

U4 Expert Answer



Overview of corruption and anti-corruption in the Democratic Republic of Congo (DRC)

Query

What is the present corruption situation in the Democratic Republic of Congo? Please provide an overview of recent evolution in national anti-corruption measures and structures.

Purpose

Our agency is currently reviewing its development cooperation programme with the DRC.

Content

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Summary

As the Democratic Republic of Congo (DRC) emerges from a long period of violence and instability, it struggles with a legacy of entrenched corruption at all levels of society, threatening social and political institutions with failure. Repeated political crises, poor infrastructure, an underdeveloped regulatory environment, lack of institutional capacity and weak rule of law fuel the country's persistent governance crisis.

Petty and grand forms of corruption, as well as a complex web of political patronage permeate all sectors of the economy, undermining development prospects and compromising the fragile post-conflict equilibrium. Despite being endowed with considerable mineral wealth, extraction of natural resources continues to be combined with widespread corruption, including within the armed forces, fuelling violence, insecurity and public discontent. Corruption in tax and customs

administration, as well as in the management of state-run companies, undermines the state's capacity to collect revenues and escape the trap of mismanagement, conflict and poverty.

Against this backdrop, the country has limited capacity to address the governance and corruption challenges it faces. There is neither indication of firm political will to address corruption, nor evidence of progress made in anti-corruption in the post-conflict era. While a strong legal framework to address corruption has recently been established under the pressure of the international community, it remains largely ineffective to curb corruption. The judiciary is plagued by a lack of resources and capacity, and faces major challenges of independence, political interference and corruption. Other governance institutions are weak or non-existent. The media and civil society operate in a restrictive environment, running a high risk of intimidation, arrest and harassment when denouncing public sector corruption.

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1. Overview of Corruption in DRC

Background

The recent history of the Democratic Republic of Congo (DRC) has been marred by civil war and corruption. After Laurent Kabila overthrew the corrupt regime of Mobutu Sese Seko in 1997, the DRC endured five years of conflict between government forces supported by Angola, Namibia and Zimbabwe, and rebels backed by Rwanda and Uganda. Joseph Kabila assumed power after his father was assassinated in 2001 and won the first multiparty elections since independence in 2006, raising hopes that peace and stability would be restored. The war had claimed an estimated three million lives, and left the country in a fragile humanitarian, economic and political state. This situation further fuelled continuing violence, insecurity, human right abuses, poor governance and corruption.

Most observers agree the war was driven by both economic and political factors. The role of natural resources in conflict in the country has been well-documented, with all sides taking advantage of the fragile situation to gain control over and plunder the country's mineral wealth (Global Witness, 2004, 2009 and BBC, 2010). Some authors also attribute the underlying causes of the conflict to decades of poor governance that resulted in inequitable distribution of resources, corruption and human rights violations under successive authoritarian regimes, and bred public discontent, violence and instability (Shekhawat, S., 2009).

Far from addressing this governance crisis, the fragile 2003 peace agreement and the political transition period that followed brought new governance and corruption challenges to light. Political actors regularly interfered in the administration, customs, army and natural resource sectors for private gain, giving rise to a predatory system of governance. Some reports estimate that as much as 60 to 80 % of custom revenues could have been embezzled, while close to a quarter of the national budget was not properly accounted for in the transition period (International Crisis Group, 2006). Mining, state-run companies and the military remain sectors that are particularly prone to corruption.

Extent of Corruption

Corruption continues to undermine the economy and administration in the post-conflict era. All available data

and country reports indicate persistent, widespread and endemic forms of corruption in the DRC, permeating all levels of society. As the country emerges from a long period of violence and instability, there is little evidence of progress in anti-corruption work. Repeated political crises, poor infrastructure, an underdeveloped regulatory environment, a lack of institutional capacity and weak rule of law continue to hinder economic development prospects and create fertile ground for corruption.

