

CORRUPTION AND GOVERNANCE
IN THE DRC
DURING THE TRANSITION PERIOD (2003–2006)

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ABBREVIATIONS AND ACRONYMS

Abako	Alliance of Bakongo
ACIDH	Action against Impunity for Human Rights
AFDL	Alliance of Democratic Forces for the Liberation of the Congo
AMF	American Mineral Fields Inc
AMP	Alliance of the Presidential Majority
Asadhó	African Association for Defence of Human Rights
AU	African Union
BIC	Bank Information Centre
CCIZ	Zaire International Trade Center
CDC	Convention of Christian Democrats
CDG	Governance Contract
CDH	Centre for Human Rights and Humanitarian Rights
CEEC	Centre of Evaluation, Expertise and Certification
CELC	Ethics and Anti-Corruption Commission
Kenadep	National Centre for Support to Development and Popular Participation
Cepas	Research Centre for Social Action
CIAT	International Committee in Support of the Transition
Cifor	Center for International Forestry Research
COPIREP	Steering Committee in Charge of the Reform of State Enterprises
COREMAP	Public Procurement Reform Commission
CTRAP	Technical Committee in Charge of Public Administration Reform
DFID	Department for International Development (United Kingdom)
DGI	General Directorate of Taxes
DGRAD	General Directorate of Administrative and State Revenues
DRC	Democratic Republic of Congo
EITI	Extractive Industries Transparency Initiative
EIU	Economist Intelligence Unit

EUSEC	European Union's Security Sector Reform Mission in the DRC
FARDC	Armed Forces of the Democratic Republic of Congo
FEC	Federation of Congolese Enterprises
FERN	The Forests and the European Union ~Resource Network
FR	Forces of Renewal
GEC	Global Enterprises Corporate Ltd.
Gécamines	Générale des Carrières et des Mines
GTZ	German Agency for Technical Co-operation
HAM	High Authority of the Media
IMF	International Monetary Fund
IRM	Innovative Resources Management Inc.
ISS	Institute for Security Studies
I-PRSP	Interim Poverty Reduction Strategy Paper
JED	Journalist in Danger
KPCS	Kimberley Process Certification Scheme
Licoco	Congolese League against Corruption and Fraud
Miba	Bakwanga Mining Company
MLC	Congo Liberation Movement
MNC	Congolese National Movement
Monuc	United Nations Mission in the Congo
MPR	Popular Movement for the Revolution
MSR	Social Movement for Renewal
NACS	National Anti-Corruption Strategy
NDS	New Trade Union Dynamics
NGO	non-governmental organisation
Niza	Netherlands Institute for Southern Africa
OCEP	Observatory of the Code of Ethics for Public Officials
OCPT	Congolese Post and Communications Office
OFIDA	Customs and Excise Authority
OR	Road Authority
Onatra	National Transport Authority
Palu	Unified Lumubist Party
PPRD	People's Party for Reconstruction and Development
RAID	Rights and Accountability in Development
RCD-Goma	Congolese Rally for Democracy – Goma
RCD-ML	Congolese Rally for Democracy – Liberation Movement
RCD-N	Congolese Rally for Democracy – National
RDC	Democratic Republic of Congo

Regideso	National Water Company
RODHECIC	Network of Human Rights and Civic Education Organisations
RRN	Natural Resources Network
RTNC	Congo National Radio and Television
SADC	Southern African Development Community
SAESSCAM	Small-Scale Mining Technical Assistance and Training Service
SNEL	National Electricity Company
Sonas	National Insurance Company
Udemo	Union of Mobutuist Democrats
UDPS	Union for Democracy and Social Progress
UN	Union for the Nation
UNDP	United Nations Development Programme

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CHAPTER 1

INTRODUCTION

The last ten years have been some of the most difficult in the history of the DRC. This vast and resource-rich country in the centre of the African continent has been devastated by wars imposed on its long-suffering people by its neighbours, Rwanda and Uganda. More than four million people have died from the direct and indirect consequences of the conflict.

In spite of the devastation that has been visited on the Congo, with the assistance of the international community elections were held in 2006 and at the beginning of 2007, thus putting an end to a long political transition and raising the hopes of the Congolese people. Most observers thought the country could not ever live up to the challenge of organising democratic elections in a country that had not held any for 40 years, and where most of the infrastructure had been all but destroyed. This major achievement was due to the determination of the Congolese people themselves and the support of the international community.

However, if no lessons are learned from the country's long history of predation and misery, and especially from the transition period (from 2003 to 2006), the hopes of the Congolese people will be dashed as the country may again miss a chance to gradually bring about a democratic dispensation and start reconstructing its institutions, economy and social fabric. Indeed, the country will run the risk of sliding back to the bad governance and conflicts that have marked its recent history. In fact, during the elections and the subsequent establishment of the new political institutions, signs were shown of a resurgence of patrimonial rule and corruption in all sectors of the society.

It is now that the most difficult period starts as the government begins the process of putting a country that has been shattered by decades of neglect, mismanagement, corruption and wars back on the road to sustained peace and stability and, it is hoped, development. In a country where all the institutions

have been destroyed and everything needs and deserves urgent attention, the government has the unenviable responsibility of making difficult choices about which programmes and actions to adopt to create the enabling environment that will put the Congo on the path towards development.

At this crucial juncture, when the new government is starting to implement its programmes and when the temptation is understandably very high to move fast on all fronts, it is important to assess the transition period from 2003 to 2006 in order to draw out lessons that could be used in making decisions about priorities and programmes. Otherwise the predatory political and governance culture that developed under Mobutu's long dictatorship and that was perfected during the transition will continue, with far-reaching consequences for the country. In fact, without such lessons none of the urgent government actions will succeed as a minimal level of security could not be guaranteed, public administration could not develop the capacity to deliver the basic services that the people badly need, and state institutions would continue to lack the capacity to properly manage the very important mining sector, raise and manage revenue and account for its expenditure. No progress will be made, either, if impunity for corruption and for all kinds of crimes and human rights violations continue to be the rule and continue to be committed with impunity because of a corrupt and ill-equipped justice sector. Hopes for development will be dashed if Parliament, the opposition and civil society are not given the means and freedom to play their watchdog role vis-à-vis the executive branch of government.

This study makes a modest contribution to a review of the transition period. It assesses the strengths and weaknesses of the anti-corruption institutions and laws that were in force during that time, evaluates the degree of their success or failure and identifies the factors that supported or inhibited their effectiveness. It further identifies some of the major gaps in national laws and regulations that could be prioritised to make national legislation compliant with international legal instruments (specifically the United Nations Convention against Corruption, the African Union [AU] Convention on Preventing and Combating Corruption, and the Southern African Development Community [SADC] Protocol against Corruption). Finally, recommendations are made regarding what measures should be prioritised to improve the legal framework and the relevant institutions in the short to medium term.

CHAPTER 2

A HISTORICAL PERSPECTIVE ON CORRUPTION IN THE DRC

Background

The history of the Congo since the partitioning of Africa at the Berlin Conference in 1885 and the scramble which followed, has been marked by predation, authoritarianism, political oppression, the commission of all kinds of crimes with impunity, and the struggle of the Congolese people for human dignity and social justice. King Leopold II of Belgium acquired as his personal property a vast territory in central Africa, 80 times the size of his own kingdom and as large as the whole of Western Europe. He called the region the Congo Free State (Vangroenweghe 1986; Hochschild 1998; Nzongola-Ntalaja 2002; Ndaywel 1998).

To make a quick profit from investments in this property, a most brutal regime of forced labour was put in place whereby villagers were required to provide set quantities of ivory and rubber to King Leopold's agents. Cruel punishment was meted out to those who did not meet the quotas set for them. Their villages were burned to the ground, people's limbs were chopped off and massacres carried out on a regular basis. The king also leased land to companies that committed all kinds of atrocities in turn. The combined activities of the Congo Free State agents and the concessionary companies decimated populations in the regions in which they operated.

By the beginning of the 1900s, information about the regime of terror and exploitation and the suffering of the Congolese people was spread by missionaries and other visitors to the Congo. A campaign, spearheaded by humanitarian organisations such as Edmond Morel's Congo Reform Association, was joined by a number of the celebrities of the day. King Leopold II was

forced to hand over the Congo to Belgium in 1908 and the Congo Free State was renamed the Belgian Congo.

However, the advent of the Belgian Congo only saw a marginal improvement in the well-being of the Congolese people as forced labour, economic exploitation and oppression continued under Belgian rule. The first challenge to colonial rule and a first call for independence for the Congo was made in the 1920s when Paul Panda Farnana, who had been educated in Belgium, fought for Belgium during World War I and imprisoned by the Germans, agitated for Congo's independence. He represented the Congo at the 1921 Pan-African Congress in Brussels where he was exposed to the thinking of other black intellectuals from around the world (Kodi 1984, 1993). It was also in the 1920s that a messianic movement was created by Simon Kimbangu in the Lower Congo. Kimbanguism, as the movement was known, had two concomitant goals: the salvation of the soul and the liberation of Congo from Belgian colonialism. Kimbangu and his followers urged the Congolese to overthrow colonial rule. The colonial authorities reacted vigorously by arresting Kimbangu and sentencing him to life imprisonment in the distant Katanga province. Hundreds of his followers were also arrested and imprisoned in concentration camps throughout the country. This only helped to spread Kimbanguism throughout the country. Kimbangu's movement was copied by others who preached the message of 'Africa for Africans' not only in the Belgian Congo but also in neighbouring French Congo and the Portuguese colony of Angola (Kodi 1993).

The 1950s saw the awakening of the independence movement in Congo. The 'winds of change' that were blowing in colonies throughout the world reached the small group of educated Congolese, the so-called *évolués* (or those who were 'advanced' in comparison with the rest of the Congolese). From the early 1950s, this class of educated Congolese was made to believe that in the evolving relations between Belgium and its colony, they would gradually be promoted to positions in the colonial administration and the private sector that had been held thus far by Europeans. Their aspirations were frustrated by strong opposition from some important sectors among the Belgians in the colony. To defend their interests the *évolués* created associations that advocated better conditions for themselves and their countrymen (Anstey 1970; Stengers 1978:533–538).

In 1955, a Belgian academic published a pamphlet proposing a 30-year plan for the emancipation of Belgian territories in Africa, which at the time was deemed revolutionary in Belgian circles. However, reacting vigorously to this proposal (and its endorsement in August 1956 by African Conscience,¹ a group of Congolese Catholic intellectuals), Joseph Kasavubu, the leader of the Alliance of the Bakongo (Abako),² rejected the plan and called for the Congo's immediate independence. This marked the start of the agitation for independence that culminated in the uprising of the Congolese population of Kinshasa on 4 January 1959, after the Belgian authorities had banned a rally organised by Abako. Faced with mounting pressures from the newly created Congolese parties, the Belgian authorities had no choice but to put in place a process for the devolution of power to the Congolese. To resist the demands for change effectively the Belgian colonial administration would have required substantial support in terms of economic aid and military presence from the Belgian government. However, the Belgian political establishment was not ready to provide such expensive assistance (Peemans 1997:202–212). At a political roundtable convened by the Belgian government in Brussels in early 1960 and attended by representatives of all the existing Congolese political parties, it was decided that elections for the national Parliament and the provincial assemblies would be held in May that year and independence would be granted to the Belgian colony on 30 June 1960.

A coalition of nationalist parties won the national elections and the leader of the Congolese National Movement (MNC),³ Patrice-Emery Lumumba, was elected Congo's first Prime Minister. Antoine Gizenga,⁴ leader of the second largest party in the coalition, became Deputy Prime Minister. In a compromise deal, Joseph Kasavubu was elected president of the Republic of Congo.

The ruling coalition was determined to use the immense wealth of the country to improve the wellbeing of its people, whose expectations were very high. These hopes were soon dashed as the country descended into chaos and anarchy, engineered by the multinationals and other foreign interests in the Congo, including Belgium and the USA, who saw Lumumba's nationalist rhetoric as a threat to their continued exploitation of the country (Witte 2000; Devlin 2007).

The former colonial army (the *Force Publique*) mutinied two weeks after the Congo became independent (Nzongola-Ntalaja 2002:95–99). This was soon

followed by the secession of the mineral-rich Katanga province, led by Moïse Tshombe, and South Kasai, led by Albert Kalonji. Lumumba appointed Joseph-Désiré Mobutu, a former soldier in the colonial army and a close associate of his, as Chief of Staff of the Congolese National Army⁵ with the rank of colonel. At the request of the president and the prime minister, the United Nations deployed its 'blue helmets' to the Congo in what would become its largest operation in the world.

Taking advantage of his powerful position at the head of the national army and with the full financial and diplomatic support of foreign powers, Mobutu staged a *coup d'état* in September 1960 in which he dismissed Lumumba and his democratically elected government but kept a diminished President Kasavubu in power. From then on Mobutu became the real power behind the weak head of state. Lumumba attempted to join his allies in Stanleyville (now known as Kisangani) where, under the leadership of Antoine Gizenga, they had set up a base to re-conquer the country. He was arrested by Mobutu's troops in Kasai and later flown to Katanga, where Belgians murdered him and two of his colleagues, Okito and Mpolo (Witte 2000).

Mobutu staged his second coup in November 1965 and finally took over as head of state, thus confirming the dominant position that he had occupied since his first coup in September 1960. By the time of the 1965 coup the country had been reunited, and the numerous rebellions that had troubled the Congo since its independence had been defeated thanks to the robust interventions of mercenaries and the support of the US and Belgian governments. By this time also, the country had held its second democratic elections since 1960 and the political parties which had participated in the elections were negotiating the formation of a coalition government since none had won the majority of seats in Parliament. The accusation of infighting between politicians, which Mobutu invoked to justify the second coup, was not founded. This was the second time that Mobutu, with the support of his foreign allies, put an end to the move toward democracy in the Congo.

Contradicting his own promises to restore democracy and give power back to the civilians within five years, Mobutu gradually established a dictatorial regime after eliminating many of his allies among the politicians and the military. Mobutu acted as the king and sole owner of the Congo, which he

renamed Zaire. Like King Leopold II, he put in place a predatory regime that was maintained by brute force and a one-party state, and that relied on foreign powers for its defence against external threats.

The demand for base metals, such as cobalt and copper, was spurred by the Vietnam war and boosted the Congolese economy between 1968 and 1974. The vast revenues from these resources should have enabled the government to move millions of Congolese out of poverty but were instead used by Mobutu to bribe political allies in the country and abroad and to strengthen the hold of his party, the Popular Movement for the Revolution (MPR),⁶ over the country.

In November 1973, in a drive to create a national bourgeoisie which, in his own words, would spur the country's development, Mobutu confiscated all small and medium-sized enterprises and handed them over to his cronies. This was a turning point in the country's economic history. The beneficiaries of Mobutu's largesse had no experience nor any intention of running businesses and merely siphoned off the businesses' available cash and let them rot. By 1974, most of the businesses had folded and this started a downturn in the national economy from which the country never recovered. As a result, hundreds of thousands of workers lost their jobs and raised the high levels of unemployment. The government lost revenue and thus the means to maintain infrastructure, which quickly deteriorated.

On the political front, discontent was mounting not only among the masses but also among the elites who had benefited from the regime. In 1980, in an unprecedented move, a group of 13 members of Parliament, led by Etienne Tshisekedi wa Mulumba, wrote a letter to Mobutu denouncing the regime's mismanagement and the capture of the state by a clique, and demanding political reforms. The reaction of the regime's repressive machine was swift and brutal. The MPs were all arrested and tortured. In 1982, in a show of exceptional courage and defiance of the law establishing a one-party state in the Congo, the MPs created a party, the Union for Democracy and Social Progress (UDPS).⁷ Their struggle, combined with pressure from the regime's allies, forced Mobutu to accept multiparty democracy in April 1990. With the end of the Cold War, the old dictator had outlived his usefulness to his former masters as a bulwark against communism.

Yielding to mounting pressure from the numerous political parties that were created after the liberalisation of the political space, Mobutu agreed to convene a National Sovereign Conference to discuss the political future of the country. The conference played the dual role of a truth and reconciliation institution and a constitutional conference (Nzongola-Ntalaja 2002:189–198). In spite of regular disruptions by Mobutu and his camp, the conference succeeded in reviewing the country's history, its mismanagement by Mobutu's regime and the crimes committed since independence. Furthermore, it drafted and approved a new constitution, agreed a timetable for national elections and elected Etienne Tshisekedi as Prime Minister. It was agreed that the transition government led by Tshisekedi would prepare for democratic elections within a two-year period.

Mobutu and his entourage did not want to relinquish power and lose all the privileges that they enjoyed. They did their best to disrupt the running of the new government and then used military force to remove it from power. Thereafter, a number of prime ministers were appointed, including Bernardin Mungul Diaka, Jean-de-Dieu Nguz a Karl I Bond, Faustin Birindwa, Léon Lobitsh Kengo wa Dondo and General Likulia Bolongo.

While the politicians were arguing in Kinshasa, trouble was mounting on the eastern fringes of the country. In fact, from April 1994, because of the Tutsi genocide in Rwanda and the war that ensued, close to a million Rwandese refugees crossed the border into the eastern Congolese provinces of North and South Kivu. The leaders of the Interahamwe and officers of the defeated National Army of Rwanda used the refugee camps in Kivu to launch sporadic attacks on Rwanda. In October 1996, using the excuse of these attacks, Rwanda and Uganda invaded eastern Congo. They recruited Congolese proxies who acted as rebels and as a front for this invasion. Mobutu's demoralised and ill-equipped army hardly fought the invaders, who literally walked across the whole breadth of the country. There is anecdotal evidence that all along their trek, Rwandese and Ugandan troops and their Congolese allies killed hundreds of thousands of Rwandese Hutu and Congolese civilians and looted whatever they could lay their hands on. In the final stages of the conquest, the Rwandese and Ugandan troops were joined by the Angolan army, which seized the opportunity to flush out Angolan rebels using the Congo as their base.

the primary mission of their armies from protection of their territory and made them armies of business. By the same token, they indirectly created within their armies conditions for top officers to put in place networks that they controlled (United Nations 2001a:41).

Soon Kabila fell out with his protectors, whom he asked to leave the Congo. Both Rwanda and Uganda withdrew their troops to the eastern fringes of the Congo and from there undertook to re-conquer the country. Kabila's regime was only saved by the support that he received from Angola, Namibia and Zimbabwe. The two warring camps reached a stalemate and, as a result, the country was divided into two parts, with the Rwandese and Ugandans – who had created a number of proxy rebel groups – occupying the eastern and northern sections of the country, and Kabila's central government controlling the west and south.

The international community exerted a great deal of pressure on the belligerents, who convened in Lusaka to negotiate a way out of the crisis. On 10 July 1999, they signed a cease-fire agreement that provided for the withdrawal of foreign troops from the Congo and the disbanding of non-Congolese armed groups, including Angolan, Rwandese, Zimbabwean, Namibian, Burundian and Ugandan rebels, and for the creation of an Inter-Congolese Dialogue. A few months later, in November 1999, the United Nations Security Council authorised the deployment of the United Nations Mission in the Congo (known as 'Monuc', its French acronym)⁹ to monitor the implementation of the Lusaka agreement.

The murder of Laurent-Désiré Kabila on 16 January 2001, allegedly by one of his own bodyguards, marked a turning point in the history of post-independence Congo. His entourage chose his son, Major-General Joseph Kabila, as his replacement. The new ruler of the Congo proved to be more accommodating than his father was to the demands of the international community. The Inter-Congolese Dialogue provided for in the Lusaka Agreement finally took place and culminated with the Sun City Global and All Inclusive Agreement (hereafter the Sun City Agreement), which was approved and signed at Sun City in South Africa in December 2002 by most of the parties to the conflict.

The new government was put in place in June 2003 and was known as the '1+4 Formula'. It was led by Joseph Kabila, who remained president of the DRC,

and included representatives of all the parties to the Sun City Agreement, i.e. the main former belligerents (Kabila's government, the Congolese Rally for Democracy [RCD] and the Congo Liberation Movement [MLC])¹⁰ and the opposition political parties. A vice-president, seven ministers and four deputy ministers were allocated in equal numbers to the main parties to the agreement. Civil society was allotted two ministries and three vice-ministries, in addition to the presidencies and boards of five institutions that were set up in support of democracy.¹¹ The minor rebel groups, Congolese Rally for Democracy – National (RCD-N), Congolese Rally for Democracy – Liberation Movement (RCD-ML) and the Mai-Mai (self-defence militias in the Kivu, Maniema and northern Katanga provinces created mainly to fight against Ugandan, Rwandan and Burundian troops and Congolese Tutsi militias) were granted two ministries each and eight vice-ministries. This formula of distribution of responsibilities among the signatories to the Sun City Agreement was also applied to seats in the National Assembly and the Senate, ambassadorial posts and positions on the boards of state enterprises.

According to the Sun City Agreement, the main objectives of the transitional government were:

- To reunite, pacify and rebuild the country
- To restore the territorial integrity of the country and to re-establish the authority of the state throughout the national territory
- To promote national reconciliation
- To set up a national army which would be restructured and integrated
- To organise free and transparent elections at the national, provincial and local levels
- To put in place the new political institutions

In some cases the power-sharing arrangement imposed by the Sun City Agreement made decision-making by the government rather difficult, if not impossible, as the partners in government did not have the same vision on how to implement these objectives. Political patronage rather than merit was the most important factor in appointing officials to various positions. This had the effect of further reducing the management capacity and technical expertise

in government, Parliament, the civil service, the armed forces, the police, state enterprises and all the other bodies in which the parties to the Sun City Agreement appointed officials. In all these bodies, as shown later in this report, incompetent political appointees defended the interests of the sector to which they belonged, rather the interests of the state as a whole.

