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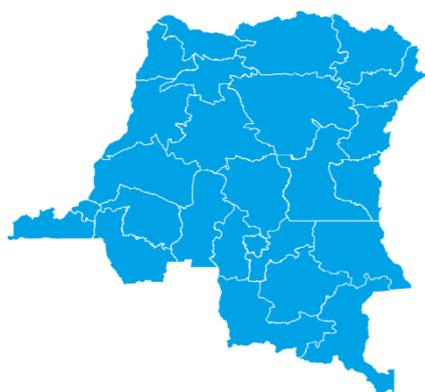
# Democratic Republic of the Congo

## Overview of corruption and anti-corruption

**Author(s): Mathias Bak, [tihelpdesk@transparency.org](mailto:tihelpdesk@transparency.org)**

**Reviewer(s):** Jon Vrushi, Transparency International; Ernest Mpararo, Ligue Congolaise de Lutte contre la Corruption (LICOCO)

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Emerging from the contested elections of 2018, Felix Tshisekedi has been installed as the new president of the Democratic Republic of the Congo. Tshisekedi has inherited a corrupt and inefficient state apparatus that struggles with its legitimacy and is embroiled in multiple deadly conflicts.

At the heart of the corruption and conflict are the forms of neopatrimonial governance and state capture that have defined politics in the DRC for decades. Powerful patron-client networks reproduce corruption and predation at every link of the hierarchy, putting the greatest burdens on low-ranking corrupt officials and ordinary citizens.

The DRC has a legal framework with some potential for improving its fight against corruption, but implements it very poorly. A key issue, therefore, is ensuring independent and autonomous anti-corruption institutions that can put an end to the impunity of those benefiting from corruption.

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## Query

Provide an overview of corruption and anti-corruption in the Democratic Republic of Congo.

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## Background

The Republic of the Congo gained independence in 1960 from the Kingdom of Belgium. The early colonial period was characterised by an extremely violent form of personal rule where what was known as the Congo Free State was run as a property of the royal family. The Belgian government took over control of the Congo Free State from the royal family on 1908 and while atrocities were less extreme, colonial rule remained violently extractivist. This left a legacy of Congolese state-society relations marked by violent suppression rather than a genuine social contract (Larmer et al. 2013).

Since independence, Congo has gone through a coup d'état and execution of its first president, followed by a totalitarian and kleptocratic regime run by Mobutu Sese Seko who had personal control over 15 to 20 per cent of the country's operating budget, followed by two regional wars (Acemoglu, Robinson and Verdier 2004; Acemoglu et al. 2004; Economist 2002).

Since the end of the Second Congolese War in 2003, the Congo has experienced a prolonged period of "neither war, nor peace" (Larmer et al. 2013). Fault lines are ever elusive, though they often coincide with identity and ethnic groups (Huening 2013). To some extent the eastern

## Main points

- The Congolese state has been captured by powerful patronage networks.
- Corruption in the DRC has taken on a logic of its own. It allows those at the top of patron-client networks to get rich and those on the bottom to survive.
- The DRC's legal framework has a good foundation for countering corruption, but it is not being implemented.

Congo still provides a haven for foreign armed groups to launch attacks into neighbouring states. The conflicts that have plagued the DRC in recent decades have had a combined death toll on 5.4 million people, according to some estimates (Bavier 2008).

In December 2018, after two years of delay, the government of the DRC finally gave in to domestic and international pressure and held elections. The ensuing election of Felix Tshisekedi and his inauguration in the beginning of 2019 was a surprise to many. The election was initially interpreted as a potent rejection of Joseph Kabila's leadership. Moreover, the fact that Emmanuel Ramazani Shadary, Kabila's successor and preferred candidate, lost, has been seen as a positive sign by some (Politico 2018).

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However, the election process was highly flawed, marked by restrictions on independent media and violent suppression of protesters and opposition (Sawyer 2018; Gavin 2019).

The election of Tshisekedi could very well be the result of a deal between Kabila and Tshisekedi, made as soon as Kabila realised that the loss of Shadary would be too great to make it feasible to rig the elections (Burke 2019; Paravicini et al. 2019). The Catholic Church (which conducted the election observation) disputes Tshisekedi, and claim that the actual winner (by a significant margin) was Martin Fayulu (Paravicini et al. 2019). Fayulu himself has called the election a coup, the African Union have «serious doubts» on the veracity of the official election results, while the US and EU have applied new targeted sanctions in their wake (Paravicini et al. 2019). Leaked data also suggests that Fayulu won decisively, receiving more than three times the votes of Tshisekedi and Shadary combined (Paravicini et al. 2019).

For now, however, Tshisekedi is the president of the Democratic Republic of the Congo, and the Union for Democracy and Social Progress (UDPS) will have to share power with the Common Front for Congo, a Kabila coalition party.

Regardless of whether Tshisekedi's election is merely a cosmetic facade for the status quo or not, his coalition has its work cut out. The DRC faces multiple mounting and worsening crises. According to the UN Office for the Coordination of Humanitarian Affairs, humanitarian needs in the DRC doubled from 2017 to 2018 (OCHA 2018).

First and foremost, the DRC remains in a state of perpetual instability. The drivers of the conflict in the east are a complex mix of geopolitical, ethnic dynamics and local competition over land, resources and struggles over access to citizenship rights (Carayannis et al. 2018, Autesserre 2012). Moreover, the east is characterised by the presence of dozens of armed groups governing small territories, providing security, protection and regulation (Carayannis et al. 2018).

Apart from these longstanding conflicts, new ones have seemingly emerged in areas such as Tanganyika province and Kasai region, previously believed to have been somewhat stable.

In Kasai, the violence that erupted in August 2016 led to the displacement of more than 1.4 million people in its first year (Congo Research Group 2018). UN investigators blame the army, the government-affiliated Bana Mura and the Kamuina Nsapu for ethnic cleansing and systematically targeting civilians (BBC 2018). The crisis in Kasai reveals the crux of many of DRC's issues: the intersection of customary power, elite manipulation and social marginalisation (Congo Research Group 2018).