This situation is reflected in the major worldwide governance indicators. In 2009, the country ranked 162nd of 180 countries assessed by [Transparency International's Corruption Perceptions Index \(CPI\)](#), scoring 1,9 on a scale of 0 (highly corrupt) to 10 (highly clean). These findings are consistent with the [World Bank 2009 Worldwide Governance Indicators](#) which confirm the DRC's extremely poor performance on all six dimensions of governance assessed. While the country has slightly improved its performance in terms of voice and accountability (from 3,8 in 2004 to 8,5 in 2009 on a scale of 0 to 100), it scores below 5 in all other areas of governance, including political stability, regulatory quality and rule of law. The situation even seems to be deteriorating in terms of government effectiveness (from 4,9 in 2004 to 1,9 in 2009) and control of corruption (3,9 in 2004 compared to 2,9 in 2009).

DRC does not perform better on the 2010 [Heritage Foundation's Index of Economic Freedom](#). The country ranks 44th out of the 46 countries in the Sub-Saharan Africa region in terms of economic freedom, scoring far below the regional average. In particular, the country performed extremely poorly in terms of freedom from corruption, with a score of 17 on a scale from 0 to 100. Against this background, the report points to mismanagement and rampant corruption as major obstacles to doing business in the country, which contribute to driving much economic activity into the informal sector.

Forms of Corruption

Both **street-level and grand forms of corruption** are present in DRC, involving a wide range of state officials from low ranking civil servants to the highest members of government.

Inefficient government structures, weak administrative capacity, and low salaries combined with an absence of oversight, provide civil servants with both opportunities and incentives for extorting money from the population (Global Integrity, 2008). Reflecting this reality,

bureaucratic and administrative forms of corruption are widespread across all public services and departments. For example, more than 80% of firms interviewed in the **2006 World Bank Enterprise Survey** report expected to make informal payments to get things done or secure a government contract. Close to 70% expected to make gifts to get an operating license.

The lack of transparency and oversight is especially manifest in **public financial management**. Auditing and expenditure tracking are rare and the DRC ranks at the bottom of the **2008 Open Budget Index**, with a score of 0%. The government provides no information to the public on the central government's budget and financial activity during the budget year, making it impossible for citizens to hold government accountable for its management of public funds. As a result, state resources can be easily siphoned off for private or political purposes. One of the few audits published in 2008 claimed that various state agencies and parastatals had embezzled \$1,8 billion (Bertelsmann Foundation, 2010a).

At another level, the political legacy of previous regimes in which public resources were siphoned off to sustain a web of patronage networks continues to overshadow the current political landscape. Various forms of **political patronage and clientelism** are persisting across the political system, as reflected by the overrepresentation of cabinet members close to the President. President Kabila also replaced the heads of thirty seven state enterprises with his own connections, tightening his grips on economic and political power (Matti, S. A., 2010). Key positions in the administration are also allocated on the basis of cronyism and patronage politics rather than on merit. This is likely to undermine democratic processes and the establishment of transparent institutions, as rent-seeking and accessing power become the major incentives for entering politics.

Sectors Most Affected by Corruption in the DRC

Mining

The DRC is endowed with considerable mineral wealth, including rich reserves of diamonds, copper, cobalt, gold and uranium. But this vast natural wealth has failed to bring economic dividends to ordinary citizens. This is documented in UNDP's 2009 Human Development Report where DRC performs very poorly

on most indicators of human development (UNDP, 2009).

Many reports have documented the long tradition of **predatory management of natural resources**. Global Witness in particular have reported how the DRC's considerable natural wealth was originally exploited for the commercial benefit of a small number of business and political actors to the detriment of the population (Global Witness, 2004). Global Witness reports also denounced other problems in the natural resource sector, including extensive corruption, a lack of transparency and life-threatening labour conditions.

Global Witness' most recent report on the DRC documents **the militarisation of mining** in conflict-affected eastern areas of the country. The report describes how all warring parties have used the illicit exploitation of natural resources to consolidate their economic base and plunder the country's mineral wealth at the expense of the population (Global Witness, 2009). According to a 2001 UN expert panel report, warring factions sold minerals and signed contracts with multinational corporations and other mining companies to raise money for the war. This involved a wide range of practices such as offering monopolies in exchange for kickbacks, embezzling money from state-run companies, creating joint ventures in which politicians were shareholders, and accepting unfavourable contract terms for the state in exchange for kickbacks (International Crisis Group, 2006). In the process, the Congolese army and rebel groups have resorted extensively to forced labour and extortion, and have imposed illicit taxes on the civilian population.

