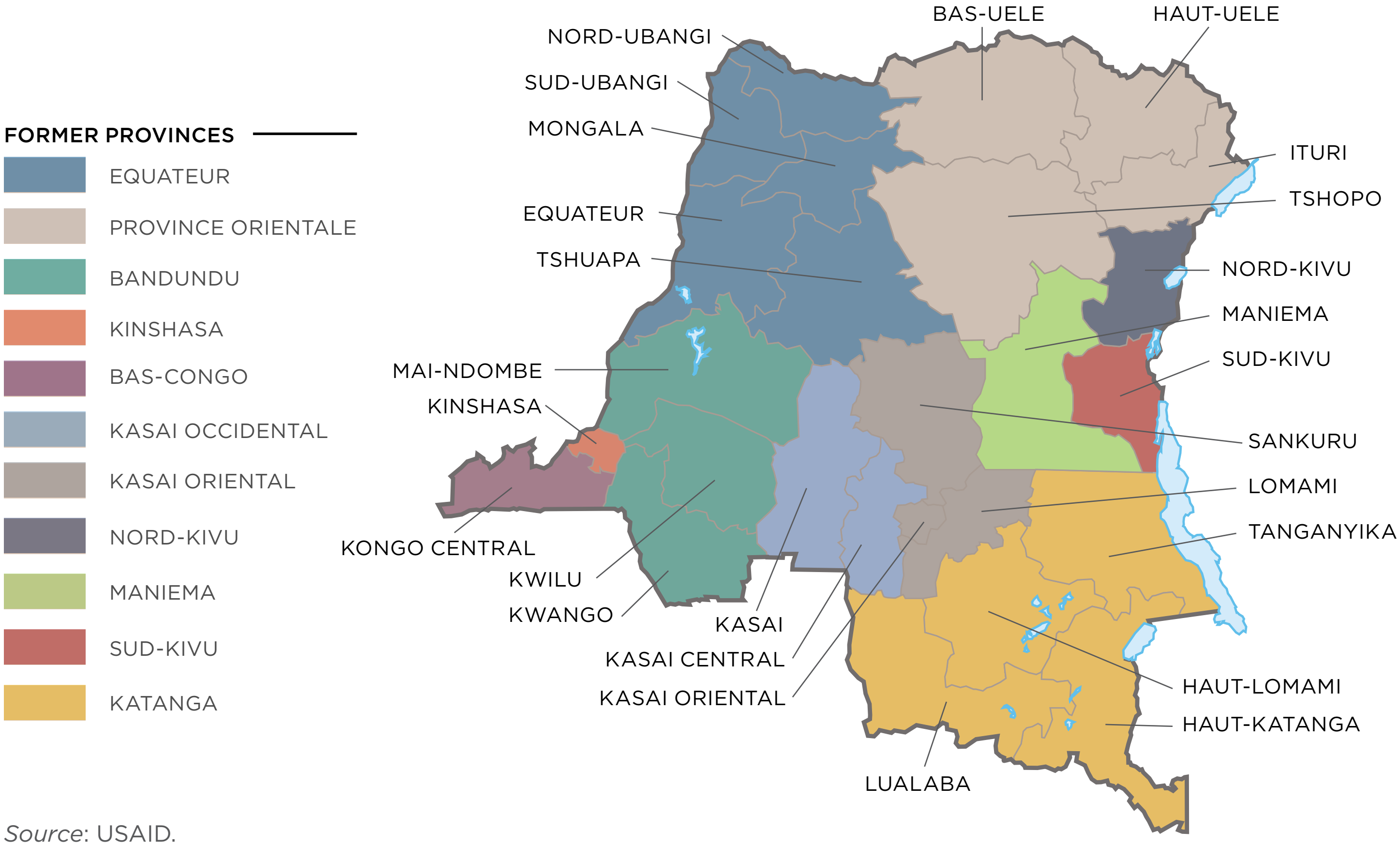
One of the best examples of the "governance by confusion" tactic is the ongoing quagmire regarding the presidential elections scheduled for November 2016. Will these elections take place or not? They have not been cancelled or rescheduled, yet, at this late point, it is difficult to imagine how they could happen on time: massive adjustments are needed to voter rolls (an estimated five million new voters have come of age since the last elections in 2011 and need to be registered), and the National Independent Electoral Commission (CENI) lacks a proper budget. Will Kabila run or not? He is constitutionally banned from doing so but is behaving as though he intends to stay in office (his chief of staff recently put out a development plan running to 2030, hardly the action of a lame-duck administration). And, he has been trying to change the constitution or to write a new one altogether. But more basically, true to the confusion agenda, Kabila appears to simply be letting the elections slip by, failing to organize them, and ushering the country toward constitutional limbo. Kabila's strategy is reminiscent of Mobutu in his later years. He too (successfully) tried to avoid elections by muddling the work of a constitution-drafting National Sovereign Conference, even, at one

