

Democratic Republic of Congo: Growth for All?

Challenges and Opportunities for a New Economic Future



Pierre Englebert

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Background Paper prepared for the Congo Dialogue, September 2014

Contents

Executive Summary	3
Introduction: Overcoming a Legacy of Predation.. . . .	4
Growth without Development	4
Economic Governance and the Resilience of Predation	7
Consequences.. . . .	11
Policy Recommendations	13
Conclusion: Self-Interest and Collective Goods.	17
Endnotes	17

About the Author

Pierre Englebert is the H. Russell Smith Professor of International Relations at Pomona College (California, USA) where he teaches African politics and development. His latest books include *Inside African Politics* (2013, with Kevin Dunn) and *Africa: Unity, Sovereignty, and Sorrow* (2009).

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E Oppenheimer & Son (Pty) Ltd
PO Box 61631, Johannesburg 2000, South Africa
Tel +27-(0)11 274-2096 · Fax +27-(0)11 274-2097
www.thebrenthurstfoundation.org

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Executive Summary

Despite recent economic progress, there is little in today's governance of the Democratic Republic of the Congo that suggests a transformation away from predatory rule. As in colonial days, Congo is still understood more as a resource to be plundered than as a state to be built, and grass-roots Congolese continue to shoulder the burden of such a system. Year in and year out, state agents and their partners, starting at the very apex of the state, divert an estimated US\$4bn from government finances, either through the manipulation of mining contracts and payments, through tortuous budgetary practice, or directly by using their state authority to steal from citizens. This amount corresponds to about 20 per

cent of GDP and 100 per cent of domestic government revenue. The consequences of such predation include weak government capacity, the undermining of governance reforms, aid dependence, inequality, and 'tribalism' fed by individual strategies of survival. Although there are no easy solutions, it is hard to imagine a better future for Congo without increased public transparency, an end to impunity, accelerated decentralisation, a withdrawal of the state from ownership of productive assets, and a reduction in overall state authority, including via a deflation of the role of local chiefs. None of these reforms are likely to take place, however, unless they are endorsed and promoted by the Congolese themselves.

Introduction: Overcoming a Legacy of Predation

Any conversation about the political economy of the Democratic Republic of Congo (henceforth Congo) must start from an understanding of the country's historical origins. Congo was born in the 1880s as the institutional facade of an enterprise of predation and violent extraction. It was initially the *private property* of Belgium's King Leopold II. He did not rule it as much as he exploited it. It was not until 1908, more than 20 years after its founding, that Congo became an official colony of Belgium. Even then, large chunks of its territory and population remained managed (more than administered) by concessionary companies whose first objective was not public policy or the organisation of collective action but the maximisation of profits.¹

Although the past need not determine the future, the understanding of the state as private property has remained in Congo's DNA to this day. President Mobutu, who ruled from 1965 to 1997, proved the worthy heir to Leopold II. And despite the best attempts of the engineers of the 2003–2006 transition to lead Congo towards more just and democratic forms of governance, a large number of Congolese state actors, at all levels of responsibility, continue to wield their public authority as the source of private material rewards. By and large, Congo remains barely administered. And, by and large, it is still partly the institutional facade of an enterprise of extraction and predation.

It does not have to be this way, however. Congo's development potential is formidable, and economic

opportunities abound. Not only are the underground resources plentiful, the country also harbours enough energy – hydraulic, carbon-based, or even nuclear – for itself and most of the rest of the continent, and it has a large and industrious population, and fertile land. It could be the economic engine of Central Africa. Its failure to live up to this potential is largely a political one: official discourses aside, Congo has never been run for collective development. Instead it has been, and continues to be, looted.

**Congo's development potential
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This report offers a diagnosis of Congo's economic governance and recommendations for change in support of the Congo Dialogue sponsored by the Brenthurst Foundation and Afrique Avenir Congo. While acknowledging the positive economic developments of the last decade, it provides a detailed picture of the fundamental flaws in the country's governance. It then suggests feasible reforms that the Congolese can adopt in order to unleash their country's economic potential and provide opportunities for more than just a narrow elite.

Growth without Development

Despite its historical problems, Congo has been enjoying a remarkable phase of economic expansion over the last decade. As Figure 1 (page 5) illustrates, with the exception of 2009, Congolese GDP has grown by more than 5 per cent every year since 2003, and by close to or more than 7 per cent for the last four years.² For 2014, growth is forecast at 8.8 per cent. This is the longest sustained episode of growth for Congo since independence.

However, this recent performance comes at the tail end of a lamentable long-run trajectory,

particularly a steady economic decline and subsequent collapse between the mid-1970s and the early 2000s (Figure 2, page 5). This decline began with the *Zaireanization* policies of Mobutu in 1974 and accelerated with the downfall of his regime in the 1990s. Put in this long-term perspective, Congo's recent performance amounts to little more than a rebound. The fundamental question is whether the current economic growth represents a genuine transformation, a turnaround of Congo's economy, or whether it is just the happy coincidence of certain