The transition period lasted from June 2003, when the new government was put in place, to 6 December 2006, when the elected president was inaugurated. It was a rather difficult process as there was no political will on the part of the former belligerents to go to elections. They dragged their feet on passing the necessary laws for the electoral process to continue its normal course and for the elections to take place. However, thanks to the pressure that the international community continued to exert on the political elites and due to the determination of the Congolese people to put an end to the long transition, the referendum adopting the new Constitution of the DRC took place, as did presidential, Parliamentary and provincial assembly elections. This was no mean feat in an environment where most of the infrastructure had been destroyed and public institutions had all but disappeared.

Joseph Kabila was elected president after a second round in an election that pitted him against former Vice-President Jean-Pierre Bemba. The Alliance of the Presidential Majority (AMP),¹² which was the coalition of political parties led by Kabila's People's Party for Reconstruction and Development (PPRD),¹³ had a sizeable majority in both the National Assembly and the Senate. In addition, nine out of 11 provincial governors belonged to this coalition. Besides Kabila's PPRD, the AMP included, among others, the political party of the Prime Minister Antoine Gizenga (the Unified Lumumbist Party – Palu),¹⁴ Pierre Lumbi's Social Movement for Renewal (MSR),¹⁵ Mbusa Nyamwisi's Forces of Renewal (FR),¹⁶ and Mobutu Nzanga's Union of Mobutuist Democrats (Udemo).¹⁷

The opposition was mainly made up of a coalition of parties called Union for the Nation¹⁸ (UN, referred to hereafter as the UN coalition), led by Jean-Pierre Bemba's MLC. It included the Convention of Christian Democrats (CDC),¹⁹ whose leader is Kiakwama kia Kiziki, and a number of independents. Azarias Ruberwa's RCD-Goma was also in the opposition although it was not a member of the UN coalition. Veteran politician Etienne Tshisekedi's UDPS, which boycotted the elections, remained outside the institutions and intended to continue to play a role as an opposition party.

All the institutions have been established at both the national and the provincial level. The new government, its programme and budget have been approved by Parliament. It is important to note that politicians of the Mobutu era have made a remarkable comeback on the political scene. To everybody's surprise, Léon Lobitsch Kengo wa Dondo, who had been Prime Minister three times under Mobutu, stood as an independent and was elected speaker of the Senate, thus outmanoeuvring President Kabila's divided coalition. Two other old Mobutu hands cleverly used their experience of wheeling and dealing to outclass the newcomers on the Congolese political scene. Kengo's second deputy is none other than one of the most powerful figures in Mobutu's intelligence apparatus, Edouard Mokolo wa Mpombo. Another key figure of Mobutu's era, Mario Cardoso Losembe, was elected first deputy speaker of the Senate.

The transition period was a great disappointment to the Congolese people as the politicians, who were solely interested in profiting from their positions, were oblivious to their needs. The Catholic church (see CENCO 2004 and 2005), civil society (Société civile/Forces vives 2005), trade unions and the media often appealed to politicians to pay attention to the plight of the people. During this period the infrastructure (roads, railway, water and electricity distribution networks, hospitals, schools) deteriorated further during this period from neglect. Some of the crucial objectives of the transition period, as set by the Sun City Agreement, were not met. These included the integration of the armed groups into a national army capable of defending the national territory, the formation of a national police force, national reconciliation, and the rehabilitation of an independent justice system. The items of this unfinished agenda will be among the priorities of the new government.

This historical review shows a striking continuity in the type of governance that the Congo has known for more than a century, from the time of King Leopold II of Belgium through the colonial period to Mobutu's regime and to the presidencies of both of the Kabilas. The predatory regimes that have succeeded each other over this time have been characterised by greed, corruption, massive violations of human rights and the commission of all kinds of crimes with impunity. They have devastated what could have been one of the richest countries in Africa. In the midst of vast riches one finds one of the poorest people in the world. The Congo is again at a crossroads in its history, as it had been at independence in 1960, after Mobutu's second coup d'état in 1965 and when Mobutu was ousted by Rwanda and Uganda and replaced by

Kabila in 1997. Once again, the Congolese expect that this third republic will mark the beginning of the end of their misery and suffering. The next section will analyse just one of the factors, i.e. corruption, that explain why the Congolese have not benefited from the political changes since Mobutu's regime.

Corruption under Mobutu Sese Seko

The causes and consequences of corruption during the transition period can neither be put in their right perspective nor properly understood without tracing the scourge back to its roots in Mobutu Sese Seko's 32-year rule. Most of the adult population in the DRC today grew up under Mobutu's regime, which is the yardstick against which they assess the current situation. Besides, the values held and propagated by Mobutu and his entourage have moulded the Congolese psyche, subverted the moral values of society and left an indelible mark on the institutions of Patrice-Emery Lumumba's country. The neo-patrimonial regime that Mobutu established in the heart of Africa with the benevolent support of his foreign masters continues to be the model of governance for the ruling elite. It is no wonder that Lumumba's Deputy Prime Minister and the present Prime Minister, Antoine Gizenga Funji, has made the fight against corruption one of his priorities.

Mobutu maintained his hold on power not only by using brutal force and guile, but also by using the power of money. The armed forces of the country were there for the protection of Mobutu and his entourage. He used them and the extensive intelligence establishment he had put in place to intimidate and keep the people under control, as he had learned how to do in the colonial army. He was also an adept Machiavellian and a formidable manipulator who knew how to divide and rule his people. In addition, he excelled in using money to make new allies and enjoy the support of his network of friends within and outside of the country. To raise the vast amounts of money that he needed, he required unlimited access to all the resources of the country, which he achieved by turning the country's assets into his personal property and by gradually establishing a neo-patrimonial regime. He was emulated by the ruling elite who, like their president, saw their positions in the state establishment not as a duty to the country but as an opportunity to enrich themselves and their relatives (Diangitukwa 2001 and Nzongola-Ntalaja 2002:157–160).

In the armed forces, which were the backbone of the regime, corruption was rampant. Officers regularly embezzled the pay of their soldiers or they declared large numbers of 'ghost soldiers' whose salaries they pocketed. They even sold their equipment and rations. They also assigned their soldiers to the protection of rich expatriate entrepreneurs in exchange for pay. Many of these foreigners were involved in criminal activities, including importing counterfeit bank notes and smuggling timber, gold and diamonds out of the country. The protection money they paid army officers put them above the law (Nzongola-Ntalaja 2002:153–157).

Interviews with former high-ranking officers under Mobutu (who requested to remain anonymous) brought to light that, just as under Belgian colonial rule, soldiers were taught to consider civilians as unintelligent and undisciplined and, therefore, as inferior human beings. This is corroborated by Jean-Claude Willame (1972:57–76) who asserts that from the very beginning of Belgian colonisation, 'the military organisation of the colony rested upon the fragile basis of an army whose troops were alienated from Congolese society as a whole and its tribal origins in particular'. Soldiers were allowed to fleece at will the people they were supposed to protect.

An elitist spirit was created within the colonial army and this was preserved after independence. This is documented by an army publication (*Bulletin Militaire*), cited by Willame (1972:60), which advised that:

The best remedy for subversion and corruption in the army is the isolation of the troops by inculcating a positive zealotry toward their craft and the nobility of military ideals [and by teaching them] to despise the masses, who lack military discipline.

Like the *Force Publique*, the post-independence soldiers' mindset was that of an occupying force, which kept its distance from the people. In spite of the low salaries paid irregularly by the army, young people flocked to join because, with their uniforms and arms, they could raise all kinds of illegal 'taxes' from civilians (Schatzberg 1988:52–70; Braeckman 1992:50–57).

As reported above, from 1968 to 1974 vast amounts of revenue accrued to Mobutu's Zaire because of the rise in the prices of copper and other base metals. In fact, the demand for these metals by armament industries that

supplied the US army in Vietnam increased prices to the highest historical levels on the world market (Nzongola-Ntalaja 2002:148). The revenues, which should have been used to develop the country, created instead an opportunity for the elites to enrich themselves. All kinds of schemes were invented to steal money from the state. It is no mere coincidence that this was the period in which the country saw a mushrooming of numerous very costly 'white elephant' projects. The Inga-Shaba power line, the Zaire International Trade Center (CCIZ),²⁰ and the Maluku steel plant were two of the projects that were launched during the heady days of the early 1970s. They provided opportunities for Mobutu and his cronies to pocket huge bribes and for their foreign partners to enrich themselves immensely.

It is also during this period that Mobutu embarked on a scheme which, he declared, would help create a Congolese bourgeoisie. The new national bourgeoisie, he argued, would spearhead the development of the country. To create this new class, in 1973 he decided to confiscate the properties of small and medium-sized enterprises belonging to expatriates and to hand them over to his clients. This drive, which was called 'Zairianisation', failed miserably as the beneficiaries of this state-sponsored theft had no business experience. As mentioned above, most sold any assets they could dispose of, sacked their staff and abandoned the businesses. Realising the damaging effect that Zairianisation had had on the national economy, Mobutu requested that the businesses be handed back to their owners, very few of whom were willing to return to Zaire.

From the mid-1970s, the country started feeling the consequences of the economic downturn. The decrease in state revenue meant that even the little that had been devoted to the maintenance of the physical infrastructure disappeared, the state was less able to pay regular salaries to civil servants and the armed forces, and schools and hospitals were no longer maintained. This led to a phenomenal growth in the informal sector, in which millions of unemployed workers found a means to eke out a miserable living. The growth in the informal sector was also spurred by the high costs levied on formal businesses by a plethora of public services in the form of illegal taxes. This state of affairs discouraged entrepreneurship and contributed to the fast decline of the formal sector.

The banking sector was gradually marginalised as more and more money circulated in parallel networks in order to avoid possible control. As the national

currency depreciated rapidly, with the exchange rate changing several times in a day, the US dollar was increasingly used not only as a refuge currency but also as the preferred currency in normal commercial transactions. The almighty dollar could only be found in the informal currency market called 'Wall Street', in which all the regime's barons (i.e. the president's relatives and friends and all those in the higher echelons of government and the army who benefited from Mobutu's largesse) and their clients openly speculated. Even companies resorted to the informal currency market to procure the foreign currency they needed for imports (Braeckman 1992:193–212).

For the majority of the people, a fight for survival became the order of the day. One had to be 'resourceful' (*débrouillard*) to survive and provide for one's family. It was in this context of utter destitution that the moral values of the society were challenged and turned upside down. Corruption became an accepted and tolerated reality. Corrupt individuals, who flaunted their ill-acquired riches, were admired and became role models. An appointment to a government position or a high position in the armed forces of public administration, which gave the appointee access to state coffers, was greeted as a blessing by the relatives and associates of the person. They indeed expected to benefit from the appointee's corrupt activities. Those who refused to partake in corrupt activities were derided by their community and considered as misfits and as utopians who dreamt about changing the world. They were advised to steal like everybody else. This is indeed the most enduring legacy of Mobutu's 32-year regime, which will be a major challenge for those who intend to fight corruption in the DRC. The notion of public good, of which the government and public institutions were the stewards on behalf of the national community, became meaningless. It was common to hear people say in Lingala, '*ezali eloko ya Leta, ya moto te*'. This means: 'a public good does not belong to anybody'. In other words, public goods are free for all and can be looted with impunity. This legacy underscores the challenges facing the DRC today.

In such a context, where negative moral and ethical values prevail, it will not be possible to eradicate corruption with technical remedies alone. Strong institutions and a strong legal framework will not be a solution either. Well-paid civil servants and soldiers may also continue to request bribes. Indeed, for any anti-corruption programme to produce the desired effects, the issues of moral values and behavioural change need to be factored in.

The general tolerance of corruption under Mobutu was reflected not only in people's attitudes but also in the languages of the country. So, for instance, corruption was referred to as '*coop*', an abbreviation of cooperation, or as '*madesu ya bana*', which means children's beans, or '*mbuengi*', a type of beans. Proverbs, which are normally used to transmit ancestral wisdom, were also used to convey the acceptance of corruption as a legitimate activity. In Kikongo, for instance, people would say '*ku usadilanga, ku udilanga*', which means, 'you eat where you work'. In other words, it is acceptable to 'eat', that is to steal, where you work. It was reported that Mobutu, in one of his 1973 speeches, while denouncing the state employees who embezzled large amounts of money, advised them in Lingala, '*yiba na mayele*', which means 'be smart while you are stealing'. For the public this meant that it was fine to steal from the state as long as one was not caught.

Public administration was the institution where the consequences of this general tolerance and acceptance of corruption as a normal way of life was experienced the most. No document could be issued and no service delivered without a bribe. Civil servants multiplied ploys to force the public to part with money for services that they were expected to provide as part of their normal work. Those who refused to pay bribes were either denied the service or had to wait a long time. As the nomenclature of taxes was unknown to the public, public servants made up all kinds of taxes and inflated the existing ones. People had nobody to complain to as the corrupt networks were organised and controlled by the authorities, who were supposed to ensure the good management of the services.

Immunity was guaranteed to the barons of the regime and their clients as the justice sector was not spared the corruption that was rampant in the country. The justice sector was controlled by the executive branch of government and the corrupt networks that had captured the state apparatus. Gérard Kamanda wa Kamanda, one of the barons of the regime and a trained lawyer himself, had this to say about the justice sector (Tshilombo 2007):

The justice sector incarnates injustice, corruption, tribalism, skulduggery...the Zairian or the foreigner who is to be tried comes to the court shaking because he does not know what is going to happen to him.

Judges and magistrates were appointed by the Minister of Justice who could dismiss them at will. Paid menial wages, they were demoralised and vulnerable

to corruption. Even in some quarters where integrity survived, they lacked the resources to do their work properly.

By the end of the 1970s, the international backers of Mobutu's regime had tried everything to stop the slide of the economy with no noticeable results. In 1978, measures were then taken at the bilateral and multilateral levels to put the country's economic organs under direct international control. Erwin Blumenthal was appointed by the International Monetary Fund (IMF) to head the Banque du Zaïre, the central bank of the country. Belgium and France, Mobutu's unshakable friends, sent groups of experts to manage the Ministry of Finance and the Customs and Excise Authority (OFIDA),²¹ the customs authority. In spite of all the controls that were put in place, it was reported that 50–75% of foreign exchange continued to elude the central bank as the regime's corrupt networks continued to circumvent all rules and regulations (Nzongola-Ntalaja 2002:151–2; Wrong 2000:189–194). By 1979, Blumenthal, who had been threatened several times by army generals, gave up and returned to Washington, DC. In the report that he wrote after his stint in Kinshasa, he concluded (Wrong 2005):

There has been – and there still is – one single major obstacle wiping all prospects: the corruption of the team in power.

Georges Nzongola-Ntalaja explained the failure of this experiment in economic tutelage by the international community as follows (Nzongola-Ntalaja 2005:152):

The tutelage of foreign experts was based on major fallacy, the view that mismanagement was a *technical* problem. This was a false view, for what was wrong with the country under Mobutu, as subsequently under Kabila, was not so much the lack of technical skills among nationals as the use to which the skills available were put. The frequent purges of competent young officers in the armed forces had their parallels in the staffing policies and practices within the other branches of the state apparatus. For those who thrived on corruption and incompetence, mediocrity was preferable to excellence, and immorality to integrity.

In November 1982, Kengo wa Dondo was appointed Prime Minister by President Mobutu. He immediately announced his intention to undertake a wide range of reforms to salvage the economy. Among the first measures was the arrest of more than a hundred high-ranking civil servants and politicians suspected of

corrupt activities. However, he was accused of waging a selective war against his political enemies and ignoring his own corrupt allies. With the support of the international community, he took a series of economic measures that merely had the effect of making him very unpopular even within the ranks of the regime's barons. The austerity measures dictated by the Bretton Wood institutions worsened the situation of a population already living in abject poverty. By 1986, Kengo had become one of the most disliked leaders in the country and a liability to Mobutu, who had no choice but to get rid of him.

By 1990, Mobutu had outlived his usefulness to his Western backers. The old dinosaur was no longer needed as the Cold War had ended and there was no longer any need for a bulwark against the Marxist-Leninist regimes in neighbouring Angola and Congo-Brazzaville. His former friends and protectors seized the opportunity presented by the massacre of students at the Lubumbashi campus of the National University in May 1990 to cut off external aid. As the economy was already in dire straits, the withdrawal of foreign assistance reduced substantially the sources of income that the corrupt barons could access. State enterprises and especially the customs authority and the tax collection agencies were captured by the ruling class and managed as private concerns. The state gradually lost control of the enterprises to these corrupt networks (Braeckman 1992:198–203; Nzongola-Ntalaja 2002:157–160).

The liberalisation of the political scene in April 1990 created new opportunities for corrupt activities. Dozens of political parties were created overnight with the sole purpose of selling votes in the National Sovereign Conference. Some individuals were bribed by Mobutu's camp, which had been deserted by many of its members who then formed their own political parties. These parties were empty shells that had no constituencies. Many young and promising professionals, who had not participated in the running of the country, impressed people with their articulate analyses of the ongoing crisis and were also bribed to join Mobutu's party. There is anecdotal evidence that a lot of 'brown envelopes'²² circulated among the participants in the National Sovereign Conference, thus once again dashing the hopes of those who had believed that this historical event would lead to a new country free of the vice of corruption (Nzongola-Ntalaja 2002:189–198).

In 1992, the National Sovereign Conference, after analysing the ills that afflicted the Congo, concluded that the ongoing crisis was primarily moral. Among the

VICES that had destroyed the moral fabric of the society, the Conference especially denounced corruption, which had become the keystone of Mobutu's Second Republic. To remedy this situation, the Conference recommended, among other things, that a national declaration of ethical principles be drafted and a national ethics council be put in place.

By the mid-1990s, external assistance had been reduced to humanitarian aid and the economy had all but collapsed, so the state budget dwindled and formal employment declined rapidly. While many people resorted to the informal sector to survive, the political and business elites found new ways to keep up their living standards and maintain their patronage networks by criminalising the economy. The abuse of entrusted power for the personal gain of the elites took several forms, including organised fraud, money laundering, clandestine printing and circulation of counterfeited bank notes, stripping of state mineral and forest assets, etc.

Under pressure from the World Bank, in 1995 Prime Minister Kengo wa Dondo undertook to privatise state enterprises with a view to raising money to service the country's external debt and to get the economy back on its feet again. As part of this move, negotiations were started with various mining companies, which culminated in the signing of joint venture contracts between Gécamines and a number of mining companies, including the Lundin Group, Anvil Mining and Union Minière. Parts of Okimo, the state-owned gold mining enterprise, were sold to Mindev and Barrick Gold Corporation. A contract was also signed between the partially state-owned Sominki,²³ mining enterprise, and a consortium made up of Banro Resources Corporation and Mines d'Or du Zaire, a Belgian company (RDC 2005:5–7). As the negotiations took place while the Eastern provinces of the country were being invaded by Rwanda, Uganda and Burundi, and the country needed cash urgently to buy arms and ammunitions for the national army, the government had very little room to maneuver. The terms and conditions of the contracts, which were negotiated in very opaque circumstances, were one sided and unfavourable to the DRC (RDC 2005:5–7). International observers in Kinshasa feared that some of these deals might have involved corruption (Human Rights Watch 2005a:14).

By the time the Congo was invaded by Rwanda and Uganda in October 1996, the national army had become so disorganised and demoralised that it could

not protect the country. As mentioned above, soldiers' meagre salaries were embezzled and their equipment sold off by high-ranking officers from Mobutu's entourage. The officer corps had become full-time 'businessmen', using their uniforms to smuggle arms to Jonas Savimbi's guerrilla fighters in return for diamonds (Nzongola-Ntalaja 2002:153–157). They provided protection to foreign smugglers of diamonds, gold and other minerals from the country. Corruption, mismanagement and tribalism had devastated the armed forces so much that Mobutu's Zaire, as the popular saying went, was a ripe fruit waiting to be picked. Corruption, on which Mobutu had built his regime, had gradually eaten away at the very foundation of the regime and led to its collapse. It was a sad end for a man who had vowed never to be addressed as 'the former president of Zaire'. During his 32 years in power, Mobutu and the barons of his regime had created a culture that was characterised by tolerance of corruption at all levels of society, the blurring of the line between private and public property, mismanagement, lack of respect for human rights, and impunity for all kinds of crimes. It is this culture that continued during the regime of Laurent-Désiré Kabila, his son, Joseph, and the transition period that followed.

Corruption under Laurent-Désiré Kabila

Before he even reached Kinshasa, Laurent-Désiré Kabila, who needed a lot of money to equip the invading armies and keep up his entourage, emulated Kengo wa Dondo by offering mining concessions to a number of companies that had deserted Kinshasa to negotiate with him in Goma and then Lubumbashi. The first beneficiaries of mining contracts that were signed amid rumours of corruption included American Mineral Fields Inc. (AMF) (a Canadian junior enterprise), the Zimbabwean company Ridgepointe Overseas Development, Australia-based Resources Russell Group and American Diamond Buyers, a subsidiary of AMF (Dunn 2002:59-60).