10 Observatoire de la Dépense Publique, *La Transparence*, February 29, 2016, p. 8.

11 The author is grateful to Dr. Frederick Ehrenreich for suggesting the notion of "regression to Zaire."

12 This problem is shared by other low-income countries. See M. A. Thomas, *Govern Like Us: US Expectations of Poor Countries* (New York: Columbia University Press, 2015).

Map 1. Decentralized Provinces of the Democratic Republic of the Congo



Source: USAID.

time, appointing two simultaneous governments and parliaments.

Decentralization reforms are another case in point. The 2006 constitution provides for a decentralized regime with eleven provinces, which were to become twenty-six by 2009, and the transfer of 40 percent of national revenue to provinces and local decentralized entities (such as towns and villages). But the government has passed few of the laws necessary to implement decentralization properly and has fallen well short of transferring sufficient resources to the provinces. Provincial governments have compounded the problem by using their new legal prerogatives to tax their citizens while, in most cases, offering virtually no services in exchange for these taxes. The government failed to increase the number of provinces, until it did so almost out of the blue in 2015, when faced with potential opposition from some provincial actors such as former Katanga Governor Moïse Katumbi. In the new arrangement, not coincidentally, Katanga has been split into four smaller and less-influential provinces (see map 1).

The 2015 break-up of existing provinces (all but Bas-Congo, Kinshasa, Maniema, North Kivu, and South Kivu) suggests that the government can take action when it wants to, but again was a typical instance of confusion-inducing policymaking. The government left unclear how the personnel or assets of existing provinces would be split; announced, then postponed, the election of new governors; appointed "special commissioners" to run the new provinces, though such a position was unheard of in decentralization laws; then, had the Supreme Court endorse the decision in violation of the constitution. The reorganization of the provinces also allowed Kabila to orchestrate a cascading series of appointments and elections that greatly strengthened the regime's control over local institutions, even though the ostensible purpose of decentralization was to promote local accountability. Instead, the regime controls seventeen of the twenty-one governors as of March 2016.

Governance by Dithering and "Dialogue"

Linked to this habit of sowing confusion is the tendency of the regime simply not to do anything, either for lack of will or capacity. It is not rare for announcements of impending actions by the president or the government to be followed by months of inaction, and for official policy priorities not to get enacted. Meanwhile, seemingly endless "dialogues" occupy the political class, but yield precious little in practice.

The government's repeated failure to organize a census is an apt illustration of its lack of capacity (The DRC's first and last census dates back to 1984, thirty-two years ago). It has also proved so far impossible to do a systematic census of the civil service despite repeated attempts by donors eager to promote a civil service reform. This inability to perform an essential task over so many years suggests, in part, a lack of interest by elites in genuine and effective governance but also a failure of collective action among government agencies, which tend to look after their own interests and resources before their intended missions.

The near-ritual convocation of lengthy "dialogues," "general estates," "conferences," "seminars," "workshops," and other "consultations" is another reason for Congo's propensity for inaction. For example, at the time of writing, Kabila still had not made any significant steps towards organizing the elections that are legally required to be held before year's end. But he has spent several months negotiating with the opposition—at times with the help of an African Union mediator—for a national dialogue to discuss the elections process. It's not as if the Congolese political class has not had a chance to dialogue before: as recently as September 2013, some seven hundred delegates participated in a national "consultation" (*concertation* in French) to promote national cohesion, peace, and development. When it ended in October, Kabila promised a new, more inclusive government. Yet it was not until more than a year later, in December 2014, that he delivered a slightly reshuffled cabinet, including a few token opposition figures. No other recommendations from the national consultation were implemented, despite the creation of a follow-up committee headed by the presidents of the Senate and National Assembly. A national dialogue on elections is unlikely to be more fruitful.

