

ANTI-CORRUPTION CHALLENGES IN POST-ELECTION DEMOCRATIC REPUBLIC OF CONGO

Muzong W. Kodi

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About the Author

Dr Muzong Wanda Kodi is an Associate Fellow of the Africa Programme at Chatham House. His most recent positions include Regional Director for Africa and the Middle East at the International Secretariat of Transparency International and Director of International Development at the International Secretariat of Amnesty International.

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M.K.

List of Abbreviations/Acronyms

APNAC	African Parliamentarians' Network against Corruption
CELC	Commission de l'Éthique et de la Lutte contre la Corruption
CIAT	Comité International d'Accompagnement de la Transition
DFID	Department for International Development (UK)
FARDC	Forces Armées de la République Démocratique du Congo
MLC	Mouvement de Libération du Congo
MONUC	Mission des Nations-Unies au Congo
OBMA	Office des Biens Mal Acquis
OCEP	Observatoire du Code d'Éthique Professionnelle
OFIDA	Office de Douane et d'Accises
PPRD	Parti du Peuple pour la Reconstruction et la Démocratie
RCD	Rassemblement Congolais pour la Démocratie
SADC	Southern African Development Community
UNDP	United Nations Development Programme

Executive Summary

Now that the Democratic Republic of Congo has held a series of elections that mark the end of the long transition period, new institutions are being put in place at the national and provincial levels. The paper retraces the enduring legacy of mismanagement, corruption and human rights violations which was left by Mobutu Sese Seko's regime (1965–97) and was deepened during the following six years of conflict and three years of the transition period. A culture of impunity compounded by an inversion of moral values will be among the many challenges confronting the leaders of the new regime.

The paper shows how for decades the Congolese corrupt elites privatized the state in collusion with international networks and systematically destroyed what was one of the most promising economies of the African continent. As a result, the country is today ranked among the poorest and the most corrupt in the world.

The paper assesses a number of anti-corruption initiatives undertaken by the government during the transition period as a result of pressure from the international community. Only lip-service was paid to these schemes by the government and the development partners of the Congo. In fact, throughout the transition period, the international community turned a blind eye to increasing levels of graft for fear that an anti-corruption drive would scuttle the electoral process. During this period, the Auditor General carried out audits of a number of state-owned enterprises. Furthermore, a special parliamentary committee investigated the validity of the financial and economic conventions signed during the 1996–7 and 1998–2003 wars. The findings of these two bodies and their recommendations were ignored by the government. Parliament has not yet discussed the report of the parliamentary committee.

The new government will be faced with the difficult responsibility of deciding on priorities in an environment where all sectors require urgent attention. In fact, the DRC has been shattered by several decades of kleptocracy and conflict which have left the population of one of the richest countries in Africa in dire straits. Most of the active population is unemployed and ekes out a wretched living in the informal sector of the economy. The country's formal economy and the infrastructure have been completely destroyed.

The multifaceted challenges will include endemic and rampant corruption which was not considered a priority during the transition period by the Congolese authorities and the international community as they all feared that dealing with corruption would destabilize the very delicate transition period and jeopardize the elections.

The paper argues that the governance reforms that the DRC has to implement will not succeed if graft is not tackled in parallel and as an integral part of these reform programmes. In making these choices, one must keep in mind that reforms in whatever sectors are identified as a priority have to take into account the fact that they will affect other sectors. The approach needs to be multi-pronged since in a situation where corruption is endemic, weaknesses in all sectors of society need to be addressed. Corruption is not just a problem of dishonest individuals in government, business or civil society. Experience has shown that it is a systemic problem which calls for systemic solutions.

The political will to address graft will not exist within the leadership and will need to be created at the highest levels of the government for any progress to be made. Ethical issues,

which have so far been neglected, will need to be addressed as well in order to start a process of behavioural change in the Congolese population at all levels. Indeed, without political will and a change of attitude, the technical recipes proposed in donor-supported reform programmes will have no impact.

In all the priority areas of its reform programmes – which may include the security, justice, civil service and mining sectors – the government should aim at ending impunity and creating the necessary stability, capacity and resources to enable the government to start the process of building a state in the heart of the African continent. Corruption, which has so far impeded the successful reform of these sectors, will need to be reduced substantially. In this difficult task, stakeholders other than the government, i.e. Congolese civil society, donors, the international financial institutions and the companies operating in the country, have an important role to play.

1 INTRODUCTION

As the dust settles on the momentous elections in the DRC, attention will hopefully now turn to rebuilding the Congo. In a country where the infrastructure, all the institutions and all sectors of the economy, and above all the moral foundation of society have been devastated by three decades of kleptocracy followed by ten years of the most destructive conflict since the Second World War, all areas need immediate and urgent attention. Four million people have died since the conflict started in 1996 and, by 2004, 1,200 more were dying every day as a direct or indirect result of the conflict. Thousands of women and girls have been raped by all the warring parties, including the newly integrated national army. The challenge for the new government, Congolese society and development partners is now to decide on the priorities in the drive to restore peace and stability in order to reduce poverty and improve human security.

Transparency International has once again ranked the Democratic Republic of the Congo among the most corrupt countries in the world. Out of a total of 163 countries ranked in the Corruption Perception Index (CPI) in 2006, the DRC came 156th with a score of 2.0 out of a perfect score of 10 – indicating rampant corruption.¹ The vice permeates all sectors of the economy and is encouraged by a culture of impunity.

The Poverty Reduction Strategy Paper (PRSP) for the DRC,² finalized in July 2006, gives a very depressing and damning assessment of the management of the country during the transition period, and paints a gloomy picture of poverty there. It reports that 71.34 per cent of the population can be considered poor. The situation is worse in the rural areas. In fact, whereas in the urban areas 61.49 per cent of the population can be classified as poor, the figure is even higher for the rural areas, at 75.72 per cent. Furthermore, the human development indicators (i.e. education, health, access to socio-economic goods and services), as well as the data for HIV/AIDS prevalence, living environment and social protection, confirm that poverty in the DRC is a mass, generalized and chronic phenomenon. Looking at the causes of this misery, the PRSP reports that the people who participated in its investigations denounced the prevailing impunity in the country. They considered it to be the major cause of poverty as it encourages corruption, injustice and exclusion.³ Impunity for all kinds of crimes, including at the highest levels of government, encourages all of the Congolese elites to continue to loot the country and flaunt their ill-acquired wealth. The policy-makers and the government who let this situation continue are severely criticized:

One can see that decision-makers and the government lack democratic culture, are not committed to the general interest and are incapable of resisting ... external pressures and those of their clients. The State lacks efficient institutions that can enable it to find solutions to disagreements by peaceful means. By the same token, it does not have appropriate mechanisms to prevent political conflicts and armed conflicts.

While fully recognizing the need for reforms to be undertaken in a holistic manner and the importance of other areas of reform, this paper will focus on one area, corruption, which, for various reasons, has so far not been given the attention it deserves. In fact, during the transition period, the government and its development partners paid lip-service to this very crucial issue. Unless actions are taken to reduce the scourge of corruption, the proposed governance reforms are likely to have limited impact or, even worse, could fail.⁴

It has been well documented that corruption is one of the main causes of the Congo's disastrous economic situation and the appalling and enduring poverty of its people in one of the richest countries on the African continent. It has also been identified as one of the main

factors fuelling and maintaining conflict and instability in the whole region of the Great Lakes.⁵ Concurring with this position, the Head of the UN Development Programme in Congo, Babacar Cissé, argued in a recent interview that endemic graft is the major impediment to development in the country. He went on:

*Our major concern as a partner is how they can come up with policies that will fight corruption in this country – it is the whole system that needs to be cleaned up.*⁶

Corruption and governance issues were not major themes of the presidential election campaign. However, in an interview given to a Belgian newspaper after the second round of the election, Joseph Kabila vowed to support Antoine Gizenga, the Prime Minister designate, in his efforts to fight corruption.⁷

This paper does not purport to undertake a detailed analysis of the phenomenon of corruption in the DRC, although such a diagnostic is very important and long overdue. Instead, it provides a short background to the issue of corruption as it has affected the DRC under Mobutu Sese Seko and during the transition period. It also surveys the actions initiated over the last few years to reduce corruption and assesses what impact they will make on the government's anti-corruption activities in the post-election period. The closing section of the paper makes recommendations on the way forward in the post-elections period.