Amid the worsening security crises, a number of other issues are coming to the fore. North Kivu has experienced an outbreak of Ebola that has infected more than 1,600 since August 2018 (Boseley 2018). The number of infections have been rising steadily and is threatening to spiral out of control (Boseley 2019). This is particularly because health facilities that provide treatment to Ebola victims have been either caught in crossfire between belligerents or directly attacked by armed actors. Violence against health workers makes it hard to contain Ebola (Ratcliffe 2019). Attacks on health workers treating Ebola victims also raise concerns of Ebola potentially being weaponised.

Currently, the administrative capacity of the Congolese state apparatus does not enable it to cope with these crises. Service delivery is weak, and staff lack human resources. In 2015, decentralisation reforms increased the number of provincial governments to 26. However, the new provinces remain underfunded, lack capacity and some provincial governments do not even have buildings (BTI 2018). In fact, it may have been a political move by Kinshasa to ensure that provincial administrations are weak, so that power can be de-facto centralised (BTI 2018).

The weakness of service delivery means that only 29 per cent of Congolese have access to sanitation facilities, and only around half of the population has access to water (BTI 2018). Health and education is weak or absent unless provided by NGOs, faith organisations and other civil society actors.

The Congolese economy holds enormous potential, but faces a number of systemic vulnerabilities. The primary industry dominates the economy, and mining products account for more

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than 95 per cent of exports (Atlas of Economic Complexity 2017). Consequently, the economy lacks diversification and is vulnerable to shocks in global commodity prices (African Development Bank 2019). Commodity prices have driven growth rates of approximately 4 per cent in 2018 and 3.7 per cent in 2017 (African Development Bank 2019). Growth is expected to continue to rise in 2019 and 2020, reaching 6.8 per cent by 2021 (World Bank 2018b). The World Bank estimates that approximately 73 per cent of the population lives on less than US\$2 a day and that the DRC has a GINI index of 42.1.

As will be demonstrated here, corruption challenges are key to explaining the DRC's current under-performance and the climate of insecurity that affects much of the country. Indeed, since Mobutu, corruption "became a semi-official state policy" (Shepherd 2019), summed up best in the equally semi-official doctrine (or "15th article") of *débrouillez-vous* (fend for yourself, or look after yourself) (Shepherd 2019; Englebert and Mungongo 2016).

## Extent of corruption

Corruption is widespread and deeply entrenched across Congolese institutions. The DRC scores 20 out of 100 on Transparency International's Corruption Perception Index, ranked 161 out of 180 countries.

On the World Bank's Worldwide Governance Indicators (2017), the DRC Congo likewise scores low on indicators of voice and accountability (9 out of 100); government effectiveness (5 out of 100); regulatory quality (5 out of 100); rule of law (4 out of 100); and control of corruption (6 out of 100). These indicators have been stagnant since 2007.

The Mo Ibrahim Index of African Governance (2017) ranks the DRC as 47 out of 54 countries (with 54 being the worst, Somalia), giving it a governance score of 32 out of 100. This low score is driven, in particular, by the low score in the category of "safety and rule of law" consists of various measures of anti-corruption efforts and transparency-enhancing rules. According to the index, governance indicators have been declining over the last 10 years, though it has been stagnant on corruption-related indicators.

The DRC is considered a fragile state by the OECD, and is featured at the top of the 2018 States of Fragility list. It faces severe forms of fragility across the political, societal and environmental dimensions.

Data on illicit financial flows shows that the DRC lost an average of US\$225 million every year from 2003 to 2013 because of illicit outflows (Global Financial Integrity 2015).

Media freedom in the DRC is under pressure. Reporters Without Borders ranks DRC 154 out of 180 countries on its World Press Freedom Index (2019). In 2017 and 2018, the DRC was the country in sub-Saharan Africa with the most violations against press freedom in the form of, for instance, intimidation, arbitrary arrests and closure of independent media. Freedom House (2019) concurs, considering the DRC among the group of least free countries.

According to the Global Corruption Barometer Africa 2019, 85 per cent of Congolese citizens think that corruption has increased in the past 12 months, while 80 per cent think that the government is not handling the fight against corruption well. Only 32 per cent believe that ordinary people can make a difference in fighting corruption (Transparency International, 2019).

## Nature of corruption challenges

### Grand corruption

Elite state capture has been a defining feature of the DRC's (and Zaire's) political economy since the annexation of the Congo by King Leopold II in the late 19th century. Today, DRC's governance is best understood as neopatrimonial (Englebert and Mungongo 2016) – a political economy where formal institutions have been captured by networks of power .

The narrative of state fragility is commonly applied in analyses of the numerous troubles of the DRC. While the state does indeed lack the capacity to undertake many essential functions, it does not lack in its capacity to extract rents for well-

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connected elites (Lezhnev 2016). Moreover, even if one accepts the notion that the DRC is a failed state, there is no lack of governance and authority structures. The vast territories of the DRC are governed by a multitude of actors, and it is therefore more correct to talk of fragmentation of governance than the lack or absence of it (Carayannis et al. 2018). These state and non-state actors, often embedded in specific ethnic contexts, are linked to the political centre through complex networks of patronage and brokerage that often involve various “big men”. Many local rulers, whether armed actors or provincial elites, are therefore part of or co-opted into patron-client networks where they not only help themselves but ensure that resources are channelled to those higher in the command chain (Englebert and Mungongo 2016). Many local conflicts are tied to issues that are related to issues of state institutions in one way or another (Stearns et al. 2017). Militias or local elites are typically connected to larger patronage networks, stemming from Kinshasa, regional capitals or capitals in neighbouring countries (Stearns et al. 2017).

This political economy is not new and has been in place since Mobutu’s strategy of abandoning direct control over the peripheries of the country in favour of a system of indirect control (Shepherd 2019). Nonetheless, for those in power, this system of “rapportage” (flow of money from bottom to top of the network’s hierarchy) secures a steady stream of money, which can then be redistributed in a strategic fashion to ensure loyalty from clients.