Figure 1: Recent Economic Performance

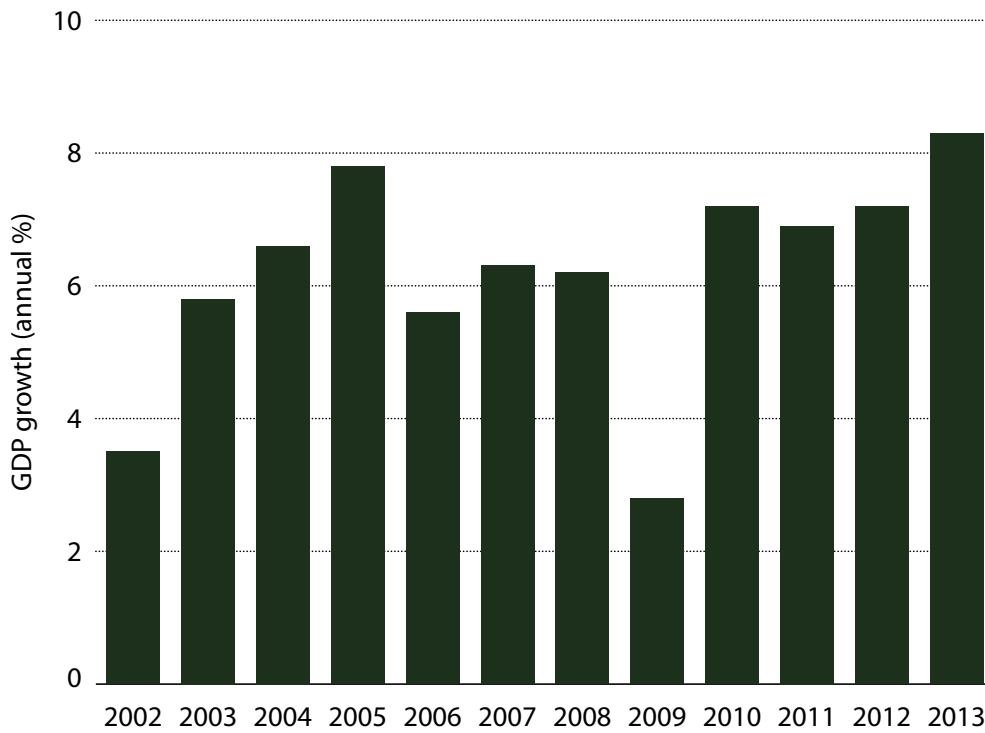
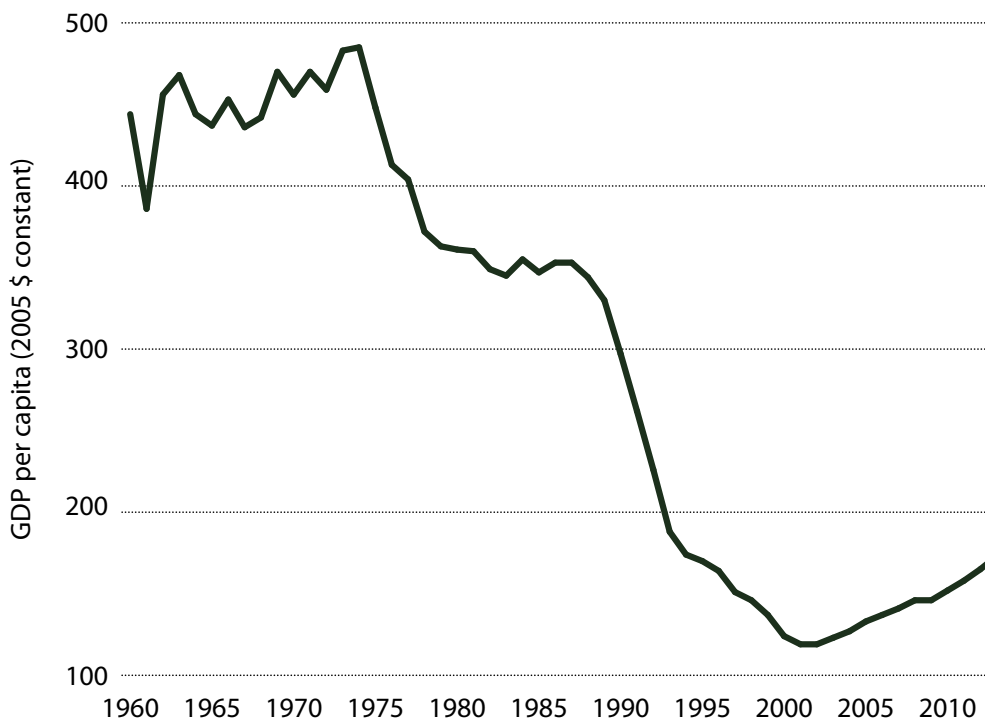


Figure 2: Long-Run Economic Performance

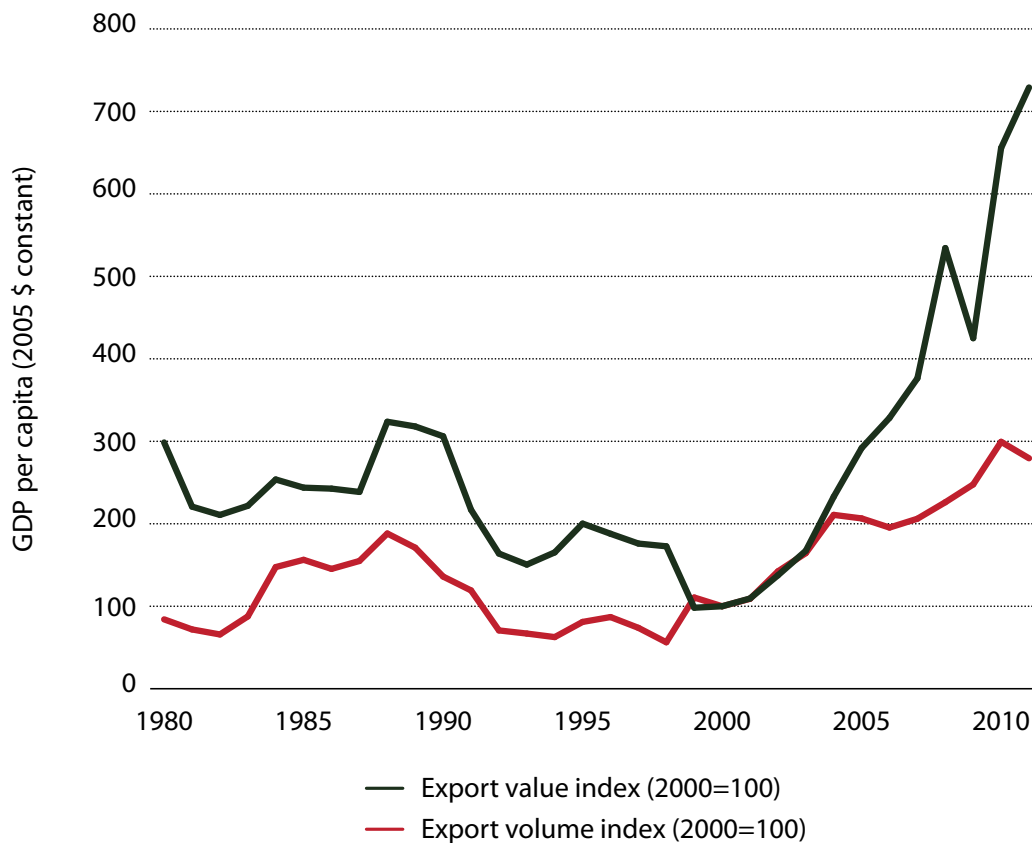


factors beyond the country’s control. The answer, unfortunately, is the latter.