Unfortunately, these dialogues are an essential feature of Congolese politics. The Kabila regime itself resulted from a three-year transition period that saw an inclusive constitutional assembly debate at length. That transition, in turn, followed in the steps of a multi-year Inter-Congolese Dialogue, which rehashed many of the questions addressed in 1992-94 by the Sovereign National Conference.[13] None of these forums have produced a lasting political compact, and indeed, the Kabila regime is increasingly flaunting its constitutional obligations. Yet, the promise of more dialogues has been enough to keep many members of the political opposition—some of whom are hungry for mere crumbs of power—divided, off-balance, or merely hopeful. Thus the regime endures, but at the cost of effective governance.

Governance by Absenteeism and Delegation

In a country starving for leadership, peace, and unity, Kabila cuts a weak profile. He is reclusive and observed to be more interested in video games and riding his motorcycle than in governing. He lacks charisma. He has never articulated a vision for the country short of platitudes, such as "revolution in modernity." The regime quietly abandoned his previous motto, "Five Pillars" (roads and infrastructure, health, education, water and electricity, and housing and employment), after it became clear that there was so little to show for it. Aloof from politics and the day-to-day management of the country, Kabila appears more interested in his family's private dealings and in beefing up his security apparatus than in governance.

To some extent, Kabila's failures reflect the weakness of his position. Presiding over a fickle and fractious majority, and with the Congo itself always teetering on the edge of chaos and dissolution, he waits out his opponents rather than squarely facing them; he lets problems rot or go away, rather than confronting them. When it comes to policymaking or service provision, the Congolese state is also largely absent, frequently outsourcing its obligations to business, nongovernmental, and international partners.

In matters of security, for example, the government often relies on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). The regime has carefully ensured its own survival by constructing a battery of agencies, from police to the dreaded National Intelligence Agency (ANR) and special battalions of the Armed Forces of

13 Paule Bouvier and Francesca Bomboko, *Le dialogue inter-congolais: anatomie d'une négociation à la lisière du chaos* (Paris: L'Harmattan, 2004).

the DRC (FARDC). But when it comes to its citizens' security, the government's forces are more often threat than protector, and many in the East have to rely on the often-feckless MONUSCO forces. Even the government calls upon MONUSCO when it confronts genuine insurrections that threaten its survival, as with the M23 movement that captured the city of Goma in 2013.[14]

In terms of infrastructure, despite efforts by authorities to present Congo as an incipient "developmental state" (illustrated by billboards scattered across Kinshasa depicting a photo-shopped Kabila next to nonexistent modern bullet trains), it is donors and foreign trade partners, particularly the Chinese, who have been responsible for funding and constructing the vast majority of roads, hospitals, and other infrastructure—most of which seem to be only in Kinshasa.

Donors are also involved in the daily provision of public goods such as education and health care. Here they share the burden with a vast array of Congolese associations, NGOs, religious groups, and customary institutions, such as chieftaincies.

It comes as little surprise, therefore, that a 2015 South Kivu survey by the Secure Livelihoods Research Consortium found that fewer than half the respondents identified the government as "the main actor responsible for the provision of health and education services." In addition, the government was "not perceived to play any role in the provision of water or of livelihood services such as seeds and tools, or food, material, and financial aid."[15] It is also telling that the same survey found that conflict-displaced households, who rely mainly on humanitarian aid, actually got better service delivery than other South Kivu residents.

The supply of governance and public services by donors and non-state actors has significant implications. First, by happening outside the legislative and policy context, it lacks predictability and bypasses legal mechanisms of accountability. Second, the donors' practice of taking over the Congolese government's social service obligations has helped to gloss over the Kabila regime's failures and worse, has allowed the regime to focus its political and material resources on more self-serving ends.

Governance by Theft

When it comes to extracting the resources of the country (and its citizens), the Congolese state is no longer absentee. For it is in matters of economic and fiscal governance that incumbent authorities have best managed to circumvent transparency requirements, constitutional safeguards, and donor conditionality.