This rapportage, in combination with the prevailing notion of having to fend for oneself, underpins an institutional culture of predatory behaviour (Englebert and Mungongo 2016). State institutions have largely become means to generate the money needed to advance upwards in networks (Titeca and Thamani 2018) rather than means to serve the public.

However, alliances and patron-client networks are rarely stable and always in motion (Carayannis et al. 2018). Because of the competitive and unpredictable nature of loyalties, most Congolese, from political elites to “big men” and ordinary citizens, live in fear of being cut off from patronage networks. As a cabinet minister tells Titeca and

Thamani (2018): “an office cleaner at a ministry has more job security than the minister”.

This environment of uncertainty and competition generates high levels of violence (Carayannis et al. 2018) and increases the pressure for public officials to accumulate wealth quickly (Titeca and Thamani 2018).

For the very top of the presidential network, however, it provides security and immense wealth (Lezhnev 2016). Indeed, the Kabila family has limited or full ownership of more than 80 companies, active in industries such as farming, mining, banking, real estate, airlines and telecoms, and holds more than 71,000 hectares of farmland (Congo Research Group 2017). Particularly with regards to mining, the Kabila family benefits from large permits as well as joint ventures and subcontracts that exceed the limits set in the DRC’s legal code (Congo Research Group 2017). During Kabila’s tenure, an estimated US\$4 billion went missing per year due to opaque public procurement practices, misappropriation and manipulation of contracts (Englebert 2014). This amount corresponds to around 20 per cent of government revenue (Englebert 2014). Summed up, in the DRC, institutional integrity is sacrificed for the personal enrichment of elites.

## Political corruption

In the last decade, indices of democratic developments in the DRC have steadily declined. The country is considered a “backslider” on the Varieties of Democracy (V-Dem), having a score of 0.12 (where 1 constitutes the complete realisation of the liberal democratic ideal) in 2018. This number has been more or less stagnant since the end of the second Congolese war. This is also reflected in the 2019 GCB survey, which shows that nearly four in five citizens think that most or all members of parliament or those working in the president or prime minister’s office are involved in corruption (Transparency International, 2019).

Indeed, as the elections of 2018 show, the DRC’s political system faces a number of systemic issues.

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One issue is that campaign finance is extremely intertwined with special interests. During the recent elections, Shadary's presidential campaign board consisted, among others, of Albert Yuma (the CEO of the DRC's largest state-owned enterprise, Gècamines) and Moïse Ekanga Lushyma (who has been leading the Sino-Congolese cooperation programme) (Global Witness 2018). Both individuals have been implicated in corruption scandals involving the embezzlement of public funds (Global Witness 2018).

During the elections, there were a number of cases of government opponents being barred from running. The most prominent case is that of Moïse Katumbi. Katumbi, a successful businessman and former Katanga governor, has been accused of hiring mercenaries, forcing him into exile (Van de Walle 2019). He was convicted in absentia on (politically motivated) charges of corruption, and his passport was cancelled. His conviction was meant to ensure that he could not enter the DRC to lead his party, Together for Change, in the 2018 elections (Van de Walle 2019). Katumbi has now returned to the DRC after the courts (following the change of president) overruled the sentence.

Another prominent politician and Kabila rival who was barred from running in the 2018 elections was Jean-Pierre Bemba. Returning upon the acquittal of his charges in the International Criminal Court, the Congolese electoral commission deemed Bemba ineligible for president (BBC 2018b).

The incumbent government during the 2018 elections have also been accused of various forms of voter suppression. Cities such as Beni and Butembo, where Fayulu enjoy a strong backing, were put under "emergency procedures" due to Ebola outbreaks and were unable to vote (Paravicini 2019). Critics argue that political convenience rather than genuine health concerns have driven these decisions (Paravicini 2019).

There are also extensive accusations of vote buying during the recent senatorial elections. Senators in the DRC are elected by provincial parliaments in secret ballots. Senatorial candidates allegedly pay up to US\$50,000 to obtain support from provincial lawmakers (Clowes 2019). During the March 2019 senatorial elections, at least eight

candidates withdrew from elections on the basis that the elections were marred by corruption (Clowes 2019).

In March 2019, the US imposed a number of new targeted sanctions on key members of the Congolese electoral commission, citing an alleged failure of the vote to honour the will of the people (Wroughton and Paravicini 2019).

## Petty corruption

Ever since a famous speech by Mobutu in 1976, that tacitly approved corruption and predatory bribe extraction, the DRC has had a semi-official policy of allowing petty corruption instead of proper wages. In practice, petty corruption has become a norm, and bribery has become the means for civil servant to "fend for themselves". This results in high levels of informal extraction and bribery.

A traffic police officer, for instance, officially makes US\$75 a month, but a study from 2014 estimates that this wage is complemented by an "informal" wage of between US\$350 and US\$500 a month (Malukisa 2014). Another example of how this works in practice can be seen in the markets that, across the DRC, support the livelihoods of more than 10 million people. Here traders are often subject to various forms of informal taxes that enter the loop of patronage politics (Nkuku and Titeca 2018). A final example (which will be subject to a brief discussion again later) is that of roadblocks operated by various security providers and soldiers who (if they are paid) have salaries that do not allow them to escape a perpetual poverty trap.

The Transparency International Global Corruption Barometer Africa 2019 is testament to the high rates of bribery and corruption that this system produces. Bribery rates are consistently high across almost every sector: 75 per cent of citizens report having paid bribes to the police; 72 per cent to access utilities such as water and electricity; 70 per cent to obtain identification papers; and 59 per cent report paying bribes to public schools.

Given these numbers, it is perhaps not strange that the levels of trust in most institutions are low:

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81 per cent of Congolese citizens believe that all or most in the police are corrupt, while 74 per cent believe that most or all judges and magistrates are involved in corruption.

These numbers are significantly lower for traditional leaders (43 per cent) and NGOs (35 per cent), but higher for the president's office (82 per cent) and the parliament (79 per cent).