2 MOBUTU'S LEGACY

In order to fully understand the challenges that the new government will have to address, it is useful to review the situation under Mobutu Sese Seko's kleptocratic regime, since it is the only reference point for the majority of the Congolese. His regime has marked, and will continue to mark, the Congolese for many years to come not only because it was so long – 32 years – but also because of the profound way in which it has moulded the Congolese psyche, changed the moral values of an entire society and left an indelible imprint on the institutions of the DRC. Many of the corrupt practices ongoing today and the behaviour of the political elite can be traced them back to their roots in Mobutu's Zaire.

General Joseph-Désiré Mobutu came to power through a *coup d'état* staged by the army under his leadership on 24 November 1965. This was his second coup; in September 1960 he had deposed the first democratically elected government of the Congo led by Patrice-Emery Lumumba. By allowing him to assume the role of Head of State, the second coup merely confirmed the dominant political role that he had been playing in the country since 1960. In its declaration justifying the coup, the High Command of the Congolese National Army accused politicians of fighting each other to assume power for selfish motives instead of caring for the well-being of the people. They hoped that the Congolese people would be grateful to them because their only goal was to restore peace, tranquillity and prosperity in the country. They assured the Congolese people that their intention was not to set up a military dictatorship.⁸

This 1965 coup came after the country had held its second democratic elections following five years of turmoil and rebellion against the puppet regime put in place by Mobutu. The rebellion had engulfed more than two-thirds of the country. At the time of the 1965 elections the central government had mainly regained control, thanks to the robust interventions of European and Southern African mercenaries and the strong support of the United States and Belgian governments.

In his early statements after the coup, Mobutu made it clear that the High Command of the Congolese National Army would collegially govern the country. However, it soon became clear that he ran the country single-handedly after eliminating many of his allies, both civilians and high-ranking military officers, and co-opting others.

Georges Nzongola-Ntalaja explains why Western powers chose Mobutu to lead the Congo:

*To protect and promote these interests in the turbulent countries of the Third World, policymakers in Washington and other Western capitals could trust only a 'strongman' as the ideal ruler. As described by Rouleau, the strongman is supposed to be intelligent, cunning, and independent of any uncontrollable coalition or popular consensus 'that would prevent him from being understanding towards external protectors'. Accordingly, he 'is singularly ambitious and stops at nothing to attain his objectives'. During the first Congo crisis, Mobutu was deemed to possess all of these prized qualities, and his Western protectors groomed him as the perfect candidate for the role of Congo's strongman.*⁹

Mobutu also took steps to entrench his regime and his personal control over it for the long haul. He banned all political activities for five years and dissolved the newly elected parliament. This trend toward building up his hold on power culminated in the creation of the Mouvement Populaire de la Révolution (Popular Movement for the Revolution) in 1967. Three years later, the one-party system was established and, as the motto of the party proclaimed at the time, whether they liked it or not all Congolese were members of Mobutu's party.

In order to command the support of the Congolese elite and the armed forces, Mobutu needed unlimited access to all the resources of the country. It soon became his personal property and a patrimonial regime was gradually established. The main beneficiaries of the regime were the 'state bourgeoisie' recruited from among the politicians of the independence struggle period, high-ranking military officers and rich businessmen who were joined by university graduates. The obsession of this ruling elite was to remain in power as long as possible in order to enjoy the privileges that accrued to those who were in Mobutu's entourage. The elite constituted its capital 'collectively through the output of state enterprises, royalties, taxes, and so on, as well as individually, for instance from exorbitant salaries, corruption and the use of state resources for personal ends'.¹⁰

In the praetorian guard put in place by Mobutu for his personal protection and that of his entourage, corruption was rife. Generals helped themselves to the pay of the soldiers and sold off the equipment. The rank and file were encouraged to live off the civilians. After all, as the soldiers had been taught for generations since the days of Belgian colonial rule, civilians were '*the soldiers' farm which soldiers were allowed to harvest whenever they wanted to*'. To make matters worse, soldiers were taught to despise civilians who were regarded as undisciplined, unintelligent, inferior and worthless creatures, and hence soldiers were never punished for fleecing them or even raping their women and girls.

The economic boom that the country enjoyed from 1968 to 1974 because of, among other factors, the historically high levels of copper prices due to the demand generated by the Vietnam war only provided further opportunities for the Congolese elite to enrich themselves further by helping themselves in the coffers of the state and state enterprises. A number of the very costly white elephants with which the country is still saddled today date back to this period. The Inga-Shaba power line, the Maluku steel plant, the CCIZ and national radio and television buildings, the huge presidential agro-industrial complex of Nsele – all provided further opportunities to Mobutu and his entourage to steal more from the country.

Claiming that the country could not develop without having its own Fords and Rockefellers, in November 1973 Mobutu decided to create a national bourgeoisie by confiscating small and medium-sized enterprises owned by expatriates and allocating them to the national elite. The recipients had no experience of running them and merely siphoned off all the available cash, selling whatever assets they could dispose of and letting the businesses rot. A year later, recognizing the failure of the scheme, Mobutu decided that businesses that had been abandoned by their new Congolese owners would be taken over by the state enterprises – which, as mentioned earlier, were one of main sources of income for the corrupt ruling class.

This waste resulted in the loss of hundreds of thousands of jobs, the deterioration of the physical infrastructure and loss of income for the government, which was less capable of paying civil servants and the armed forces regularly and maintaining hospitals and schools. The standard of living for most Congolese deteriorated from 1975 onwards. The millions of unemployed workers could survive only by engaging in petty activities in the informal sector. This situation of extreme destitution led to the inversion of the moral values in society. For instance, individuals who engaged in corrupt activities (called '*coop*'¹¹) were admired and became role models. Worse still, all the fraudulent and corrupt activities in which people engaged to make ends meet were tolerated and accepted as a normal way of life. Corruption became widely accepted as a way of life especially if the corrupt individual was from one's own ethnic group or region. This was the case even if those who admired the corrupt individual did not benefit from the loot. All individuals who were appointed to any position of influence came

under unbearable pressure from their kin to provide for their needs. They were expected to use their position to raise the additional income to meet the needs of their constituency. Honest people who decided to live within their means and not to use their position to fleece other people were derided by their community. This is the most enduring legacy of the Mobutu regime, which will be very difficult to eradicate. Reducing corruption in the Congo will not only be a matter of resolving the technical problems encountered in the public finance management of the country but will also need to address these issues of moral values and behavioural change.

The unpaid security forces lived more and more off the population, thus exacerbating insecurity in the country. The population also had to pay more arbitrary taxes to unpaid civil servants to have access to state services. Even universities and institutions of higher education were not spared. Impoverished university lecturers became vulnerable to bribes. Civil society organizations, and especially the Catholic and Protestant churches, filled in the gap left by the state by providing medical services, running schools, repairing roads and even organizing parallel postal services.

As ethnicity and support for the regime were the criteria for acceding to high positions in public administration and in the state enterprises (which were all now in the hands of Mobutu's clique), frustrated and disillusioned academics and other professionals who resisted being co-opted into the corrupt system had no choice but to leave the country.

In an attempt to stop the economic decline, the World Bank and the IMF tried to persuade the regime to take a certain number of measures. Some of these related to reforms aiming at reducing corruption. With the assistance of the Bretton Woods institutions, a number of institutions were created, including the Auditor General's Office (Cour des Comptes), the Finance General Inspectorate within the Ministry of Finance, and the Conseil Supérieur du Portefeuille. These institutions were, however, not allowed to play their watchdog role fully under Mobutu's regime.

Besides, the international powers supporting Mobutu put the major economic institutions of the country under their 'tutelage'. An IMF appointee was put in charge of the central bank, and French and Belgian experts ran the Ministry of Finance and OFIDA, the customs agency. In spite of all the controls put in place by these teams, it is reported that 50–75 per cent of foreign exchange continued to elude the central banks as Mobutu and his entourage found ways to defend their privileges by circumventing the rules and regulations. This failure, which should be a lesson for present and future schemes aimed at improving public finance management, is explained as follows:

*The tutelage of foreign experts was based on major fallacy, the view that mismanagement was basically 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 have 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.¹²*

By 1990, with the end of the Cold War, Mobutu had outlived his usefulness to the Western world and had become an embarrassment. The old dinosaur's services as the bulwark of the

West against the growing influence of the USSR in 'Marxist' Angola and Congo-Brazzaville were no longer needed. Most of the foreign assistance he had enjoyed and had come to expect from his protectors dried up. In April 1990, mounting pressure from within the country came to a head and Mobutu had no choice but to liberalize the political environment, allowing other political parties to exist.