As mentioned in the previous section of this report, the people of the DRC greeted the Rwandese and Ugandan invaders as 'liberators' who, in the name of Pan-Africanism, had come to save them from Mobutu's kleptocratic regime. All those political opponents who had agitated against Mobutu since the time of the National Sovereign Conference hoped that the resolutions of the conference would be revived and implemented, which is why so many of them collaborated with the invaders. Even Etienne Tshisekedi wa Mulumba

greeted Kabila with open arms and offered to collaborate with him, hoping that he would be reinstated as Prime Minister. Kabila's first public statements encouraged the people to dream of a new dawn. In fact, in the speech that he gave on the 37th anniversary of independence, he declared his intention to make fundamental changes to the governance of the country. He further stated (Ndaywel 1998:882):

The anniversary that we are celebrating today has this particular characteristic that it comes after a long period of dictatorship during which the country, having lost its soul, was diverted to the point of no longer having a State, of not being governed any longer, worse still having no other future than a slow and permanent death. This anniversary therefore marks the renaissance of our country and the return to life of our people. [Author's translation]

People were soon disillusioned, however, as Kabila not only reinstated the type of dictatorial regime under which the country had laboured before the April 1990 political liberalisation. Instead of the sound, transparent and efficient management of the economy that he had promised, his actions showed an uncanny resemblance to the bad governance that had characterised Mobutu's rule. Wrong (2000:299) aptly summarised this situation as follows:

Despite the Leopard's departure, there has been no renewal, no change in mentalities. Mobutu ruled thanks to the support of a mono-ethnic security force. So does Kabila. Mobutu destroyed the formal economy. Kabila has gone even further, choking off the informal economy. 'Kabila', as one European politician astutely remarked, 'has simply replaced Mobutu with Mobutuism'.

Assets were openly looted by the Rwandan, Ugandan and Burundian occupying forces and Kabila's own entourage, who seized any property they fancied. The political activists and adventurers from the Congolese diaspora in North America and Western Europe who had joined Kabila were appointed to high positions in government and other key institutions, in spite of their lack of experience or expertise. They also quickly learned the ropes of how to benefit from their positions, just as Mobutu's barons had done before them. The embedded corrupt, elite networks of Mobutu's followers reorganised themselves and joined Kabila's inner circles (Wrong 2000:293).

When the short-lived alliance between Kabila and his Ugandan and Rwandan mentors broke up in August 1998, the country was invaded a second time by the same coalition. As a result, the country was divided into two. While the western half of the country remained under the control of Kabila's central government and his allies (Angola, Zimbabwe, Namibia and Chad), the northern and eastern fringes of the country were divided up among the proxy warlords supported by Rwanda, Uganda and Burundi. The pretext for the invasion at the beginning of this second war was security along the common borders, which was threatened by Ugandan and Rwandan rebels, and the protection of the Tutsi minorities in Kivu. This was soon forgotten as Congo's eastern neighbours vied with each other to exploit its natural resources. In the territory controlled by the central government, the foreign allies started to engage in similar ventures. The *modus operandi* was the same throughout the country. The new masters of the Congo were granted mining concessions and exonerated from taxes for all their business activities and they signed joint venture contracts. Moreover, they systematically plundered the stocks of minerals, timber, coffee and cattle they found in the occupied territories. As the state had all but collapsed this was a golden opportunity for all kinds of adventurers and other criminals to plunder the country with impunity (Turner 2007:40–42).

The war economy, which was established throughout the country, allowed the warlords and their foreign allies to raise substantial revenues and to fund the war. It was dominated by armed actors who collaborated closely with local and foreign companies, criminal elements and local political authorities. As a result, comprehensive commercial networks were set up that relied on violent predatory strategies to exploit resources, fix prices and prey on the people. Given the prevailing unstable and uncertain situation in which they operated because of ongoing violence, the elite networks focused their activities on ventures that required few investments but from which they could reap quick profits. Included among these activities were levying illegal and exorbitant taxes on trade and exploiting natural resources that had high returns, such as gold, diamonds, cassiterite, cobalt and copper (Kodi 2007:9). The panel of experts put in place by the United Nations Security Council in July 2000 to investigate the illicit exploitation of the DRC's natural resources gave a wealth of details on the elite networks, connected with international criminal networks, which had captured the country and plundered its resources to the detriment of its people and which also fuelled the ongoing conflict (United Nations 2001a, b; 2002, 2003b).

CHAPTER 3

CORRUPTION DURING THE TRANSITION PERIOD (2003–2006)

This section provides an overview of corruption in key areas, including public finance management, public administration, the justice sector, state enterprises, the mining sector, the armed forces, the education sector and the electoral process. This will illustrate the extent to which the heirs of Mobutu Sese Seko and Laurent-Désiré Kabila perpetuated the enduring legacy of kleptocracy.

At the end of the transition period, the Observatory of the Code of Ethics for Public Officials (OCEP)²⁴ – an organ created by a Presidential Decree-Law in 2002 to promote and monitor the implementation of the code of conduct of public officials – carried out a landmark survey of corruption in the DRC. The preliminary results of the survey were announced in December 2006 as part of the celebration of the first anti-corruption week in the Congo – but were not made available in a publication. Of the 30 public institutions included in the survey, the most corrupt were found to be the offices of the president and the four vice-presidents (known in French as *l'Espace Présidentiel*) followed by the justice sector and the customs authority. Corruption topped all the negative values found in the Congolese public administration.²⁵

Power-sharing and corruption

As reported above, a ceasefire was signed in Lusaka, Zambia, on 10 July 1999, at the end of a conference that brought together all six countries involved in the conflict in the DRC, i.e. Rwanda, Uganda, Angola, Namibia, Zimbabwe and the DRC. However, the Lusaka Agreement did not have the envisaged results as the ceasefire continued to be violated by all sides.

In an attempt to address the political aspects of the Lusaka Agreement and put an end to the conflict, an Inter-Congolese Dialogue was launched at the behest of the international community. This initiative was to bring to the negotiation table representatives of the Kinshasa government, all the rebel movements, the unarmed political opposition and civil society organisations. A first meeting held in Addis-Ababa in October 2001 was followed by a more sustained effort in Sun City, South Africa, under the combined mediation of South Africa and the United Nations from February 2002. This culminated in the signing of the Sun City Agreement, which complemented the Lusaka Agreement and put in place a two-year power-sharing arrangement. The agreement provided that Joseph Kabila would remain president and would be deputised by four vice-presidents. A government and two-chamber Parliament would be formed and would be made up of appointees from the Kinshasa government and the rebels' movements, the unarmed political opposition and civil society organisations.

The Sun City Agreement made a mockery of good governance, accountability and merit. In fact, it provided a power-sharing arrangement for the transition period (2003–2006) whereby all the signatories were allocated a proportionate share of government ministries, seats in the national assembly and the Senate, top positions in the state enterprises, ambassadorial positions and high-ranking positions in the army and police. The appointments to these positions were carried out by the signatories to the Agreement, i.e. the president and the four vice-presidents. The appointees were only accountable to their leaders, who were also given the full powers to remove them. This created a strange situation wherein the head of state and his four vice-presidents could not be sanctioned by the Senate or the National Assembly during the transition. Ministers could be summoned by one of the chambers to answer questions on their performance. The power to sanction them remained with the leaders of the 'components' to whom they were exclusively answerable. All the checks and balances on which good governance is based were effectively removed by the Sun City Agreement and the resulting power-sharing arrangement.

The power-sharing arrangement created new opportunities for corrupt activities and guaranteed immunity to all the office-holders as long as they maintained good client relations with their leaders. Political patronage was more important than merit in the appointment of officials. As a result, the management capacities of state organs, which had already been substantially diminished

by 32 years of neo-patrimonial rule under Mobutu, were further reduced by an influx of incompetent political operatives. As a rule, the appointees defended the interests of their respective 'components' and made any consensual management and decision-making impossible. As detailed in a later section, even those institutions that were supposed to ensure that good governance standards were upheld and to lead the fight against corruption, such as the Ethics and Anti-Corruption Commission (CELC), were not spared.

For the preparation of the forthcoming elections, politicians needed a great deal of money. Therefore, the primary objective of the new rulers of the Congo was to raise substantial amounts of money from all the positions in ministries, state enterprises and tax-collecting organs that were allocated to them. Money had to be found to fund the electoral campaigns and, in case the elections were lost, to fight for power by starting another war (Kabungulu:60–61²⁶).

Most of the former belligerents – including Joseph Kabila and vice-presidents Azarias Ruberwa and Jean Pierre Bemba – kept a sizeable number of their best soldiers out of the process of integrating the national army (ICG 2006:4). According to figures in a Swiss Peace report (2006:12), President Kabila's presidential guard was said to include up to 15 000 soldiers who were kept out of the security forces integration process. Vice-President Bemba was alleged to have under his direct command about 2 000 troops in Kinshasa and in the Equateur province. It is believed that Vice-President Ruberwa could count on the loyalty of between 11 000 and 20 000 soldiers of the former army of RCD-Goma, scattered mainly in North and South Kivu provinces but also in Maniema, Orientale and Kasai Oriental provinces. One of his former commanders, Laurent Nkundabatware, was said to have 2 000 troops from the former army of RCD-Goma under his control in North Kivu. They therefore needed to raise cash for the maintenance of these troops, which were under their own direct command (International Crisis Group [ICG] 2005:4; Kibasomba 2005:15; Human Rights Watch 2005a:8–10; Swiss Peace 2006:12; Braeckman 2006:11). With the coffers of the state wide open and all the controls neutralised, the looting of state assets was carried out openly and reached heights that could not have been imagined even in the worst times of Mobutu's kleptocratic rule.

The warlords turned politicians not only helped themselves to the coffers of the state but also continued to benefit from the war economy that they had put

in place. It can be rightly argued that the proxy warlords and their external masters signed the Sun City Agreement because, among other things, it did not raise the economic issues relating to the illicit exploitation of the resources of the country and did not touch their privileges (Nest 2006:31–62). Human Rights Watch (2005b) and Global Witness (2004, 2006), for instance, have extensively documented how the warlords continued to plunder the sections of the country that remained under their control (mainly the northern half of the Equateur Province, and the Orientale, Maniema and Kivu Provinces) even after they had joined the central government in Kinshasa.

Corruption in public finance management

Analysing the disastrous management of public finances from 2001 to 2004, Professor Mabi Mulumba (2006b:1, 3), the then-president of the Court of Auditors, concluded that it was characterised by a complete lack of respect for budget estimates – which were not made available to the public or even to civil servants – and total disregard for the rules and regulations governing public accounts. He noted, in the same article, that the substantial budget deficits that resulted from such practices were financed by credits from the Banque Centrale du Congo well beyond the limits set in its statutes. More unbudgeted expenses were incurred than those provided for in the budget.

The rules and regulations governing public procurement were simply ignored, with single-source procurement and over-billing being systematically applied. To make matters worse, public officials in charge of procurement lacked the necessary skills. As a rule, all the stages of procurement were managed by a single individual.²⁷As the internal and external oversight mechanisms were weak or dysfunctional, it was difficult to identify breaches in the system and prosecute corrupt officials. Given the difficulty of gathering evidence in such circumstances and the lack of staff with the necessary technical skills, no corruption case relating to procurement was ever referred to a court.²⁸ The government did not account to Parliament on the performance of the budget during the period under review (Mabi 2006b:6; Mukwayanzo & Tona 2005:138).

It is because of the intractable problems of public finance management and the lack of sustained efforts on the part of the government to tackle them that the IMF and DRC had rather difficult relations during this period. In fact, from

2001 – when structural co-operation with the international community restarted – and the end of the transition period in 2006, the IMF requested that measures be taken to remedy a list of governance problems that remained practically the same throughout (IMF 2004, 2005b, 2006, 2007):

- The implementation of a new budget classification system in the budget
- The rationalisation and reinstatement of the full expenditure chain applicable to all types of expenditure, including commitment, liquidation, payment orders, and payment
- The implementation of a computerised exchange of information between the treasury and the central bank
- The production of monthly budget execution reports at each stage of the budget process
- The auditing of the government budget execution by the Court of Accounts
- The reform of the procurement process
- The prior authorisation of the Ministry of Finance for the financing of government expenditure by the central bank
- The reduction of the share of the budget allocated to defence, security and political institutions (mainly the president and the four vice-presidents) in favour of pro-poor spending
- The implementation of a comprehensive tax reform, elimination of tax exemptions and improvement of tax compliance and collection

The maintenance of a dysfunctional public finance management system and the lack of controls made it possible for corrupt practices to thrive. In all its reports for the period, the IMF identified corruption as one of the major obstacles to improving the management of finances in the DRC.

As preparations for the electoral campaign started in 2005, large fiscal slippages were recorded. Wage increases and unbudgeted expenditure in favour of political institutions and the military led to overruns in current spending to the tune of 2.5% of GDP. The Banque Centrale du Congo, contravening its own rules and regulations, intervened to finance the deficit (IMF 2006). The structural reforms to which the government had committed itself were no longer a priority.

The IMF acknowledged that corruption remained a major problem (IMF 2006). These problems prevented the conclusion of the review of the IMF Poverty Reduction and Growth Facility (PRGF) arrangement with the DRC, which expired on 31 March 2006.

The Congolese authorities requested that the IMF assist them in implementing a staff-monitored programme that would allow them to preserve macro-economic stability during the elections (April to December 2006) and establish a track record of policy implementation. The successful implementation of this programme would then pave the way for them to negotiate another PRGF (IMF 2006). The measures included in the programme were meant to reduce corruption, which the IMF considered as deeply ingrained and a major obstacle to the improvement of both public resource management and the business climate.

The review of the implementation of this staff-monitored programme in February–March 2007 concluded that most of the quantitative and structural benchmarks that had been agreed with the government were not met. The outgoing government continued to overspend its budget to meet the demands of the political institutions. The Banque Centrale du Congo went on financing the unbudgeted expenditures of the government (IMF 2007). The mismanagement of public finance during the transition period resulted in a difficult macroeconomic situation, which the post-election government would have the unenviable task to remedy.

Corruption in public administration

Corruption in public administration was rampant during the transition period. Although the public paid a heavy tribute, they tolerated the vice, which they considered as a survival mechanism for poorly paid civil servants. People felt obliged to pay bribes to civil servants as a way to ‘motivate’ them. This state of affairs was due not only to civil servants’ greed but also to poor remuneration and working conditions (RADD 2004:82). In fact, in 2004, salaries ranged from US\$5.95 for the lowest-ranking civil servants to US\$25.74 for the highest level, namely that of the Permanent Secretary, making Congolese civil servants among the lowest paid in the world. In the same period, it was estimated that a family of seven persons needed a minimum of US\$380.05 to survive in the DRC (RADD 2004:45). Besides, according to the IMF the wage bill of the DRC

(including the armed forces) as a share of GDP was much lower than in neighbouring countries, which, except for Angola, are less well endowed than the DRC in natural resources (IMF 2005a:34). To compound the problems faced by civil servants, their meagre salaries were paid irregularly. With their legendary sense of humour, which has allowed them to survive all kinds of miseries, the Congolese called the civil servant's salary SIDA, which stands for '*Salaire Insuffisant Difficilement Acquis*' and means 'insufficient salary which is painfully earned'. SIDA also happens to be the French acronym for AIDS (CELC 2006a:7).

Not only were civil servants paid meagre salaries, they were also very poorly equipped and trained. Recruitment and promotions were carried out in complete anarchy with politicians giving jobs to their faithful clients. The already inflated numbers of civil servants were increased by anarchic recruitments during the wars and the transition period. Many civil servants who had reached retirement age were still waiting for their final benefits to be paid many years thereafter and, therefore, remained on the payroll. In 2005, the number of people who were in this situation was estimated at 100 000, or 17% of the total number of civil servants (IMF 2005a:37). In any case, even if they were offered their retirement benefits, most of them would refuse to retire because of the rather insignificant amount to which they were entitled. Fictitious or 'phantom' civil servants were added to the payroll and their salaries were pocketed by managers. The preliminary results of a census of public administration personnel in Kinshasa alone showed that in 2005, more than 20% of the payroll was paid to unrecorded employees (IMF 2005a:37–38). The former warlords also created parallel services in order to reward faithful clients, thus creating further confusion in the organisation chart of public administration and making it more inefficient. The actual number of civil servants was not known and fluctuated from month to month.

As no jobs were available elsewhere, civil servants clung to their posts and undertook to reap maximum profits from their positions. Elaborate mechanisms and networks were put in place to embezzle as much money as possible from the state coffers. This was conducted with impunity since everybody at all levels participated in these corrupt activities, the loot was shared and protection was guaranteed from the highest echelons of the public administration. State assets were used for the private gain of civil servants and rules and procedures were systematically ignored. As no controls existed, civil servants easily got away with their corrupt practices. Even in the rare instances when cases of

corruption, tax evasion or fraud were uncovered, no sanctions were ever enforced.

Corruption in the justice sector

Even though it was one of the rare sectors in which posts were not shared among the signatories of the Sun City Agreement, the justice sector functioned so poorly and was so steeped in corruption that it failed even to try cases of petty corruption. The harshest criticism of the justice sector was made on 30 November 1999 during Mobutu's era, by the First President of the Supreme Court, Kakese Mbiango Bruno, but it still applied to the transition period.

With unusual and striking candour, he said:

Yes, for many years now, we judges, public prosecutors, clerks of the courts, barristers...we have almost banished [justice] from the courts and have replaced it with all sorts of behaviours and dealings which make a parody of justice. All of this has corrupted, perverted, tarnished and depraved justice (Tshilombo 2007). [Author's translation]

Just like civil servants, judges and magistrates worked under very difficult conditions. With their menial salaries they could not make ends meet and were therefore quite vulnerable to corruption. They were very poorly equipped and most of them lacked even the basic documentation on the laws of the country. Impoverished and demoralised, they ignored the numerous human rights violations, arbitrary arrests and detentions, extrajudicial killings, torture and other crimes. When cases were actually tried, they were often expeditiously carried out with complete disregard for due process, and reports were falsified or people were unjustly condemned. As a result, the legacy of impunity from Mobutu's era continued unabated during the transition period. Even those who had committed some of the most serious war crimes and crimes against humanity were rewarded with high-ranking positions in the armed forces.

Although Article 147 of the Constitution of the transition period provided that the judiciary was independent from the legislative and executive branches of government, in reality the Minister of Justice ran the justice sector as if it was one of the departments of the ministry. Not only did the Minister appoint all the judges and magistrates but he could also demote, transfer or fire them at

will. Interference from the minister, the president's office or the numerous intelligence services were common occurrences against which the judges and magistrates had no recourse (Human Rights Watch 2005a:14–15; Tshilombo 2007).

Corruption in state enterprises

The government of the transition period inherited 53 state-owned enterprises. Under the previous regimes these had been the geese that laid golden eggs for the corrupt elite networks that ran them as their personal properties. The mismanagement of these enterprises worsened during the transition period as the power-sharing formula of the Sun City Agreement was applied to them. Each one of the signatories to the Agreement was allotted a proportional number of these enterprises. They were allowed to appoint members of their own interest groups to the boards of state enterprises and to the top management positions. There is anecdotal evidence that many of the appointees lacked relevant experience and technical capacities. Appointees were accountable first, to the leaders of their respective interest groups and only secondly, if at all, to the ministers in charge of the sectors in which they operated. They could only be dismissed with the consent of their leaders.

It was from the coffers of these enterprises that the political parties created by the former warlords collected the funds they needed for electoral campaigns. All kinds of devices were put in place to extract the maximum amounts of money and resources from state enterprises. All the appointees to juicy positions in the institutions of the transition period (i.e. government, parliament, state enterprises, etc.) were under obligation to contribute to the financing of the political parties of the former belligerents. According to one researcher (Kabungulu 2006:59), RCD-Goma, MLC and PPRD, the former belligerents' parties, required contributions amounting to 10% of their appointee's salaries. In RCD-Goma, those who also occupied executive positions within the party had to chip in 20% of their salaries. Political activists reported that for appointees to hold on to their positions depended on how much money they could contribute to the coffers of their parties. This led to all kinds of abuses.

An audit of state-owned enterprises revealed in 2005 that the CEOs had connived with their boards of directors to pay themselves extravagant salaries. For instance, the head of the Centre of Evaluation, Expertise and Certification

(CEEC)²⁹ earned US\$25 000 a month while his counterpart in charge of the inefficient national water company came a close second with a monthly salary of US\$23 050. The chairs of the boards of directors were also paid hefty monthly salaries – as much as US\$16 800 at Onatra, the national transport authority (Mabi 2006a:5). Besides these huge salaries, the managers paid themselves substantial allowances. To cite just one example, the CEO of Cohydro, the DRC's national oil company, paid himself annual holiday allowances amounting to US\$67 000 and US\$70 000 in 2003 and 2004 respectively.³⁰

The government drastically reduced the salaries of all the managers and boards of the state enterprises after the audit report was discussed in Parliament and published in the local press (Mabi 2006a:6). However, it was rumoured that this loss was compensated for by increases in various allowances and other benefits in kind.

Corruption in the mining sector

Corruption in the mining sector deserves a special attention because of the importance of this sector for the Congo's economy. During the transition period, several mining contracts were negotiated and signed by the government in very opaque conditions that did not involve any international invitations to tender. Critical analyses carried out by various bodies, including the Lutundula Commission, Rights and Accountability in Development (RAID), and the law firms Duncan & Allen and Ernst & Young, draw the following conclusions about the characteristics of these contracts (RAID 2007, 11.11.11 *et al* 2007, Rosenblum 2007):

- The assets of the contracting parties were not assessed before the contracts were signed
- The terms of the contracts vary widely between the many partners of the DRC government. There is no rationale, for instance, as to why the shares of the DRC in joint ventures were set at 49% in some contracts and at 17.5% in others
- There is no mechanism for ensuring that private companies that are parties to these contracts adhere to the terms and conditions of the contracts. No state organ, for instance, checks the tax declarations submitted by joint ventures

- The interests of the DRC state are not protected in the contracts in which it is a minority stakeholder. The majority stakeholders, for instance, take decisions in the absence of the DRC state
- Joint venture companies refuse to circulate information on their activities, thus making it difficult to assess the legality or equity of their activities

A study conducted recently by a group of Congolese experts at the request of the *Forum de la société civile de la RDC* (the Forum of DRC civil society) on a sample of 12 major contracts between DRC state enterprises and private companies raised doubts about the competence, devotion and integrity of those who signed the contracts on behalf of state enterprises (Cepas 2007). Since many of the companies that signed joint-venture contracts with Congolese state enterprises were registered offshore in tax havens, their identities and those of their shareholders could not be clearly established. The Congolese law against money laundering was thus violated.