Following the 2002 peace agreement, a commission led by an opposition parliamentarian, Christophe Lutundula, produced an incriminating report of mining sector management. In 2002, the World Bank helped draft new mining and investment codes, and in 2007 the Minister of Mines announced the creation of a governmental commission to **review mining contracts** that led to the cancellation of 61 contracts and the renegotiation of numerous deals (Freedom House, 2010a). On this occasion, Global Witness published a report expressing concern over the lack of transparency and clarity of the review process, over inadequate safeguards to protect the independence of the review commission, and over the limited involvement of civil society (Global Witness, 2007).

Smuggling of minerals also deprives the state of valuable resources. The 2006 International Crisis Group report estimated that close to \$80 million in diamonds were believed to be smuggled out of the country each year. In the Eastern part of the country, cassiterite from artisanal mines controlled by former DRC rebels were transported to Rwanda via Goma for refining. Gold smuggling has equally been an area of concern and a source of insecurity on the Ugandan border. According to the International Crisis Group, Congolese armed groups, supported by Ugandan officers and traders, have used gold mines as an important funding source for their operations in the north eastern Congo. Reportedly, the Congolese army has also been involved in gold smuggling (International Crisis Group, 2006).

Forestry

The Democratic Republic of Congo is part of the world's second largest tropical forest area after the Amazon Basin: the Congo Basin (U4, 2010). Industrial logging has great potential to generate state revenues but challenges of illegal logging and smuggling prevent this potential from being translated into economic growth. According to a U4 policy brief, industrial logging companies contribute less than 1% of GNP and there are indications that actual timber exports could be as much as seven times higher than official figures (International Crisis Group, 2006).

There have been several attempts to reform forest governance with support from the international community. But success has been limited so far. In 2002, President Kabila declared a moratorium on new forest concessions, cancelled 163 existing ones, and promulgated a forestry code. However, subsequent studies found that new concessions had been granted and 2.4 million hectares reinstated. Seven companies with concessions totalling over one million hectares were operating under fictitious contact details (International Crisis Group, 2006). Concerns have also been expressed by local NGOs over the legal review process of all logging contracts, especially with respect to the limited involvement of civil society and local community representatives. A review process finally resulted in October 2008 with the announcement that numerous deals would be cancelled, and that there would be an ongoing moratorium on new concessions (Freedom House, 2010a).

The U4 brief on forest governance in the DRC concludes that: (U4, 2010).

- The 2002 forest code and accompanying presidential decree have been largely unsuccessful in improving industrial logging's governance;
- The new legal framework requiring increased public consultation has reinforced social imbalances with limited voice for women and indigenous people;
- The administrative, logistical and institutional control mechanisms envisaged for forest management are either weak or non-existent.

According to the brief, the limited impact of forest governance reforms can mainly be attributed to a lack of incentives for various stakeholders to reform a system from which they benefit in its present form. In addition, the general context of weak institutional and governance structures create favourable conditions for corruption, predation and illegal exploitation of resources.

Tax and Customs Administration

Corruption in the tax and customs systems undermines the government's capacity to generate revenues. According to the 2006 International Crisis Group report, the DRC has one of Africa's weakest collection capacities. Customs administration generates the largest share of fiscal income, but is also the greatest source of revenue loss, with between 60 to 80% of custom duties uncollected. This is seen as one of the factors fuelling the conflict in the eastern part of the country: armed groups finance their operations from the taxes they collect at border crossings (International Crisis Group, 2006).

More generally, customs administration is poorly structured and suffers from a lack of resources, infrastructure and equipment, but also from red tape, the overstaffing of posts and widespread corruption. In its 2008 report, Global Witness provides examples of a wide range of malpractices, such as underestimating the volume of goods, colluding with customs officers to declare goods that are taxed at a lower rate than the good was actually imported, or bribery to evade customs fees (Global Witness, 2008).