As the tax revenues dwindled and foreign aid was no longer available to the country, the corrupt elite networks had to find other means of survival. The collection of taxes was privatized as civil servants working for the powerful members of Mobutu's entourage levied taxes for them and captured OFIDA. High-ranking officers and other dignitaries of the regime, bypassing the central bank, had massive amounts of money printed abroad for their private use. It was very common to find in circulation wads of banknotes bearing the same number or with no number at all.

Bowing to pressure from a coalition of political parties, the Union Sacrée de l'Opposition, Mobutu agreed to convene a national Sovereign Conference whose main tasks were to assess the past of the country since independence and find solutions to its enduring crisis. The conference also had to put in place the institutions that would run the transition to multiparty democracy. With a few interruptions the conference met from 7 August 1991 to 6 December 1992, when, on orders from Mobutu, it had to end its sessions. In spite of the many efforts made by Mobutu and his cronies to subvert the conference, a great deal of good work was done through its many committees. One of these, the Ill-Acquired Goods Committee, documented cases of corruption under Mobutu.

Mobutu decided to stop the democratization process and allowed his army to loot the country in 1991 and 1993. These actions left the infrastructure of the country in ruins and accelerated the decline of the economy.

In the meantime, trouble was brewing on the eastern fringes of the country. As a result of the 1994 genocide in Rwanda, close to one million Rwandese refugees found their way to Eastern Congo. Among the refugees were the alleged leaders of the genocide who recruited fighters among the refugees and started attacking Rwanda from Congo. In 1996, using the excuse of the attacks from Congo by rebels from their respective countries, Rwanda and Uganda invaded the Congo, thus flouting international law. Mobutu's demoralized army was no match for the invading troops, who reached the capital, Kinshasa, after a few months. In March 1997, they installed in power Laurent-Désiré Kabila, believing they could easily manipulate him.

As Mobutu fled and was forced to wander around the world with his retinue of wives, children and parasites, he left one of the richest countries in Africa in ruins. The enduring impact of his long predatory rule may be summarized as follows:

For the Congolese people, the major consequences of the Mobutuist system of institutionalized theft and corruption has been the ruin of the country's economy and social fabric, together with state decay and collapse. Mobutu and his retainers succeeded in blocking economic growth and development by destroying or neglecting the economic growth and social infrastructure inherited from the colonial past, and by depriving the state of basic resources needed to meet the vital needs of the people and to improve their living conditions. In the Congo, as in the rest of the African continent, the persistent economic and state crises have led to a growing realization that a close relationship does exist between the inability of the state to ensure a decent livelihood for its citizens and the lack of democracy.¹³

3 GOVERNANCE AND CORRUPTION UNDER LAURENT-DÉSIRÉ KABILA AND THE TRANSITION GOVERNMENT

The takeover of the country by Laurent-Désiré Kabila and his allies brought renewed hope among the Congolese that a page had been turned in their history and that the new regime would live up to its promise to end the corruption and the bad governance that he so vehemently condemned. In a speech marking the 37th anniversary of Congo's independence, Kabila solemnly declared:

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 of 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.¹⁴

Their hopes were soon dashed when the new regime started showing its true colours and people came to realize that there was more continuity than change between it and the previous regime. The renaissance of the Congo did not materialize under Laurent-Désiré Kabila. Instead, he soon suspended the constitution, banned all political parties and activities and granted himself unlimited powers, including the power to legislate by decree. The political parties and civil society organizations which had campaigned against the Mobutu regime for the previous seven years and had welcomed Kabila were appalled by the turn of events. Many of them had collaborated with the advancing rebel troops, hoping that the new regime would give a new impetus to the reform movement which they had led for the formal liberalization of the Mobutu regime and to the National Sovereign Conference.

In order to buy guns and ammunitions for his military campaign against Mobutu, Kabila needed to raise money to equip his soldiers, who included thousands of children (the *Kadogo*, the small ones, in Swahili). He acquired the necessary funding by signing mining contracts with a number of companies in very opaque conditions before he even arrived in Kinshasa. He initially made noises about fighting corruption but he soon established a dictatorial regime which turned out to be just as corrupt as that of his predecessor. The young, inexperienced and incompetent young people whom he appointed to high positions in his government were keen to get rich quickly. They succeeded in beating Mobutu's clique in the looting of the state resources. The embedded corrupt elite network of Mobutu's sycophants reorganized itself and was soon able to join Kabila's entourage.

Most of the stalwarts of the Mobutu regime fled the country before the invading troops arrived in Kinshasa. However, quite a number of them, for various reasons, stayed in the country. About forty of them were arrested and Kabila in person demanded that they repay to the country the money they had stolen. Large amounts of money were paid to the new regime but never accounted for.

In order to clean up the corruption that had marred the previous regime, in mid-1997 Kabila set up the Office des Biens Mal Acquis (OBMA) (the Office of Ill-Acquired Assets). One of its key missions was to repatriate the country's assets stashed abroad by Mobutu and his entourage. Assistance was requested from a number of foreign countries, among which Switzerland and Belgium responded positively. The assets of Mobutu's estates and others named in the Congolese government's request were frozen. However, more than a year later, these measures were lifted because of a lack of response from the Congolese authorities to Belgian and Swiss requests for additional information.

Within the country, OBMA seized the properties and other assets of the former ruling elite, most of which were allocated to the newly appointed ministers, army generals and other new rulers of the country. An audit established that the managers of OBMA were also embezzling some of the assets that they had seized. They were arrested and replaced regularly. This anti-corruption campaign soon lost steam, especially when Kabila started bringing back many members of Mobutu's clique who recovered their assets.¹⁵

In the meantime, the occupying forces were busy looting the country, with private and personal assets taken out of the country by the planeload to Rwanda and Uganda. In the eastern part of the country, factories were disassembled and removed, cattle were walked across the border, banks were systematically looted and their physical infrastructure was destroyed. It was not long before Kabila rebelled against his protectors and asked them to leave the country in August 1998. The Ugandans and the Rwandese withdrew their troops and responded swiftly by invading the Kivus and Province Orientale. In an audacious move they also tried to take over Kinshasa by launching an attack from Bas-Congo. This attempt failed thanks to the Angolans, Namibians and Zimbabweans who came to the rescue of the Kabila regime. There was soon a stalemate, with the Rwandese and Ugandans – who had created proxy rebel groups – occupying the eastern and northern sections of the country and the central government controlling the west and south.

Laurent-Désiré Kabila was allegedly killed by one of his bodyguards in January 2001 and was replaced by his son, Major-General Joseph Kabila.

The international community put a great deal of pressure on the belligerents and persuaded them to negotiate peace. A series of conferences ensued which ended with the Sun City All-Inclusive Agreement, approved and signed by most of the parties to the conflict in December 2002. The new government put in place in June 2003 and known as the '1+4 Formula', was led by Joseph Kabila who has remained President of the Republic. It included representatives of all the 'components' of the agreement – that is, the main former belligerents (Kabila's government, RCD and MLC¹⁶) and the political opposition. The posts of one Vice-President, seven Ministers and four Deputy Ministers were allocated in equal numbers to the main components. Civil society was allotted two ministries and three vice-ministries, in addition to the presidency of the five institutions in support of democracy.¹⁷ The minor rebel groups RCD-N, RCD-ML and the Mai-Mai were each granted two ministries and eight vice-ministries. This formula for the distribution of responsibilities among the signatories of the Sun City Agreement was also applied to seats in the National Assembly and the Senate, ambassador posts and boards of the state enterprises.

The main objectives of the transitional government were:

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

The power-sharing arrangement imposed by the All-Inclusive Agreement made decision-making by the government rather difficult, if not impossible in some cases, as the partners in the government did not have the same vision on how to implement the above-mentioned 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 the government, parliament, civil service, armed forces, police and all the other bodies in which the 'components' were parties to the All-Inclusive Agreement appointed officials. In all these bodies, the incompetent political appointees defended the interest of the 'components' to which they belonged, rather the interests of the state as a whole.