These joint venture contracts have been decried by many international NGOs (including the Netherlands Institute for Southern Africa (Niza),³¹ Bank Information Center (BIC), Global Witness, Human Rights Watch and Rights & Accountability in Development (RAID), as well as Congolese NGOs including, to name just a few, National Centre for Support to Development and Popular Participation (Cenadep),³² Natural Resources Network (RRN),³³ Research Centre for Social Action (Cepas),³⁴ Action against Impunity for Human Rights (ACIDH),³⁵ Congolese League Against Corruption and Fraud (Licoco)³⁶ and African Association for Defence of Human Rights/Katanga Branch (Asadho/Katanga)³⁷ – and the Congolese political class. Among the key contracts, one could cite the following (Global Witness 2006:37):

- The Kolwezi Tailings copper and cobalt project signed in October 2003 between Gécamines and Aداstra (later taken over by First Quantum), which allocated to state-owned enterprise and the Congolese state shares of only 12.5% and 5% respectively for a 40-year period
- Another such agreement related to the Kamoto mine, the Dima-Kamoto concentrator and the Luilu hydrometallurgical plant and was reached in February 2004 between Gécamines and Kinross-Forrest. In this deal, Gécamines and Kinross-Forrest were allocated shares of 25% and 75% respectively

- In June 2004, with regard to the Ruashi copper and cobalt mine, a joint venture contract was signed with Metorex and Sentinelle in which Gécamines only retained 15%
- In September 2004, in the contract relating to Kamoto Oliveira Virgule open-pit mine and Kananga and Tilwizembe deposits, Global Enterprises Corporate Ltd (GEC) was granted 75% of the deal and Gécamines only got a 25% share of the project over 35 years
- Finally, in this series of one-sided contracts one could also include the one relating to the Tenke-Fungurume copper mine for which Phelps Dodge and Canadian Tenke Mining scooped 57.75% and 24.75% ownership respectively, while Gécamines only received 17.5%

These contracts relate to enormous quantities of minerals. For instance, the ones Gécamines signed with Kinross-Forrest, GEC and Phelps Dodge are estimated to cover 70% of the Congo's known copper reserves (Global Witness 2006:37). There are concerns that they may have involved corruption, with government officials pocketing hefty bribes that could be used to fund their election campaigns and buy votes. These contracts, which bind the Congo for up to 40 years in some cases, deny the government access to the resources that it so badly needs to rebuild the country (11.11.11 *et al* 2007).

In the transition period the mining sector was beset by high levels of corruption in its operation. The IMF continuously warned that 'corruption remained a major problem, particularly in natural resource management' (see for instance IMF 2006). Large quantities of minerals were exported illegally to neighbouring countries. Government and customs officials connived with traders to evade taxes. At the end of the period, it was estimated that three quarters of the minerals mined in the formal sector in Katanga were exported illicitly by traders who were protected by local authorities (Global Witness 2006:4). The same could be said about other regions of the DRC, especially the Ituri region of the Orientale Province (Human Rights Watch 2005b) and North and South Kivu (Global Witness 2005).

Rampant corruption also affected the informal mining sector throughout the country. A plethora of state organs, including the Ministry of Mines, the armed forces, customs, intelligence services and local administrative officials, all collected illegal taxes from artisanal diggers. In this system of institutionalised

corruption, diggers were exploited even by the officials of the associations who were supposed to protect them from such practices (Global Witness 2006:5). More is said about corruption in the mining sector in later sections of this report.

Corruption in the armed forces

The integration process of the various militias into the national army also involved widespread corruption. It is alleged that the former warlords realised that by keeping their soldiers under their direct command, they could reap substantial benefits from the funding provided by the international community for the army's integration process. Another way of making money from the process was by inflating numbers with 'ghost' soldiers and pocketing the surplus from the salary budget. In fact, in 2005, the payroll of the Ministry of Defence showed that 340 000 soldiers were paid out of the national budget. However, the partial census carried out by the South African Defence Force and the Military Integration Structure³⁸ of the Congolese army revealed that 30–55% of soldiers on the payroll were fictitious (Amnesty International 2007:14). Some commanders simply lined their pockets with the money allocated to soldiers' salaries or deducted a fraction allocated to soldiers' pay for themselves. The amounts embezzled each month from soldiers' salaries were estimated at 25% or more of the total budget (Human Rights Watch 2005a:9).

Generals and high-ranking politicians are also said to have profited from other budget lines of the Ministry of Defence. It was alleged, for instance, that US\$30 million was embezzled from the budget allocated for the defence of the North and South Kivu provinces (Human Rights Watch 2005a:9–10). Ill equipped and lacking the most basic supplies, soldiers of the national army had no choice but to extort money and procure other resources from the people they were supposed to protect. This was one of the major causes of indiscipline in the integrated units, of insecurity and of massive human rights violations committed by the national army throughout the country (Amnesty International 2007:13–14, Swiss Peace 2006:13, Human Rights Watch 2005a:7–8).

Corruption in the education sector

The education sector was not spared by the scourge of corruption during the transition period. As teaching and administrative personnel from nurseries to

institutions of higher education were not regularly paid their meagre salaries, they extorted as much money as possible from students and their parents. It was generally reported that administrative staff invented several charges for registering newcomers and maintaining students on the school rolls. Students complained that they were required to buy their professors' lecture notes in order to take part in and even pass the end-of-year examinations. It was alleged that final year students in institutions of higher education had to bribe lecturers and professors for the latter to supervise them and give them passing marks for their dissertations. There was anecdotal evidence that administrative staff in registrars' offices in universities and other institutions of higher education made substantial amounts of money from taking bribes from students to change the marks given by lecturers and professors.

The situation became so alarming that the Minister of Public Administration spoke plainly while denouncing corruption and negative values before a retinue of rectors and directors-general of institutions of higher education at the closing ceremony of the first anti-corruption week in the DRC in December 2006. She said:

In fact, everybody knows that a plague of unknown origin is rampant in our universities and institutes of higher education. This virus manifests itself under various forms, including:

1. 'Marks that are sexually transmitted' (PST).³⁹
2. 'My man or my woman': marks are no longer given on merit. They are given along ethnic and tribal lines.
3. 'Operation dissertation': professors write dissertations for their students.

Briefly, our institutions of higher education and universities have become places where indescribable promiscuity prevails (RDC, Ministère de la Fonction Publique 2006b).

Corruption during the elections

The electoral campaign at the end of the transition period saw a spectacular upsurge in corrupt activities.⁴⁰ The Congolese media was full of articles about leaders of political parties and individuals standing as independent candidates

who were allegedly bribed to join one of the two major coalitions, the AMP or the UN coalition. As membership of these coalitions was not based on shared visions or political ideologies, it constantly changed during the campaign. In fact, political parties and individuals moved from one coalition to the other depending on the amounts of money that changed hands or on the promises of lucrative positions in government or state enterprises. It was no surprise that the IMF announced in October 2006 that the government had overspent the July to September 2006 budget. In September alone, the deficit amounted to US\$40 million (Le Potentiel 2006).

The elections at the national and provincial level took place amid rumours of corruption. This was epitomised by the indirect elections of senators and provincial governors by provincial assemblies. The media was rife with stories of provincial assembly deputies who received up to US\$50 000 to cast their votes for particular candidates. In Kinshasa, Bas-Congo, Western and Eastern Kasai provinces, where the opposition UN coalition had the majority of seats, candidates of the president's AMP coalition were elected governors. For most people, this turn of events could only be explained by the substantial amounts of money that were paid to deputies to buy their votes (Tshingombe and Milandu 2007, Ben-Clet 2007). In the Bas-Congo province, the people protested against the election of the AMP candidate as governor and were brutally repressed on 31 January and 1 February 2007 (Van Woudenberg 2007).

Conclusion

As this overview of corruption during the transition period has shown, Mobutu's legacy of kleptocracy continued to be the model of governance many years after his demise. The collapse of the state and the invasion of the country by its neighbours created new opportunities that allowed elites to continue to loot the country in collaboration with foreign corrupt and criminal networks. The new situation created by the wars that devastated the country allowed those in positions of power to strip state assets with impunity. Extensive mineral resources were smuggled out the country. State mining enterprises were stripped of their assets through joint-venture contracts signed in non-transparent circumstances. Many of these contracts, whose signing was alleged to have involved bribery of high ranking Congolese officials, contain terms and conditions that could deprive the Congo of the substantial revenue that it

needs to alleviate the abject poverty of its people. By the end of the transition period, corruption had permeated all facets of Congolese people's lives and had deepened their suffering.

CHAPTER 4

COMBATING CORRUPTION DURING THE TRANSITION PERIOD: AN ANALYSIS OF THE LEGAL FRAMEWORK

This section focuses primarily on the broad legal framework in force during the transition period. To avoid repetition, the legal provisions relating to individual anti-corruption bodies are dealt with in other sections. The two specifically anti-corruption laws in the period under review are the Anti-Corruption Law and the Law Against Money Laundering and Financing of Terrorism (referred to hereafter as the money-laundering law). The Mining Code and the Forest Code are also briefly analysed below. In fact, the importance of the mining and forest sectors for the economy of the DRC cannot be overemphasised. Besides, various reports by United Nations panels and international NGOs have clearly documented the link between the illicit exploitation of the mining sector and the corruption that fuelled conflicts in the Congo for over a decade.

The Anti-Corruption Law

In the period under review the DRC had specific anti-corruption and anti-money laundering laws aimed at preventing, detecting and punishing corruption. The National Anti-Corruption Strategy (NACS), which was finalised before the transition period – and which will be analysed in a later section of this report – recommended that a specific anti-corruption law be enacted. The National Assembly implemented this recommendation by amending and completing provisions of Article 147 of the Penal Code (a decree from colonial times, dated 30 January 1940). The new law (no. 5/006) was promulgated on 29 March 2005.

The Anti-Corruption Law domesticated some of the provisions of the SADC Protocol against Corruption (SADC 2001) and the African Union Convention

on Preventing and Combating Corruption and Related Offences (AU Convention) (African Union 2003). Compared with the pre-existing provisions of the Penal Code, it included important new aspects such as:

1. It adopted and widened the AU Convention's definition of public official to include 'any official or employee of the State or its institutions, including those who have been selected, appointed or elected in order to perform activities or a function in the name or in the service of the State, at any level of the hierarchy' (Article 147).
2. It introduced clear definitions of confiscation of the proceeds of corruption (referred to in the law as 'assets'), borrowed from the AU Convention (Article 147).
3. The scope of application of the law was clearly defined and in line with that of the AU Convention, except for three items, which are omitted: 'any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party' (Article 4c); 'the diversion by a public official or any other person of property belonging to the State or its agencies, to an independent agency, or to an individual' (Article 4d); and 'participation in the commission of any of the acts covered in the provisions of the article relating to the scope of application' (Article 4i).
4. It increased the penalties for committing acts of corruption to a maximum of two years imprisonment and a fine of 100 000 constant Congolese francs (Article 148), and provided for aggravating circumstances for which the maximum penalties would be doubled (Article 148).
5. For acts of corruption committed by public officials, penalties were set at 15 years imprisonment and a fine of one million constant Congolese francs (Article 149).
6. It prescribed additional penalties, including confiscation of the proceeds and instrumentalities of corruption, suspension of civic rights, banning from employment in civil service and state enterprises, banning from public procurement and deportation for foreign nationals (Article 149a).
7. It defined offences that are related to corruption, i.e. trading in influence and culpable omissions (Article 150 and 150e).

8. It criminalised obstruction of investigations (Articles 149 and 150).
9. It provided for the protection of witnesses, experts and whistleblowers against any form of intimidation or reprisals (Article 149).

This law was definitely an improvement on the antiquated provisions of the 1940 version of the Penal Code. While an effort was made to domesticate some provisions of the AU Convention, the exercise was incomplete. The provisions included in the new Penal Code need to be elaborated further while ensuring that they are easy to understand and to apply, and enforcers' discretion must be eliminated. Besides, some very important provisions were left out of the new Penal Code and should be included in a new specific anti-corruption law. These relate to:

- Access to information
- The funding of political parties
- Civil society
- The media
- Extradition
- Bank secrecy
- Cooperation and mutual assistance
- International cooperation
- Minimum guarantees for fair trials
- The laundering of the proceeds of corruption
- The embezzlement of property in the private sector
- Conflicts of interest
- The corruption of an official of a foreign state
- Public procurement and management of public finances
- The liability of legal persons
- The judiciary and prosecution services

- Compensation for entities or persons who have suffered damages as a result of acts of corruption
- Asset recovery
- The national authority or agency specialised in combating corruption and responsible for making and receiving requests for assistance and cooperation

It is important to consider domesticating these provisions, which are part of the anti-corruption instruments of the organisations of which the DRC is a member, i.e. the AU Convention, the United Nations Convention against Corruption (United Nations 2003a) and the SADC Protocol against Corruption.

While the promulgation of the revised Penal Code was hailed as an important step in the right direction in the fight against corruption, it was not enforced. In fact, it was promulgated at a time (March 2005, i.e. three months before the original date of the elections) when the priority of all political actors was to collect as much money as possible, including through embezzling state finances and assets and through corruption. The development partners of the DRC ignored acts of corruption (Human Rights Watch 2005a:3, 17–18; ICG 2005:4). Besides, as mentioned earlier, the justice sector had no means to enforce such a law. An informal survey of public prosecutors and judges carried out by the National Ethics and Anti-Corruption Commission in 2006 in Kinshasa revealed that they had heard about a new law being promulgated but were not familiar with its content (CELC 2006d:57–58).

The Law against Money Laundering and the Financing of Terrorism

On 19 July 2004, the president promulgated Law no. 04/016 against Money Laundering and the Financing of Terrorism, which was intended, among other things, to contribute to the fight against corruption. The DRC, a failed state with porous borders with nine countries (Sudan, Uganda, Rwanda, Burundi, Tanzania, Zambia, Angola, Congo-Brazzaville and the Central African Republic) and a predominantly informal and cash economy, provided fertile ground for money laundering and possibly the financing of terrorism. The law was drafted in accordance with international norms and laid out in detail the

provisions relating to the prevention and detection of money laundering and the financing of terrorism, protective and coercive measures, and international cooperation.

The money-laundering law did not take into account the realities of a country in which the banking system had virtually been replaced by the informal sector and where, as a result, cash was used in all transactions. People mistrusted the banking system, through which their hard-earned money was lost because of the continuous devaluation of the Zaire currency in the last days of the Mobutu regime.

No attempt was made to implement the money-laundering law. The Congolese political actors, who were allegedly involved in money laundering activities, could not be expected to put in place controls and institutions that would bring their lucrative operations to an end. The Banque Centrale du Congo put in place a Financial Intelligence Unit, as required by the provisions of the law. However, this unit could not become operational because the relevant draft laws that the Banque Centrale du Congo submitted to the government were not even considered by it. An informal survey conducted by the national Ethics and Anti-Corruption Commission (CELC)⁴¹ showed that the relevant officials in the Ministry of Justice, the Ministry of Finance, money transfer companies and magistrates were not familiar with the content of the law.⁴²

The Mining Code

The DRC has been dubbed a 'geological scandal' because of the variety and quantities of minerals with which it is endowed. This wealth has made it the envy of world powers and its immediate neighbours but has been a source of suffering for its people. The Congo has large deposits of copper, cobalt and coltan (columbite-tantalite)⁴³ and sizeable reserves of gold and diamonds. The DRC has an estimated 12% of the world's copper reserves and almost half of the cobalt reserves (RAID 2007:3). Other minerals in Congo's treasure trove include cassiterite (tin), heterogenite⁴⁴ (a third of the world's reserves), silver, cadmium, magnesium, coal, uranium and zinc (IMF 2005a:47–51).

The DRC also produces 8.5 to 10 million barrels a year of crude petroleum, principally offshore in the Atlantic Ocean (IMF 2005a:46). There are prospects

for substantial production onshore in the central Congo basin and in the basin of Lakes Albert and Edward, on the border with Uganda (Lugerero 2007:72). However, petroleum is excluded from the Mining Code and so is not discussed here.⁴⁵

The importance of the mining sector for the DRC lies in the fact that it has historically been the mainstay of the country's economy. In fact, before the onset of the political turmoil and conflict, the share of the extractive sector in the total export earnings of the DRC was about 75% – 25% of the country's GDP and 25% of its fiscal revenue (RAID 2007::3). The recovery of this sector is crucial to provide the necessary resources for the reconstruction and development of the Congo. Besides, according to the IMF (2005a:51):

Overall, it seems plausible that, in addition to the estimated 800 000 people employed in artisanal diamond sector, at least another 150 000 are involved in other artisanal mining activities. Hence, about 20 per cent of the population is dependent on artisanal mining.

The Interim Poverty Reduction Strategy Paper (I-PRSP)⁴⁶ of the DRC strongly recommended, among other measures, that a new investment code be adopted. In an effort spearheaded by the World Bank, a mining code was quickly drafted and promulgated by Law no. 007/2002 of 11 July 2002. The Mining Regulation⁴⁷ providing the application modalities of the Mining Code was enacted by Decree no. 038/2003 of 26 March 2003. These were the main legal instruments that regulated the mining industry during the transition period.

The Mining Code⁴⁸ aimed to bring transparency to the regulation of the mining sector. To do so, it incorporated the available international best practices in the area. It also purported to create a level playing field for private investors in the sector (RDC Ministère des Mines 2005). In order to exclude the plethora of institutions intervening in mining activities and to reduce rampant corruption, Article 16 of the Code usefully identified and defined the roles of the main players in charge of regulating the mining sector. These now included the president, the Minister of Mines, the Mining Registry,⁴⁹ the Directorate of Mines and the department in charge of protecting the mining environment. The Mining Code also laid out in detail the procedure for acquiring mining rights.

To put an end to the rampant extortion in the mining sector, Article 220 of the Mining Code established an exhaustive list of the taxes, charges and fees and

customs duty payable to the Congolese treasury by operators in the sector. The Mining Code eliminated another source of conflict between the central government and the provinces and a possible opportunity for corrupt activities by setting the percentages of the mining revenue that the respective spheres could receive: 40% for the provinces and 60% for the central government. A host of other measures aimed at attracting investors to the DRC were included in the Mining Code, which is one of the reasons why it has been criticised for being too favourable to mining operators and insufficiently emphasising the economic development of the DRC. For instance, the new code took out the provision of the former mining code which made it an obligation for mining companies to meet the development objectives defined by the government (Mazalto 2004:5). It was replaced with a requirement for the mining company to submit, as part of its application for an exploitation permit, 'a plan as to how the project will contribute to the development of the surrounding communities' (Article 69g). Mining companies were therefore allowed to undertake development-related initiatives on a voluntary basis.

Just like the other laws that were in force during the transition period, the Mining Code was largely ignored in the negotiation and implementation of mining titles. As reported earlier in this study, in 2005 the government authorised the signing of contracts between Gécamines and three international mining companies behind closed doors, in violation of the Mining Code. In a leaked memorandum, a World Bank official said that contracts were signed without any prior 'thorough analysis and evaluation' (11.11.11 *et al* 2007:4). There was no evidence that an international tendering process took place, in spite of the fact that the contracts related to a huge percentage of the country's copper and cobalt reserves. It was thus not surprising that the analysis carried out by an expert showed that these joint venture contracts were 'genuinely disadvantageous to Gécamines or the Congolese State' (11.11.11 *et al* 2007:5). Moreover, an evaluation of the implementation of the Mining Code by a group of Congolese activists found that in violation of the code, many of the contracts signed during the transition period exempt the holders of the mining titles from taxes (Radio Okapi 2007).

No effort was made by the authorities to familiarise the population in the mining areas with the provisions of the Mining Code. This led to people being unnecessarily abused by the holders of mining titles in collusion with corrupt

local authorities in some regions. The lack of capacity to monitor the implementation of the Mining Code made possible continued corruption in the granting of mining rights (Kuediasala 2006).

The Forest Code

It is estimated that the forests of the DRC, which make up the second largest rainforest in the world, cover an area of 2 000 000 km² (Counsell 2006:7). By comparison, the *total* surface area of South Africa is only 1 219 090 km² (GCIS 2005:7). The DRC's forests account for 10% of all the tropical forests of the world and more than 45% of African forests. They include closed high rainforests, open forests and woody savannah, and represent the fifth most biodiverse environment in the world as they contain around 10 000 species of plants, 409 species of mammals, 1 117 species of birds and 400 species of fish (Counsell 2006:7).

About 40 million people in the DRC (about 67% of its total population of around 60 million) depend for their livelihood on forest resources, which provide them with food, medicines and fuel wood, and represent an important source of income (Debroux and Topa 2007:ix). The DRC forests also play an important role in regulating world climate processes. In fact, through the exchange of water and energy in the atmosphere, they are said to influence atmospheric circulations. Since they represent an immense carbon sink, they could play an important role in current efforts to combat climate change (Hoare 2007).

As in many other areas, the law that regulated the forest sector until 2002 was obsolete, dating back to 1949. The regulatory framework governing the forest sector had thus not taken into account the various international conventions and agreements that had been put in place since then. Over the years, it had become difficult to enforce given the country's changing economic, political and social situation. The World Bank took the lead in developing a new legal framework that promised to provide incentives to investors and to ensure that the sustainable exploitation of the forest would contribute to the economy of the DRC and the improvement of the wellbeing of its people.