Taxation is another dysfunctional area of the DRC's administration. According to Freedom House, citizens are poorly informed of which fees are legal, and remain largely unaware of their rights in this regard. Taxes are mostly collected informally and illegally, undermining development of a relationship of accountability between

citizens and the state. At another level, mining companies take advantage of the tax administration's lack of resources and capacity to develop tax avoidance schemes. When mining revenues reach the state, opaque revenue distribution facilitates conflict between the local and national levels, providing local authorities with incentives to circumvent the revenue administration system (Freedom House, 2010a).

State-Run Enterprises

The management of state-run companies remains an area of concern. In the transition period, the management of these companies was allocated to the signatories of the peace agreement. Managers appointed former warlords to run the companies, who routinely abused their position for private gain, leading to considerable losses to the budget. As a result of corruption and mismanagement, the contribution of state enterprises to the state budget dropped from 10% in the late 1960s, to about 1% in the early 1990s, and to almost nothing towards the end of the transition period (Kodi, M., 2008).

Under pressure from the international community, President Kabila requested the audit of about 20 state-owned enterprises. This uncovered massive looting by the management and governing boards appointed by former warlords. The findings of the audit were debated at the National Assembly in 2005. This debate indicated that, of the 20 companies audited, only 12 had a board of directors, and most had kept no accounts for a period of between two to seven years, making a proper audit impossible. Management teams routinely decided on their own benefits or granted themselves "loans" that were never paid back. None of the companies reviewed had internal auditors (Kodi, M., 2008). Following the publicity given to the report, the President suspended six ministers who had allegedly participated in the plundering of state enterprises.

The Helpdesk has found no recent account of the situation in the post-transition era and little indication of major progress made in the management of state-enterprises since Kabila appointed his own people at the head of many parastatals.

Army

There have been many concerns raised about corruption in the armed forces, and it is noted that such corruption often has a direct impact on the population. Soldiers endure terrible living conditions, are very poorly paid and live below the poverty line. Low wages and poor internal control mechanisms facilitate the

development of lucrative embezzlement schemes within the army. In particular, there have been widespread examples of embezzlement of soldiers' salaries, possibly representing close to half of the funds allocated to soldiers' maintenance and salary costs. There have also been concerns raised about bloating the payroll with ghost soldiers (International Crisis Group, 2006).

The International Crisis Group report documents how corruption further erodes soldiers' living condition, as troops are irregularly paid, and, in some places, receive less than half of what they are owed. Deprived of decent salaries they have incentives to harass and extort civilians, as well as loot villages for survival. Soldiers thus become a major threat to local populations. Embezzlement has decreased since 2006 due to introduction of a more independent payroll mechanism and better surveillance by the Congolese authorities. It is, however, unclear how successful these efforts are, given that the armed forces continue to face major challenges of lack of discipline in many parts of the country (International Crisis Group, 2006). The government is showing signs of addressing the situation, as reflected in the 2010 national budget which gives priority to the salaries of police, military, civil servants and teachers (U4, 2010).

2. Anti-corruption Efforts in the DRC

Addressing corruption and governance challenges is a prerequisite to prevent the DRC from sliding back into conflict. Yet the country has weak legal and institutional mechanisms in place to ensure accountability, as well as limited capacity to respond to its governance challenges. High levels of patronage have undermined the establishment of transparent, accountable institutions, and rent-seeking elites generally lack the incentives and political will to build strong institutions to curb corruption (Matti, S. A., 2010).

Legal Framework

Anti-corruption interventions were initiated during the transition period, mainly as a result of pressure from the international community and with little ownership by the Congolese government. An anti-corruption law enacted in 2005 brought provisions of the UNCAC and African Union Convention on Preventing and Combating Corruption into the national context and is largely perceived as providing an adequate legal framework to fight corruption (Freedom House, 2010a). Global

Integrity even rated the anti-corruption law as “very strong” on the DRC’s 2006 scorecard. According to most reports, however, there is little indication of strong political will to effectively address corruption and enforce legal anti-corruption provisions. The strong legal framework has so far not resulted in effective prosecutions of corruption, even in cases where there is solid evidence of abuse (Kodi, M., 2007).