The most important objective for the warlords turned politicians was the preparation of the elections. It was therefore of paramount importance that the political appointees raise money by all means possible for their parties wherever they found themselves in positions of authority. Large sums of money had to be found in order to finance the electoral campaign. Many political actors were also determined to tap into the state coffers to raise money on which they could survive either personally or as a party if they lost the elections. Some of the former belligerents – including President Kabila, and Vice-Presidents Ruberwa and Jean-Pierre Bemba – had also kept some of their best soldiers under their own direct command, outside the national army. They therefore had to find additional financial means to continue to maintain these militias.

The launching of the transitional government did not mark the end of the war economy which had been put in place by the belligerents and their external partners, as described in the reports of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo. The Panel, which was appointed by the UN Security Council in June 2000, wrote a series of reports analysing the illegal exploitation of the natural resources by elite networks including the rebels, the central government, foreign companies and the armies of Uganda, Rwanda and Zimbabwe.¹⁸

This war economy is dominated by armed actors collaborating closely with local and foreign private companies, criminal elements and local political authorities.¹⁹ The comprehensive commercial networks that these groups of actors have set up rely on violent predatory strategies to exploit resources, fix prices, and prey on the civilian population. As the violence that accompanies these activities has created a very unstable and unpredictable situation, the elite networks concentrate their efforts on activities that require few investments and can yield quick profits. These activities include levying taxes from trade and exploiting certain natural resources with high returns, such as gold, diamonds, cassiterite, cobalt and copper.

It has been rightly argued that the former warlords and their external partners accepted the All-Inclusive Agreement because it did not address the economic issues relating to the war and left their privileges intact.²⁰ Business continued pretty much as usual, as has been extensively documented by Human Rights Watch²¹ and Global Witness,²² for instance. Besides, the agreement created additional lucrative opportunities for all the warlords: they were allocated positions in governments, in state enterprises and the armed forces. With the resources they were thereby able to access, they could continue their private activities with some degree of legitimacy.

The stakes and the opportunities created by the war are so high that the former warlords who still have troops under their orders will continue to be tempted to use force to 'spoil' the transition and even the post-elections period. The use of violence, as the experience of the warlords in Katanga and Ituri has shown, enables them to achieve their political goals and to maintain their economic privileges.

The international community is so desperate for the electoral process to succeed that it is ready

to turn a blind eye to human rights violations and criminal activities, and to accommodate any demands from a potential spoiler. Throughout the transition period the position of donors – including the United Nations Mission to the Congo (MONUC), the United Nations system at large, the international financial institutions and the European Union – on matters relating to transparency and economic governance was rather weak. Towards the end of the transition period, realizing that the increasing levels of corruption could unravel the electoral process, donors attempted unsuccessfully to convene meetings between the International Committee in Support of the Transition (CIAT)²³ and the Congolese government to discuss issue relating to governance. Talks were also held about mounting some last-minute efforts to raise awareness of the negative consequences of corruption and economic mismanagement. No action was taken as donors themselves were sceptical about the credibility of such a move. The attitude of the donor community sent a clear message of tolerance for corruption and mismanagement.²⁴

The electoral campaign saw an upsurge in corrupt activities as political parties were recruiting candidates for their lists and independent candidates were bargaining their support for a particular party or coalition of parties.²⁵ In order to get people to attend their rallies candidates promised to hand out cash or distribute tee-shirts and drinks. State assets, including the national radio and television, were used illegally by candidates. In the poor sections of the cities and villages, people wanted the campaign period to be extended so that they could collect money from corrupt politicians. It is no surprise that in October the IMF announced that the government had overspent the July–September 2006 budget by US\$94 million.

The coalitions of political parties which were formed before the first round of the presidential election and even more before the second round were not based on any common vision but on short-term political interests and the need to position oneself or one's party for lucrative positions in the future government. Rumour has it that many individuals and political parties joined the coalition of the presidential candidate who offered the most cash or promised the most interesting positions in government.

4 ANTI-CORRUPTION INITIATIVES DURING THE TRANSITION

Faced with a massive problem of corruption, the development partners of the DRC put pressure on the government to tackle the scourge as it threatened to unravel all the development projects. It is important to review the initiatives and measures taken for this purpose as precious lessons can be drawn from these experiences to inform future actions.

In September 2001, the IMF pointed to poor governance in the DRC and denounced corruption in the government structures. As the government was keen to negotiate a loan from the IMF, it decided to act. The President, in a speech to the nation, acknowledged the generalized nature of corruption in the DRC and the weakness of the institutions responsible for fighting it.²⁶ In October 2001, after the publication of the results of an audit that documented the catastrophic mismanagement of state enterprises, President Joseph Kabila suspended 90 per cent of the managing directors. However, none of these directors were ever prosecuted. In the same year, the Auditor General (Cour des Comptes) started preparing comprehensive auditing reports on public administration which were not made public.

In August 2002, the Anti-Corruption, Fraud and Money Laundering Commission was set up. Before it was disbanded seven months later to give way to the Ethics and Anti-Corruption Commission, a national anti-corruption strategy was drafted and put through consultation with various national stakeholders and donors. However, the strategy was never implemented. The Commission found itself pitted against other similar initiatives in the Ministries of Finance and Planning.

In June 2004, responding to criticisms of lack of action against rampant corruption in government, President Joseph Kabila wrote a letter to his four Vice-Presidents, in which he said, among other things:

*The reports of international organizations, editorials in the newspapers, complaints from churches, reports from all sectors of the population attest to the persistence, if not the resurgence, of corruption and the misappropriation and embezzlement of public funds in all sectors of the national life. The leaders of the people cannot be indifferent to this state of affairs.*²⁷

At Kabila's request, at the end of 2004 the Parliament's Economics and Finance Commission carried out an investigation into the management of 19 state enterprises between 1 January 2002 and 31 March 2004. Using its own findings and those of the audits undertaken by the Auditor General, the General Financial Inspectorate and another two government bodies,²⁸ the commission uncovered and detailed cases of corruption and fraud in all the enterprises, which also involved the ministers in charge of overseeing them. The boards and the management committees of the enterprises concerned, as well as a number of ministers, were suspended from their duties. However, no prosecution took place and, contrary to what parliament and public opinion had requested, the parliamentary commission was not allowed to continue its investigations in other state enterprises.²⁹

In accordance with the resolutions of the Inter-Congolese Dialogue and the National Assembly of the DRC dated 24 April 2004, another special parliamentary commission was set up to investigate the validity of the financial and economic conventions signed during the 1996–7 and 1998–2003 wars by both the rebels and the central government of the DRC. Working on a shoestring and facing all kinds of difficulties – including death threats and the refusal to

collaborate by some of the foreign countries whose companies were involved in the plunder of the DRC – the commission, led by Christophe Lutundula Apala, finalized its report in June 2005 and submitted it to the Speaker of the National Assembly.³⁰ The Commission reported that many of the contracts were illegal or that their terms were against the interests of the Congo. It recommended that the contracts be either rescinded or renegotiated to agree better terms for the Congo. It further requested that no contracts be signed with mining companies for the rest of the transition period. The report also recommended the prosecution of a number of top Congolese officials and foreign companies involved in the signing of these contracts. Since the Congolese political establishment and the donor community brought a great deal of pressure to bear on the National Assembly, the report was never discussed by parliament. It was, in fact, feared that such could upset the delicate transition period.

In keeping with the All-Inclusive Agreement and the Constitution of the Transition, the Commission de l’Ethique et de la Lutte contre la Corruption (CELC), or Ethics and Anti-corruption Commission, was created in 2003, but it became operational only a year later, after the national Assembly and the Senate passed a law defining its powers, organization and functioning. Its objectives were mainly:

- to raise awareness of the ethical issues and the fight against corruption;
- to increase the capacity of national institutions to promote integrity;
- to ensure that all national institutions involved in the fight against corruption have adequate operating capacity;
- to investigate violations of ethical values and corrupt activities; and
- to promote transparency in the political parties.