From 2002 the DRC made some progress toward defining a forest policy. The first two important steps toward this end were the development of the Forest

Code and the Priority Agenda for re-launching the forest sector.⁵⁰ The Priority Agenda may be described as:

a set of simple, corrective, preventive or foundational measures intended to clean up the legacy of the past and to regulate the re-launch of the timber sector. It targets problems which, if not resolved quickly, would risk harming the environment and communities irreversibly, and depriving the DRC of the benefits of its own forests. It emphasises the application of laws and contracts, transparency as a means of eradicating corruption and stimulating dialogue, and finally accountability (Kalambayi wa Kabongo 2007; author's translation).

The Forest Code was an important step toward developing a vision of forest management in the DRC. Promulgated as Law no. 011/2002 of 29 August 2002, it aimed to:

promote rational and sustainable management of forest resources in order to increase their contribution to the economic, social and cultural development of the current generations, while at the same time preserving the ecosystems and biodiversity of the forests for the future generations (Kalambayi wa Kabongo 2007; author's translation).

It detailed a number of measures that guaranteed full consultation with the local population before granting rights in relation to forest resources. It introduced some transparency in the procedures for granting forest concessions by making invitations to tender mandatory and single-offer contracts exceptions to the rule, which could only be resorted to in exceptional circumstances. Furthermore, it established a detailed list of taxes and fees that applied in the forest sector. It also provided that the central government would allocate 40% of forest revenues to local communities.

The promulgation of the Forest Code was also important considering that such a large proportion of the population depend on forests for their livelihood. It was estimated that, with the right incentives and legal framework, the annual timber production of the DRC could be increased from 100 000 to 6 million m³. It was also thought at the time that sustainable and transparent management of the DRC forests could lead to substantial job creation and provide sizeable revenues to the cash-strapped government and to the local communities (Mutamba 2006).

However, the measures were not implemented because of a lack of capacity and technical skills in the environment ministry and a weak and thin presence on the ground. The ministry was over-staffed at the centre in Kinshasa, with several special services with overlapping responsibilities (Counsell 2006:25). However, at the provincial and local level, it was thinly represented and civil servants were not properly equipped, inadequately informed about the legal developments in their sector and irregularly paid (Greenpeace 2005; Sakata 2007:15).

The lack of basic technical skills at all levels of this ministry was another major hindrance to the proper administration of the sector and the implementation of the relevant laws and policies. (Counsell 2006:25). In order to successfully implement the reform of the forest sector, the ministry needed the continued commitment of the president's office and Parliament, which unfortunately also lacked capacity and technical knowledge of the sector, and, above all, lacked the necessary political will (Debroux and Topa 2006:xvii).

Furthermore, the set of implementation decrees that were required for the effective application of the measures provided in the Forest Code were not fully drafted and approved. At the beginning of this 2008 the environment ministry reported that only nine of the required 42 implementation decrees had been issued (Kalambayi wa Kabongo, 2007). It was reported elsewhere that a larger number of such decrees has been approved by either the environment minister or the president, but that only one of these was published in the Official Gazette⁵¹ (Counsell 2006:23).

With the assistance of the World Bank a tax review of logging contracts was undertaken. As a result of this exercise, 163 non-compliant contracts covering 25.5 million hectares, were cancelled (Greenpeace 2007:23). Thereafter, at the request of the World Bank, the DRC government declared a moratorium on new logging titles and on the renewal or extension of existing ones. According to Greenpeace, in spite of this measure, by April 2006 corrupt government officials had signed 107 new logging contracts which covered 15 million hectares (Greenpeace 2007:23–25). According to international experts, of the 21 million hectares that have been granted to logging companies, at least three million hectares were granted illegally. Another 15 million hectares were 'exchanged' in violation of the law, as logging companies, for instance,

swapped marshes or areas with little potential for forests with highly valued trees. It is estimated that titles were legally issued on only the remaining three million hectares (Agence France Presse 2007).

In response to a further request by the World Bank, the president promulgated a decree in October 2005 that extended the moratorium. The decree provided that the moratorium would end after completion of the evaluation of the 156 forest contracts that had not been cancelled. This task was assigned to a group that included an inter-ministerial committee, the private sector and civil society. The evaluation was not completed at the end of 2006 and has been taken up by the new post-election government. Greenpeace has reported that of the 156 contracts to be reviewed, 107 were signed after the May 2002 moratorium and should therefore have been cancelled (Greenpeace 2007:23–25). Worse still, there were indications that a number of concessions that were being exploited were not included in the list of the 156 contracts. The information provided by the corrupt local administration was not reliable.

As in other areas, the government of the transition period had no political will to implement an externally imposed Forest Code and reduce corruption in the sector. Besides, the lack of institutional capacity and qualified forestry professionals, and poorly equipped and poorly paid civil servants, were all obstacles to an adequate implementation of the Forest Code. As a result, logging has not had the positive effect that it was supposed to have. Its contribution to the increase in corruption has been appropriately summarised as follows:

In an environment of endemic corruption, logging companies inevitably operate beyond the rule of law. In the DRC, the logging industry continues to feed the networks of corruption that are obstacles to genuine development. Through support for an extractive industry-based model of development, donor countries and agencies such as the World Bank are effectively undermining their own rhetoric on establishing good governance and alleviating poverty (Greenpeace 2007:33).

To such criticism, the World Bank has responded that it is not encouraging commercial logging in the Congo. It states that, on the contrary, its advice to the government of the DRC has been ‘NOT to expand industrial logging, and NOT to allocate any new concessions until satisfactory standards of governance and management are achieved in existing concessions and the country is able

to enforce laws' (World Bank 2008:2). The World Bank has also drawn the attention of the government to 'a high risk of unregulated expansion of logging driven by the return of peace and rush to rehabilitate infrastructure' (World Bank 2008:2). In areas where logging is already taking place, the World Bank is assisting the government to ensure that sustainable practices are adopted, social provisions are included and the rights of the forest-dependent people, including the Pygmies, are respected. With regard to the indigenous people of the DRC, including the Pygmies, the World Bank has committed itself to broadening its support to them. Its plans in the forest sector in the DRC will focus on building the capacities of Congolese institutions and civil society organisations with a view to enabling them to improve the implementation, enforcement and monitoring of the Forest Code (World Bank 2008:2-3).

Conclusion

One can conclude that, in spite of some weaknesses, the legal framework that was in force during the transition period could have allowed the country to make some progress in the fight against corruption. The laws in place included those that are specifically related to anti-corruption and a number of others that aimed at improving transparency, accountability and controls. However, as they were all imposed by the development partners of the DRC, there was no ownership by the Congolese political class. Among other obstacles to the implementation of these laws was the lack of political will in the Congolese political class, which was riddled with graft. The Sun City Agreement, which governed the institutions of the transition period, had put in place a power-sharing arrangement that practically removed all institutional controls and facilitated the looting of the country. Lacking in capacity and expertise, impoverished Congolese civil servants could not deliver on the implementation of laws whose very existence most ignored. Furthermore, the international development partners of the DRC only gave lip service to the fight against corruption as they feared that it could jeopardise the achievement of their most important goal for the transition period, i.e. the elections.

CHAPTER 5

INSTITUTIONS TASKED WITH COMBATING CORRUPTION DURING THE TRANSITION PERIOD

While an anti-corruption legal framework was developed during the transition period, the bodies that were responsible for enforcing it were rather dysfunctional. Some of them had been created under Mobutu's authoritarian regime and thus suffered from the heavy legacy of this kleptocratic era. In fact, as mentioned earlier, a number of institutions were created to control corruption in the second half of the 1980s in an effort to save Mobutu's regime from complete collapse. These were the Office of the Auditor-General,⁵² through the Court of Auditors, and the General Inspectorate of Public Finances.⁵³ This section focuses on these two institutions as well as Parliament and the CELC. The combined control activities of these bodies were meant to prevent, detect and combat corruption during the transition period.

The Court of Auditors

The Court of Auditors, the supreme auditing institution of the country, was created by Law no 87-005 of 6 February 1987. Its mandate was:

- To independently audit the general public finances and the execution of the government budget
- To audit the accounts and management of public enterprises
- To monitor the reimbursement of loans due to the state
- To audit public procurement procedures and contracts
- To audit tax collection and expenses incurred on the government general budget

This remit was confirmed by the Constitution of the transition in its Article 165.

The Constitution also provided that the Court of Auditors reported to the National Assembly and that its members were appointed by the president on the recommendation of the National Assembly. In addition to annual reports submitted to the president and the National Assembly on the audits of public institutions, the Court was also required to report to the relevant ministries, the prime minister and the National Assembly on their management.

With the limited information to which the Court of Auditors could have access, it regularly submitted audit reports to the National Assembly, as provided by law. However, these audit reports, which were duly published in the Official Gazette of the DRC,⁵⁴ were neither discussed nor acted upon. The only exception was a special report (which is discussed in the next section) on an audit that the Court of Auditors produced at the request of the president in 2004. Therefore, its activities were largely unknown to the public.

Some of the problems that plagued the Court of Auditors were the same as those already mentioned with regard to other public institutions and organs during the period under review: inadequate remuneration, lack of opportunities for personnel for further training, lack of financial means and human resources to properly fulfil their responsibilities, overdependence on external sources of funding even for the operating budget, and the fact that many of the staff were well beyond retirement age.⁵⁵ More specifically, while the Constitution and the implementation decrees governing the Court of Auditors required it to report to the National Assembly, in reality it continued, as under the Mobutu regime, to come under the purview of the president's office and to be considered part of it.⁵⁶ This practice reduced the Court's perceived and real independence vis-à-vis the president. The lack of accountability that characterised the institutions of the transition period made it difficult, if not impossible, for the Court to have access to the information that it needed from the government and the various state enterprises, which reported first and foremost the leaders of the 'components' and 'entities' to which they belonged. For the same reasons, the National Assembly, to which it was supposed to report, completely ignored the few reports that it produced⁵⁷ (Abolia 2005:351–362; Umba-di-Ndangi 2006:377–393).

The General Inspectorate of Finance⁵⁸

The Inspectorate was responsible for auditing all public bodies, including the Ministry of Finance, of which it was a special unit. For a short period, from 2002 to 2003, it was placed under the purview of the president's office. Candidates to the posts of General Inspectors of Finances, who made up this unit, underwent a competitive and rigorous examination and were appointed by the president on the recommendation of the ministers of finance and public administration.

The Inspectorate was expected to undertake audit missions at the request of the finance minister, the president or any ministry, or it could initiate a mission on its own. However, it was required to have its annual programme approved by the finance minister. This supervision by the finance ministry was, during the transition period, a source of tension between the inspectors and the ministers and reduced the formers' autonomy and credibility (Abolia 2005:380–388; Umba-di-Ndangi 2006a:378–379). The Inspectorate was mandated to:

- Control the implementation on a day-to-day basis of the budgets of the government and of decentralised administrative bodies
- Ensure that the internal audit units in ministries and decentralised administrative bodies were well organised
- Audit the financial operations of state enterprises, organs and private enterprises which were subsidised by the state or of which the state was a stakeholder
- Control tax, customs and accounting situation of any person or body that was liable to taxation, at the request of the finance minister, the president or the vice-president in charge of the Economic and Financial Commission
- Ensure that all the units in charge of collecting taxes and spending state revenue complied with and applied the legal and regulatory provisions as well as instructions relating to the posting of operations (*Ordonnance no 87–323 du 15 septembre 1987, Article 2bis*)

In an environment that was deeply averse to any kind of control, the Inspectorate was marginalised and deprived of the necessary resources to play its role fully. For most of the transition period, it could not access its operational budget. It was often manipulated by the ministers in charge to settle their

scores with political enemies. The bodies that it was supposed to audit ganged together against it. There were even instances when audit missions were publicly prohibited by these powerful institutions. In the rare cases where the audits were carried out, the Inspectors' recommendations were ignored.

Inspectors had neither the means nor the opportunities to be properly trained. Their technical capacities were limited as a result and their knowledge did not keep up with developments in their area of expertise. They also lacked the most basic equipment. Their paltry remuneration made them vulnerable to corruption.⁵⁹

Parliament

The Constitution of the transition period (Article 98 and 104) provided that Parliament not only voted the government budget but also controlled its implementation by the government and state enterprises and organs. In order to exercise this control and secure information, the Constitution provided in Article 112 that both the Senate and the National Assembly could:

- Ask any one of these institutions an oral or written question
- Ask for information on a topical issue
- Summon a minister or the head of one of the state enterprises to be questioned by Parliament
- Establish investigation commissions

However, the Constitution also made it clear that none of these means of control could lead to votes of no confidence against the government.

The Minister of Finance was required by the Finance Act⁶⁰ to submit an annual report to Parliament on the national accounts, the general situation of the treasury and the consolidated accounts of the state and the decentralised administrative entities. Based on this information Parliament could assess the performance of the national budget.

In this control exercise, Parliament was supposed to rely on the support and expertise of the Court of Auditors, which, after auditing the national accounts, could point out irregularities and weaknesses in accounting or administrative organisation. With this information, Parliament could play its oversight role

more effectively. The capacity of Parliament to hold the Executive to account for its management of the country's economy depended on the quality of the reports that the government submitted to it and the advice that it received from the Court of Auditors. However, as explained earlier, the Court of Auditors reported to the president, whose office supervised it but with very limited capacity. Besides, the government, decentralised administrative entities and state enterprises never provided the information that the Court of Auditors needed to produce high-quality audit reports. For these reasons and the negation of accountability to which the power-sharing arrangement amounted, Parliament did not fully play its oversight role on the Executive. Even the few initiatives that were taken by its regular and special investigation commissions were ignored by the Executive, as the next section shows.

The provisions of the code of conduct for public officials, the implementation of which is monitored by the OCEP, requires Parliamentarians to disclose their assets and interests. Unfortunately, these provisions were not enforced during the transition period.

The Ethics and Anti-Corruption Commission

A resolution of the Inter-Congolese Dialogue in Sun City, South Africa⁶¹ provided for the creation of the CELC. It was created by the Constitution of the transition period, under Article 154, as one of the five citizen commissions that supported democracy. (The other four commissions were the Independent Electoral Commission,⁶² the National Observatory of Human Rights,⁶³ the High Authority of the Media⁶⁴ and the Truth and Reconciliation Commission.⁶⁵)

Article 155 of the Constitution defined the main mission of the CELC as promoting the practice of moral and republican values. Article 156 of the Constitution provided that the citizen commissions had their own legal personality and were independent from each other and from other institutions of the Republic.

The remit of the CELC was defined as follows by the implementation law promulgated by the president on 30 July 2004:⁶⁶

- To promote good governance
- To make the public and private sectors more ethical

- To build the management capacity of state institutions and the private sector with regard to developing and implementing their respective professional codes of ethics
- To put in place networks and cooperation relations with state institutions at the local, national and international levels which have similar objectives
- To combat negative values, such as money laundering, influence peddling, embezzlement of funds and bribery
- To promote the development of a positive Congolese value system
- To investigate violations of ethical values and acts of corruption in all sectors of the nation and to propose appropriate measures to the authorities
- To advocate for the introduction at all levels of the national curriculum the teaching of practical moral and republican values
- To promote transparency in political party financing
- To make concrete proposals to the government on its anti-corruption policy and strategy

As provided by its implementation law, the CELC was managed by an Executive Board (*Bureau*) made up of eight members representing the signatories of the Sun City Agreement. The President of the Executive Board was elected by civil society. Pamphile Badu-wa-Badu, who was chosen to occupy this position, was a well-known businessman and the president of the Bas-Congo provincial branch of the Federation of Congolese Enterprises (FEC),⁶⁷ the country's main business federation, which, during the Inter-Congolese Dialogue, was an active member of Congolese civil society (CELC 2006a:17).

A 46-person cabinet was formed to support and implement the decisions of the Executive Board. At the top of the governance structure was the Plenary Assembly,⁶⁸ which supervised and set the policy directions of the Commission. Its 13 members were also appointed by the signatories of the Sun City Accord. The President of the Executive Board also chaired the Plenary Assembly.

The members of the various bodies of the Commission could not be arrested or prosecuted during or after their term of office for any opinions expressed within the framework of their duties. They could only be prosecuted if they were caught in the act and after the Plenary Assembly had lifted their immunity.

Furthermore, because of the delicate nature of their responsibilities, the members of the Commission were protected by security forces.

Cases could be submitted to the Commission through formal complaints or denunciations. The Commission was also allowed to initiate investigations on its own.⁶⁹

The CELC faced major difficulties in its operations, as revealed by a number of sources⁷⁰ (Hussmann and Bunga 2005:15–23; *Evaluation de la Transition par la société civile/Forces vives*).

In fact, because of the power-sharing arrangements of the transition period, the signatories of the Sun City Accord could appoint anyone to the Commission without taking due consideration of their expertise. As a result, most of the members of the Commission had no experience in the anti-corruption arena. They were mostly people who had missed juicy positions in the government, Parliament and state enterprises, who tried to reap the maximum financial and material benefit from the positions to which they were appointed. They were embittered people who were not interested in the training that was provided by consultants.⁷¹ As a result, the Commission's managerial competence and the capacity to think strategically were limited. With the assistance of a United Nations Development Programme (UNDP) consultant, a strategic plan was developed for the Commission. Though a plan of action was drafted by the members of the Cabinet, it was not owned by the rest of the Commission members. At the professional and technical level, nepotism prevailed with clients and relatives of the CELC members being recruited and useless positions being created, such as protocol advisers and hostesses.

In interviews with CELC staff in December 2006 and in discussions with other people (Hussmann and Bunga, 2005:20), infighting within the various bodies of the Commission was openly talked about, with each group trying to have the largest share of professional staff appointed from the ranks of their parties. The discussions in the Executive Board and the Plenary Assembly were dominated by issues relating to salaries and benefits. All kinds of rumours circulated in the Commission on unethical behaviour by key members of the Commission. This resulted in deep mistrust and antagonism between the members and also made any substantive discussions about anti-corruption almost impossible (Hussman and Bunga 2005:21).⁷²

To add to the internal difficulties encountered by the Commission, the government dragged its feet in submitting the relevant laws to Parliament and the latter took a great deal of time to pass them. The law governing the organisation, attributions and operations of the CELC was only promulgated on 30 July 2004, more than a year after the start of the transition period. The Plenary Assembly adopted the standing orders of the Commission four months later, on 30 November 2004, and its internal administrative and financial regulations only on 10 June 2005. Besides, the Anti-Corruption Law was promulgated on 29 March 2005, just 15 months before the end of the transition period. The establishment of the legal framework within which the CELC could operate normally was therefore seriously delayed and the Commission only had a few months to deliver on its mandate. Even in the best circumstances, this was too short a time to be able to have a lasting impact on the rampant corruption in the DRC.

Another major difficulty was the lack of financial resources. As in other state institutions, the salaries of the members of the Commission were paid irregularly. The operating budget (about US\$2 400 per month in 2004 and US\$3 000 in 2006) allocated by the government was inadequate and seldom paid⁷³ (Hussman and Bunga 2005:16). The CELC thus depended on funding from development partners, including the Department for International Development (DFID) of the UK, and the UNDP. After unsuccessful attempts to get the Commission off the ground, the development partners gave up and reallocated the funding earmarked for the Commission to other programmes. Funding would later be resumed but at a more modest level. The development partners allegedly feared that activities of the CELC that focused on investigations into and repression of corruption could be abused for political reasons and, therefore, jeopardise the political process (Hussman and Bunga 2005:21–22).

The prevailing cynicism with regard to efforts to combat corruption complicated the Commission's task. In fact, a number of previous efforts to combat corruption had failed miserably. These included the Commission against Corruption, Fraud and Smuggling as well as Counterfeiting of Currencies and Brands,⁷⁴ which was created by Presidential Decree no. 116/2002 of 26 August 2002 and launched a few months before the beginning of the transition period. The members of this Commission were very competent individuals drawn from all walks of life. The reports on the many investigations that they carried out were confidential and exclusively submitted to the head of state. However, by the

time this Commission was disestablished seven months after its creation to give way to the CELC, none of its recommendations had been followed up.⁷⁵ This is one of the reasons why, besides the enduring tradition of impunity, people were sceptical that the CELC would do any better.

The CELC generally had a rather negative reputation because of allegations of unethical behaviour by some of its key members and because of the rivalry within the organisation (Hussman and Bunga 2005:20). This explains why it was difficult for the Commission to form any solid working relationship with other anti-corruption bodies. The Independent Electoral Commission kept it out of the organisation of the referendum on the new Constitution, which was held in December 2005, and the elections that followed from June to October 2006. According to the CELC's own assessment of its work, it managed to establish 'contacts' with the office of the Auditor-General, the Central Bank, the planning ministry, the Steering Committee in Charge of the Reform of State Enterprises (COPIREP)⁷⁶ and the Technical Committee in Charge of Public Administration Reform (CTRAP)⁷⁷ (CELC 2006a:24). The CELC also reported having signed partnership agreements with a number of NGOs working in the areas of ethics and anti-corruption, including Innovative Resources Management Inc. (IRM), Licoco and Transparency Africa (CELC 2006a:32–33).

The CELC carried out a number of activities in a rather ad hoc manner, without prior strategic thinking or adequate analysis and understanding of the phenomenon of corruption in the DRC. The UNDP and DFID, who were the main partners of the CELC, endeavoured to get the Commission off the ground but soon realised that the members of the CELC's executive organ, the Bureau, were not capable of developing a unified vision and approach to the implementation of its mandate, nor could they agree on the Commission's plans and priorities. To build the capacities of the Bureau and help resolve conflicts within it, the UNDP and DFID recruited consultants to train them in team building, strategic planning and organisational restructuring. This effort failed miserably (Hussmann and Bunga:24).