Other anti-corruption related legal provisions are included in the 2006 Constitution and the Code of Ethics of Public Officials, which require the head of state, government officials and civil servants to submit asset declarations to the constitutional court. However, these provisions are poorly implemented. The lack of public access to declarations hinders the effective monitoring of public officials’ assets and limits the impact of such measures.

There is neither a freedom of information law, nor comprehensive laws regulating access to government data. In addition, as information dissemination is poorly developed, many citizens don’t know the laws and regulations that affect their lives and remain largely unaware of their rights and obligations (Freedom House, 2010a).

In the area of public finance management, the country has been working with the World Bank to adopt a new procurement code (Freedom House 2010a).

In terms of its international commitments, the DRC has signed¹ the African Union Convention on Preventing and Combating Corruption. In September 2010, the country also acceded to the UNCAC and is legally bound by the terms of the convention. Additional legislation includes the 2004 Money Laundering Act, under which the DRC cooperates with African and European crime-fighting organisations. In September 2007, the DRC also ratified the protocol agreement with the Southern African Development Community (SADC) on Fighting Corruption. Since 2008, the DRC is a candidate within the Extractive Industry Transparency Initiative (EITI), but must implement numerous steps to promote transparency before becoming a compliant EITI country (Freedom House 2010a).

¹ But not ratified as of 06.08.2010.

Institutional Framework

Ethics and Anti-Corruption Commission

The Commission de l’Ethique et de la Lutte contre la Corruption (CELC) was created in 2003 as one of the five “citizen” institutions mandated by the transitional constitution. From its establishment, it faced major resource and logistical problems that the international community has sought to help tackle. As with other transition bodies, its Board was composed of representatives of all signatories to the Peace Agreement, which resulted in bloated staffing, difficult decision-making processes and the lack of a common vision and coherent strategy (Kodi, M., 2007). The work of the CELC was further hampered by weak leadership, insufficient technical expertise and lack of independence. Paralysed by these various challenges, the CELC was finally not carried over into the new constitution (Freedom House, 2010a).

Financial Intelligence Unit

In order to enforce anti-corruption laws among civil servants and members of the government, President Kabila launched a “zero-tolerance” campaign in September 2009. Within this framework, he established the DRC Financial Intelligence Unit in October 2009 to combat money laundering and misappropriation of public funds (US Department of State, 2010). The effectiveness of this institution has yet to be ascertained.

The State Auditor

The state auditor is responsible for reviewing public expenditures and audit state-run companies. Freedom House considers the DRC’s audit body to be largely ineffective (Freedom House, 2010a).

The Judiciary

The judiciary faces many challenges that undermine its ability to effectively prosecute corruption. The judiciary has been subordinated to the executive since the Mobutu era. The new administration is not believed to have brought effective change and there has been very little progress made in terms of judicial reform. The judiciary lacks independence and suffers from widespread political interference and generalised corruption (Bertelsmann Foundation, 2010). A 2004 audit of the judicial system revealed that only 20% of the population had access to justice services, especially outside Kinshasa (Matti, S. A., 2010).

The 2006 constitution transferred the power to appoint judges and magistrates from the executive to the Supreme Council of the Judiciary (CSM), institutionalising the principle of judicial independence. However, the CSM was only created in 2008 and remained largely non-functioning as of mid-2009 (Freedom House, 2010a). In practice, judges remain subject to undue influence from government officials. In February 2008, President Kabila forced 89 judges into retirement, including the President of the Supreme Court and the Prosecutor General, and replaced them with 28 new and largely unqualified magistrates. While he justified his decision as a corruption purge, most analysts considered it to constitute undue interference with the judiciary (Freedom House, 2010a).

In addition to widespread political interference in the administration of justice, the judiciary is poorly equipped and under-financed. It has under-paid staff and poor infrastructure, and lacks basic resources and capacity, including legal texts. As a result, in spite of a strong anti-corruption legal framework, very few office holders have been prosecuted and convicted for corruption-related offences fuelling a culture of impunity and cynicism among the population (Kodi, M., 2007).