Several problems made it impossible for the CELC to fulfil its role.³¹ From the very beginning it had to overcome serious logistical problems which the UNDP and DFID assisted in solving. Besides, like all the other transition bodies, its board was made up of representatives of all the signatories to the All-Inclusive Agreement. This arrangement led to a bloated staffing³² and made decision-making almost impossible as there was neither a common vision nor a coherent strategy. The board members considered that their role was to defend the interests of their parties within the commission. This also compromised the independence of the commission, whose work was hampered by conflicts between the various internal factions. To make matters worse, the board and most of the staff were political appointees with no technical knowledge of ethics and anti-corruption. The leadership was rather weak and demotivated. The commission was completely ineffective because of its meagre budget³³ and the lack of collaboration from the justice sector. It also had a poor public image.³⁴

Another interesting initiative was the creation in April 2003 of the Observatoire du Code d’Ethique Professionnelle (OCEP), or Observatory of the Code of Ethics of Public Officials.³⁵ Its main objective is to raise awareness of the Code of Ethics of Public Officials signed by President Joseph Kabila in October 2002 as part of the civil service reform. It is also responsible for monitoring its implementation. The Director General of OCEP is a dedicated and talented university professor who reports to the Minister of Public Administration. OCEP’s activities have been limited by the lack of resources. Its paltry budget does not allow it to buy the basic office equipment and to recruit the staff that it badly needs. It has been able, nonetheless, to carry out seminars in most of the provinces with the support of the UNDP and the South African Ministry of Public Administration.

A significant move was the promulgation by the Congolese Head of State on 25 March 2005 of the Anti-Corruption Law which amended and completed Article 148bis of the Congolese Penal

Code. It domesticated the relevant provisions of the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption and Related Offences. It put in place a legal framework within which a number of corrupt activities can be prosecuted.

What all these initiatives have in common is that they were driven by Congo's development partners; they were not generated by the Congolese government on its own. In all cases, action was taken to placate the international community but no prosecution ever resulted from these initiatives, even in cases where there was solid enough evidence of malfeasance. There was a complete lack of political will to follow up on the findings or recommendations of these initiatives as many people who were involved in the corrupt activities investigated were in powerful positions within the state institutions. Fearful of rocking the boat, the international community systematically resisted all pressure to deal seriously with corruption or any other governance issues. Only occasional lip-service was paid to the fight against corruption.

All these actions were taken on an ad hoc basis to respond mainly to pressure from the international community. There was no vision, no attempt to think strategically and coordinate the initiatives. In an environment where moral values have been turned on their head by decades of Mobutuism and Kabilism, no effort has been made to look at ways of addressing this crucial issue. Since neither the government nor other stakeholders have ownership of these initiatives, the institutions that have been put in place have not been given the means to do their work properly.

The lack of prosecution and guaranteed impunity for corrupt acts have created a great deal of cynicism among the Congolese, who are now convinced that nothing can be done about the corruption and that the international community is complicit in the plundering of the country. It is believed that the development partners of the Congo would do everything they can to maintain the status quo so that, in collaboration with the Congolese elite, they can continue to extract from the Congo all the resources they want. Any genuine effort to fight corruption will need to find ways to overcome the prevailing cynicism.

5 THE WAY FORWARD

The new government of the Democratic Republic of Congo will come into office in an environment that is completely dilapidated and where all sectors of the economy will need immediate and urgent attention. It will obviously not have unlimited means or capacity to face all the challenges simultaneously. Difficult choices will need to be made if the country is to be put on the way to recovery, if the Congo is finally to start building strong institutions which will uphold the rule of law and respect for human rights.

It must be borne in mind, in making these choices, that reforms in whatever sectors are identified as a priority have to take into account the fact that they will affect other sectors. The approach needs to be multi-pronged since in a situation where corruption is endemic, weaknesses in all sectors of society need to be addressed. Corruption is not just a problem of dishonest individuals in government, business or civil society. Experience has shown that it is a systemic problem which calls for systemic solutions. Corruption cannot be successfully tackled by one single institution or one single law. The solution to corruption lies in 'the institutionalization of integrity through a number of agencies, laws, practices and ethical codes'.³⁶ This holistic approach to the problem of corruption is encapsulated in the notion of the national integrity system, as proposed by Jeremy Pope in the TI Source Book and later refined by Pope and Sampford.³⁷ The national integrity systems are defined as:

*the sum total of institutions, laws, procedures, practices and attitudes that encourage and support integrity in the exercise of power ... Integrity systems function to ensure that power is exercised in a manner that is true to the values, purposes and duties for which that power is entrusted to, or held by, the institutions and individual office-holders concerned.*³⁸

Every country has a national integrity system of some kind in place. In a situation where corruption is rampant, although the national integrity system is not effective in promoting and supporting public integrity, it may contain some institutions or practices that could become vital elements in an effective integrity system.³⁹

As has been argued earlier, addressing corruption is crucial, especially in a post-conflict situation where it is rampant. In fact, if corruption is not reduced the governance reforms that are prioritized will fail. As experience has already shown, the security sector reform has not succeeded because, among other reasons, it has been mired in corruption. In fact, the salaries of the soldiers of the integrated national army (FARDC) have not been paid regularly as millions of dollars have been embezzled by the Congolese generals. As a result, the FARDC soldiers have been preying on the civilians and have committed horrendous human rights violations in the areas where they have been deployed.⁴⁰ It is therefore important that the *laissez-faire* attitude adopted by the development partners of the DRC should end and that corruption is tackled as part of the governance reforms that are ongoing and will be undertaken in the future.

Considering the present situation in the DRC, it would be sensible to include among the priorities to be chosen the following sectors: security, civil service, mining, justice, parliament, the Auditor General and civil society. Human rights violations and especially the rape of women and girls, and the use of child soldiers, will need to be tackled as well.

Reform of the security sector has been beset by problems.⁴¹ In accordance with the All-Inclusive Agreement, all the former belligerents who chose to remain in the armed forces had to be integrated into the new national army. The rest could be demobilized and repatriated to their

regions of origin. However, some of the former warlords, including Joseph Kabila, Jean-Pierre Bemba, Azarias Ruberwa and Antipas Mbusa Nyamwisi, have kept their best troops under their direct command. As was witnessed in August and November 2006 in Kinshasa, the belligerents, lacking a democratic culture, will not hesitate to use the barrel of the gun if they cannot achieve their goals by democratic means. The integration of the new army needs to be reviewed with a view to ridding it of individuals who were responsible for human rights violations and criminal acts. The mentality of the remaining soldiers needs to change so that they can become a normal army protecting civilians and their property. In the process of cleaning up the army and the police, the issues of the low pay of security forces and embezzlement of their salaries will need to be addressed to reduce the temptation to prey on civilians.

The civil servants of the DRC earn some of the lowest salaries in the world, well below the poverty line, which creates incentives for corruption. They are demotivated by the anarchical manner in which recruitment is undertaken and promotions are awarded regardless of merit. The patronage system that is prevalent in the sector has led to an inflation in the numbers of staff, the lack of effective controls allowing ministers and high-ranking civil servants to include ghost staff on the payroll. Rules and procedures exist on paper but are systematically ignored.

Following recommendations made during a World Bank seminar in September 2002 on good governance and the fight against corruption, steps were taken to reform the civil service.⁴² So far the reform has focused on establishing basic administrative systems, rules and procedures. It is high time that efforts are started to professionalize the civil service. As in other sectors, the reform measures will need to include an increase in salaries and benefits, a census of the workforce to eliminate ghost employees, re-establishment of the Ecole Nationale de Droit et d'Administration (civil service college), implementation of the Code of Ethics for Public Officials more widely and efforts to make the general public aware of its contents.

Reform of the civil service has to pay particular attention to public procurement, where much of the corruption and irregularities occurs. Indeed, the country lacks a credible public procurement system. The rules and regulations governing it are outdated and ignored by those involved. The staff in charge of procurement need to be trained and the public procurement code needs to be finalized and implemented. It should include mechanisms for transparency and public disclosure of information on procurement.