The execution of the budget makes a mockery of process and transparency. Revenues and expenditures are routinely overestimated. In 2015, actual government expenses amounted to 58.6 percent of those voted by parliament, an execution rate that is in the same range every year and betrays both significant leakages on the revenue side and misallocation on the expenditure side. But not all Congolese are equal before budget shortfalls. While the presidency and the prime minister's office routinely spend more than 200 percent of their allocated funds, other sectors and state agencies suffer. In 2015, for example, institutional reforms were funded at only 20.5 percent; improvements to the social conditions of the population at 17.7 percent; education at 10 percent; health at 3.3 percent; infrastructure modernization at 3.1 percent; drinking water at 0.2 percent; and rural electrification at 0.04 percent.[16]

The shortfall in expenditure results from deliberate mismanagement, spending manipulations throughout the fiscal year, and from a lack of revenue. Congo's revenue has increasingly fallen short of government revenue forecasts, largely because of global declines in oil and copper prices, with the consequence that macroeconomic stability is at risk (as witnessed by the recent deterioration of the exchange rate). But staggering sums of money are also lost to "revenue leakage," i.e. the diversion or disappearance of government money.

The cruel irony is that, while the Congolese Treasury is systematically underfunded, state agents extract massive resources from their compatriots under the guise of taxation. The list of taxes faced by the Congolese is endless. Moreover, the efforts of tax agents appear largely targeted at the weakest and poorest segments of society, while richer taxpayers often negotiate

14 For a cogent development of this argument, and an analysis of the government's unwillingness to resolve the political roots of these crises, see Hugo de Vries, *Going around in Circles: The Challenges of Peacekeeping and Stabilization in the Democratic Republic of the Congo* (The Hague: Clingendael Institute, August 2015).

15 C.W.J. de Milliano et al. "Surveying livelihoods...," op. cit., p. ix.

16 Observatoire de la Dépense Publique, *La Transparence*, op. cit.; see also Ministère du Budget, République Démocratique du Congo, www.budget.gouv.cd.

Amid fighting between M23 rebels and FARDC forces, Congolese civilians flee into Goma in 2013.
Photo credit: MONUSCO photo/Clara Padovan.

their obligations down. Preliminary findings from an ongoing study of the real tax burden of the Congolese based on 2,400 households,[17] indicate that the real tax rate faced by lower-income Congolese amounts to a stunning 40 percent of their wealth, an overwhelming and punishing burden of a scope reminiscent of colonial exploitation.[18] In addition to income taxes, head taxes, value-added taxes, administrative fees, fines, and the like, Congolese citizens pay taxes for such mundane things as having bicycles, making charcoal, transporting and burying the dead, cutting branches off trees, having vagrant animals, or posting signs on lampposts. In the words of a member of Kinshasa's provincial assembly, "Even if it comes down to mere crumbs, the state must have its share."[19] Setting aside taxes imposed by the national government, a recent study found the Congolese crumbling under more than 314 provincial and local taxes.[20] And these are only the official ones. The Congolese also regularly pay informal user fees and bribes; make "acceleration payments" to officials; face roadblock exactions by security forces and other armed groups; are subjected to informal fines; pay tributes to customary chiefs; and make contributions to community development projects.[21]

Military and police actors deployed in or near artisanal mines take up to 80 percent of the income of miners through "substantial illegal taxation and extortion."[22]

17 Kinshasa, North Kivu, and the former province of Kasai Oriental.

18 "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).

19 Author interview, Kinshasa, January 2014.

20 Pierre Englebert and Emmanuel Kasongo, "Misguided and Misdiagnosed: The Failure of Decentralization Reforms in the DR Congo," *African Studies Review*, vol. 59, no. 1, April 2016, pp. 5-32.

21 "Total Tax Burden…," op. cit., p. 2.

22 Daniel Rothenberg and Ben Radley, "The Lived Experience of Human Rights and Labor Violations in Select Artisanal Mining Sites in North and South Kivu," (Heartland Alliance for Human Needs and Human Rights and Arizona State University, 2014), p. 70; There are two mining regimes in Congo: industrial and artisanal. Mines that are used by individual miners rather than owned by corporate or state interests are designated as artisanal. In practice, few receive this designation and most are actually illegal squatter mines being exploited by both citizens and state officials.