What are the sources of Congo’s growth? First, Congo has benefited from significant debt

forgiveness grants and inflows of new aid which have had a short-term stimulus effect, as have the flows of Foreign Direct Investment (FDI), most of which go into the mining sector and infrastructure projects.

Figure 3: Uplifting Commodities



Official Development Assistance (ODA) was greater than US\$5bn in 2011, almost one third of GDP and more than 100 per cent of budget revenue (although none of it provides for direct budget support). The total stock of foreign debt also shrank from more than \$13bn in 2009 to \$5.5bn in 2011 as a result of debt forgiveness. It has since climbed back up to \$6.7bn but remains a very reasonable 30 per cent of GDP. As of 2012, FDI reached an unprecedented \$3bn.

Setting aid aside, the bulk of Congo's growth (and the target of most of its FDI) derives from its thriving mining sector, itself a function of the booming value of commodities. An index of the value of Congo's main exports went from being worth 100 in 2000 to exceeding 700 in 2011 (Figure 3). This boom, which has affected copper, cobalt, gold and other mineral commodities, has led to sustained investments in mining and a recovery of output. Copper production stood at nearly one million tons in 2013, about twice its previous record from the mid-1980s and a stunning contrast to the paltry figures of about 20 000 tons of merely a decade ago.

Cobalt has also broken all records with production hovering at around 100 000 tons during the last few years, more than five times its previous record. An index of export volume worth 100 in 2000 had reached 300 by 2010 (Figure 3). The combination of increased mining output and soaring commodity prices accounts for a large chunk of Congo's overall growth. Indeed, breaking down the origins of growth in 2013, industry (which includes mining and construction, another booming sector as wealthy Congolese recycle their mineral gains into real estate) grew by 12 per cent, services by 9.4 per cent and agriculture by 2.8 per cent.

Certainly, the relative return to peace in much of the country and some legal improvements (such as the mining code) have favoured this expansion. But, for the most part, Congo has merely been riding on the coat-tails of world trends. Congolese growth has more to do with Chinese manufacturing and demand for its minerals than with any domestic policy improvements. In this respect, the apparent slowdown of the Chinese economy is worrisome. This slowdown is already well reflected in price declines

across the board. Copper has lost about 20 per cent of its value since 2011. Cobalt fell abruptly in 2009 and has since stayed in the doldrums at about 30 per cent of where it stood in 2008. As for gold, it went from about \$1 800 an ounce in 2012 to \$1 300 in 2014. If prices fail to pick up they could lead to a reduction in mining profitability and activity in Congo. At any rate, they will reduce the net effects of mining expansion on the economy. Another reason for rising FDI in Congo has been the depressed interest rate environment in the US, which has increased the relative appeal of riskier investment for money managers. The changing monetary environment in the US with the tapering of bond purchases by the Federal Reserve and its upward impact on interest rates will not favour Congo.³

Congo's sizzling rate of economic growth has so far not had much of an impact on the welfare of its citizens

There is a danger that current rates of growth might lead some to assume that Congo's crisis is over. However, the external sources of Congo's growth should caution the Congolese against any complacency with respect to their economic performance. Moreover, Congo's sizzling rate of economic growth has so far not had much of an impact on the welfare of its citizens, particularly the poorest ones. According to the World Bank, 71 per cent of Congolese still live below the poverty line, a terrible indictment on 50 years of sovereignty and development objectives. Only 22 per cent of them have access to drinkable water and fewer than 10 per cent

to electricity. Fifteen per cent of Congolese children die before the age of 5.⁴ Misery is still visible everywhere and is particularly widespread outside Kinshasa (Bandundu, Equateur, Maniema, and the Kasais have a particularly high incidence of poverty, including malnutrition).

As this report will show, there is little doubt that the failure of economic growth to improve the lot of all Congolese is linked to the enduring predatory nature of the country's economic governance. Many Congolese sense this fundamental inequity, which feeds undercurrents of anger and leads to occasional explosions of violence. As a recent report based on focus groups around the country⁵ made clear,

'Congolese are extremely unhappy with the current state of their country. When asked their perceptions of the DRC today, nearly all participants – male and female, in rural and urban settings alike – express negative views. They feel that the country is barely functioning and are frustrated by a lack of development and poor quality of life. Their awareness of Congo's great economic potential compounds this frustration into outrage that average citizens do not benefit from its natural wealth. When asked if the DRC was moving in a positive or negative direction, nearly all participants respond that the country is moving in the wrong direction.'

This is not to deny that there are reformers among Congo's elite, for they certainly exist, even in government. It is to stress, however, that, despite changes at the margins the overall Congolese system remains dictated by a logic of patrimonial predation and informal redistribution.

Economic Governance and the Resilience of Predation

The use of state authority for the private appropriation, accumulation and redistribution of public resources remains the fundamental problem for economic governance and development in Congo, and conditions most other issues including the behavior of Congolese at every level of society. Altogether, as this section illustrates, these practices cost the state

– and the Congolese people – an estimated \$4bn in foregone revenue per year, which is grossly equivalent to 100 per cent of domestic government revenue and 20 per cent of GDP. Two areas of economic governance are most prone to such predation: the mining industry and the implementation of the budget.

Mining: Undervaluations and Leakages

Mining is the engine of Congo's economy. The total estimated value of mining output in 2013 was about \$10.2bn, or more than 50 per cent of GDP. Yet mining's contribution to the national budget that same year was a meager \$580m, 5.7 per cent of the sector's total value, and a mere 15.4 per cent of government revenue.⁶ This low rate of effective taxation can be explained in large part by the tendency of the government to sell its mineral assets at deeply discounted prices to apparent front companies, and to the leakage of much of this revenue from the sector before it reaches the Treasury. Together, these two sets of practices cost the state an estimated \$2bn per year.