The mining sector of the DRC is in a shambles. The Congo is endowed with a wealth of minerals that, over the centuries, have made it the envy of external powers. In its recent history, these powers have colluded with its corrupt national elite to plunder the country. For the Congolese people, the mineral wealth of the country has been a curse rather than a blessing ever since the Belgians started exploiting it at the beginning of the twentieth century. The predatory regime set up by King Leopold II continued under Mobutu and was perfected under the Kabilas, father and son. As a Congolese political scientist put it:

*The main linkage between colonial rule, Mobutu and the two Kabila [...] is that they represent a predatory regime in which the enormous wealth of the country is being monopolized by the rulers and their external allies instead of serving the basic needs of the Congolese people.*⁴³

The illegal exploitation of the natural resources of the DRC fuelled the wars that raged in the country between 1996 and 2003 and continue to finance the militias who terrorize people and

rape women and girls in Ituri and the Kivus. Contracts have been signed with mining companies in opaque circumstances, with terms that do not earn the Congo any revenue in spite of the high prices in the world market. Just as happened under Mobutu, unless some order is put in this sector, the Congo will not benefit from the historically high prices of minerals fuelled by demand from India and China. The corruption that has beset this sector needs to be addressed urgently:

In the mining sector, corruption is particularly pronounced because the stakes are so high. It is the single biggest problem affecting the mining industry; almost all the illicit and abusive practices in the sector have their roots in corruption. Unless it is addressed explicitly and radical measures [are] taken to eliminate it from top down, little positive change can be expected.⁴⁴

The government, which signed up to the Extractive Industries Transparency Initiative (EITI) in 2005, has not followed its public declarations with concrete action to show its commitment to the scheme. Steps need to be taken for the extractive sector companies to publish what they pay to the government. The latter should also make public all the revenue that it collects from the enterprises. This will introduce transparency in the sector and will make it possible for civil society organizations and other stakeholders in the country to monitor the government's use of the revenue accruing to it, and to demand accountability.

The judiciary of the DRC is known for its lack of independence *vis-à-vis* the executive and its inefficiency. The low salaries paid irregularly to the judges make them vulnerable to corruption. Prosecutors and judges who try to do their job properly and honestly are threatened with violence even by highly placed individuals in the government. Fearing for their lives and lacking any kind of protection, they cannot resist malevolent individuals. The prevailing state violence in the DRC promotes lawlessness and makes it impossible for an independent judiciary to exist in the country.

From October 2003 to March 2004, with the support of the European Union, UNDP, MONUC, the World Bank, Belgium, France and the United Kingdom, an audit of the justice sector was carried out. The audit confirmed the utter destitution of the judiciary. Owing to the lack of political will to reform this sector, the Permanent Law Reform Commission, which is in charge of the reform programme, lacks the means to carry out its duties. Instead, the government has set up a committee to follow up the implementation of the framework programme for the justice sector but it has not yet been launched. It goes without saying that if the justice sector is not reformed urgently, the prevailing culture of impunity will continue unabated and will jeopardize efforts to reform other sectors. In a recent interview, Joseph Kabila promised to put an end to impunity:

If we asked the Congolese people for a five-year term in office, it is not in order to reproduce what we lived through during the transition. The country needs to be put back on the rails and punish people.⁴⁵

The parliamentary commissions, the Auditor General's Office and civil society organizations are in dire need of strengthening so that they can play their watchdog role fully. Parliamentary commissions during the transition were ineffectual not only because of the power-sharing arrangements which made any consensual decisions impossible but also because of lack of resources and technical capacity. For the DRC to start building a viable democracy, it needs a strong parliament with the means to exercise its oversight of the government and state

enterprises. Therefore, the temptation to include all the parties in the new government under the pretence of national unity should be resisted. Congolese politicians need to learn that the opposition has an important role to play in a democracy.

The Auditor General has been denied the resources to properly equip his office and train his staff. This body will only be able to play its role of auditing the government and state enterprises if it is endowed with the right level of resources and expertise. The reports that it produces under very difficult conditions are not publicized as much as they should be.

Civil society organizations have been weakened by their participation in the political process since the National Sovereign Conference and were dealt a death blow after the Sun City Agreement was implemented and many of their leaders became engaged in active politics. A number of very courageous genuine civil society organizations are, however, still operating. They deserve to be helped to increase their capacity and should be encouraged to form coalitions with a view to building synergies and avoiding duplication of effort. Besides, many of the civil society organizations which have denounced human rights violations and corruption have been threatened. They need to be protected by the government.

Contrary to what many people have claimed, there will be more continuity than change in the post-election period as many of the attitudes and problems encountered during the transition period will continue. For many of the political actors who have benefited from the status quo ante, it will be business as usual, as the political will that is needed at the highest levels of government will not exist. Experience shows that without leadership and political will from the very top of the government, national anti-corruption strategies fail. There needs to be a demonstration of leadership and political will from the highest political level in the country to combat and eradicate corruption in all sectors of government and society by improving governance and economic management, by endeavouring to create a climate that promotes transparency, accountability and integrity in public as well as private efforts, and by restoring people's confidence in the government. Political leaders must take specific actions which send a clear message that corruption is not tolerated at any level of society and that nobody is above the law.⁴⁶

Those who want to bring about change will be faced with a government which will not be ready to listen or to be swayed. Rightly or wrongly, it will claim to be democratically elected and to have the mandate of the people whose priorities were expressed through the ballot box. As in other similar situations, political will at the top of the government will need to be built by pressure from below, by the Congolese people themselves. Civil society organizations should be strengthened in order to educate and mobilize people at the grassroots to exert pressure and demand accountability from their government at the national, provincial and local levels.

An overall strategy for the implementation of the various governance reforms will need to be developed with the participation of all stakeholders to ensure its ownership and smooth implementation. This strategy will presumably be based on the PRSP which has just been completed. On the basis of this a national anti-corruption strategy will also be developed in a participative manner. This national strategy should take into account the social, cultural and economic realities of the DRC instead of being copied onto models from other countries. It should also take into consideration the available capacity in the country to implement such a strategy. That is why it is so important to develop a comprehensive diagnostic of corruption and its manifestations in the Congo.

The proposed diagnostic will assess the national integrity system of the DRC in theory (law and regulatory provisions) and practice (how it works). It will therefore map not only 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, 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 national integrity system.

The national anti-corruption strategy developed on the basis of this diagnostic should include some quick wins – that is, actions that generate strategic advances and results that can be perceived by the public. Such actions are important as they build up the trust of the public in an environment where a great deal of scepticism and cynicism have developed over the years *vis-à-vis* anti-corruption initiatives. An example of a quick win is increasing access to information by passing and implementing freedom of information legislation.

Article 99 of the Constitution requires that, when they assume office and at the end of their term of office, the President and all the members of the government submit to the Constitutional Court a written declaration of their families' assets. This provision should be implemented and the declarations made public to build confidence in the new institutions of the country. The Constitutional Court should be granted the right and means to independently check the declarations. Besides, the Code of Ethics of Public Officials also provides that civil servants declare their assets. In this case, it would be advisable, in the first instance, to require this of only a limited number of high-ranking officials, taking into account the limited capacity of OCEP, which is responsible for receiving such declarations.

A thorny issue will be dealing with past corrupt activities. It is obviously important not to allow the culture of impunity which has caused so much misery to the Congolese people to continue to flourish. No lasting peace could be built in an environment where crimes are not punished. The rule of law will never exist in such circumstances. As far as the capacity of the new institutions will allow, authors of past crimes should be brought to book. This will send out a clear message from the very beginning that corruption will no longer be tolerated and that nobody – no matter how highly placed – will be above the law. To serve as a deterrent to others who could be tempted to engage in corrupt activities, the ill-acquired assets of individuals found guilty of corruption should be confiscated.

In order to successfully implement the national anti-corruption strategy, it will be necessary to identify the reformers and non-reformers in the Congolese political establishment. This mapping-out exercise will allow the development of strategies to get buy-in from an influential group of politicians who will act as the champions of the anti-corruption drive in the various governance reform programmes. It will also make it possible to find ways to defeat anti-corruption reformers.⁴⁷

Communication will be key to the success of anti-corruption efforts. The public will need to be informed on a regular basis of the initiatives being undertaken, and an honest account of the successes and failures will need to be conveyed as well.

The donor community will have a major role to play in the post-election period. Its tolerance of bad governance and corruption must cease if it is to play the positive role to which it has committed itself. For the development partners of the Congo to have leverage on a government which has been used to a *laissez-faire* approach, an agreed and coordinated plan of action will need to be developed and implemented by all the donors. 'Flag-waving' should be avoided so that all the partners can talk with one voice. A regular dialogue should be held with key individuals in the Congolese political class and there should be consistency between the messages given in private and in public.

So far, in all donor-supported reform programmes, emphasis has been put almost exclusively on providing technical solutions and building up the skills of the Congolese staff. Donors need to realize that unless the problem of lack of political will at the highest level of government is tackled first, none of these solutions will ever have the desired impact, and thus the scarce financial and human resources used in these programmes will simply be wasted.