At least one armed group is present in more than 50 percent of artisanal mines in eastern Congo, and the FARDC is present in one-third of them. Sometimes these groups are involved in illegal taxation. Other times, they buy minerals from the mines. They might also dig for minerals themselves or coerce local miners into forced labor.[23]

All available evidence suggests that the majority of taxes collected from Congolese citizens fail to reach state coffers. In 2015, state revenue agencies reached between 70 percent and 80 percent of their relatively modest targets. Either state agents keep the payments for themselves, or the state agencies that collect them retain large amounts to pay for their own salaries and operating costs, since they might not be receiving the funds earmarked for them in the budget. A 2013 study of Kinshasa's central market showed that, of $1.5 million taxes and fees collected from market traders, only $280,000 accrued to the Treasury, amounting to an 81 percent revenue leakage rate.[24] A 2014 survey of Kinshasa traffic police, who calculate expected annual revenue for traffic citations, found that only 4 percent of expected payments were made. The same study assessed traffic police's "informal" monthly income at $350 ($500 for those on motorbikes) compared to official wages of $75.[25]

State actors, from the very top down, are involved in mining activities from which they derive large benefits that remain off the books. There are thirteen state-owned companies involved in oil and mineral exploitation. In addition, the state is a partner in nine oil joint ventures and as many as thirty-four mining joint ventures. Through all these companies, the state is responsible for about $1.7 billion of output from which it must accrue significant profit. Bloomberg's Kinshasa correspondent estimates that state-owned copper and cobalt company Gécamines alone must make "hundreds of millions of dollars in partnership revenue."[26] And yet, total dividends from all state enterprises and joint ventures in the 2013 budget amounted to only $8.5 million.[27]

Such dramatic revenue shortfalls suggest that either the state is astonishingly incompetent, or that state actors are benefiting personally from the opacity of these transactions. The latter hypothesis is buffered by the hidden ownership structure of several of the state's partners in these mining deals, and the state's propensity to sell its mining assets to these companies—some of which are registered in the British Virgin Islands and not known to be otherwise engaged in mining—at deep discounts.

The "Panama Papers" released in early April 2016 provide a glimpse into the hidden structure of transactions involving the presidential family and its entourage. The name of Israeli businessman Dan Gertler, a friend of President Kabila with multiple investments in copper, cobalt, and diamonds, appears in two hundred related documents.[28] The papers also showed that the Rawji family, owners of the leading Congolese financial institution, Rawbank, "make extensive use of tax havens and shell companies," apparently "to ensure that due diligence for important state-related projects, referred to as 'Kabila projects,' can take place through a private sector actor and that the bar leans towards political not regulatory standards."[29] Jaynet Kabila, the president's twin sister and a member of parliament, was also revealed to own half of Keratsu Holding Ltd., a company with a 9.6 percent indirect stake in Vodacom Congo, registered in the South Pacific state of Niue.[30]

Governance by Patronage

These plundered resources form the backbone of extensive patronage networks. Patronage is common in

23 International Peace Information Services, *Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update*, (Antwerp: IPIS, May 2014), pp. 8-11.

24 Observatoire de la Dépense Publique, *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* (Kinshasa: ODEP, 2013).

25 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).

26 Michael Kavanagh, interview by Jason Stearns, Congo Research Network, September 22, 2015, http://congoresearchgroup.org/interview-with-michael-kavanagh-of-bloomberg-news/.

27 Author's calculations based on data from www.budget.gouv.cd and Extractive Industries Transparency Initiative. "2013 EITI Report on the Mining Sector," July 2015, www.budget.gouv.cd.

28 Barry Sergeant, "Panama Papers Unravel DRC Mining Concession Deals," https://panamapapers.investigativecenters.org/drc-copper-mining/.

29 Khadija Sharife, "Panama Papers: The DRC's Gold Standard," *Times Live*, April 4, 2016, http://www.timeslive.co.za/africa/2016/04/04/Panama-Papers-The-DRC%E2%80%99s-Gold-Standard.