## Sectors vulnerable to corruption

### Extractive industries

#### Mining

The Democratic Republic of Congo is Africa's biggest producer of cobalt and copper. These two metals make up the approximately three-fourths of the country's annual 7.4 billion exports (Atlas of Economic Complexity 2017). Both artisanal and industrial scale mining is the main source of livelihood for millions of Congolese, and the artisanal mining industry alone employs around 150,000 miners (Callaway 2018).

Rather than being an engine of economic growth, however, the DRC's natural resource endowments have been undermined by endemic corruption in the mining sector. The Natural Resource Governance Institute (2019) gives the DRC a score of 33 out 100, putting it in the category of poor performers (though not in the failing category). This low score is attributed to a lack of accountability, lack of government effectiveness as well as weak regulation and rule of law. Indeed, the DRC is often referenced in discussions on the resource curse (e.g. Ross 2003).

One of the weakest points in mining governance is the management of revenue (The Natural Resource Governance Institute 2019). The mining sector is one of the largest sectors in the DRC, making up around a third of the country's economic activity. However, it contributes only 9 per cent to government revenue (Englebert and Mungongo 2016). The rules regarding revenue projections, collection and sharing lacks transparency and often result in little or no revenue transfer to provinces and other authorities (Natural Resource Governance Institute 2019). Global

Witness (2017) estimates that only 6 per cent of the total value of exports in the mining sector is added to the national budget while hundreds of millions of dollars' worth of mining revenue leaks every year. Although it is difficult to assess exactly where this money goes, it is safe to assume that at least some of the money has been redistributed within different patron-client networks (Global Witness 2017).

Shady transactions, such as insider trading, is common practice in the mining sector. Offshore companies owned by Congolese elites buy mining concessions under the market price, then sell them on at the market price (Global Witness 2017). In the process, tens of millions of dollars in bribes have been given to the politicians (Global Witness 2017).

Another key issue in the DRC's mining sector is the lack of transparent governance in Gècamines, the DRC's largest state-owned mining enterprise. Gècamines controls the majority of the DRCs mining permits and make its money from leasing or extracting royalties from joint ventures. Corporate governance lacks transparency, and Gècamines tends not to disclose things such as beneficial ownership, selection procedures for joint ventures and legal contracts. (Natural Resource Governance Institute 2019). Gècamines has been implicated in some of the grossest cases of mismanagement. It is accused of being at the centre of a wide range of illicit flows, pays almost no tax and is connected to Kabila's network (Global Witness 2017; Callaway 2018).

The Congolese security sector is also an important actor in the cobalt and copper trade. The army and the Republican Guard control a number of mines, extracting a large sum of revenue from them (Callaway 2018). So do various rebel and Mai-Mai groups. Armed interference in the mining sector is particularly evident in eastern DRC, and is highest in Ituri where approximately one-third of mines are "controlled" (to some extent) by an armed actor, such as a rebel group, a Mai-Mai group or a group connected to the army (Matthysen et al. 2019). In many cases, armed groups do not wield any direct control over mining sites, but find other, more indirect, means of benefiting from artisanal mining revenues (such as the erection of roadblocks).

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The DRC joined the Extractive Industries Transparency Initiative (EITI) in 2007. EITI has recorded small improvements in government revenues coming from the extractive sectors. EITI also notes improvements in increased public disclosures of government mining contracts and revenue collection by the ministry of finance. The 2018 mining code has taken a number of positive steps, especially with regard to disclosing company ownership and has introduced better (though far from satisfactory) means of redistributing mining revenues locally (EITI 2019).

Moreover, the new mining code has introduced provisions that, in theory (and if implemented), should lead to more openness in mining concessions. So far, however, the impact of the new code is limited due to a lack of implementation (Natural Resource Governance Institute 2019). The Natural Resource Governance Institute (2019) also notes that the DRC performs somewhat well on a number of indicators. In terms of mineral licensing, for instance, the DRC achieves a satisfactory score.

## Oil and gas

The oil and gas sub-sector in the DRC is small compared to the mining sector. The Natural Resource Governance Institute (2019b) gives the oil and gas sector a score of 25 out of 100, making the DRC one of the world's worst performers in the world in terms of governing the oil sector. Revenue distribution at the local level, in particular, is a cause for concern (Natural Resource Governance Institute 2019b). The local authorities are legally entitled to a share of the revenues but rarely receive the money. This, combined with a lack of environmental planning (due to, for instance, a lack of impact assessment and stakeholder consultation), creates tensions around drilling sites (Natural Resource Governance Institute 2019b).

The state-owned enterprise Cohydro is responsible for the exploration and development of the DRC's oil resources. Cohydro is among the 10 least transparent state-owned oil companies assessed by Natural Resource Governance Institute (2019b). It does not publish any financial reports and is shrouded in secrecy to the extent that only the EITI can actually provide the public with any indication about the revenues generated by Cohydro (Natural Resource Governance

Institute 2019b). Furthermore, the legal framework that regulates Cohydro lacks in several ways, making it very difficult to exercise any form of oversight or regulation over the company.

## Minerals for Infrastructure, Sicominex

The role of China, as in many other countries in Africa, has been heralded as an important development. However, it may come with significant corruption risks.

In 2008, China and the DRC signed a controversial agreement, exchanging mining concessions for infrastructure and development assistance. The value of the agreement was so sizeable that it exceeded the value of the Congolese state budget at the time (Landry 2017). Sicominex, as the deal is known has, however, not materialised into particularly improved economic fundamentals for the DRC nor into improved livelihoods for local communities (Maiza-Larrarte and Claudio-Quiroga 2019). The reasons why the infrastructure-for-minerals deal did not live up to expectations are many. Endemic corruption and lack of transparency has contributed to poor outcomes. As a result, hundreds of millions of dollars intended for infrastructure projects have gone missing. According to some data, less than half of the loans have been spent on their intended purpose (Carter Center 2017: 46). In general Sicominex have suffered from a lack of local institutional capacity to adequately monitor, manage and regulate programmes in a way that ensure knowledge transfer and secure development outcomes (Maiza-Larrarte and Claudio-Quiroga 2019).

## The security sector

The Congolese security sector has an unfortunate history of engaging in corruption and predatory behaviour. Corruption is unfortunately still deeply entrenched within most security institutions, including the army, the Republican Guard, the intelligence services and the police.