With regards to raising awareness of corruption, it is worth mentioning that the CELC organised workshops to familiarise the public with its implementation law, the Anti-Corruption Law and the Code of Ethics of Public Officials.⁷⁸ It also organised the first anti-corruption week in the DRC in December 2006 in collaboration with the OCEP. In an effort to improve ethical behaviour, the

CELC organised conferences and seminars for students and lecturers at the University of Kinshasa and for the managers of state enterprises (CELC 2006d:19–21).

In its evaluation of its activities, the CELC reported that, in collaboration with other state bodies, it had actively participated in the repression of corrupt activities. It mentioned, for instance, that it had broken up a major corrupt network operating at the border posts in Bas-Congo and Katanga. It also participated in uncovering tax evasion by a number of state and private enterprises (CELC 2006d:59–60).

In December 2006 and January 2007, in order to mark the end of its operations and to assess its activities and the implementation of the NACS (see section 6 below), the CELC produced a number of studies that have been cited in this section (CELC 2006a, b, c and d). Although they were a result of a rather belated effort to advocate for reinstating the CELC after the transition period, they are a valuable contribution to the analysis of the challenges of fighting corruption in an environment in which the scourge had permeated the whole of the social and economic fabric, including the institutions that were supposed to lead the fight against it. These studies also compiled some of the most important laws relating to anti-corruption, which was a valuable contribution in a country in which archives had been looted many times.

Observatory of the Code of Ethics for Public Officials

The OCEP was created by Presidential Decree-Law no. 017/2002 of 3 October 2002 relating to the Code of Conduct of Public Officials. The decree-law assigned to OCEP the following mission:

- To promote, disseminate and popularise the Code of Ethics for Public Officials and monitor its implementation
- To ensure the adequate implementation of the Code and recommend to the relevant authorities appropriate measures to prevent and punish those who violate the provisions of the Code
- To publish annual reports on the implementation and effectiveness of the Code

A later Presidential decree⁷⁹ governed the organisation and operations of OCEP,

granted it administrative and financial autonomy and placed it under the purview of the public administration minister, to whom it reported. The decree also provided for a Supervisory Council in charge of monitoring the management of the OCEP and submitting to the minister the annual plans of action, draft budgets, activity and financial reports.

The Code was developed to improve ethics in public administration.⁸⁰ The Presidential Decree-Law no. 017/2002 defined 'public official' as 'any person who holds a public office and/or is a salaried employee of the State'. This very wide definition includes, among others, the head of state, members of Parliament, government ministers, magistrates, all civil servants, ambassadors, members of the national army and the police, the management and staff of state enterprises, and employees of private enterprises carrying out duties on behalf of the state.

Article 2 of the Code defined the rules of conduct relating to moral integrity and professional ethics. It aimed at helping public officials to uphold these rules and facilitate the good management of the state. It was also designed to fight against negative values, which, according to Article 16, include corruption, misappropriation of public funds, misuse of labour, favouritism, nepotism, influence peddling, etc. Furthermore, it provided guidelines for dealing with conflicts of interest and corruption, and outlined disciplinary measures to be taken against public officials who contravened the provisions of the Code. It is also important to note that Article 9 required that on taking up their posts and, subsequently, every year and at the end of their term in office, public officials should submit declaration of assets to the OCEP. By December 2006, OCEP had collected the declarations of a small number of civil servants. However, the vice-presidents, ministers, parliamentarians and senior civil servants had not complied. The president did declare his assets in December 2006, after his inauguration, but submitted his declaration to the Supreme Court of Justice, as provided for by the new post-transition Constitution.

One cannot overemphasise the role that an organisation like OCEP could play in an environment where ethical behaviour was no longer the norm and negative values prevailed. However, the implementation of the Code was hampered by a lack of resources, which was a reflection of a lack of political will in the government to promote ethical values.⁸¹ With an operating budget of around US\$200 per month in 2005 (Hussman and Bunga 2005:16), OCEP could not

recruit and properly train the staff that it badly needed. It had to operate from a tiny office that lacked even the most basic equipment. It could not even acquire the necessary documentation on ethics and anti-corruption.

After a rather laborious beginning, the OCEP was given a push from 2005 by a committed public administration minister, Matenda Kyelu, and a dedicated director general, Professor Mwendambali Saint Augustin. With the limited resources provided by the public administration ministry, the African Development Bank, the World Bank, UNDP, the Belgian Technical Cooperation Mission to the DRC, and the South African public administration ministry, it organised workshops and seminars throughout the country to raise awareness of the Code and of ethical problems. Its staff gave talks on radio and television on corruption, its negative impact and the need to fight it. Following the publication of the 2005 Corruption Perception Index by Transparency International, the OCEP carried out a survey on corruption in the DRC, which, as mentioned earlier, ranked the offices of the president and the four vice-presidents as the most corrupt institutions in the country. In collaboration with CELC, it successfully organised the first anti-corruption week in the Congo in December 2006.

During that week, the public administration minister announced the launch of OCEP's new programme code-named 'LICOFI'.⁸² It would include the following elements (RDC Ministère de la Fonction Publique 2006a:4–5):

- To continue and intensify the popularisation of the Code of Ethics for Public Officials
- To ensure that all public officials declare their assets
- To punish harshly all corrupt acts by building the capacity of the Disciplinary Board of Public Administration and to submit cases of corruption or embezzlement of public funds to judicial authorities
- To use measurement tools for moral integrity and good governance in public administration
- To create and build up synergy between actors involved in the promotion of integrity and the prevention and fight against corruption

This ambitious programme can only be implemented if the problems that hampered the OCEP during the transition period are solved. In fact, the political

will to improve ethical values and fight against corruption have to be shown not only in the public administration ministry but also in the offices of the prime minister and the president. Adequate resources need to be made available to allow the OCEP to acquire the necessary equipment and documentation and to train its personnel. Furthermore, it is only if OCEP is properly tooled and equipped, and backed up by strong political will at the highest levels of the state, that it can effectively fulfil its mandate and tackle the terrible ethical hangover and the kleptocratic legacy left by Mobutu's long reign, by numerous wars and years of looting by warlords turned politicians.

Other watchdogs

A number of other organisations and institutions play an important role in the fight against corruption. What follows are some brief observations on Congolese civil society, the media, churches and the international community.

Civil society

Congolese civil society played an important role during the National Sovereign Conference in the early 1990s and the period that followed the failure of the liberalisation of the political space by President Mobutu. During the National Sovereign Conference, many of the outspoken representatives of civil society were 'bought' by politicians and others became interested in playing active roles in politics, using their civil society positions as stepping stones. The lines between political parties and civil society organisations were further blurred when, after the Inter-Congolese Dialogue, civil society organisations agreed to share power with politicians and take up political positions in government and Parliament. Civil society organisations were even allocated managerial positions in state enterprises. As the civil society activists-turned-politicians continued to hold onto the leadership of their organisations, civil society lost its credibility in the eyes of the public. It could no longer play an independent watchdog role, as it could not be both judge and party. Worse still, in the 2006 elections many civil society activists stood as candidates. Under the banner of civil society, a political party, the MSR, was formed and won the third largest number of seats in Parliament. It joined the incumbent president's AMP and its leader, Pierre Lumbi, was appointed senior minister in the post-election government.

Some civil society organisations continued to do excellent work in a rather difficult environment. More specifically, in the anti-corruption arena, the Anti-Corruption Observatory,⁸³ which was created in 2002, had a very promising beginning. With the financial support of the German Agency for Technical Co-operation (GTZ) and later of DFID, it organised a number of workshops and seminars and published reports on corruption in the DRC (Observatoire Anti-Corruption 2003). However, after just a few years of activity, it was marred by internal infighting and virtually ground to a halt. Other organisations, such as Asadho/Katanga, Licoco and Transparency Africa soon joined the fight against corruption.

It is worth noting that a number of organisations working in the minerals and forest sectors, human rights, and the environment, took up issues relating to governance and transparency. With the assistance of international organisations, such as RAID, Broederlijk Delen, Human Rights Watch, Global Witness, Greenpeace, Rainforest Foundation, Niza and the Open Society of Southern Africa, these local organisations built up their advocacy and research capacities. The local organisations included, to name a few:

- The RRN⁸⁴
- Cenadep
- Asadho/Katanga
- Ocean⁸⁵
- A new network coordinated by Cepas
- ACIDH
- The Centre for Human Rights and Humanitarian Rights (CDH)⁸⁶
- The New Trade Union Dynamics (NDS)⁸⁷
- The Network of Human Rights and Civic Education Organisations (RODHECIC).⁸⁸

The work of these organisations and their international counterparts deserves an in-depth analysis, which is not possible within the limited confines of this report.

The media

The media's important role in promoting good governance and fighting corruption is well documented. In the wake of the liberalisation of the political space in

1994, the media sector developed very rapidly. By 2004, there were 231 newspapers and magazines, 126 radio stations and 52 television channels in the Congo (Institut Panos 2004:85). In the following years, these figures increased further. For instance, the available figures for a later period (October 2007) but which could be an indication of the numbers at the end of the period, show a tally of 298 radio and television stations (Agence France Presse 2007).

Most of the newspapers were published in Kinshasa but only a few were published regularly. As they are mainly published in French, their readership was limited to a small elite (Institut Panos 2004:44). The largest daily newspaper was *Le Potentiel*, which had a daily circulation of 8 000 copies in 2006 (EIU 2006:21). All newspapers are privately owned and some were considered as pro-opposition (including *Le Potentiel*, *Le Phare*, *Tempête des Tropiques* and *La Référence Plus*) while others were said to have pro-government leanings (including *Le Palmarès* and *L'Avenir*) (EIU 2006:21). Most of the radio and television stations also belonged to private entrepreneurs. There is also a state-run radio and television network (*Radio-Télévision nationale Congolaise*, RTNC) which had ceased to have a national coverage in the 1990s and only broadcast in some parts of the country. The radio station with the largest coverage was Radio Okapi, which had been created by Monuc in early 2002 (EIU 2006:21).

During the period under review, the media in the DRC was governed by laws that could have allowed it to make a significant contribution to the fight against corruption. Article 27 of the Constitution of the transition period guaranteed freedom of expression. It also provided that the right to freedom of expression implied the freedom to express one's opinions and feelings in speech, in writing and in images, as long as public order and other people's rights and accepted standards of good behaviour were respected.

Freedom of the press was guaranteed by Article 28 of the Constitution of the transition period. The Constitution further provided that the law could only restrict freedom of the press in order to protect public order, accepted standards of good behaviour and other people's rights.

The right to information was guaranteed by Article 29 of the Constitution, which also upheld the freedom to broadcast by radio, television, the press or any other means of communication. In addition to the Constitution of the transition period, Law no. 96/002 of 22 June 1996 concerning the details of the

implementation of press freedom continued to apply. This law, which was adopted in the wake of the liberalisation of the political space under Mobutu, established freedom of the press and ended the state monopoly over the media. It also stated that public audiovisual communication was pluralistic and could not be monopolised in favour of one single opinion or a group of people and provided for journalists' access to information. A major weakness of the law, however, was the vague definition of the violation of the press laws, which could thus be interpreted in many different ways and consequently abused. Unfortunately, this law was unknown to the public and even to most media professionals, which left the latter at the mercy of politicians and other powerful people. These freedoms were guaranteed on paper but were hardly implemented in an environment where laws were violated and rights were routinely abused.

During the transition period, the Congolese media did not have the means or the political space to play its role fully. In fact, newspaper sales were limited mainly to Kinshasa and other major cities. Even then, they were a luxury for most people. The limited number of copies sold and the few advertisements published hardly provided the resources needed to allow the newspapers to thrive. Given the difficult financial situation of most newspapers, journalists could only be paid very low salaries and were, therefore, vulnerable to corruption. It was quite common for journalists to ask to be paid to publish articles. Journalists who were invited to cover an event expected to be paid a 'per diem' by the organisers. In such circumstances, those politicians who had the means could easily buy out the newspaper owners and individual journalists.

Those journalists who were brave enough to report on corruption cases were threatened with physical violence or ran the risk of being prosecuted for defamation. Several were killed by armed gangs, who were frequently identified as members of the armed forces or the national police. The victims included renowned journalists such as Franck Ngyke Kangundu and his wife, who were killed in November 2005 (JED 2006a) and Bapuwa Mwamba, who was murdered in July 2006.

The press releases of the journalists' defence NGO, *Journaliste en danger* (Journalist in Danger) were replete with cases of arbitrary arrests of journalists and other media professionals (see, for instance, JED 2004, 2005, 2006a and b).

The High Authority of the Media (HAM),⁸⁹ which was responsible for ensuring press freedom and the neutrality of the media, was, just like other institutions

of the transition period, toothless and often overruled by the information minister, who belonged to the President's camp. For the sake of illustration, in August 2005 the minister instructed the general manager of the state-owned television network not to broadcast a programme on political parties that had been produced by HAM. The minister ignored the HAM president's protestations about the government's interference in matters of his independent body (*Congo Actualités* 2005).

As it appeared clearly during the electoral campaign, the national radio and television network was captured by the incumbent president and his camp. The other powerful broadcasting networks were owned by politicians, including some of the main political actors of the transition period. Vice-President Jean-Pierre Bemba effectively used his private media network in his electoral campaign.

The Catholic Church

The Catholic Church, through regular and adept analyses of social, economic and political developments, denounced the predominantly unethical behaviour of the politicians and the looting of the country's resources. This very often put the Church at loggerheads with the political class, who could not ignore its criticisms as the majority of the Congolese people are Catholics. Besides, the Catholic Church was the only body whose organisation more or less survived the devastation that had been visited on the Congo. In fact, it could reach its followers in all parts of the country. An East-West divide appeared within the leadership of the Church during the presidential election campaign, with bishops of the Eastern provinces openly campaigning for Joseph Kabila, a fellow Swahili speaker, who was pitted against the Lingala-speaking Jean-Pierre Bemba.

The international community

The international community could have brought pressure to bear on the Congolese authorities to take the fight against corruption seriously. In fact, as it provided the funding for the elections, the international community had a great deal of leverage. However, as mentioned earlier, the members of the International Committee in Support of the Transition (CIAT)⁹⁰ took a *laissez-faire* attitude in all matters relating to governance. They were convinced that

there was a risk that the electoral process, which was their main priority, would be jeopardised if they took a firm stand on the need to tackle corruption. Thus, mere lip service was given to the issue from time to time. At the end of the transition period, when the international community representatives felt that the increasing levels of corruption could scuttle the electoral process, discussions were held within CIAT to agree on a common position about governance. Meetings were held in June and July 2006 to discuss how to introduce the issue of good governance in the debates during the electoral campaign. Even this last-minute effort was abandoned as it was felt that such action would lack credibility in the eyes of the Congolese people.⁹¹

Conclusion

To conclude, the overriding negation of good governance and accountability that characterised the power-sharing arrangement of the transition period, made it impossible for anti-corruption bodies to operate effectively. They were deprived of the necessary financial resources and even basic equipment to play their role as watchdogs of the management of the country by the Executive. To survive, they had to depend on the DRC's international development partners for financial and material assistance. The legal framework that governed these institutions could have allowed them to operate with a certain degree of effectiveness but it was violated or simply ignored by the government. The lack of political will to fight corruption and promote ethical values, combined with the impoverishment of the staff of these institutions, doomed anti-corruption efforts to inescapable failure.

CHAPTER 6

ANTI-CORRUPTION INITIATIVES DURING THE TRANSITION PERIOD

As articulated above, the political actors of the transition period were averse to any form of accountability and transparency. There was therefore no political will to tackle either corruption or the negative values inherited from previous regimes. On the contrary, in their efforts to amass the maximum amounts of money, political actors deepened the prevailing kleptocratic culture.

To ensure that bad governance and corruption did not threaten the completion of the electoral process, the international community from time to time put pressure on the government to take initiatives to avoid the complete collapse of the country. In fact, the international development partners of the DRC had come to believe that the delicate issue of corruption could only be addressed after the elections had taken place.

The initiatives taken included the NACS (which was finalised in 2002 but was still in force during the transition period), investigations by Parliament, the Kimberley Process Certification Scheme (KPCS), the Extractive Industries Transparency Initiative (EITI) and some aspects of public sector reforms related to governance and anti-corruption. These are discussed in turn below.

National Anti-Corruption Strategy

In 2002, a few months before the beginning of the transition period, the Congo completed its I-PRSP. In the consultation process that preceded the drafting of the paper, the overwhelming majority of the people interviewed in four provinces identified corruption, economic mismanagement, the poor quality of public service and social and economic infrastructure among the main

causes of poverty in the Congo. The analysis undertaken at the end of this process drew the following conclusion:

Being an obstacle to sustainable development, corruption is therefore an absolute evil that any government must resolutely endeavour to eradicate considering its negative impact. It basically explains the deepening of poverty in society (RDC 2002:6).

Based on this analysis, the I-PRSP emphasised the fight against corruption, which was considered an essential pillar in the effort towards economic recovery and addressing the DRC's political and social problems. To this effect, the paper recommended that a national strategy against corruption be developed.

An inter-ministerial committee in charge of drafting the strategy was put in place in 2002. It benefited from the technical assistance of the World Bank. The Ministry of Planning and Reconstruction provided the committee's technical secretariat. The committee's approach was participative and included consultations with the population, led by ministers through the media, focus groups involving civil society, public institutions, the private sector and the international community, a seminar to synthesize the results of the consultations and a technical workshop. Finally, also in 2002, a seminar bringing together decision-makers concluded the series of meetings, agreed on directions and outlined the content of the strategy. It is interesting to note that this seminar acknowledged the role that the mismanagement of state enterprises played in fuelling corruption. It also identified impunity, clientelism and insufficient political will as contributing factors to corruption.

To successfully fight against corruption, the seminar participants recommended that the national strategy emphasise the need for political commitment and will, concrete actions, strengthening controls, the drastic reduction of discretionary powers, decentralisation, good management of enterprises and the fight against clientelism, especially in the army (RDC 2002:7–8).

The objective of the NACS was defined as follows (RDC 2002:11):

...to strengthen the institutions of the republic with a view to the optimal functioning of democracy based on the transparent management of political and public institutions, and of the whole of the economy

which will result in durable development, the sine qua non condition for reducing poverty. [Author's translation]

The NACS was assigned four strategic directions (RDC 2002:11):

1. Prevention, awareness raising and raising of moral standards, including putting in place anti-corruption institutions.
2. Reforming public institutions, including public administration, the judiciary and the revenue authorities.
3. Repression of corruption.
4. Building a partnership between the public sector, the private sector, civil society and the international community.

Under each strategic direction, the NACS listed a number of activities that needed to be carried out by various institutions. It is worth noting that it recommended that the Commission in Charge of the Fight against Corruption, Fraud, Smuggling, and Counterfeiting of Currencies and Brands⁹² (the anti-corruption commission that was created before the transition period and succeeded by the CELC) be given the responsibility to develop, promote and implement a national anti-corruption law in collaboration with other national and foreign institutions. The NACS also recommended that the investigation responsibilities and capacities of the Commission be strengthened and that representatives of public institutions, civil society and the private sector be included in its membership.

Other actions recommended by the NACS included:

- The promulgation, promotion and implementation of an anti-corruption law
- The creation of independent anti-corruption NGOs
- The reform of public finance management and public procurement
- The rationalisation of the chain of payments
- Regular audits of state enterprises

This was the first attempt by the DRC to develop a national anti-corruption strategy. The participatory approach taken by the inter-ministerial committee

in charge of developing the NACS was appropriate and could facilitate local ownership of the final product. However, the consultation was limited to Kinshasa and did not involve the rest of the country. Another major weakness was that the exercise was donor-driven. In fact, there was no political will on the part of the Kabila government to engage in the fight against corruption. On the contrary, corruption increased and immunity was guaranteed for the powerful corrupt networks that had captured the state.

As mentioned, the NACS was based on the diagnostic of the I-PRSP, which showed the role that corruption had played in increasing poverty. However, the strategy was not based on a more systematic analysis of the underlying causes of corruption rather than just its symptoms. Further, a thorough analysis of the ethical issues related to corruption should have been undertaken and its findings used to recommend remedies. To complement this information, the existing anti-corruption legal framework and institutions should have been assessed in order to identify the strengths that could be built upon and the weaknesses that needed to be remedied. Previous attempts at fighting corruption should have been evaluated with a view to determining what worked, what did not and the reasons why.

On the positive side, the NACS had a detailed action plan with clearly defined responsibilities and timeframes for implementation. There were, however, no clear priorities set and no sequencing of the actions recommended. Further, the actions were not measurable and neither monitoring nor evaluation mechanisms were built into the strategy.

The NACS was finalised in November 2002, i.e. one month before the signing of the Sun City Accord in South Africa in December 2002. The transition period government that came into power thereafter did not consider the NACS as its own and ignored it. During the field mission for this report in December 2006 and January 2007, it was difficult to find a copy of the strategy or an official who could discuss its implementation in the Ministry of Planning and National Reconstruction – which had provided the secretariat for the inter-ministerial committee in charge of designing the NACS. In any case, the prevailing political environment characterised by open tolerance of corruption would have made the implementation of such a strategy very difficult.