The Congolese state is in the habit of selling mining rights to relatively unknown foreign companies

The first problem lies in the area of the contracting of mining rights. The Congolese state is in the habit of selling mining rights to relatively unknown foreign companies, some of which are registered in the British Virgin Islands with hidden ownership structures, at a significant loss to the state. These companies – which are not known to actually be involved in mining – then subsequently resell the rights to larger, legitimate mining companies at great benefit to themselves and their owners. In 2013, the Africa Progress Panel estimated the losses from such practices at about \$1.36bn in 2010–2012.⁷ Earlier, British Member of Parliament Eric Joyce had identified a loss of \$5.5bn over 2008–2011 from similar deals.⁸ Recent information suggests that these bottom-basement bargain sales are ongoing and reach beyond base metals. In January 2014 Global Witness⁹ revealed that in 2012 the Congolese government purchased oil rights from Nesserger, a company owned by President Kabila's friend Dan Gertler, to which it had sold these rights in 2006. The 2012 contract was not published, despite commitments by the Congolese government to do so. Global Witness suggests that the rights were sold to Nesserger for \$500 000 in 2006 and that they were bought back in

2012 for at least \$150 million or 300 times the initial amount. Dan Gertler's parent company, Fleurette, claims that no Congolese politician was involved in the deal or has any interest in Nesserger, but such statements have little value coming from a company that hides its ownership structure.

Altogether the losses to the state of such undervaluations probably amount to \$1–1.5bn a year. But there are in fact further negative consequences beyond the actual losses. The lack of transparency in these deals led the IMF to suspend its program in Congo in 2012, which has yet to be reinstated. Prime Minister Matata Ponyo has spent considerable time and energy trying to get the IMF to agree to a new program over the last year, partly in order to help unleash funds from other donors which are conditional upon IMF approval. Yet these costs to the regime (accrued mainly by the government for official projects and programs) are probably compensated by the benefits that these deals bring to the ruling elite (accrued mainly by individuals).

The second problem with mining governance is the failure of much of the revenue from the sector's operations to actually reach the Treasury. The following estimation is based on data presented in Table 1 (page 9), which relies on multiple sources including the Extractive Industries Transparency Initiative,¹⁰

The losses to the state of undervaluations in the selling of mining rights probably amount to \$1–1.5bn a year

the Ministry of Finance, world mineral prices, government output figures and information from the Economist Intelligence Unit. The top half of Table 1 provides estimates of the value of mining output for 2011 (the year covered by the latest EITI report) and 2013 (the latest year with available data). As can be seen the total value of mining output was \$8.2bn in 2011 and \$10.2bn in 2013. Although copper and cobalt output increased significantly over the period, lower prices reduced the increase in total value.

Table 1: Estimates of Government Revenue and Leakages from Mining

	2011			2013		
	Output	Price	Total	Output	Price	Total
Copper (tonnes)	499 000	\$8 811	\$4.4bn	942 000	\$7 645	\$7.2bn
Cobalt (tonnes)	99 475	\$35 000	\$3.5bn	92 903	\$28 000	\$2.6bn
Diamond (carats)	19m	misc.	\$335m	17m	misc.	\$258m [#]
Gold (kilograms)	286	\$1 571/ounce	\$16m	2 768	\$1 400/ounce	\$136m ^l
Total			\$8.2bn			\$10.2bn
Payments to the state			\$0.95bn [*] (11.6%)			1.18bn [?]
Of which to treasury			\$0.47bn [*] (5.7%)			0.58bn [^]
Of which to Katanga			\$0.1bn ⁺			\$0.1bn [?]
Of which kept by collecting agencies or unaccounted for by them			\$0.38bn			0.5bn [?]

^{*} as stated in 2011 EITI report.

⁺ consistent with Katanga budget execution figures.

[#] extrapolated from 2012 EIU figure (2013 output about 3m carats below 2012, however, so this is generous estimate).

^l formal production only. Some \$400m artisanal production smuggled and missing.

[^] actual figure from Ministry of Finance.

The lower half of the table estimates the value of payments to the state. It starts from the figures given by the EITI¹¹ report for 2011 (left side) and then makes some projections based on similar assumptions for 2013 (right side). In 2011, according to EITI (which matches payments from some 200 mining companies with declared receipts by the state and its agencies), total payments to the state by mining companies (*redevances*, taxes, bonuses, fees, dividends, rents, etc.) amounted to nearly \$0.95bn, which is 11.6 per cent of the total value of mining output. Yet only about half of that (\$0.47bn) made it all the way to the Treasury, while \$0.1bn was kept by the Katanga provincial government. This leaves an amount of \$0.38bn unaccounted for.

What happened to this \$0.38bn (three hundred and eighty million dollars)? It never made it past the collection agencies and public enterprises like Gécamines. Gécamines is a parastatal that used to be the monopoly producer of copper and cobalt in Katanga before the sector was widely opened to private companies after the adoption of the 2002 mining code. Now, Gécamines acts in multiple capacities: it sells mining rights, has taken shares in some 30 joint mining ventures, and also collects payments of multiple fees and taxes from mining

operators. SOKIMO acts in a similar capacity for the gold sector. Other collecting bodies include the custom agency (DGDA), the income tax agency (DGI) and the agency collecting other taxes (DGRAD). The DGDA, DGI, and DGRAD typically keep 5–10 per cent of the funds they raise for their own functioning costs, but the amounts involved here go well beyond these commissions. Thus, these state agencies collected funds but did not transfer them to the Treasury. It is anyone's guess what happened to them. The fact that Gécamines claims insolvency (and has recently failed to pay its employees) suggests that these funds were not properly allocated to its functioning expenses. If we do a similar exercise for 2013 (right side of Table 1), we can estimate that the total amount accruing to parastatals and collection agencies – but *not* to the Treasury – probably hovered around \$0.5bn that year.