The security sector in the DRC is highly fragmented, and civilian authorities exercise little to no control over the security sector (BTI 2018). Simultaneously, since Mobutu, the government of the DRC has either directly encouraged or tacitly

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approved of corruption and predation in the armed forces (Shepherd 2019). Moreover, the government of Joseph Kabila has worked to secure the regime against potential coup d'états' by maintaining the army's fragmented nature as well as by co-opting high-ranking army officials into its patronage networks (Verweijen 2018). What political role the army, the intelligence services, the police and, in particular, the Republican Guard will play during the tenure of Tshisekedi is an open question.

In spite of being the national, statutory army of the DRC, the Forces armées de la République Démocratique du Congo (FARDC) is a highly fragmented construction. FARDC is not a professional force and cannot be considered to be under civilian control (BTI 2018). Since the end of the second Congolese war, the FARDC sought to expand by co-opting different rebel groups under its umbrella. While such an approach has its pros and cons, it has, in the case of the DRC, produced a number of contradictory effects. Many of FARDC's different sub-factions shift between collaborating and competing (Carayannis et al. 2018; Verweijen 2018). Various groups of Rwandophones, Swahilophones and Lingala speakers often blame each other for trying to obtain advantageous positions in the army, for instance, by appointing members of their own group to commanding positions. Many of the patronage networks within the FARDC are embedded in these ethnic groups (Verweijen 2018).

The FARDC contains little institutional infrastructure for delivering training and career advancement. It has scant norm enforcement, weak professional identity and, as a consequence, lacks overall institutional cohesion (Verweijen 2018). The FARDC consists of multiple patronage networks that often materialise into de-facto parallel command chains (Verweijen 2018).

Given this fragmentation and absence of a clear command structure, the various FARDC sub-factions often do not act coherently. This enables endemic corruption within the army.

For many rank-and-file soldiers, this means poor service conditions and a pay too low to sustain even a basic livelihood (Verweijen 2018). Embezzlement of funds and high levels of corruption also come at a cost for the material

army infrastructure. For instance, rather than stay in barracks, many soldiers have to arrange their own housing, and while soldiers are entitled to retirement by law, their retirement funds tend to be stolen (Verweijen 2018).

As a consequence, soldiers often engage in a number of income generating activities that predates on host communities (Verweijen 2018). The various patronage networks inside the FARDC are involved in a wide range of illicit activities including extraction and smuggling of conflict minerals, extortion and illegal taxation. The most important revenue-generating activity among the FARDC is the erection of roadblocks (International Peace Information Service 2017). A mapping of over 1,000 roadblocks in Central Africa show that armed groups, including the FARDC and rebel factions, are extensively taxing people via roadblocks. Taxes are not just put on mineral traders but on everything from cattle and agricultural produce to minerals and this passing in cars. The FARDC is the largest operator of roadblocks, controlling around 50 per cent, with rebel groups and various civil society organisations operating the other half (International Peace Information Service 2017). Much of the rent generated through these means finds its way up through the command chain to the higher ranks of networks of raptage (Verweijen 2018).

There have been multiple attempts at security sector reform in the DRC. Collectively, the technical assistance missions to the FARDC have made up some of the most sizeable global attempts to reform a military: around US\$14 billion have been spent since the end of the second Congo war (Africa Center 2016). So far, however, these investments have not translated into a professional army. This is often contributed to a lack of political will, particularly at the Maison Militaire (the president's military office) (Verweijen 2018). The Maison Militaire has a significant role to play in maintaining the status quo by strategically and regularly reorganising the military. One of the rationales behind this is that, by having a frequent reorganisation, no one in the higher ranks in the FARDC is safe from being sacked, and therefore their position depends on maintaining good relations with the president's military office (Verweijen 2018).

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The Republican Guard (GR) is the most well-equipped and professional force in the DRC. In practice it has served as a guarantor of the regime's interests, both providing protection against potential coup d'états and capacities to undertake armed attacks against opposition groups (Africa Center for Strategic Studies 2016). Due to its partisan nature, it is not accountable to civilians and is prone to abuse. Amnesty International (2007) has accused the GR of engaging in serious human rights violations against members of the opposition. In the recent elections, the GR, together with the police, killed multiple protesters in Goma and Kinshasa (Human Rights Watch 2019).

Likewise, Agence Nationale de Renseignements (ANR), the national intelligence service, has also had a history of acting outside of its constitutional mandate. It often acts in a politicised manner against opposition politicians, and it has been accused of kidnappings, torture and extrajudicial killings (Africa Center for Strategic Studies 2016). The ANR is also accused of detaining dozens of opposition figures and political activists during the election of 2018 (Human Rights Watch 2019).

Apart from these statutory institutions, the security environment in the DRC is marked by the presence of multiple armed groups undertaking predatory activities. In the Kivus alone there are more than 120 armed groups (Stearns and Vogel 2017). These armed actors do not operate in isolation, and many are connected to different corrupt regional and national elites, or elites located in neighbouring countries (Verweijen 2016). Violence produces rents through many channels, including through patronage and international development assistance (Verweijen 2016).

The inability of the state to create a durable settlement, something which is in part a result of private interests taking precedence over public ones, also inspire other armed actors to organise themselves through anti-establishment discourses (Vlassenroot 2001). In the face of the inability (or unwillingness) of the state to provide basic services, protection and justice, a plethora of groups have mobilised themselves, claiming to be self-defence groups representing their ethnic communities (Verweijen 2016). Self-defence

groups such as the Mai-Mai arose both as a reaction to the failure of the post-colonial Congolese state to produce an inclusive political order as well as a simple survival strategy in a context of perpetual insecurity and marginalisation (Vlassenroot 2001).