Audits of state enterprises

As of July 2006, the Congolese state wholly owned 53 enterprises whose activities were very important for the Congolese economy (RDC, Ministère du Portefeuille 2006) and encompassed a wide range of economic sectors: mines, energy, industry, agriculture, transport, communication, finance, service, trade, construction, research, forestry and training. Furthermore, they were either monopolies or the dominant players in some key sectors. For instance, Gécamines, based in the Katanga Province, dominated the mining sector and was virtually a state within a state during the colonial period and most of the post-independence period. In the energy sector, the National Water Authority (Regideso)⁹³ and National Electricity Company (SNEL)⁹⁴ controlled the distribution of water and electricity respectively. National Insurance Company (SONAS)⁹⁵ was the only insurance company in the country. Postal services were the monopoly of the Congolese Posts and Telecommunications Office (OCPT).⁹⁶ Road building and maintenance were the exclusive responsibility of the Road Authority (OR),⁹⁷ (RDC, Ministère du Portefeuille 2006). They were placed under the dual purview of the sectoral ministries and the portfolio ministry.⁹⁸

In accordance with the Sun City Agreement, the management of these enterprises was allocated to the signatories of the Agreement. The managers appointed by the former warlords helped themselves freely to the coffers of the enterprises that were allotted to them while the ministries in charge of the enterprises regularly tapped their resources. Pressured by the international development partners of the DRC, President Kabila requested the Court of Auditors to audit a number of state-owned enterprises, in collaboration with other organs that were responsible for auditing public bodies, including the General Inspectorate of Finance, the Supreme Council of the Portfolio⁹⁹ and the Permanent Council of Accounting of the Congo.¹⁰⁰ The finance minister refused to let the team audit the revenue authorities (General Directorate of Taxes, DGI,¹⁰¹ and the General Directorate of Administrative and State Revenues, DGRAD¹⁰²) and OFIDA, whose managers had been appointed by the president's camp. In spite of the limited time (14 days) that it was given to complete work covering a 27-month period (from 1 January 2002 to 31 March 2004), the team uncovered massive looting of state enterprises by the management and governing boards appointed by the former warlords (Mabi 2006).¹⁰³

In February 2005 the audit team's findings were submitted by the government to the Economics and Finance Committee of the National Assembly, led by Professor Bakandjeja wa Mpungu. A report of this committee was debated in a plenary session of the National Assembly the same month. The committee reported that, of the 20 state enterprises audited, only 12 had boards of directors, revealing very weak corporate governance in these institutions. However, where boards of directors did exist, they took over the day-to-day management of the enterprises. Members of some boards granted themselves 'loans' which were never reimbursed, thus infringing the 1978 law governing the functioning of state enterprises. With one exception all the enterprises audited had kept no accounts for two to seven years, making a proper audit impossible. Board members were paid monthly salaries amounting to up to US\$16 800 in addition to substantial allowances. They were also paid exorbitant allowances for the missions that they carried out regularly on behalf of the enterprises (Mabi 2006).¹⁰⁴

In violation of the law and regulations governing state enterprises, which required the prior authorisation of the minister in charge, the management teams routinely decided on their own remunerations and various benefits. In one of the enterprises, CEEC, the CEO earned US\$25 000 per month in addition to numerous generous allowances, many of which were invented by the beneficiary himself. His monthly salary was reduced by the government to US\$8 300 thereafter (Mabi 2006:6).

The managers of the enterprises also went on long missions for which they received very high allowances, way beyond the levels allowed by the regulations. In an extreme case of abuse, a member of a management team went on 14 missions abroad in one year for a total of seven months.¹⁰⁵

Furthermore, the management teams colluded with the representatives of the trade unions whose role was no longer to defend the rights of the workers but to keep them in check so that the looting of the enterprises could continue. Trade unionists were bribed to prevent industrial actions by workers, who were paid irregularly.

It is important to note that none of the enterprises reviewed had internal auditors. At the time of the audits, some of the state enterprises had not drawn up balance sheets for seven years. In the rare cases where annual accounts were produced, none had been audited either internally or externally. The ministers

in charge ignored the mismanagement of state enterprises as long as they also benefited from this parlous state of affairs. It was not surprising that the contribution of state enterprises to the state budget dropped from 10% in 1969 to about 1% in the early 1990s and to almost nothing by the end of the transition period (Vibidio 2007).

Faced with the publicity given to this scandal in the national media and the public outrage that it caused, in February 2005 the President suspended six ministers – who, according to the audit reports, had participated in the plundering of the state enterprises – and the management boards of ten state enterprises. This measure was hailed as a turning point in the fight against corruption in the DRC. However, to the public's disappointment none of the corrupt officials were prosecuted. Furthermore, the requests of the public and Parliament for the audits to continue in other state enterprises and in other parts of the country were ignored by the authorities.

During the discussion of the 2007 budget in the National Assembly in June 2007, Prime Minister Antoine Gizenga, in his assessment of the performance of the state enterprises during the transition period, called them 'useless monopolies' which had turnovers amounting to millions of dollars but that contributed nothing to the state treasury (Ben-Clet 2007).

The Lutundula Commission

Resolution no. DIC/CEF/04 of the Inter-Congolese Dialogue, adopted in April 2002, requested that the Parliament of the transition period establish a special commission to review the validity of the economic and financial conventions signed during the wars of 1996–1997 and 1998–2003 (commonly known as the Lutundula Commission).¹⁰⁶ This issue had already been raised in the preliminary meetings of the Inter-Congolese Dialogue in August 2001 and it had then been agreed that there was an urgent need to examine all the conventions and contracts signed during the wars with a view to:

- Establishing the truth about the conventions and contracts and the responsibilities of the individuals who negotiated them
- Evaluating the economic and financial damages that the wars had caused to the country

- Re-establishing the rights of the Congolese people and salvaging the national interests
- Stopping the massive outflow of the wealth of the country
- Putting an end to irregularities and impunity
- Laying the foundations of the rule of law in the DRC

In keeping with the resolution, the National Assembly created the Lutundula Commission whose missions were:

- To make an inventory of all the conventions
- To examine them
- To assess their economic impact
- To validate or reject these conventions

The Lutundula Commission was requested to recommend appropriate measures for reparations for damages caused by the conventions and contracts to the Congolese state. It was also tasked to propose measures to prevent the illegal exploitation of natural resources.

The Lutundula Commission was led by Christophe Lutundula Apala (who represented the non-armed political opposition) and included 16 other members drawn from all the 'components' and 'entities' represented in the National Assembly. Lacking adequate financial resources, the Lutundula Commission encountered all kinds of difficulties. Its members were threatened and many of the former belligerents refused to co-operate with it. Some of the countries whose companies had signed contracts with rebels or the central government denied access to the information it needed for its investigations. In spite of all these difficulties, the Lutundula Commission finalised the first part of its work and submitted a report to the Speaker of the National Assembly in June 2005.

The report revealed that many of the contracts and conventions were illegal, one-sided or unfavourable to the Congo. The Lutundula Commission therefore recommended that they be either rescinded or renegotiated to ensure better terms for the DRC. It further recommended that no contracts be signed during the rest of the transition period. It suggested the prosecution of some Congolese

officials and foreign companies involved in signing the contracts.

However, the international community and the Congolese authorities allegedly put a lot of pressure on the Speaker of the National Assembly to prevent him from tabling the Commission's report for discussion in the National Assembly.¹⁰⁷ In fact, it was feared that an open discussion of the report would cause a great deal of trouble and even scuttle the electoral process. The report was brought to the attention of the public only when it was finally leaked and posted on websites of international NGOs. Thereafter, it was circulated to members of the Congolese Parliament but, for unknown reasons, it was not discussed.¹⁰⁸

The Government did not heed the Commission's recommendation to suspend the signing of mining contracts for the rest of the transition period. It signed further contracts with multinational mining companies that have been criticised by both local and international NGOs. Most of these contracts related to joint ventures with state mining enterprises, including Gécamines, Bakwanga Mining Company (MIBA)¹⁰⁹ and Kilo-Moto Mining Company (OKIMO).¹¹⁰ Investigations carried out by experts showed that these deals were negotiated, approved and signed with a total lack of transparency and even against the advice of IMC Group Consulting Ltd., appointed by the World Bank on behalf of the Congolese government to review some of the contracts (11.11.11 *et al* 2007). In section 2 above, some of these contracts have been briefly described and their significance for the economy and the future of the Congo (up to 40 years in some cases) has been analysed. The various one-sided contracts were approved and signed in spite of the existence of the Mining Code, which was promulgated in July 2002, before the transition period, and was still in force.

Public administration reform

Considering the important role that public administration could play in the development of the DRC, the development partners of the country, and especially Belgium and South Africa, undertook to assist the government to reform this sector. Following an evaluation of the public administration sector by Belgian and South African experts, in collaboration with Congolese counterparts, the following directions for reform were approved by the Congolese government in 2003:

- To enhance the use of public resources
- To improve personnel management and remuneration by conducting a census of civil service and building up the capacity to manage payroll
- To streamline and rationalise organisational structures (Kita 2006)

As corruption was considered too delicate an issue, no specific programme was put in place to tackle it. However, it was assumed that by 'fixing' the technical problems rampant corruption would be reduced. OCEP, which was in charge of promoting the implementation of the ethical code of public servants and the fight against corruption, was given a minor role in the reform process.

By the end of transition period, the census of the civil service had progressed in Kinshasa and had revealed a large number of 'ghost' employees. The exact figures of this exercise were being worked out at the time of the field research for this report.¹¹¹ However, a major weakness of the reform was the lack of attention to issues relating to the professionalisation of the civil service and the establishment of recruitment criteria, procedures and controls to prevent political appointments and nepotism.

Reform of public finance management

As part of the reform of public finance management the NACS recommended that particular attention be paid to the payment chain with a view to reducing opportunities for corruption. During the transition period, efforts were made to implement this recommendation with the assistance of the country's foreign partners. However, at the end of the period under review, the CELC was of the opinion that the system put in place was not yet effective because of administrative red tape (CELC 2006d:24). The Auditor-General believed that corruption was a major obstacle to the reform of public finance management.¹¹²

Public procurement was also identified by the NACS as a priority in terms of fighting corruption. A presidential decree dated 13 October 2004 put in place a public procurement reform committee¹¹³ and a national working group,¹¹⁴ which were both put in charge of leading the reform of public procurement. A tender system was put in place to prevent the prevailing practice of single-sourcing procurement and the corruption that it fuelled. However, the personnel

in charge of the procurement system had not been trained and lacked the skills to manage it properly. Moreover, by the end of the transition period, no tender boards had been set up in the provinces. The blacklist of dishonest bidders, which had been recommended by the NACS as a way of excluding corrupt entrepreneurs, had not been established (CELC 2006d:27–28).

Security sector reform

As mentioned in an earlier section of this report, the embezzlement of the salaries of soldiers in the integrated national army (Armed Forces of the Democratic Republic of Congo, FARDC¹¹⁵) was one of the causes of indiscipline and harassment of the population by soldiers. Massive human rights violations by the army represented mounting threats to the electoral process and needed to be urgently addressed. The monthly bill for soldiers' salaries amounted to US\$8 million (Swiss Peace 2006:12), payable to the 300 000 soldiers who had been declared by the former belligerents. The actual number of soldiers was 130 000, the balance being 'ghost' soldiers whose pay was pocketed by corrupt army officers. Worse still, even the 130 000 soldiers were not regularly paid their salaries, which started at US\$10 (Swiss Peace 2006:12–13).

The European Union's Security Sector Reform Mission in the DRC (EUSEC), which had been created at the request of the Congolese government, was asked in December 2005 to put in place a chain of payments that would be independent of the chain of command and would supposedly reduce corruption in the army. The mission was also to address other issues relating to the soldiers' appalling conditions of service (ICG 2006:19–20). By the end of the transition period, however, the efforts of the EUSEC team of 27 experts had not succeeded in significantly reducing corruption in the FARDC. This was due mainly to the fact that the mission encountered serious logistical problems (Swiss Peace 2006:12–13). One could imagine that they also met stiff resistance from corrupt generals.

Extractive Industries Transparency Initiative

In March 2005, Vice-President Jean-Pierre Bemba attended the second symposium on EITI in London. He seized this opportunity to announce the

intention of the Congolese government to join this initiative and to implement its principles and criteria. This was an important step in the fight against corruption. In fact EITI, which was launched by the UK government in 2002, aims to improve accountability and transparency of governments and companies in resource-rich countries. To this effect, it requires companies operating in the oil, gas and mining sectors to fully publish – on a voluntary basis – their payments to governments, while the latter are meant to publish their revenues from these sources in turn.

At a forum convened by the Minister of Planning, held in Kinshasa in May 2005 on the theme ‘Natural Resources, Transparency and the Reconstruction of a Prosperous Congo: The Stakes and Perspectives,’ the vice-president made a statement affirming the determination of the government to implement EITI. Congolese and international civil society organisations, the private sector and the Congo’s development partners participated in this forum.

In August 2005, the planning minister, who was in charge of the implementation of EITI, signed two departmental orders establishing the EITI Provisional Committee and appointing its members who were drawn from government departments, civil society and the private sector. The Committee was requested to develop the relevant legal framework, to propose a plan of urgent action and to identify funding sources. Based on its proposals and the conclusions of a workshop held in late August and early September 2005, a National EITI Committee was created¹¹⁶ and put in charge of ensuring the implementation of EITI (RDC 2005). It included a steering committee and a technical committee and its members were appointed by the planning minister in May 2006 (RDC, Ministère du Plan 2006). However, as this was the end of the transition period, the imperatives of the forthcoming elections soon took over and the initiative was shelved.

The Kimberley Process Certification Scheme

The KPCS was launched in November 2002 as a joint government, international diamond industry and civil society initiative. Its main objective is to stop the flow of conflict diamonds (also known as blood diamonds), i.e. diamonds that are mined in rebel-held areas and the sale of which finances rebels’ fights against legitimate governments. The scheme was born of the realisation of the

link between the trade in blood diamonds and the devastation and corruption that had been visited on African countries, including the DRC, Angola, Sierra Leone, Liberia, and, more recently, Côte d'Ivoire.

The KPCS is a voluntary system that imposes extensive requirements on the participating states and regional economic integration organisations that have fulfilled its minimum requirements and are eligible to trade in rough diamonds in accordance with its rules. Participants commit themselves to implementing internal controls in order to prevent blood diamonds from entering the arena of legitimate trade, in which trade can only be undertaken with other participants in the scheme. A KPCS certificate must accompany all exports of rough diamonds.¹¹⁷

The DRC is one of the biggest producers of diamonds by volume in the world and diamonds provide a sizeable percentage of state revenue. Most of the diamonds produced and exported from the country are mined by artisanal diggers. During the transition period, MIBA, the majority of whose shares (80%) were held by the Congolese state, almost went bankrupt because of its mismanagement by corrupt political appointees. It owed its survival to usurious loans contracted in rather opaque conditions. The other operator in the formal sector was Sengamines, which was created in 1999 as a joint venture between MIBA and Oryx Natural Resources representing the interests of President Joseph Kabila's Zimbabwean allies. The conditions under which the company was created were tainted with corruption and were one-sided in favour of Oryx. It ceased its activities in 2005 for reasons that are still to be fathomed.

The DRC joined the KPCS in May 2003. The scheme's implementation is governed by Ministerial Decree no. 193 dated 31 March 2003. By Presidential Decree, the CEEC was put in charge of implementing the KPCS and, more specifically, of supervising the activities of diamond buyers and making sure that diamonds are exported in accordance with the terms and conditions of the KPCS. The Small-Scale Mining Technical Assistance and Training Service (SAESSCAM),¹¹⁸ which was set up in March 2003 within the Ministry of Mining, also had the responsibility to monitor the flow of diamonds with a view to bringing diamonds from artisanal production into the formal sector. The DRC soon had, at least on paper, all the controls that were required under the scheme (Global Witness and Partnership Africa Canada 2004:8–11).

The implementation of the KPCS was bedevilled by numerous problems. While there was an increase in the volume of diamonds exported through official channels, smuggling through the neighbouring countries continued. Inaccurate valuations of the exported diamonds allowed tax evasion. The lack of capacity in the provincial offices of CEEC and the Ministry of Mining made it difficult to control the production and marketing of diamonds, which are mined mainly by 700 000 diggers scattered over the whole of the expanse of the country. The activities of the Ministry of Mining and CEEC officials on the ground were not properly coordinated (Global Witness and Partnership Africa Canada 2004).

While the figures relating to smuggling are difficult to estimate, it should be said that during the transition period the DRC recorded an increase in the volumes of diamonds going through official channels. It has been reported that in 1995, the DRC's diamond exports were valued at US\$331 million while by 2005 the official exports had climbed to US\$895 million. This is the highest figure since the discovery of diamonds in 1907 (Partnership Africa Canada 2006:2). That is not a mean achievement considering the fact that, as the main mining company was almost bankrupt, most of the diamond production came from the alluvial fields mined by diggers in a vast country with porous borders and a weak public administration.

Conclusion

To conclude, the anti-corruption initiatives reviewed here either failed or achieved limited success. The reasons are manifold.

Firstly, most initiatives were inspired and imposed by the international community and were not owned by the Congolese ruling elites. Even in those schemes that were initiated within the framework of the implementation of the Sun City Agreement, there was no political will to carry them out.

Secondly, the international community itself only gave lip service to the fight against corruption as it feared that robust action could jeopardise the electoral process. The Congolese ruling class knew also that the country's development partners did not have a common position on this matter and that they put the interests of their individual countries before those of the international community.

Thirdly, all the initiatives reviewed above were undertaken in an *ad hoc* manner and were usually taken out of fear of seeing the electoral process unravel. They were not based on a thorough analysis of the situation and were not part of an overall anti-corruption strategy. The Congolese ruling elites, who knew that the international community lacked the political will and unity to follow through on these initiatives, only went through the motions to placate their international partners and made sure the initiatives failed.

Fourthly, the Congolese political actors knew corrupt activities could be conducted with impunity as the international community had adopted a *laissez-faire* attitude toward corruption and all other crimes to make sure that the electoral process was not derailed. Anyway, they were also aware that the power-sharing arrangements that they put in place in Sun City disabled all checks and balances and guaranteed impunity for the whole of the transition period.

CHAPTER 7

ANTI-CORRUPTION IN THE POST-ELECTION PERIOD – 2007 AND BEYOND

The DRC has reached another fork in the bumpy road leading to democracy and the rule of law. After the first democratic elections since 1965, institutions have been put in place under the new democratic political dispensation. A new government under Antoine Gizenga's leadership is set to begin to implement the programme that the National Assembly approved in March 2007.

Most observers thought the country could never live up to the challenge of organising democratic elections in a country that had not held any for 40 years and where most of the infrastructure had been destroyed. The fact that it did was a major achievement and was due to the determination of the Congolese people themselves and the support of the international community. It is now, however, that the most difficult period starts as the government begins the process of putting a land that has been shattered by decades of economic decline, mismanagement, corruption and wars back on the road to sustained peace and stability – and, it is hoped, development. In a country where state capacity has been destroyed and everything needs and deserves urgent attention, the government has the unenviable responsibility of making difficult choices about programmes and actions that will create the enabling environment to put the Congo on the path towards development and prosperity.

The urgency to rebuild the infrastructure, schools and hospitals, to rehabilitate agriculture, to rehabilitate the economy and to create jobs is fully acknowledged. However, none of these urgent actions will be implemented if a modicum of security does not exist; if the administration does not have a minimum of capacity to deliver the basic services that its people have been denied for decades; if there is no clear strategy for economic development; if state organisations do not have the capacity to properly manage the most important economic sectors (mining, agriculture, forestry and embryonic manufacturing), or to raise and manage revenue and account for its expenditure. No progress will be made, either, if corruption, all kinds of crimes and human rights violations can continue with impunity and continue to be the rule because

of a graft-riddled and ill-equipped justice sector. Hopes for development will be dashed if Parliament, the opposition and civil society are not given the means and political space to play their watchdog role vis-à-vis the executive sector freely. If the Congolese people are to start to enjoy the dividends of relative peace, the long-term and constructive engagement of the international community through Monuc and the DRC's development partners will also be crucial.

The international community has unfortunately not learned from the mistakes it made during the transition period by not promoting local ownership of anti-corruption initiatives. In fact, it has imposed on Antoine Gizenga's government its own governance plan entitled 'Towards Governance Compact in the DRC,' which was discussed by Congo's development partners in meetings held in Washington, DC and Brussels in June and July 2006. The government has adopted verbatim the relevant sections of this document in its Governance Compact (CDG).¹¹⁹

With regard to the fight against corruption, the CDG sets three main priorities (RDC, Gouvernement 2007:8):

1. Public decisions which have a significant financial impact.
2. Key sectors, such as mining, forestry, public finance management, public enterprises management and procurement.
3. Building the capacity of institutions such as the Court of Auditors and the General Inspectorate of Finance.

To its merit, the CDG undertakes, among other things, to publish extensive information regarding public revenues and expenditure on a biannual basis, and to publish all future mining and forestry contracts to which the government or public enterprises are a party. It also promises that the government will make public a series of audits, including on the use of highly-indebted poor country savings, the tracking of expenditure in key social sectors, financial management in large public enterprises, the Banque Centrale du Congo, and mining and petroleum revenues. Another important action in the CDG is a plan to build up the capacity of key watchdog institutions, namely the Court of Auditors and the General Inspectorate of Finances. It is also important to note that the CDG promises to take action against persons and entities involved in corruption in high-visibility cases.

With regard to natural resources management, the CDG acknowledges that the sector constitutes a major economic asset for the recovery of the country but also a potential source of corruption and conflict. It further undertakes to develop and adopt an action plan for the implementation of the principles and criteria of EITI. Another noteworthy action is the publication of key elements and analyses of existing partnership agreements in the mining sector and the renegotiation of these agreements if possible and appropriate. The CDG also prioritises the development and adoption of adequate transparent procedures for awarding new mining rights (for both exploitation and production).

While the CDG identifies the appropriate priorities and lists the relevant actions to implement these priorities, it suffers from the same problems as the initiatives taken during the transition period. The CDG, which had not been discussed with all the relevant stakeholders before it was presented to the National Assembly in March 2007, is not owned by the people and institutions that are supposed to implement it. The CDG document, nonetheless, identifies ownership by local authorities of the compact as one of the main conditions for its successful implementation. One wonders why lessons were not learned from other similar post-conflict experiences where the inclusive participation of all the stakeholders in the development of such a compact has been a determining factor in its successful implementation. Besides, the assessment of the various donor-driven initiatives during the transition period in this report has shown that lack of ownership by the Congolese was one of the main contributing factors to their failure. The process of designing such a strategy or a plan of action is, indeed, as important as its contents.