The potential loss to the national budget is significant. These \$0.5bn represent more than 13 per cent of government expenditure (\$3.78bn for 2013 converted at \$1:FC920¹²) and nearly 3 per cent of GDP. The amount that does accrue to the Treasury is a mere 15.4 per cent of government revenue. Had the payments to parastatals and collection agencies not gone missing from the budget, the total

contribution of mining to government revenue would have been about 25 per cent. The data thus suggest that the Congolese state might be losing half a billion dollars a year in revenue to mining leakages. Given the dependence of many pro-poor programs and governance reform initiatives on funding by the government, such losses, year in year out, have catastrophic consequences. Compounded with the losses from undervaluation of mining rights, it is potentially \$2bn that leaks out of government revenue each year.

Budget Execution: More Leakages and Diversions

Outside the mining sector there is also a broad tendency for state agents to use their public authority to extract resources from citizens without transferring them to the Treasury in their entirety. The result is a paradoxical heavy effective taxation on the Congolese with a shortage of public revenue. In addition, government spending often significantly deviates from budgeted allocations with the effect that some branches of the state benefit at the expense of others.

At about 22 per cent of GDP, government revenue seems reasonable. However, the actual rate of revenue extraction from society and the economy is likely to be larger than the budget indicates because the income from many taxes, fees, duties and other penalties never makes it into the government's books, providing instead for the income of the multitude of state agents in charge of their collection. First, there is the widespread practice of 'off-budget financing' by some government services, agencies and public enterprises which keep the revenues they collect for their own functioning costs. Many of these off-budget revenues are based on informal practices rather than explicit legal provisions. In the import and export of goods sector, for example, there are no fewer than 116 different taxes, fees, licenses and other charges, 69 of which do not enter the government budget.¹³

Second, there is a widespread tendency for those collecting revenue to retain some of it for their personal needs. Anecdotal evidence provides clues as to the scope of such leakages. In a recent study, the *Observatoire de la Dépense Publique* (ODEP),¹⁴ a Congolese NGO, estimated the value of lost revenue in the context of Kinshasa's central market which has some 15 000 traders. Based on the

value and periodicity of taxes, ODEP estimated that annual government revenue from the market should amount to about \$2.1m. However, payment receipts produced by traders added up to \$1.5m, suggesting a loss of \$600 000 in collection. Moreover, the actual revenues registered in Treasury accounts from the market amounted to only \$280 000, which indicates that another \$1.2m of collected revenue disappeared before reaching the Treasury.

The Kinshasa market, with a tax realisation rate of 13 per cent, might be an extreme case. In a 2007 paper, A. Batamba Balembu estimated the loss from such corrupt practices at 55 per cent of potential budget revenue.¹⁵ If we generalise this estimate, which is quite plausible as it was based on decent methods and the general impression in Kinshasa is that corruption has worsened, it could imply that up to \$2bn in tax and fee revenue extracted from Congolese citizens and companies never makes it to state coffers. This amount is largely similar to the total amount of wages in the budget, and would imply that state agents on average manage to double their income through corrupt practices. If added to the earlier estimates of leakages from the mining sector, total annual losses for the state might reach \$4bn.

Government spending often significantly deviates from budgeted allocations with the effect that some branches of the state benefit at the expense of others

Third, there is also a tendency for state agents to privately extract resources from citizens, without any tax justification, simply because positions of authority are understood to be opportunities for private appropriation. Thus, public school teachers and university professors demand payments for grades. Municipal employees do not deliver birth certificates without a bribe. Judges rule in favour of the best-paying party. Police stand at intersections preying on drivers. The list goes on. These are not isolated instances of corruption but the manifestations of a

broad, nation-wide system of resource extraction, with each actor along the way expected to return a share of his/her earnings to the person above in the hierarchy – a system the Congolese refer to as *rapportage*.¹⁶ Thus, it is the entire state apparatus which is constructed and understood as an enterprise of extraction, not as a tool of public policy or collective action.

Despite a decade of attempts at public sector reform the Congolese state remains broadly dysfunctional

The expenditure side of the budget equation appears equally problematic. In theory, there is a very cumbersome expenditure chain that involves some 20 steps for each expense to be approved, which is meant to guarantee transparency and oversight. In reality, however, actual government spending differs significantly from budgeted spending. In 2011 for example (but other years are similar), total actual expenditures disbursed by the government – \$3.8bn – bore limited resemblance to the expenditures approved in the budget because of the widespread use of emergency expenditures, which were estimated at 32.6 per cent of total spending, while another 14 per cent was ‘managed outside the chain’, that is, without much scrutiny and with little relation to

budgetary allocations. Altogether, therefore, a total of 46.6 per cent of actual government spending, representing the actions of thousands of civil servants, took place ‘outside of regular expenditure controls and procedures’.¹⁷

As one would imagine, these reallocations are not random or neutral. Compared to budgeted amounts, ex-post execution figures show a significant redistribution of government spending in favour of certain ministries and state agencies and against other ones, which end up all but asphyxiated and unable to perform their functions. In 2011, the ratio of payments over appropriation was 289 per cent for the Presidency, 248 per cent for the Ministry of Communication and Media (of government spokesman Lambert Mendé), 207 per cent for the Ministry of Transport and Communications, 179 per cent for the Government Secretariat, 167 per cent for the Prime Minister and 113 per cent for national defence. These orders of magnitude are consistent through the years.¹⁸ In contrast, ending up well below appropriations were the budgets of the Ministry of Education (65 per cent), Health (59 per cent), Agriculture (33 per cent), Energy (24 per cent), and Infrastructure and Public Works (9 per cent). Moreover, transfers to provinces amounted to no more than 42 per cent of their constitutionally mandated level, despite some creative accounting. Altogether, ‘pro-poor’ expenditures reached 33 per cent of their budgeted level, illustrating the toll such reallocations can take on the welfare of the most vulnerable.

