

**Democratic Republic of the Congo:
Technical Assistance Report-Governance
and Anti-Corruption Assessment**



DEMOCRATIC REPUBLIC OF THE CONGO

TECHNICAL ASSISTANCE REPORT—GOVERNANCE AND ANTI-CORRUPTION ASSESSMENT

May 2021

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TECHNICAL ASSISTANCE REPORT

DEMOCRATIC REPUBLIC OF THE CONGO

Governance and Anti-corruption Assessment

OCTOBER 2020

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CONTENTS

Glossary	ii
PREFACE	1
EXECUTIVE SUMMARY	2
KEY RECOMMENDATIONS	6
EVALUATION	16
I. Fiscal Governance	16
II. Central Bank Governance and Operations	47
III. Financial Sector Oversight	51
IV. Rule of Law	52
V. Market Regulation and Business Environment	56
VI. Anti-Corruption Framework	60
VII. AML/CFT	63
BOX	
1. Towards an Integrated Public Finance Reform Strategy	37
FIGURES	
1. Investments and Growth in Sub-Saharan Africa (2000-2018)	16
2. Government Revenue and Governance in Sub-Saharan Africa (2000-2018 averages)	16
3. Illustrations of Vulnerabilities in the DGI and the DGDA	24
4. Coverage for the Treasury General Account	31
5. Government Contracting Procedures by Category	32
6. Expenditure Categories According to the Normal Mode of Execution	33
TABLES	
1. Key Recommendations	6
2. Tax Expenditures in the DRC (2017)	20
3. Information to be Published on the DGI, DGDA and DGRAD websites	21
4. Urgent Measures to Improve the Processing of Complaints or Appeals	22
5. Specific Measures to Upgrade Reporting and Payment Procedures	25
6. Measures to Streamline and Normalize Interventions in Businesses	26
7. Concrete Measures to Improve the Resource Management Framework	28
8. Revenues, Net Income and Debt of Strategic SOEs in 2017 (\$ million)	43
ANNEX	
I. List of Government Entities Participating in the Diagnostic Report and Other Entities Consulted	68

GLOSSARY

AC	Board Audit Committee
AFC	Regional Technical Assistance Center in Central Africa
AML/CFT	Anti-Money Laundering and Combating Financing of Terrorism
ANAPI	Investment Promotion Agency
ARMP	Public Markets Regulatory Authority
ASYCUDA	Automated System for Customs Data
ASYMP	ASYCUDA System for Performance Measurement
BCC	Central Bank of the Congo
CdC	Court of Auditors
CEMAC	Central African Economic and Monetary Community
CENAREF	National Financial Intelligence Unit
CDF	Congolese Franc
CNCLT	Comité National de Coordination et de Lutte contre le Terrorisme International
COLUB	Comité de Lutte contre le Blanchiment
COPIREP	Comité de pilotage de la réforme des entreprises publiques
CSO	Civil society organisation
CSP	Conseil Supérieur du Portefeuille
DGDA	General Directorate of Customs and Excises
DGI	General Tax Directorate
DGRAD	General Directorate of Administrative, Judicial, Government Property and Participation
DNFBPs	Designated Non-Financial Businesses and Professions
DRC	Democratic Republic of the Congo
EITI	Extractive Industries Transparency Initiative
ETD	Territorial and Decentralized Entities
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FAD	Fiscal Affairs Department
FATF	Financial Action Task Force
FOLUCCO	Anti-Corruption Fund
FSAP	Financial Sector Assessment Program
GABAC	Action Group Against Money Laundering in Central Africa
GDP	Gross Domestic Product
Gécamines	Générale des Carrières et des Mines
GUICE	Integral Single Window for Foreign Trade