Other Institutions

The DRC lacks a national ombudsman and an effective complaint mechanism to empower citizens to report corruption cases (Freedom House 2010a).

Within the framework of a protocol cooperation agreement on fighting corruption with South Africa and UNODC signed in 2008, the DRC organised a Forum National sur la Lutte Contre la Corruption (National Forum on the Fight against Corruption) in December 2009. The Forum recommended creation of a number of anti-corruption institutions, including a consultative body, the National Council of Ethics, an Independent Commission of Ethics and Fight against Corruption, a government anti-corruption agency and an Ombudsman (FONALC, 2009).

Other Stakeholders

Media

Freedom of speech and of the press is guaranteed by the 2006 Constitution. However, in practice, the effectiveness of the media as a watchdog is hampered by considerable government control and restrictions. Government has used a wide range of licensing requirements, as well as security and criminal libel laws, to restrict freedom of the press (Freedom House,

2009). Consistent with these findings, Reporters sans Frontières ranked the DRC 146 out of 175 countries assessed in its 2009 Freedom of the Press Index (Reporters Sans Frontières, 2009).

Critical journalists and broadcasters are frequently harassed, intimidated, arrested or imprisoned. Broadcasting institutions can also be banned from operating and the contents of their broadcasts censored. In 2007, for example, the government banned 40 TV and radio stations due to allegedly improper licenses. More recently, in March 2009, the mayor of Likasi ordered the closure of one local radio and one TV channel for alleged defamation. In July of the same year, the government banned transmission of the French public radio, Radio France International or RFI (Freedom House, 2010b). In spite of these constraints and restrictions, however, the media provides a space for lively debate on social and political issues (Bertelsmann Foundation, 2010).

Civil Society

Governance challenges combined with the near collapse of state institutions have served as a catalyst for civil society, with a myriad of NGOs emerging to provide basic services to fill gaps left by government. However, freedom of assembly and association are limited by public order-related provisions and groups organising public events must inform local authorities in advance (Freedom House, 2010b).

When they are politically active, civil society organisations run a high risk of intimidation, arrest and harassment. According to the Bertelsmann Foundation, the government has intensified repressive measures against opposition groups since the 2006 elections, contributing to restrictions on the country's political space (Bertelsmann Foundation, 2010). In particular, a 2008 Human Rights Watch report also documented the government's increased use of violence and intimidation to eliminate political opposition, with President Kabila himself setting the tone and ordering to "crush" or "neutralise" the "enemies of democracy," (Human Right Watch, 2008).

When tackling corruption issues, civil society faces considerable pressure from the government and powerful vested interests. A 2010 report by Freedom House provides numerous examples of human rights activists being arrested, harassed and imprisoned when dealing with corruption. In 2009, for example, the President of the human rights group ASADHO-Katanga was sentenced to one year in prison after publishing a

report alleging official kickbacks from illegal mining. In the same year, a trade union leader was arrested after writing a memorandum alleging the embezzlement of public money by the Minister of National Economy and trade (Freedom House, 2010a). In spite of these various challenges, the Bertelsmann Foundation reports that an increasing number of civil society organisations engage in budget tracking issues and are raising awareness of high level corruption in the population (Bertelsmann Foundation, 2010).

The International Community

The DRC is a heavily indebted country, whose budget is constrained by a debt load amounting to a quarter of the country's total annual expenditures (U4, 2010). As a result and given DRC's low revenue collection capacity, the country is heavily dependent on aid, which accounts for about half of the budget (U4, 2010).

International pressure has played an important role in driving past and current governance reforms. However, analysts also consider that international partners have an important responsibility in the government's failure to deliver meaningful change. In the transition period, some authors argue that the international community turned a blind eye to increasing levels of corruption in order not to undermine the fragile electoral process, while both international partners and the government paid lip service to the anti-corruption agenda (Kodi, M., 2007). Beyond the transition process, the lack of ownership is seen as a major obstacle to the success of anti-corruption reforms (U4, 2010).

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