Consequences

The first and most obvious consequence of these practices is the weakness of overall state capacity and the difficulties for administration and policy implementation. Little can be expected in terms of effective governance from institutions and resources that have been hijacked for private benefit. Despite a decade of attempts at public sector reform, multiple campaigns against corruption, and new laws for public market oversight and public finances, the Congolese state remains broadly dysfunctional. As of 2014, Congo is still 47th out of 52 African countries in the Mo Ibrahim Index of African Governance¹⁹ with a score of 34.1 out of 100. It is 183rd out of 189

countries in the World Bank’s Ease of Doing Business Index,²⁰ and it ranks 154th out of 177 (in the third percentile) in the Corruption Perception Index of Transparency International.²¹ In other words, the instrumentalisation of the state for private appropriation undermines its capacity to function as a vector of development.

Not only is poor governance a by-product of predation, but it can also be a direct goal of it, particularly with regard to the implementation of reforms which the government may have agreed to with donors but which it is not actually eager to promote. The under-allocation of budgetary funds

to some agencies and ministries may indeed reflect a desire to bypass commitments to donors and stifle specific policy initiatives. Thus, the failure in each budget since 2007 to transfer sufficient funds to provinces and local territorial entities no doubt reflects the government's lack of commitment to decentralisation. Similarly, the systematic underfunding of the Independent National Electoral Commission (CENI) probably betrays the government's aversion to electoral democracy. Other examples of financially asphyxiated agencies include the Observatory of the Professional Ethical Code (OCEP), the public markets supervision authority (ARMP), which is supposed to guarantee that government contracts follow specific bidding procedures, the Inter-ministerial Commission for Leadership of the Public Administration Reform (CIPRAP), deemed 'effectively moribund' by Williams and Ghonda,²² the *Cour des Comptes* which, despite UNDP funding, functions at about 30 per cent of budget, the Committee for the Reform of Public Finances (COREF), the General Inspectorate of Finance, and more, all of which seem associated with reforms and policies meant to improve governance, but whose effectiveness is seriously impaired by their underfunding. Hence, the specific spending policies of the Congolese government result in the creation of zombie institutions, legally alive but fiscally dead, starved of resources by the prevarications of individuals in charge of government and administration.

The specific spending policies of the Congolese government result in the creation of zombie institutions

Beyond what may be wilful attempts at curtailing some institutions, there is no doubt that the Congolese government undermines its own autonomy by starving itself of funds. Approximately half of the \$4bn in actual government revenue goes to the payment of salaries and other bonuses (*primes*). Much of the rest goes to the functioning costs of the administration, transfers to provinces, etc. Very little is left for public investments, which are largely financed by donors. Yet, if the above estimations

are right, another \$4bn is lost to revenue leakages every year, more than the average annual net inflows of official development assistance over the last ten years. It is not hard to imagine how much more the Congolese government could have achieved in terms of infrastructure, energy, agriculture or other development programs had these resources been better harnessed. It would also have been able to reach a significant measure of independence from donors.

It is not hard to imagine how much more the Congolese government could have achieved had resources been better harnessed

Although it is harder to document, state predation also probably raises the extent of inequality in the country, favouring those with access to state positions and submitting others to punishing extraction, thereby increasing the gap among them. Gini coefficients are not available for Congo, yet anecdotal evidence from the wealth of cars and residences in the Gombe or Ngaliema districts of Kinshasa as compared to other communes, or between the lifestyles of some public officials and regular citizens, suggests an increase in politically-mediated income inequality.

Last but not least, the manner in which people cope with the daily arbitrariness and uncertainty brought about by Congo's dysfunctional governance might further undermine the country's development prospects. For many people, the most rational strategy is to find a way to participate in the ongoing predation rather than being only on the receiving end of it. If one cannot get a civil service, police or military job (even without pay as the position pays for itself), then it is important to find a patron who has one so as to benefit from his/her redistribution. Patron-client relations require, however, a certain amount of trust as they involve exchanges of loyalty for resources which are distributed over time. As a result, they tend to occur largely within the same cultural community or ethnic group.

It can thus be argued that the propensity for what the Congolese call 'tribalism', or the perceived

favouring of one's ethnic kin by people in positions of authority, derives at least in part from the understanding of the state as a resource, and subsequent attempts by people to cope with the precariousness that this system creates in their lives. Such 'tribalism' does not simply set up large, established ethnic groups against one another, but tends to replicate at very local levels, fostering polarisation among communities within the same broad ethnic group for control over local state-mediated resources.²³

There is no easy way to
fix Congo's economy and
promote its development

For those who have the least access to the state, land is often the main resource left to fight over. Because land in Congo is allocated by chiefs acting as representatives of the state and not through any

Policy Recommendations

There is no easy way to fix Congo's economy and promote its development. As a matter of fact, the current situation of bad governance and economic underachievement despite growth is largely a self-reproducing equilibrium from which many actors derive benefits. When considering what could plausibly be done to launch the country on a path of shared growth and development, one must keep in mind the central role of the state in the problem. The Congolese state controls and owns much of the economy in the country, with the result that state-sponsored opportunities dwarf those of most economic alternatives for many Congolese. It is dubious that a solution can be found that would not somehow undermine or deflate the role of the state – particularly the central executive – in the economy and in social relations.

Bearing this in mind, this last section submits several ideas for discussion. Some of them, such as increased transparency, ending the impunity of office, and more genuine decentralisation, are reiterations and extensions of existing efforts. Others, such

as land reform and the abrogation of state monopolies, are less often discussed.

market mechanism, access to it falls into established patterns of predatory governance and promotes identity conflicts. This has been at the core of the multiple wars in the East at least since the early 1990s.²⁴ These conflicts are between groups who deem themselves autochthonous or 'sons of the soil' and those perceived as migrants.²⁵ It bears insisting here that the role the state plays in allocating land and its frequent failure to do so with fairness and transparency are the crucial elements in such polarisation, rather than some hypothetical natural land scarcity.

Altogether, ethnic polarisation limits the realm of exchanges, reduces social trust at the national level, and hampers collective action, even locally. Recent work by David Booth²⁶ has shown the importance of collective action in development. The distrust that comes with the suspicion that anyone with a parcel of authority favours his/her co-ethnics promotes conspiracy readings of the actions of public figures and reduces individual agency. Mostly, it empties the civic public of its substance and deflates the meaning of citizenship for the majority of Congolese.

as land reform and the abrogation of state monopolies, are less often discussed.