## Local and provincial government

As a compromise between federalists and centralists, the government of the DRC initiated a process of decentralisation in 2006. These reforms created 11 provinces with exclusive mandates in policy areas such as education, health and agricultural policy. Provinces became responsible for raising taxes, sharing tax revenues 60-40 with the central government, with a number of decentralised territorial entities falling under them (including chiefdoms) (Englebert and Mungongo 2016)

It was the hope, particularly among the donors who pushed for these reforms, that decentralisation would lead to more responsive governance, increased accountability and make it more difficult for the DRC to be subject to personal rule.

The process, however, was flawed. Few of the reforms were ever implemented, and some of those that were, were undermined by the central government (Englebert and Mungongo 2016). For instance, the ministry of decentralisation had a budget execution rate of only 11.7 per cent, largely due to the fact that it did not receive its allocated funding. Worse still, the new provincial authorities were quickly subject to capture. Therefore, instead of improving governance, these reforms have worsened the extent of corruption and enabled provincial elites to enrich themselves through increasing their rent-seeking activities. They also, paradoxically, increased the extent of centralisation by centralising power at the provincial level (Englebert and Mungongo 2016).

With regards to their mandate to implement tax regimes, provincial governments have been active in taxing a wide range of activities (that are usually not sources of tax revenues) in a somewhat predatory manner (Englebert and Mungongo 2016). Provinces rarely deliver services to follow the taxes (for instance, a tax for trash collection did not lead to trash collection). Indeed, in many provinces there

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are hundreds of taxation sources, and some of the activities that are taxed, such as a tax for building a well, borders the absurd (Englebert and Mungongo 2016). “Official” tax revenues make up somewhere between 4 per cent and 60 per cent of real tax revenue, which means that ordinary Congolese citizens are taxed much higher in practice than they are supposed to be. Rough estimates based on anecdotal evidence say that the real tax rate in the DRC amounts to 40 per cent to 50 per cent of income (Englebert and Mungongo 2016). Tax regimes are also incoherently applied, and the rates of revenue leakage are very high. Provincial governments therefore tax citizens in ways that are highly predatory and do not increase the quality of service provisions (Englebert and Mungongo 2016).

Another issue is the relationship between provincial government and the decentralised territorial entities – the authorities at town and commune level as well as chiefdoms. Provincial governments tend to not allocate the resources prescribed for decentralised territorial entities, which makes the latter largely unable to provide services. At the same time, the provincial government faces few checks and balances in terms of how it allocates tax revenue, and accounting practices are often considered inadequate (Englebert and Mungongo 2016). Consequently, there is little budgetary transparency in how tax revenue is actually spent, though it seems that the majority of it is spent on the different provincial cabinets, assemblies and their patronage-client networks. Estimates of how much tax revenue goes back into public services are extremely low.

Provincial elites also play important roles as a link in the networks of raptage. Some provincial governors have been installed by operatives in the presidential network and are expected to pay up and ensure a steady stream of income in return (Englebert and Mungongo 2016).

There are, however, differences in governance between the different provincial states. Most notably, Katanga outperforms most other provinces, while Kinshasa and Bas-Kongo are also doing better than average on a range of governance indicators (Englebert and Mungongo 2016). Nonetheless, decentralisation reforms have failed in fighting corruption because they do not change the fact that the state in the DRC is a

resource to be controlled. Decentralisation was, unfortunately, not a quick fix to neopatrimonialism.

## Rule of law

Polls indicate that in the Kivus, less than 20 per cent of the population trust that judges can rule independently of government interests, and a similarly low number believes that courts can guarantee fair and equal treatment (Peacebuildingdata.org). Three-quarters of respondents in a 2015 poll believed statutory justice institutions to be corrupt (Vinck et al. 2015). Many Congolese resort to various informal and/or customary justice institutions. Older polls show that customary justice is the primary mechanism for large parts of Congolese society (Vinck et al. 2015). Trust is generally higher for customary institutions than for statutory, both in urban and rural spaces (Vinck et al. 2015).

Nonetheless, customary institutions cannot always stand in the place of statutory law when it comes to criminal law. This is particularly so in severe cases where punishment is required and customary justice institutions lack the capacities to provide justice.

Money and connections are the key means of accessing the justice services of the state (Jacobs 2018). For many of those without these means, popular justice and vengeance can offer some form of justice (Jacobs 2018).

## Anti-corruption framework

The DRC’s legal framework for fighting corruption is somewhat comprehensive and has been improved markedly in recent years. However, both the actual mechanisms and incentives for implementing the DRC’s laws are weak. As a result, the DRC has multiple flaws and gaps in the anti-corruption framework.

## Regional and international anti-corruption conventions

The DRC ratified the UN Convention against Corruption (UNCAC) on 23 September 2010. The second implementation review cycle is

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under preparation, and no reviews are publicly available at present (UNODC 2019).

In 2003, DRC signed the African Convention for the Prevention and Combating of Corruption. However, it has never ratified it (African Union 2019).

## Legal framework

The Anti-Corruption Law of 2004 provides a good legal foundation for countering corruption and addresses many key issues. The penal code criminalises corruption, and article 147-150 contains provisions for sentencing corrupt officials with prison sentences for receiving bribes. Furthermore, the penal code requires any civil servant to report any bribery attempt that they have witnessed to their superior (article 17). The law does not protect high-ranking officials and the head of state against investigations or prosecution while in office. Moreover, it guarantees an independent judiciary. There are also laws (article 17, 18) guaranteeing competitive and public tendering as well as provisions for punishing the awarding of contracts without due process (article 77) (Global Integrity 2019).

While it has a solid foundation, the legal framework for countering corruption in the DRC has its flaws. One issue is that the law does not mandate an independent body to investigate corruption allegations. Instead, the president has a special corruption advisor with this mandate. The corruption advisor is handpicked by the president (Global Integrity 2018). Asset disclosure rules only require the president, prime minister and cabinet ministers to disclose their assets upon taking and leaving office (Global Integrity 2018). Asset declarations are submitted to the constitutional court but are not made accessible to the public.

In recent years there have been a number of improvements to the legal framework, particularly in relation to corruption in the extractive industries. The 2015 Hydrocarbons Law has improved the law regulating the hydrocarbons industry and comes with a number of requirements relating to fiscal rules, impact assessments and safety (Inside Africa Law 2016). The 2018 Mining Law, though it

still leaves room for corruption, is a step in the right direction in some respects. In particular, the law introduced some provisions that should lead to more disclosures of beneficial ownership (EITI 2019).