The international community needs to prioritize support for watchdog institutions, including parliament, the Auditor General and civil society organizations. Strong partnerships with these institutions would go a long way towards increasing their capacity to hold the government to account. In order to support efforts to put ethical issues at the top of the reform agenda, donors could also bring to public attention individuals or institutions that demonstrate positive values associated with good governance. To put an end to impunity for all kinds of crimes, the donor community should advocate and support efforts to build a truly independent judiciary and provide the police with the expertise and tools to investigate and prosecute financial crimes.

6 CONCLUSION

The Democratic Republic of the Congo is at a crossroads in its history. The first democratic elections since 1965 have raised high hopes among the long-suffering Congolese people that the new government will introduce a new era leading to peace, stability and prosperity.

The road ahead will not be easy as the political will does not exist to make the necessary changes and implement reforms that will build strong institutions. The culture developed under Mobutu and refined by the new rulers of the country since the demise of the great kleptocrat will continue. Reform-minded Congolese, with the help of the international community, will need to develop the necessary pressure to create this political will at the highest level of government.

The issue of corruption should not be avoided but needs to be dealt with within the framework of the ongoing and future governance programmes. Otherwise, as experience shows, all the good intentions to improve the situation in the Congo will come to nought. The mineral wealth of the country will continue to enrich the corrupt national elite and their foreign partners to the detriment of the Congolese people. Insecurity will continue unabated and women and girls will continue to be raped in their thousands. Thousands of people will continue to die every day as a direct result of the ongoing conflict and curable diseases.

If in the coming months the Congolese people do not begin to see a move towards better governance and a reduction of corruption, the suspicion raised by the elections will be reinforced; they will continue to believe that the elections served only to legitimize the present regime in order for it to continue to plunder the country's resources.

7 RECOMMENDATIONS

To the Congolese government

- The government should demonstrate at its highest level the leadership and political will to combat and eradicate corruption in all sectors and in society by improving governance and economic management, by endeavouring to create a climate that promotes transparency, accountability and integrity in public as well as private efforts. Political leaders should take specific actions that send a clear message that corruption is no longer tolerated at any level of society and that nobody is any longer above the law.
- To set a good example, the government should implement Article 99 of the Constitution which requires the President and all the members of government to submit to the Constitutional Court a written declaration of their assets on assuming and leaving office. The Constitutional Court should be given the right and means to check these declarations.
- The government should take the lead in developing an overall strategy for a coordinated implementation of the various governance reforms with the participation of all stakeholders to ensure ownership and smooth implementation.
- The government should include all the stakeholders in the development of a national anti-corruption strategy based on a comprehensive diagnostic of the national integrity system, i.e. all the institutions and practices that enable corruption to be prevented and combated.
- The role and objectives of a national anti-corruption commission should be defined in the national anti-corruption strategy. The commission should therefore only be created after this strategy has been completed.
- The government should review the integration of the security sector with a view to ridding it of individuals who have committed human rights violations and criminal acts. Measures should be taken to change the mentality and behaviour of the remaining soldiers and policemen so that they can protect civilians and their property. In the process of cleaning up the army and the police, the government should address the issues of the low pay of the security forces and embezzlement of their salaries in order to reduce the temptation to prey on civilians.
- The civil service reform should go beyond the introduction and implementation of basic administrative systems, rules and procedures to include the following measures: professionalization of civil servants, increasing their salaries and benefits, a census of the workforce to eliminate ghost employees, re-establishing the Ecole Nationale de Droit et d'Administration (civil service college), implementing the Code of Ethics of Public Officials more widely and making the general public aware of its contents.
- Particular attention should be paid to public procurement, where much of the corruption and irregularities occurs. In finalizing the procurement code, the rules and regulations governing it should be updated and adequate control mechanisms established. The code should also include mechanisms for transparency and public disclosure of information. The staff in charge of procurement should be trained.
- The government should request parliament to discuss the report of the commission led by Christophe Lutundula Apala and tasked with investigating the validity of the financial and economic conventions signed during the 1996–7 and 1998–2003 wars. The government should also undertake to implement the recommendations of the commission, including those suggesting that contracts be renegotiated or rescinded. The government should also send a clear message of zero tolerance of corruption by prosecuting individuals or companies identified as having been involved in corrupt deals.

- The government should publish details of all the revenue received from mining and oil companies. It should also meet the commitment it made in 2005 to fully implement the provisions of the Extractive Industries Transparency Initiative.
- The government should set up the committee charged with the follow-up of the implementation of the framework reform programme for the justice sector and provide it with the necessary means to do its work.
- The Auditor General should be given adequate resources to properly equip his office and train his staff. His office should be allowed to continue in the provinces the audits started in 2004 in Kinshasa. The reports produced by this body should be made public and its recommendations implemented.
- The government should initiate the process for ratifying the main international anti-corruption efforts, including the African Union Convention on Preventing and Combating Corruption and Other Related Offences, the United Nations Convention against Corruption and the SADC Protocol against Corruption.
- The government should take measures to put an end to threats to human rights defenders, anti-corruption advocates and journalists who denounce human rights violations and corrupt activities.
- Given the limited expertise that remains in the country, the government should explore ways to engage with the Congolese diaspora and have it contribute to rebuilding the Congo.

To the Congolese government and donors

- The government of the DRC and donors should agree the priority areas of reform and an action plan for their implementation, with a clear timetable and benchmarks.
- The government of the DRC and donors should put in place a joint coordination, monitoring and evaluation mechanism for all the reform programmes undertaken by the government. The mechanism should include Congolese civil society organizations.
- The commitments of the government and donors under this agreement should be publicized in order to raise awareness and encourage civil society and the public at large to demand accountability.

To the Congolese parliament

- Parliament should discuss the report of the commission led by Christophe Lutundula Apala and tasked with investigating the validity of the financial and economic conventions signed during the 1996–7 and 1998–2003 wars. It should monitor the government's implementation of the recommendations made by this committee. It should further initiate investigations of the contracts signed between 2003 and 2006.
- All the parliamentary commissions should be provided with adequate expertise, equipment and financial means to properly carry out their work.
- Parliament should take steps to form a national chapter of the African Parliamentarians' Network against Corruption (APNAC) and learn from the experiences of other parliaments in anti-corruption measures, especially those in post-conflict situations.

To the Congolese civil society

- Civil society organizations engaged in governance and the fight against corruption should form a coalition and coordinate their activities with a view to building synergies and avoiding duplication.
- Civil society organizations should educate and mobilize people at the grassroots with a view to empowering them to exert pressure and demand accountability from their government at all levels.
- In order to improve their credibility and the impact of their work, civil society organizations should develop expertise to gather and process information to inform evidence-based advocacy. They should explore possibilities of collaboration with academia to generate evidence.
- Civil society organizations should develop the capacity to conduct independent service delivery perception surveys, public expenditure tracking surveys and corruption perception surveys to inform their advocacy work and make it more credible.
- Civil society organizations should develop expertise in the monitoring of government activities in such important areas as budget transparency, public contracting and declarations of personal assets by politically exposed persons.

To donors

- Donors should harmonize the priorities of their reform programmes and benchmarks after consultation with the Congolese government and ensure that they speak with one voice.
- Donors should invest in gathering better and more comprehensive knowledge of the political, economic and social context of the DRC.
- The donor community should abandon its *laissez-faire* approach to corruption in the Congolese government and institutions, and assist in including anti-corruption measures in all governance reforms.
- Donors should lobby the government to take action against senior figures allegedly involved in corruption.
- With the assistance of the national civil society, donors should identify the reformers and non-reformers in the Congolese political establishment and develop a strategy for achieving buy-in and overcoming resistance to the governance and anti-corruption programmes.
- Donors should assist the efforts of civil society organizations to improve their capacity by providing funding to build their organizational development, and skills and expertise in the relevant areas.
- Donors should partner with partner with Congolese civil society organizations to foster the political will to implement governance programmes at the highest levels of government.
- Donors should support educational initiatives aimed at changing ethical behaviour in schools and universities.
- In order to help to build up domestic capacity, donors should use local consultants. Where local expertise is lacking, external consultants should be encouraged to work jointly with local consultants. The expertise of the Congolese diaspora should also be tapped.
- In the spirit of transparency, the audit reports of all programmes and projects managed by donors should be made available to the Congolese government and the public.

- Donors should support efforts to develop a professional media by, for instance, helping to train journalists in investigative reporting.

To the private sector

- Private companies should abide by the provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Their staff should familiarize themselves with and implement the OECD Risk Management Tool for Investors in Weak Governance Zones.