Enforcing Transparency

Many of the corrupt practices that occur in Congo rely on the prevailing opacity of public affairs. There has certainly been significant progress in transparency over the last few years: budgets and their execution are now published online;²⁷ mining contracts are made public;²⁸ Congo is now EITI compliant, with payments of mining companies and receipts from government agencies public up to 2011; the *Cour des Comptes*, which audits government accounts at all levels, has been revived; and the Matata government has launched the bankarisation of the salaries of about one third of the country's one million civil servants, which reduces opportunities for fraud. As a matter of fact, while Congo scored 1 per cent on the Open Budget Index in 2008, it reached 6 per cent in 2010 before improving to 18 per cent in 2012.²⁹ Although a score of 0–20 per cent still corresponds to 'scant or none' in terms of budgetary information,

the improvement nevertheless reflects progress in fiscal transparency.

Nonetheless, these advances have had only a marginal impact and state actors continue to be able to operate beyond public scrutiny in many cases. Although there are fewer and fewer instances – like the recent Nesserger case – of public contracts not being published, there is still very little oversight of those that are. Many of these contracts are very technical and they give few clues as to what actual payments might be. They also may or may not conform with the mining code, which adds a degree of uncertainty, making effective oversight difficult. In addition, there is limited follow up as to what happens to monies that are declared in contracts or in budgets. As the budgetary practices illustrated earlier suggest, one budget might be published and another implemented.

What is needed is for more influential actors – those who are wronged by the current practices – to take on the transparency battle

One possible problem is that most of these transparency initiatives are mandated by donors and their follow-up is often taken up by Congolese NGOs that focus on extractive industries or human rights. A game of cat-and-mouse ensues with donors, who have less leverage than they tend to think they do, while NGOs write reports that few people bother to read. In the end there is little buy-in from society at large or other interest groups. How can transparency grow some teeth?

What is likely needed is for more influential actors to take on the transparency battle. The ones for whom this would make sense are those who are wronged by the current practices. The interests of legitimate Congolese and international mining and oil corporations or other companies are clearly damaged by the actions of the government. They should sue, go public, and otherwise raise hell. They should challenge not just the government in Congolese courts but also the shady partners it operates with before international courts or arbitration tribunals.

In terms of budgetary opacity, there is also room for Congolese stakeholders to stand up. Civil servant associations and unions should challenge the budgetary practices that deprive them of sufficient salaries and make their work all but impossible because of a lack of basic resources for functioning costs.

Finally, opposition parties can do a much better job at playing their role. Too often they focus on issues of access to power, such as elections. They need instead to challenge the practices of those in power. An aggressive opposition is the best deterrent against impunity. Parliamentary commissions, like the Economy and Finance Commission (Ecofin), are a great place to start in challenging the government's management. In the early years of the post-transition period, these commissions were doing excellent work. Since 2009, however, parliament has been more of a rubber stamp. There is room to restore some of its bite and it behooves genuine opposition parties to do so. This might run against the short-term interests of their leaders to find advantageous accommodations with the regime, but it may be in their long-run interests (as witnessed by the 90 per cent rate of replacement of MPs in 2011 elections despite widespread fraud).

Boosting Judicial Capacity and Fighting Impunity

One of the reasons opacity endures despite the laws in place is that elites get away with it. The fact of the matter is that Congolese elites get away with murder, sometimes literally, but almost always when it comes to economic crimes. There are very few reliable sanctions to corruption, predation, and other abuses. People might be dismissed (like, in July 2014, the administrator of Gécamines) but the reasons for such dismissals could be political and these people may resurface a few months later in a different position once the dust has settled. By and large, political, administrative and economic power is exercised in Congo within a regime of impunity that makes all sorts of abuses possible.

One obvious way to fight impunity is to boost judicial capacity. The Congolese judiciary is weak and disorganised, with many courts and tribunals existing on paper only and lacking magistrates or other staff (not to mention basic resources like paper). Donors have been keenly aware of this problem for many

years and have not spared their efforts. Support has been given to the *Conseil Supérieur de la Magistrature* (CSM) to improve the autonomy of judges from the political system, and several donors have capacity-building projects for local courts.

Yet, here too, so little has been achieved. The judiciary remains squarely under the control of the executive with President Kabila appointing judges to the highest jurisdictions, who then lack independence from him. At the local level, scattered efforts have not made much of an indent into the structural weakness of the justice system. As a matter of fact, many judges refuse to be deployed to remote areas of the country, with the consequence that entire communities are deprived of justice, despite the numerous conflicts they encounter over land and access to other resources. As a result, customary justice continues to prevail locally despite its obvious weaknesses.

Who can help strengthen justice and fight back impunity? The best candidates might be those who stand to benefit from the rule of law. In England the *Magna Carta* was not brought about because outside donors asked for it, but because feudal barons demanded it. In Congo, too, business operators might have to stand up and demand a stronger judiciary system so as to promote a more secure environment for their activities. It is in their interest to do so. As with transparency, one way to proceed might be to sue the state more often when contracts are awarded to shady companies, say from the British Virgin Islands, under secret agreements. Congolese companies stand to lose from these agreements and some of them may actually have the wherewithal to put some fire under the government's feet. If courts fail to act because of a lack of means, corporations might be able to finance their activities, turning the judiciary's lack of financial autonomy to the advantage of justice. Similarly, unions might more proactively challenge the government in courts over budgetary practices, the use of emergency procedures, etc. No doubt there are risks to such a strategy, as those suing the government are likely to be harassed, but good governance does not come without sacrifices. Donors and the UN might be called upon to protect these individuals and keep their cases in the limelight.