30 Michael J. Kavanagh, Tom Wilson, and Franz Wild, "Congo President's Twin Has Indirect Stake in Vodacom Unit," *Bloomberg*, April 5, 2016, http://www.bloomberg.com/news/articles/2016-04-05/congo-president-s-twin-sister-has-indirect-stake-in-vodacom-unit.

impoverished African nations,[31] but far from necessary in the wealthy Democratic Republic of Congo, which could easily sustain a modern, rights-based governance model if its revenues were more effectively collected and distributed.

In Congo, subordinates are commonly appointed to positions of authority with the understanding not only that they will help themselves, but also that they will "pay" for their appointment by channeling resources upward. This practice, which the Congolese call *rapportage* (reporting), exists throughout the hierarchy. Rapportage has been well-documented in the police force where "property violations" are "highly organized with large portions flowing upward in the chain of command."[32] Congolese scholar Albert Malukisa's work, for example, shows that traffic police have an obligation to impound a daily number of vehicles, usually between five and ten, which they must bring to their commander, who will then negotiate with the owner for the vehicle's release. If the negotiations fail, then the impounding becomes official, and the owner must jump through multiple and costlier bureaucratic hoops.[33]

In Kasai-Occidental, a 2013 study reported that Trésor Kapuku, who was governor until 2012, was entrusted by Evariste Boshab, a former speaker of the National Assembly and head of the ruling People's Party for Reconstruction and Democracy, "with returning large amounts of the provincial budget to him and other senior officials." Boshab was also "reported to have chosen all of Kapuku's provincial ministers in 2006, most of whom would have agreed to return portions of their salaries, budgets, and revenue to Boshab in exchange for their appointments."[34]

Patronage is also widespread in the military. The president has a "Maison Militaire," a private military headquarters, where he keeps trusted loyalists and which constitutes a parallel command structure that undermines the official hierarchy. General François Olenga, the head of the Maison Militaire, owns a resort and hotel complex near Kinshasa; General Gabriel Amisi, commander of Kinshasa's "first defense zone," owns the Kinshasa soccer team "AS Vita Club." Congolese generals officially make about $100 a month, but officers regularly embezzle the pay of their troops, and the president rewards loyalty by ordering operations that generate bonuses and opportunities for extortion. With such an incentive structure, it is not surprising that the FARDC has been unable or unwilling to end conflict in the East.

Governance by Violence and Repression

Democracy directly threatens the system of governance that serves Congolese elites so well. The fast-approaching end of Kabila's second term in November 2016 has caused particular anxiety for Kabila and his entourage. As a result, the regime has resorted to violence and repression with increased frequency since its failure to change the constitution to its advantage in early 2015.

Congo has a long history of political violence. Some degree of warfare has been going on uninterrupted in the East since 1993. Kabila's troops bombed the residence of political opponent (and onetime vice president) Jean-Pierre Bemba in 2007. That same year, several hundred militants and sympathizers of the Bundu dia Kongo sect were killed by security forces after they opposed provincial election results. In the controversial 2011 elections, the government used violence to silence democratic expression, killing several dozen demonstrators and arbitrarily arresting more than two hundred. In Kinshasa, more than one hundred people died at the hands of government forces during a December 2013 ramshackle alleged coup attempt. And in Lubumbashi that same year, the presidential guard killed thirty-five alleged separatist insurgents who were marching to the center of town.

While such violence seems a constant in the Congolese system, recent months have seen an increase in political repression and a reduction in political liberties. While perpetrators of sexual violence and other atrocities in the East often go unchallenged, democracy activists are locked up with alacrity.

The uptick in repression began in January 2015, when spontaneous street demonstrations opposed a government attempt to postpone the elections. Thirty-eight demonstrators were killed and more than four

31 Thomas, *Govern like Us, op. cit.*

32 Maria E. Baaz and Ola Olsson, "Feeding the Horse: Unofficial Economic Activities within the Police Force in the Democratic Republic of the Congo," *African Security*, 2011, vol. 4, issue 4, p. 223.