Another major weakness of the CDG is that it does not define a clear governance strategy with well defined objectives. Furthermore, it does not clearly assign to ministries and other state organs the responsibilities for its implementation, monitoring and evaluation. Without this, the actions presented in the document seem to be a collection of points proposed in a brainstorming session. There is urgent need for the government to develop - in a participatory process including all the stakeholders - a global strategy for the implementation of the various governance reforms that will be based on the PRSP. It will also need to take into account the lessons learned from the transition period and the new democratic dispensation and realities. It is hoped that this will be done at the end of the seven-month period of the implementation of the CDG, which expires in December 2007.

Based on this global strategy, a new national anti-corruption strategy will be developed in a participatory manner with all the stakeholders. The lessons learned from the lack of implementation of the NACS during the transition period and the capacity of the various organs and institutions to implement it should be taken into consideration in the design of the new strategy. It is thus important to develop a comprehensive diagnostic of corruption and its manifestations in the DRC. It is recommended that:

The proposed diagnostic will assess the national integrity system (NIS) of the DRC in theory (law and regulatory provisions) and practice (how it works). It will therefore not only map the accountability relationships between the various elements of the national integrity system but also the policy and operational relationships that define how integrity is pursued and protected in practice. It will also analyse the social and cultural values that explain how power is exercised. It will signal areas requiring priority action and form the basis from which stakeholders may assess existing anti-corruption initiatives. Furthermore, it will help explain which “pillars” (institutions or core rules/practices) have been more successful and, why and whether they are mutually supportive and what factors support or inhibit their effectiveness. Finally, the study will assess where the emphasis should be put to improve the system and what factors are required to support the overall development of the NIS (Kodi 2007:18).

The mining sector deserves special mention among the priorities of the new government of the DRC because of its importance as the source both of conflict and of much-needed revenue for the country’s reconstruction. The government has inherited a sector that is in shambles. To cite just one illustration of the problems that beset this sector, in a recent statement, Professor Mabi Mulumba, former Auditor-General and present Chair of the Economy, Finance and Governance Committee of the Senate, revealed that ‘of the 207 mining companies established in the province of Katanga, only 20 are registered with the Ministry for Economy, and only six publish their production statistics’ (Lukoki 2007). Another urgent matter is the review of the mining contracts signed during the wars and the transition period. The way the government deals with these issues and finally launches EITI and implements its terms will give an indication of its political will to live up to its own pronouncements on good governance and to turn a page in Congo’s long history of predation and mismanagement.

CHAPTER 8

CONCLUSION

The history of the DRC has been marked by predation of its enormous wealth and the oppression of its people by foreigners and its own elites. Many opportunities to remedy this situation were missed in the post-colonial period. Independence in 1960, Mobutu's coup in 1965, the National Sovereign Conference in the early 1990s and the demise of Mobutu's kleptocratic regime in 1997 were all events on which the Congolese people pinned their hopes for a better future. They all turned out to be great disappointments as each time there was more continuity than change in the prevailing corruption and mismanagement of the country. The 2006 elections, the first in 40 years, were another crucial juncture in the history of the DRC.

In spite of all the problems encountered during the electoral process, the new democratic dispensation that has allowed the Congo to put in place all the institutions that make up a modern state could mark a new beginning for the Congolese people, a prosperous future for which they have so long dreamt. For this dream to become a reality, the scourge of corruption, which is one of the factors responsible for the abject poverty of the Congolese, needs to be addressed. The fight against corruption should be integrated in all governance reform programmes. Furthermore, the negative values that the country inherited from Mobutu's long reign and that were deepened over the years of the transition period need to be tackled as a matter of priority. For this to happen, political will at the highest levels of the state will need to be built up by concerted actions from civil society and the development partners of the DRC.

If the *status quo ante* persists under the new government, the mineral sector will continue to enrich the Congolese elites and their foreign accomplices, insecurity will continue, massive human rights violations will continue unabated and thousands more innocent people will die. The instability in the DRC will also affect all its nine neighbours.

The signs of a significant change in the way the country is governed will come from the way in which the government resolves the important issue of the

review of the one-sided mining contracts signed between Congolese officials and multinational companies.

CHAPTER 9

RECOMMENDATIONS

The Congolese Government

- 1 At the highest levels, the government needs to show its political will to fight corruption and its commitment to implement governance reforms by taking concrete actions. These actions will send a clear message that corruption is no longer tolerated and no corrupt individual at any level of the state apparatus will enjoy immunity.
- 2 To set an example of transparency, the asset declarations made by all members of the Executive in compliance with Article 99 of the Constitution should be made public. The Constitutional Court, which receives them, should be given the right and resources to check the declarations and to monitor them.
- 3 The evaluation of the implementation of the CDG should be transparent and include members of Parliament and representatives of civil society and the private sector. The results of this evaluation should be published and discussed with the public and in Parliament.
- 4 The Government should urgently develop – in a participatory process including all the stakeholders – a global strategy for the implementation of the various governance reforms. This strategy should take into account the lessons learned from the transition period and the new democratic dispensation and realities. The objectives of the strategy should be clearly defined. A timetable for the implementation of the strategy and benchmarks should also be articulated. The coordination, monitoring and evaluation mechanisms with well defined responsibilities should complete this strategy.

- 5 Based on this global strategy, a new national anti-corruption strategy should be developed in a participatory manner with all the stakeholders, with a view to explicitly integrating the anti-corruption variable in all governance reforms. The development of the strategy should be informed by a diagnostic on the forms and dynamics of corruption. It should also use the results of an evaluation of both the theory and practice of the national integrity system of the DRC, i.e. all the institutions, laws and practices which help prevent and combat corruption. A coordination mechanism for the anti-corruption strategy, with responsibilities clearly assigned to the relevant institutions, should also be designed.
- 6 The role and objectives of a national anti-corruption commission should be defined in the new anti-corruption strategy. Its responsibilities and relations with other state organs should be clearly defined. Its independence vis-à-vis other institutions should be guaranteed.
- 7 The existing Anti-Corruption Law should be redrafted in order to strengthen it and fill the gaps that have been identified.
- 8 The government should put in place and implement a communication strategy with a view to informing the people, regularly and honestly, about the projects being undertaken and the results achieved. This should allow the government to mobilise the public and to manage its high expectations.
- 9 The security sector reform will not succeed if the human rights violations committed by the integrated soldiers and the police continue to be committed with impunity. Criminal elements should be excluded from the ranks of the armed forces. The census of soldiers should be continued in order to identify 'ghost soldiers' and reduce corruption. Ethical norms and moral values should be part of the core training of the armed forces and the police with the view to ridding them of the mentality of an occupying army that considers predation on civilians as part of its normal remuneration.
- 10 While continuing to introduce basic administrative systems, rules and procedures, civil service reform should now prioritise measures to increase the salaries and improve the terms and conditions of employment of civil

servants, and to put in place mechanisms for merit-based appointments and promotions.

- 11 The rules and regulations governing public procurement should be updated. This should include a clear definition of the responsibilities of the various institutions. In building the capacities and technical knowledge of the staff in charge of procurement, ethics and good governance should be important components of the training programme.
- 12 The review of the ongoing mining and forest concessions contracts should be conducted in a transparent manner. Information on the contracts should be made available annually to civil society organisations and Parliament, whose independent opinions on the contracts should be taken into consideration by the review team.
- 13 The government should implement the recommendations of the special commission led by Christophe Lutundula Apala on the validity of the financial and economic conventions signed in the 1996–1997 and 1998–2003 wars. The companies and individuals named in the report for partaking in corrupt activities should be prosecuted.
- 14 Given the importance of the diamond sector for the Congolese economy, the government should take measures to clarify the roles of the Ministry of Mining, the CEEC and the Mining Registry to avoid unnecessary overlap and confusion. The various organs in charge of enforcing the internal controls that have been adopted under the KPCS should be given adequate resources to build up their capacity in their provincial offices. Measures should be taken to end inaccurate valuations, illegal taxes and extortions.
- 15 The launch of the EITI in August 2007 should be followed by the full implementation of the principles of the initiative. Besides representatives of civil society organisations and the private sector, members of Parliament should be included in the bodies that lead the implementation.
- 16 Instead of creating new control organs, the government should allocate adequate human and financial resources to the Court of Auditors and the Inspectorate General of Finance. Their respective reporting relations with the president's office and the Ministry of Finance should be reviewed

with a view to guaranteeing their independence from the Executive. The government should also ensure that these two organs receive on time the data that they need for regular audits of government ministries, the decentralised entities and state enterprises.

- 17 The government should finalise the process for ratifying the main international anti-corruption instruments, including the AU Convention on Preventing and Combating Corruption and the SADC Protocol Against Corruption, and publicise and domesticate them into the relevant national laws.
- 18 The government should use these various instruments to seek assistance from other states parties to launch a campaign for the return of the country's stolen assets.
- 19 The government should engage in a regular dialogue with civil society organisations, the private sector and the media on matters relating to good governance and the fight against corruption.
- 20 The government should take measures to put an end to threats, arbitrary arrests and extra-judicial killings of human rights defenders, anti-corruption campaigners and journalists. Those soldiers and policemen proven guilty of such acts should be punished.

The Congolese government and international development partners of the DRC

- 1 The government of the DRC and its development partners should include other stakeholders in the discussion and finalisation of the priority areas of the long-term government's governance compact for the period starting in 2008. The compact should include an action plan, a clear timetable and benchmarks, and a monitoring and evaluation mechanism.
- 2 The commitments of the government and its development partners under the governance compact should be publicised in order to raise awareness and make it possible for Parliament, civil society and the public at large to demand accountability from the government.

The Congolese Parliament

1. Parliament should discuss the report of the Lutundula Commission, which investigated the validity of the financial and economic conventions signed by the government and 'rebels' during the 1996–1997 and 1998–2003 wars. Parliament should monitor the government's implementation of the recommendations made by the Commission. It should also set up a commission that would complete the Commission's by investigating financial and economic conventions signed between 2003 and 2006.
2. Parliament should request that adequate means are given to the Court of Auditors and that the government, the decentralised entities and the state enterprises provide it with the relevant data on a timely basis. The Court of Auditors should report directly to it and not to the president's office.
3. The various standing committees of Parliament should be given the appropriate levels of human resources and equipment. Means should also be provided for technical expertise to be availed to Parliament through its own research staff and external consultants.
4. Parliament should discuss the decisions of the teams in charge of reviewing mining and forest concessions contracts.
5. Parliament should take a keen interest in the KPCS and EITI and monitor their implementation.
6. Parliament should take steps to form a national chapter of the African Parliamentarians' Network against Corruption (APNAC) and learn from the anti-corruption experiences of other Parliaments, especially in post-conflict situations.

The Congolese and international civil society organisations

1. Congolese civil society organisations working in the governance and anti-corruption areas should form a coalition and coordinate their activities with a view to building synergies and avoiding unnecessary duplication.

2. Congolese civil society organisations should design plain-language versions of the mining and forest codes in French and the four national languages (Lingala, Kikongo, Swahili and Tshiluba). Training sessions should be organised throughout the country. This would empower people to exert pressure and demand accountability from the government at all levels in these two important sectors.
3. In order to improve their credibility and the impact of their work, Congolese civil society organisations should endeavour to draw a clear distinction between political parties/activists and civil society organisations. They should also develop the necessary expertise to collect and process data to inform evidence-based advocacy. They should explore possibilities of collaboration with academics and other researchers to analyse data.
4. Congolese civil society organisations should prioritise building their capacity to conduct independent perception surveys on service delivery and corruption and tracking surveys on public expenditure to inform their advocacy work and make it more credible.
5. Other important areas in which monitoring and evaluation capacity should be developed by civil society organisations include budget transparency, public contracting and declarations of personal assets by politically exposed persons.
6. Civil society organisations should work with local communities to monitor corruption in the decentralised territorial entities (including sectors and chiefdoms).
7. International civil society organisations should continue to coordinate their advocacy and research work with their Congolese counterparts. They should also support the efforts of the Congolese civil society organisations in capacity building with a view to creating genuine partnerships between the Congolese and international organisations.

The development partners of the DRC

1. The DRC's development partners have to draw lessons from their experience of working with the Congolese government during the transition period, which showed that donor-driven initiatives lacked local ownership and therefore stood very little chance of being implemented.
2. The DRC's partners should develop a better knowledge of the history and the present political, social and economic context in the Congo. They should explore ways of analysing the data collected by Monuc in various areas and sharing the results among themselves and with the Congolese government, institutions and public.
3. Donors should speak with one voice while harmonising the priorities of the governance reform programmes and benchmarks with the Congolese government. Civil society organisations and the private sector should be involved in such discussions.
4. Donors should move from the *laissez-faire* attitude that they adopted toward corruption during the transition period. They should ensure that anti-corruption measures are included in all the reform programmes undertaken by the government and that they are applied.
5. In collaboration with the Congolese civil society organisations, development partners should map out the reformers and non-reformers in the Congolese political establishment. They should then develop a strategy and targeted actions to achieve local ownership and overcome resistance to the governance and anti-corruption programmes.
6. Donors should prioritise efforts to support capacity building programmes for civil society organisations, Parliament, the Court of Auditors, the General Inspectorate of Finance and the media.
7. The development partners of the DRC should put pressure on the neighbours of the DRC to stop fuelling conflict in the Congo and to discourage the smuggling of natural resources into their territories.

The private sector

1. The Congolese and foreign private sector should actively participate in the fight against corruption.
2. The private sector should also support efforts to clean up the corruption that has bedevilled the key sectors of mining and forestry.
3. The private sector should declare zero tolerance of corruption and implement the principle in its activities and in its relations with the government at all levels.
4. Foreign companies operating in the DRC should apply the provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In addition, the Congolese should be encouraged to report bribery involving foreign multinational corporations so that OECD member states and those that are party to the UNCAC are forced to investigate and prosecute such crimes. They should ensure that their staff familiarise themselves with and apply the OECD Risk Management Tool for Investors in Weak Governance Zones.

Notes

- 1 *Conscience Africaine*
- 2 *Alliance des Bakongo*
- 3 *Mouvement National Congolais*. The MNC had the largest number of deputies and senators in the coalition.
- 4 President of the *Parti Solidaire Africain* (African Solidarity Party, PSA).
- 5 *Armée Nationale Congolaise*
- 6 *Mouvement Populaire de la Révolution*
- 7 *Union pour la Démocratie et le Progrès Social*
- 8 *Alliance des Forces Démocratiques pour la Libération du Congo*
- 9 *Mission des Nations Unies au Congo*
- 10 RCD stands for *Rassemblement des Congolais pour la Démocratie*, which is the rebel group led by Azarias Ruberwa and supported by Rwanda and which occupied mainly the Kivu and Maniema provinces, and part of northern

Katanga. The MLC is the *Mouvement de Libération du Congo*, led by Jean-Pierre Bemba and supported by Uganda. It occupied mainly the northern section of the Equateur province and part of Orientale province.

- 11 Namely, the Independent Electoral commission, the National Observatory of Human Rights, the High Authority of the Media, the Truth and Reconciliation Commission, and the Ethics and Anti-Corruption Commission.
- 12 *Alliance de la Majorité Présidentielle*
- 13 *Parti du Peuple pour la Reconstruction et la Démocratie*
- 14 *Parti Lumumbiste Unifié*
- 15 *Mouvement Social du Renouveau*
- 16 *Forces du Renouveau*
- 17 *Union des Mobutistes Démocrates*
- 18 *Union pour la Nation*
- 19 *Convention des Chrétiens Démocrates*
- 20 *Centre de Commerce International du Zaïre*
- 21 *Office des Douanes et Accises*
- 22 A slang term for bribes.
- 23 *Société Minière du Kivu*
- 24 *Observatoire du Code d’Ethique Professionnelle*
- 25 Interview: S A Mwendambali 2006
- 26 And interviews: N K H Kabungulu, July 2006; R Minani, June and December 2006; and M Mabi, December 2006.
- 27 Interviews: M Mabi, December 2006 and R Umba-di-Ndangi, December 2006.
- 28 Interviews: C Kambale, December 2006 and P Badu-wa-Badu, June 2006
- 29 *Centre d’Evaluation, d’Expertise et de Certification des Substances Minérales Précieuses et Semi-précieuses*. A public service that was established in 2001 and is in charge of implementing the Kimberley Process in the DRC.
- 30 Interview: M Mabi, December 2006.
- 31 *Nederland Instituut voor Zuid Africa*
- 32 *Centre Nationale d’Appui au Développement et à la Participation Populaire*
- 33 Réseau des Ressources Naturelles

- 34 *Centre d'Etudes pour l'Action Sociale*
- 35 *Action contre l'Impunité pour les Droits Humains*
- 36 *Ligue Congolaise contre la Corruption et la Fraude*
- 37 *Association Africaine des Droits de l'Homme*
- 38 *Structure Militaire d'Intégration*
- 39 *Points Sexuellement Transmis*. This can be translated as sexual favours for good school marks.
- 40 This section of the report is based on the author's observations and interviews in Kinshasa in June–July 2006, in December 2006 and in January 2007.
- 41 *Commission de l'Ethique et de la Lutte contre la Corruption*
- 42 Interview: C Kambale, December 2006.
- 43 Coltan is used in steel alloys and electronic equipment, including mobile telephones.
- 44 Heterogenite is mainly used to produce cobalt.
- 45 Loi no. 007/2002: Article 2, states that 'the preliminary work, exploration and extraction of liquid or gaseous hydrocarbons, as well as the activities or operations relating to thermal or mineral waters, are excluded from the scope of application of the present Code. They are governed by special laws.'
- 46 Work on this started in 2002 and was finalised in May 2004.
- 47 *Règlement Minier*
- 48 *Code Minier*
- 49 *Cadastre Minier*
- 50 *Agenda Prioritaire pour la relance du secteur forestier*
- 51 *Journal Officiel de la République Démocratique du Congo*
- 52 *Cour des Comptes*
- 53 *Inspection Générale des Finances*
- 54 *Journal Officiel de la République Démocratique du Congo*, 24 June 2005, December 2005.
- 55 Interview, M Mabi, December 2006.
- 56 Ibid.
- 57 Ibid.

- 58 This section is based on the information that the author collected in interviews in Kinshasa in December 2006 and the writings of two General Inspectors of Finances (Abolia 2005 and Umba-di-Ndangi 2006a). The Inspectorate was created by Ordinance no. 87–323 of 15 September 1987, which was later modified and completed by Ordinance no. 91–018 of 6 March 1991 and by Decree no. 034–B/2003 of 18 March 2003.
- 59 Interview: R Umba-di-Ndangi, December 2006.
- 60 *Loi financière no 83–003 du 23 février 1983*, Article 39, 44, 45 and 46
- 61 Resolution no. 25/DIC/April 2002 of the Inter-Congolese Dialogue, Chapter V, para 4a, b and c.
- 62 *Commission Electorale Indépendante*
- 63 *Observatoire National des Droits de l’Homme*
- 64 *Haute Autorité des Médias*
- 65 *Commission Vérité et Réconciliation*
- 66 *Loi no. 04/020 du 20 juillet 2004*
- 67 *Fédération des Entreprises du Congo*
- 68 *Assemblée Plénière*
- 69 *Loi no 04/020 du 20 juillet 2004*, Article 6g
- 70 Interviews: CELC staff, June, July and December 2006; and O Blake, June 2006.
- 71 Interviews: CELC staff, 2006.
- 72 Interviews: CELC staff 2006; P Badu-wa-Badu, 2006; C Kambale, 2006.
- 73 Interview: P Badu-wa-Badu, 2006.
- 74 *Commission de Lutte contre la Corruption, la Fraude et la Contrebande ainsi que la Contrefaçon de la Monnaie et des Marques*
- 75 Interviews, S Bula-Bula, 2006; M Y Bongoy, 2006.
- 76 *Comité de Pilotage de la Réforme des Entreprises Publiques*
- 77 *Comité Technique de Réforme de l’Administration Publique*
- 78 *Code de Conduite de l’Agent Public de l’Etat*
- 79 Presidential Decree no. 075/2003 of 3 April 2003.
- 80 Interviews: S A Mwendambali, 2006 and 2007.
- 81 *Ibid*, 2006.

- 82 The acronym for *Lutte Impitoyable contre la Corruption, la Fraude et l'Impunité*, which means 'Merciless Fight Against Corruption, Fraud and Impunity'. In Lingala, 'likofi' means fist.
- 83 *Observatoire Anti-Corruption*
- 84 *Réseau Ressources Naturelles*
- 85 *Organisation Concertée des Ecologistes et Amis de la Nature*
- 86 *Centre pour la Défense des Droits de l'Homme et Droits Humanitaires*
- 87 *Nouvelle Dynamique Syndicale*
- 88 *Réseau d'Organisations des Droits Humains et d'Education Civique*
- 89 *Haute Autorité des Médias*
- 90 *Comité International d'Accompagnement de la Transition*
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The new government in the DRC is starting to implement its governance programme and planning to revisit the national anti-corruption strategy. The temptation is high to move fast on all fronts but it is important to assess the immediate past and, especially, the transition period from 2003 to 2006, so that lessons which could inform policy decisions can be drawn. This monograph makes a useful contribution to a review of the transition period. It assesses the strengths and weaknesses of the anti-corruption institutions and laws which were in force, evaluating their success or failure and identifying factors that supported or inhibited their effectiveness. It further identifies gaps in national laws and regulations that could be prioritised to make them compliant with international legal instruments. Finally, it makes recommendations about what measures should be prioritised with a view to improving the legal framework and the relevant institutions.



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