Implementing Genuine Decentralisation

Although it carried great hopes of bringing about better and more proximate governance in the 1990s, decentralisation in Africa has been no panacea, even in the more successful cases.³⁰ Nevertheless, even when dysfunctional, decentralisation contains the seeds of better governance if only by balancing resources and authority and redistributing them away from the centre. The very existence of different and potentially competing centres of power reduces the authority of the central government and introduces elements of checks and balances within the state. In Congo, the engineers of the transition had put a lot of hope in decentralisation as a remedy to the worst excesses of the state. They have been betrayed. The Kabila regime has systematically undermined decentralisation reforms and prevented the rise of genuine political, fiscal and administrative autonomy at the local level.³¹ Provinces have managed to reach a degree of autonomy and have become significant political actors (particularly the richer ones like Bas-Congo, Katanga, and Kinshasa), but they too often reproduce the predatory ways of the central state as they extract resources without generally producing significant services in the policy areas under their responsibility.

Even when dysfunctional,
decentralisation contains the
seeds of better governance

How can the potential of decentralisation be better fulfilled in Congo? How can provincial and local entities earn enough power to obtain genuine autonomy from Kinshasa? How can they gain sufficient means, capacity and legitimacy to provide better local governance to citizens? Most likely, holding provincial and local elections is a necessary first step. The current CENI roadmap has scheduled local elections for 2015, although funding and government goodwill are uncertain. These would be the first local elections in Congo even though they were mandated by the constitution in 2006. However flawed such elections would be, and however incompetent many of the elected officials could end up being, they are

essential for legitimate and autonomous local governance and to reduce the patrimonial reach of the central state, which currently appoints all local officers. Provinces (which are also overdue for elections) have shown that even flawed elections can produce significant autonomy, despite fiscal dependence. Such gains could also reasonably be expected from local elections.

Elected officials might also help towns, communes, sectors and chiefdoms deal with another problem: a lack of financial and human resources. Although the constitution mandates that 40 per cent of national revenue be 'retroceded' to provinces and local entities, the figures have been closer to 25 per cent since 2007 in the most generous of estimations (including salaries of deconcentrated personnel and public investments in provinces; actual financial transfers are closer to 7–10 per cent). Moreover, while the constitution gives decentralised entities policy responsibility over health, education, agriculture and rural development, none of these competences or relevant personnel have so far been transferred outside of Kinshasa. Currently, provincial authorities such as mayors, sector chiefs, etc. would agree that fighting back the central government on these questions is political suicide for them, since the president can revoke governors and local officials at will. Being elected should empower these local elites to fight back for their interests. Clearly it does not guarantee that they would use these resources responsibly, but it would be a first step. They could also make use of the judiciary to demand their due from the government through legal cases. These might still be hypothetical outcomes, but they would be impossible without local elections. It behooves the Congolese, however, to make sure that these elections are free and fair.

Disengaging the State

More broadly and maybe more controversially, what is also generally needed is a disengagement of the state from the economy and society. The state in Congo is both impotent and omnipotent, failed and ubiquitous, weak and dominant. While the state does little for the Congolese, it does much to them. There can be little hope for more accountable economic governance and genuine development without a general deflation of its role.

How can this be achieved? First, it is important that the potentially violent manifestations of the state be curtailed. Thus, security sector reform (SSR), which has been ongoing since the transition, must be carried through and lead to the demobilisation of many military personnel and a drastic reduction of armed forces from the current 140 000. The fewer troops there are, the fewer opportunities for abuse and extraction of resources from citizens.

The state in Congo is both impotent
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Beyond the security sector, the reach of the state into the economy and social relations must be reduced. For example, since the 'Bakajika law' of 1966 and the land law of 1973, the Congolese state has ownership of all land, forest and mineral resources. The 2006 constitution replaced 'ownership' with 'sovereignty' but its failure to revoke the land law of 1973 has left the state largely in control of all of the country's natural resources. It grants concessions (as did the colonial state) and rights of exploitation or usage to local communities, individuals and corporations, but these actors never own the land. Such a system gives the state an unearned and unfair advantage over groups in society and introduces opportunities for control and rent extraction. Thorough land reform is needed to introduce private individual freehold ownership of land and to allocate small plots to farmers across the territory (with simultaneous support for agricultural inputs and initial limits to the sale and consolidation of parcels).

The state is also present in the regulation of human interactions at the local level to the extent that customary chiefs in local *collectivités* and chiefdoms are considered state agents. This correlates with the role of chiefs in allocating land and contributes to conflicts and ethnic polarisation. The public status of chiefs as state agents must be repealed and local authorities must derive their legitimacy from local elections. Chiefs can endure based on their own legitimacy if local communities so desire, but they must no longer be state agents. Such reform stands

to significantly reduce the scope of state intervention and promote greater agency by the Congolese themselves at the grassroots level.

Finally, economic diversification ought to be pursued in a way that reduces the relative importance of the state sector and of land. Both domestic and international economic actors need to invest in manufacturing. If the legal environment improves, low labour costs can make Congo a desirable destination for investments in labour-intensive manufacturing, particularly in border areas such as the Kivus, Ituri,

Bas-Congo and Katanga. The rise of private economic opportunities and employment in manufacturing can reduce the relative appeal of the state sector and offer the Congolese people alternative avenues for advancement. Here again Congolese entrepreneurs, acting through associations like the *Fédération des Entreprises du Congo* (FEC), can forcefully challenge central and regional governments for the establishment of propitious conditions for such investments that will lead to greater employment. The examples of Ethiopia and even Rwanda are worth a look.

Conclusion: Self-Interest and Collective Goods

With all these potential reforms, the main obstacle is agency. Who will take the first step? Who has an interest in realising these goals? Reforms are unlikely to take place if they run counter to the interests of the policy makers. In Congo, as elsewhere, relying on the altruism of rulers does not make for sound policy. The challenge lies therefore in creating conditions that make it very difficult for leaders to resist change. The impetus for reform must come from those who stand to gain from them. The above policy recommendations seek to take this agency problem into account and to identify the actors that can

promote change. Donors have insufficient leverage and mixed motives and civil society tends to be too poor and disembedded to make a sustained difference. Business leaders, civil servants, unions, political parties, entrepreneurs and the middle class broadly construed have a historical responsibility and material incentives to act. Although they might benefit in the short run from participating in unproductive rent seeking and sharing in the benefits of patrimonial predation, they (and their children) will be better off in the long run from promoting a diverse, rule-based economy with limited state engagement.

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