While the legal framework therefore has many of the provisions in place for preventing and countering corruption, there is a wide implementation gap. Simply put, the DRC fails to live up to its own laws. One potential reason, as analysed below, is that the DRC's oversight and anti-corruption institutions do not have the capacity to act politically independent and have been subject to capture.

## Institutional framework

The DRC's political system lacks effective checks and balances on presidential power.

### The parliament

The parliament (the senate and the national assembly) has effectively been under control by the Common Front for Congo under Kabila's tenure and has not acted as a check on the executive branch of the government (Africa Center for Strategic Studies 2016b). This, in turn, hinders the ability of the parliament to establish politically independent anti-corruption commissions.

Parliament used to act as a more open forum for debate. During the Inter-Congolese Dialogue emerging after 2003, the opposition established a number of parliamentary oversight committees. The strong opposition gave more space for open debate, scrutiny and provided a check on the government. This resulted in limited but significant progress in the post-second war transition (Africa Center for Strategic Studies 2016b). Progress, however, has turned into decline as the executive and its allies in parliament have gradually weakened the oversight mechanisms of the legislative branch. The DRC's electoral system was also changed into a one-round plurality vote. This, combined with various "irregularities", allowed the former governing People's Party for Reconstruction and Development (PPRD) to obtain a supermajority in parliament (Africa Center for Strategic Studies 2016b).

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## The judiciary

Congo's two most important judicial institutions, the supreme court and the constitutional court, are both unable to prevent and counter corruption. Both are co-opted by elite partisan interests and have, on several occasions, shown this through their rulings (African Center for Strategic Studies 2016b).

All the supreme court judges are appointed by the executive (African Center for Strategic Studies 2016b). The constitutional court is the judicial institution mandated with prosecuting high-ranking officials in the executive, including the president (Article 164 of the constitution). It has nine members of which three are selected by the parliament, three by the executive and three by the supreme court. The Kabila regime, dominating the parliament and having co-opted the supreme court, was able to able to dominate the constitutional court (African Center for Strategic Studies 2016b).

## Electoral institutions

The executive branch of DRC's government has also been able to co-opt the electoral commission (CENI). CENI has become a thoroughly politicised and partisan body and most members during the 2018 elections were allies of Kabila (Stearns 2018).

Aside from the elections in 2018, the influence wielded over both the courts and the electoral commission was at its clearest during the annulled 2016 elections when the (now returned) Moïse Katumbi was indicted and the courts allowed the president to stay in office until an incumbent was elected. These events have been described as a "constitutional coup d'état" (Clowes 2016) and shows the power that the executive have wielded over the judicial branch of the government as well as over the electoral commission.

## Anti-corruption institutions

### Observatory of Professional Ethics

L'Observatoire du code d'éthique professionnelle (OSCEP) (<http://oscep.cd/>) is an advisory and consultative body, charged with ensuring ethical behaviour in public administration. It is mandated to monitor practices that go against the code of conduct for public officials, to promote initiatives to

prevent corruption, receive and investigate complaints of misconduct and corruption as well as to follow up by taking legal action when relevant.

It is based on the same idea as the previous Commission de l'éthique et de la lutte contre la corruption (CELC) that was in place during the transitional constitution.

The OSCEP provides a range of services. It operates a hotline where citizens can file complaints and provides anti-corruption training for civil servants.

OSCEP is the main anti-corruption institution in the DRC, but is not an effective body in its current form. Firstly, it is most likely unable to carry out its mandate independent of political interests (Global Integrity 2019). Moreover, the OSCEP still lacks the means to implement its mandate (Global Integrity 2019).

### Financial intelligence unit

The Cellule nationale des renseignements financiers (CENAREF) (<http://www.cenaref.org>) was established in 2004 to aid the DRC in its fight against money laundering and terrorism financing. CENAREF investigates money laundering and terrorist financing cases, collects data, performs analysis tasks and provides advice to the government on how to prevent and counter money laundering and terrorist financing.

CENAREF has legal personality, is financially independent and is the only public entity that can investigate money laundering or terrorist financing cases. However, its independence in practice is uncertain (Sentry Foundation 2018). It may bow to political pressure, and there is evidence that only a small number of cases of money laundering and terrorism financing are subject to in-depth investigation (Sentry Foundation 2018). It also does not have a mandate to go much beyond analysis and data processing and remains an advisory body (Global Integrity 2019).

### Court of auditors

The DRC's supreme audit institution, the Cour des comptes (<http://www.courdescomptes.cd>), is responsible for carrying out external audits of the

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finances of the state, provincial governments and the decentralised territorial entities. It verifies the accounts of the different levels of government and can, in cases where it finds irregularities in accounting, charge responsible bodies for lost revenue. The court of auditors submits its findings to the president, the parliament and the government.

The court of auditors appears to be free of direct political interference, but is financially dependent on the ministry of justice and often experiences funding delays (Global Integrity 2019). Moreover, the court of auditors suffers from low institutional capacity (Global Integrity 2019). Another issue is that its latest annual reports are not publicly available on its website (the last report, at the time of writing, is from 2015).

## Relevant anti-corruption initiatives

### **Groupe d'action contre le blanchiment d'argent en Afrique Centrale (GABAC)**

**GABAC** is the regional style Financial Action Task Force (FATF) against money laundering and terrorist financing in Central Africa. It assesses whether its members comply with the standards set out by the FATF.

Through its agreement on entering GABAC, the DRC is committed to become part of the anti-money laundering, countering terrorism financing (AML/CTF) monitoring and evaluation process by the Financial Action Task Force. Membership of GABAC also commits the DRC to take steps to regulate its banks in a manner that ensures that they are not systematically part of global or regional AML/CTF-schemes.

According to LICOCO (the Transparency International affiliate in the DRC) the FATF mutual evaluation review started in July 2018 and a FATF mission arrived in the DRC at the end of 2018, but the findings have not been published as yet.