To countries whose companies operate in the DRC

- The governments of these countries should, in accordance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, investigate and, if there is enough evidence, prosecute companies based in their respective countries which are accused of corruption in the DRC.
- In cooperation with the Congolese government, these countries should investigate individuals and companies which are alleged to have illegally exported or procured minerals or other resources from the Congo.

NOTES

- ¹ Transparency International, 'Corruption Perceptions Index 2006', <http://www.transparency.org>.
- ² République Démocratique du Congo, Ministère du Plan, *Document de stratégie de réduction de la pauvreté*, July 2006.
- ³ *Ibid.*, pp. 19–20.
- ⁴ Daniel Kaufmann, 'Back to Basics – 10 Myths about Governance and Corruption', *Finance and Development*, vol. 42, no. 3, September 2005.
- ⁵ See, for instance, United Nations, 'Final Report of the Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo', New York, 2002, <http://www.monuc.org/downloads/N0262179.pdf>; United Nations, 'Final Report of the Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo', New York, 2003, <http://www.monuc.org/downloads/S-2003-1027.pdf>; Human Rights Watch, *The Curse of Gold*, New York, 2005; Global Witness, *Digging in Corruption: Fraud, Abuse and Exploitation in Katanga's Copper and Cobalt Mines*, July 2006.
- ⁶ Associated Press, 'The biggest challenge facing Congo's first elected government in nearly 50 years...', 10 November 2006.
- ⁷ Colette Braeckman, 'Le Congo va surprendre', *Le Soir* (Brussels), 16 November 2006.
- ⁸ Centre de Recherche et d'Informations Socio-Economiques, *Congo 1965*, pp. 411–12.
- ⁹ Georges Nzongola-Ntalaja, *The Congo: From Leopold to Kabila: A People's History* (London and New York: Zed Books, 2002), p. 143. Much of the analysis in this section of the paper is based on Nzongola's book.
- ¹⁰ *Ibid.*, p. 148.
- ¹¹ 'Coop' is short for cooperation and has a wide semantic field which covers a wide range of activities such as paying and accepting bribes, plotting with others to embezzle public money, cooperating with a policeman to avoid paying a fine.
- ¹² Nzongola-Ntalaja, *The Congo*, p. 152.
- ¹³ *Ibid.*, p. 152.
- ¹⁴ 'Discours du président L.D. Kabila sur la renaissance du Congo (37e anniversaire de l'indépendance)', in Isidore Ndaywel è Nziem, *Histoire Générale du Congo: de l'héritage ancien à la République Démocratique* (Brussels: De Boeck & Larcier s.a., 1998), p. 822.
- ¹⁵ See Michela Wrong, *In the Footsteps of Mr. Kurtz: Living on the Brink of Disaster in the Congo* (London: Fourth Estate, 2000), pp. 285–300.
- ¹⁶ RCD stands for Rassemblement Congolais pour la Démocratie, the rebel group led by Azarias Ruberwa and supported by Rwanda, which occupied mainly the Kivus, Maniema and part of northern Katanga. MLC is the acronym for Mouvement de Libération du Congo, led by Jean-Pierre Bemba and supported by Uganda. It occupied mainly the northern part of the Equateur province and part of Orientale province.
- ¹⁷ The following five institutions in support of democracy were set up in the transition constitution of the DRC: 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.
- ¹⁸ See the reports of the Panel of Experts produced between 2001 and 2003: United Nations, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo* (New York: UN, April 2001); United Nations, *Addendum to the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth* (New York: UN, November 2001); United Nations, *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo* (New York, UN, October 2002); United Nations, *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo* (New York: UN, October 2003).
- ¹⁹ This section is based on the analysis of the war economy by Michel Nest in 'The Political Economy of the Congo War', in Michael Nest (with François Grignon and Emizet F. Kisangani), *The Democratic Republic of Congo: Economic Dimensions of War and Peace* (Boulder, CO: Lynne Rienner Publishers, 2006), pp. 31–62.
- ²⁰ *Ibid.*, p. 55.
- ²¹ Human Rights Watch, *The Curse of Gold*, 2005 (see note 5 above).
- ²² Global Witness, *Rush and Ruin: the Devastating Mineral Trade in Southern Katanga*, 2004; Global Witness, *Digging in Corruption*, 2006 (see note 5 above).

- ²³ This committee (Comité International d'Accompagnement de la Transition) was set up by the Sun City Agreement and comprises the ambassadors of the five permanent members of the Security Council, Belgium, Canada, South Africa, Zambia, Gabon, Angola, the African Union and the European Union.
- ²⁴ The author's interviews with diplomats in Kinshasa in June and July 2006.
- ²⁵ This section is based on the author's own observations in Kinshasa in June and July 2006 and on interviews with various people during the same period.
- ²⁶ *Africa Confidential*, 14 September 2001.
- ²⁷ Observatoire anti-Corruption (OAC), 'Corruption et spoliation du patrimoine de l'Etat dans la liquidation de la BCCE, l'ONPT et dans la Gécamines', Document 2, Kinshasa, 2003.
- ²⁸ Célestin Vunabandi Kanyamihigo, 'Note à l'intention de la Commission Economique et Financière du Gouvernement', 23 October 2004.
- ²⁹ Author's interviews with parliamentarians, Kinshasa, June and July 2006.
- ³⁰ Commission Spéciale chargée de l'examen de la validité des conventions à caractère économique et financier conclues pendant les guerres de 1996–1997 et 1998, 'Rapport des travaux', République Démocratique du Congo, Assemblée Nationale, 26 June 2005.
- ³¹ This section is based on the author's interview with the President and staff of the CELC, civil society organizations and donors in Kinshasa in July 2006.
- ³² As of July 2006, the total number of board members and staff stood at 63.
- ³³ About US\$3,000 per month as of July 2006.
- ³⁴ See, for instance, Jacques Kimpozoy Mayala, 'Contentieux du riz avarié à Matadi: doute sur le verdict de la CELC', *Le Phare*, 7 June 2006.
- ³⁵ This section is based on interviews with the Director General of OCEP in December 2005 and July 2006.
- ³⁶ A.J. Brown and Arthur Shacklock, 'National Integrity Systems Assessment: An Overview and General Model', Institute for Ethics, Governance and Law, Griffith University, Queensland, 2005.
- ³⁷ Jeremy Pope, *TI Source Book. Confronting Corruption: the Elements of a National Integrity System* (Berlin: Transparency International, 2000). See <http://www.transparency.org>. C. Sampford, R. Smith and A.J. Brown, 'From Greek Temple to Bird's Nest: Towards a Theory of Coherence and Mutual Accountability for National Integrity Systems', *Australian Journal of Public Administration*, vol. 64, no. 2, 2005.
- ³⁸ 'Chaos or Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems', Key Centre for Ethics, Law, Justice and Governance, Griffith University, Queensland, and Transparency International Australia, December 2005. http://www.gu.edu.au/centre/kceljag/nisa/nisa_final.pdf.
- ³⁹ *Ibid.*
- ⁴⁰ Human Rights Watch, 'DR Congo: Army Abducts Civilians for Forced Labor', Brussels, 16 October 2006.
- ⁴¹ See, for instance, International Crisis Group, *Security Sector Reform in the Congo*, Africa Report No. 104, 13 February 2006; Stephanie Wolters and Henri Boshoff, 'The Impact of Slow Military Reform on the Transition Process in the DRC', Institute for Security Studies, Situation Report, 10 July 2006.
- ⁴² Anne-Marie-Mukwayanzo Mpundu and Gaston Tona Lutete, 'The Democratic Republic of the Congo', in Transparency International, *Global Corruption Report*, 2005, p. 137.
- ⁴³ Georges Nzongola-Ntalaja, 'DRC's Potential: Lighting the Continent from Cape to Cairo', in *Pambazuka*, 21 July 2006. <http://pambazuka.org/en/category/features/35486>.
- ⁴⁴ Global Witness, *Digging in Corruption*, p. 14.
- ⁴⁵ Colette Braeckman, 'Le Congo va surprendre', *Le Soir* (Brussels), 16 November 2006.
- ⁴⁶ Transparency International, 'New Anti-Corruption Governments: the Challenge of Delivery – Final Recommendations', Nairobi, 12–13 October 2004, p. 2.
- ⁴⁷ *Ibid.*