33 Malukisa, "Régulation du traffic…," op. cit.

34 Atos, "Provincial Pilot Study: Kasai Occidental" (Kinshasa: Department for International Development, 2013). Atos is a consulting firm that is the lead implementer for a United Kingdom Department for International Development project in the DRC.

hundred arrested.[35] Two civil-rights groups, unaffiliated with political parties, arose in response: the Lutte pour le Changement (LUCHA) based in Goma; and Filimbi ("the whistle") in Kinshasa. In March 2015, the ANR raided a Filimbi public workshop on democracy in Kinshasa, arresting thirty people, whom it accused of planning terrorist activities. Most were subsequently released but, a year later, leaders Fred Bauma and Yves Makwambala are still in detention. Later, in March, a mass grave with 421 bodies was discovered at the edge of Kinshasa, for which authorities have yet to provide a plausible explanation.

Repression has continued and intensified. In September 2015, an opposition rally in Kinshasa was attacked by thugs hired by the regime. In November, police also used teargas and live bullets against a peaceful LUCHA demonstration in Goma, and arrested twelve activists. In January 2016, security forces allegedly detained forty people to prevent commemorations of the January 2015 massacre and more were arrested as they attempted general strikes in Goma and Lubumbashi in February. Since late 2015, four television stations belonging to opposition politicians have been shut down,[36] and eighteen activists were arrested in March 2016 as they peacefully demonstrated in Goma to demand the release of their imprisoned colleagues. In April, two opposition party headquarters were set on fire and associates of Moïse Katumbi (who recently announced he would run as an opposition presidential candidate) were arrested. No wonder Human Rights Watch speaks of a "growing government crackdown on those speaking out against efforts to extend President Joseph Kabila's stay in power beyond the end of his constitutionally mandated two-term limit."[37]

Ironically, all this repression is taking place while the regime calls for a national dialogue.

Conclusions

United Nations Secretary General Ban Ki-moon and US Special Envoy for the Great Lakes Region Thomas Perriello are right to worry about the diminishing space for political freedoms and civil liberties in the Congo.[38] Growing government repression serves only to perpetuate governance based on predation and incompetence.

There are significant consequences to Congolese bad governance: enduring poverty and inequality despite growth; continued conflict and violence; a lack of services; and a pattern of extortion and domination at the hands of the Congolese people's own state. The Kabila regime's shirking of its obligations also has security implications: there is at least some indirect evidence that al-Shabab combatants have been involved in the mining of gold and the smuggling of gold and timber in parts of eastern Congo since 2013.[39]

Congo's scandalous governance should be of concern to the United States as much as to the Congolese. The United States is not always consistent in its dealings with African leaders, being occasionally lenient when authoritarian rulers deliver on the economic or security fronts, while coming down harder on geopolitically insignificant countries. Yet, problematic as it is, this lack of consistency should not preclude standing firm on Congo. Though it is unclear whether Congo can ever be governed well, and even if few of Kabila's opponents necessarily guarantee a better future for the country, the Congolese deserve a chance at better governance. Abiding by the constitution would set a crucial precedent, binding politicians for years to come. It would not solve all of Congo's governance problems, but it would be a significant step forward.

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35 Telema, "D.R. Congo Government Crack Down on African Youth," March 21, 2015, https://www.telema.org/d-r-congo-government-crack-down-on-african-youth/.

36 Agence France Presse, "RD Congo: fermeture d'une radio-télévision d'opposition à Lubumbashi," Jeune Afrique, March 12, 2016, http://www.jeuneafrique.com/309543/politique/rd-congo-fermeture-dune-radio-television-dopposition-a-lubumbashi/.

37 Human Rights Watch, "DR Congo: Free Youth Activists," March 15, 2016, https://www.hrw.org/tet/node/287632.

38 "Peace Network for Congo: After the Visit of Ban Ki-Moon, It Is Necessary to 'Put Words into Actions,'" News.Va, http://www.news.va/en/news/africadr-congo-peace-network-for-congo-after-the-v; Press Conference Transcript with Special Envoy for the Great Lakes Region of Africa Thomas Perriello, February 26, 2016, photos.state.gov/libraries/congo/76240/pdfs/160226%20Segl-Transcript%20_Eng_.pdf.

39 Sebastian Gatimu, "Is the illegal trade in Congolese minerals financing terror?" *Institute for Security Studies Africa*, March 2, 2016, https://www.issafrica.org/iss-today/is-the-illegal-trade-in-congolese-minerals-financing-terror.

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