In spite of the GABAC agreement, the Sentry Foundation (2018) estimates that the DRC's current AML/CTF efforts are largely inadequate and that the DRC lags behind global standards. As in other areas, the legal framework meets many of

the FATF recommendations but is not implemented (Sentry Foundation 2018)). As a consequence, the DRC faces a number of systematic issues that raises the risk of illicit financial flows.

The DRC's banking system, in particular, has a number of systematic vulnerabilities that can be exploited by criminal networks (Sentry Foundation 2018). BGFIBank DRC has been used by Hezbollah-linked companies and corrupt actors (Sentry Foundation 2018). A cash-based economy, as exists in the DRC, is also prone to money laundering schemes, making it imperative for the DRC and GABAC to produce and move ahead on the AML/CTF agenda (Sentry Foundation 2018).

### **Extractive Industries Transparency Initiative**

The DRC joined EITI in 2007. The implementation of EITI standards have come with a focus on improving standards for monitoring, auditing as well as publishing data and contracts. The EITI process has coincided with progress on a number of areas, particularly within the mining sector. For instance, beneficial ownership disclosure has been expanded to cover parts of artisanal sectors (EITI 2019). The EITI process has also had an impact on the 2018 mining code revision and has led to increased public availability of mining contracts, revenue and export data. Moreover, during the period of implementing EITI, the DRC's mining revenues have risen steadily (EITI 2016).

## Other stakeholders

### **Media**

In theory, the DRC enjoys freedom of the press. In practice, however, media freedom and freedom of information have become increasingly restricted in recent years (Freedom House 2019)

Reporters have been subjected to increasing acts of intimidation, extortion and arrests in recent years, in what has become a "very hostile environment for journalists" (Reporters Without Borders 2019). The intelligence service, in particular, has gone after journalists and critical media (Reporters Without Borders 2019). Opposition media has been specifically targeted.

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Two TV stations supportive of the opposition were shut down in Kinshasa (Amnesty International 2019) and, in March, a journalist was jailed for insulting a governor (Committee to Project Journalists 2019). The latter case marked the first time a journalist has been imprisoned under Felix Tshisekedi's tenure.

forceful in its rejection of the official results of the 2018 elections.

Freedom of information has been challenged by the closing down of social media and internet cuts (Committee to Project Journalists 2019), such as during the December 2018 elections (Amnesty International 2019).

There are very few critical, independent media who contribute a significant amount to public discourse around corruption. Even these outlets sometimes avoid criticism out of fear of reprisal (BTI 2018).

### **Civil society**

Space for civil society remains a complex issue in the DRC, and many civil society organisations (CSOs) struggle to stay independent of political interference from a wide range of actors. Nonetheless, there are a number of CSOs who have critical roles in the fight against corruption in the DRC. These include the association of Volunteers of the Congo (ASVOCO) and the Transparency International partner Congolese League Against Corruption (LICOCO) (<http://www.licocordc.org/>). Other relevant CSOs include Lucha Congo (<http://www.luchacongo.org>) and Filimbi (<http://www.filimbi.net>). Both organisations have a broader platform, advocating for state accountability and human rights.

While religion does not take up much space in the politics of the DRC, the various churches have an important role in society (BTI 2018). Pentecostal churches (in their many shapes and forms) own a huge number of television stations and both Fayulu, Tshisekedi and Kabila belongs to Pentecostal denominations (for example, France 24). The Catholic Church has a clearer political role to play in the DRC, particularly in delivering many of the services that the state fails to provide (BTI 2018). The Catholic Church has organised some of the most potent civil resistance against Kabila's network, in spite of violent crackdowns (Brown 2018). The Church has been particularly

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## DEMOCRATIC REPUBLIC OF CONGO



### BRIBERY RATES\*

\* Based on people who used these public services in the previous 12 months.

	<u>2019</u>
Overall bribery rate	80%
Public schools	59%
Public clinics and health centers	43%
IDs	70%
Utilities	72%
Police	75%



### HAS CORRUPTION LEVEL CHANGED IN THE PREVIOUS 12 MONTHS?

	<u>2019</u>
Increased	85%
Decreased	3%
Stayed the same	9%
Don't know	3%
Refused to answer	0%



### CAN ORDINARY PEOPLE MAKE A DIFFERENCE IN THE FIGHT AGAINST CORRUPTION?

	<u>2019</u>
Yes	32%
No	50%
Neither yes nor no	15%
Don't know / refused to answer	3%

**85%**

Think corruption increased in the previous 12 months

**80%**

Of public service users paid a bribe in the previous 12 months

**80%**

Think their government is doing a bad job of tackling corruption

**32%**

Think that ordinary citizens can make a difference in the fight against corruption



### CORRUPTION BY INSTITUTION\*

\* Percentage who think that most or all people in these institutions are corrupt.

INSTITUTION	<u>2019</u>
President / Prime Minister	82%
Members of Parliament	79%
Government officials	66%
Local government officials	68%
Police	81%
Judges and Magistrates	74%
Religious leaders	27%
NGOs	35%
Business Executives	51%
Traditional leaders	43%



### IS THE GOVERNMENT DOING A GOOD OR BAD JOB OF FIGHTING CORRUPTION?

	<u>2019</u>
Good	13%
Bad	80%
Don't know	7%
Refused to answer	0%

*“Anti-Corruption Helpdesk Answers provide practitioners around the world with rapid on-demand briefings on corruption. Drawing on publicly available information, the briefings present an overview of a particular issue and do not necessarily reflect Transparency International’s official position.”*

*Transparency International  
International Secretariat  
Alt-Moabit 96  
10559 Berlin  
Germany*

*Phone: +49 - 30 - 34 38 200  
Fax: +49 - 30 - 34 70 39 12*

*tihelpdesk@transparency.org  
www.transparency.org*

*blog.transparency.org  
facebook.com/transparencyinternational  
twitter.com/anticorruption*

*Transparency International chapters can use the Helpdesk free.  
Email us at [tihelpdesk@transparency.org](mailto:tihelpdesk@transparency.org)*