IFRS	International Financial Reporting Standards
IGF	General Inspectorate of Finance
IMF	International Monetary Fund
JV	Joint Venture
LEG	Legal Department
LOFIP	Budget and Cash Management Law
MER	Mutual Evaluation Report
MoF	Ministry of Finance
OSCEP	Observatoire de Surveillance de la Corruption et de l’Ethique Professionnelle
OHADA	Organization for the Harmonization of Business Laws in Africa
PEFA	Public Expenditure and Financial Accountability
PEP	Politically Exposed Person
PFM	Public Financial Management
PNC	Congolese National Police
PPP	Public-Private Partnership
RCCM	Trade and Property Credit Register
SNEL	Société nationale d’électricité
STR	Suspicious Transaction Report
SOE	State-Owned Enterprises
TGA	General Treasury Account
UNCAC	United Nations Convention Against Corruption
USD	United States Dollars
VAT	Value-Added Tax

PREFACE

Background and Mission

At the request of His Excellency the President of the Republic and Head of State, the Legal (LEG) and Fiscal Affairs (FAD) Departments of the IMF conducted an assessment of governance and corruption mission in Kinshasa, Democratic Republic of the Congo (DRC) from December 9 to 20, 2019 (the “mission”).¹ The objectives of the mission were to discuss with the authorities (i) a diagnostic of governance issues in the DRC; and (ii) to articulate measures to help improve governance and the fight against corruption.

The mission met with H.E. Célestin TUNDA YA KASENDE, Vice-Prime Minister and Minister of Justice, H.E. Sele YALAGHULI, Minister of Finance, Jules BONDOMBE ASSANGO, Vice Governor of the Central Bank of Congo; and several senior officials, board members and staff of government agencies, state-owned enterprises (SOEs), private sector actors, civil society organizations (CSOs), international organizations, and diplomatic missions.

The mission worked with the Technical Committee for Monitoring and Evaluation of Reforms of the Ministry of Finance, led by M. Félicien Mulenda Kahenga, National Coordinator, which provided close cooperation and helpful information. The mission would like to express its gratitude to the Technical Committee for coordinating and facilitating the mission schedule in which over 60 meetings were held with the government, the private sector and civil society.

Methodology

Consistent with its mandate, the IMF engages its members on governance issues in the context of the use of its resources, where governance and corruption have a significant effect on macroeconomic performance and are critical to meeting program objectives. The mission’s Aide-Memoire will follow the methodology set out in key IMF policy documents, particularly the IMF 2018 framework for enhanced engagement on governance.²

¹ The mission was led by Mr. A. Antonio Hyman-Bouchereau (LEG) and the team consisted of Mr. Pasquale Di Benedetta, Mr. David McDonnell, Ms. Alice French (all LEG), Mr. Patrick Petit, Mr. Anthony Ramarozatovo (all FAD) and Mr. Benoit Taiclet (FAD Consultant).

² <https://www.imf.org/en/Publications/Policy-Papers/Issues/2018/04/20/pp030918-review-of-1997-guidance-note-on-governance>

EXECUTIVE SUMMARY

Four cross-cutting issues affect the effectiveness of the economic governance framework in the DRC: institutional complexity, normative complexity, data integrity and transparency, and checks and balances. The institutional complexity is due to institutional arrangements where the mandates of the different agencies overlap or are poorly defined, paving the way for a blurring of roles and responsibilities. This manifests itself, for example, in the way the government manages public enterprises through different ministries, or in the way it manages its revenues through different tax administration agencies. Normative complexity derives from unclear legislative amendments. Low levels of transparency are associated with low audit practices, which has an impact on the quality of financial data and the quality of disclosure practices. This situation is aggravated by the limited ability to implement effective checks and balances between agencies.

Significant vulnerabilities that may contribute to corruption exist in the areas of revenue administration agencies (DGI, DGDA and DGRAD), owing to largely manual processes and a weak disciplinary process for unethical acts. The clarity and reliability of laws, rules and procedures are not always guaranteed, and the legal framework does not always provide for an appropriate balance between the rights of taxpayers and the powers of the three administrations, which leads to arbitrary decisions exercised in unclear conditions. Despite improvements at the customs administration, officials implementing the revenue administration processes and procedures misunderstand the use of electronic procedures and remain largely manual. This situation fosters direct interactions between agents and users and considerably increases the cost of taxpayers' compliance with tax obligations. Finally, human resource management executives leave little room for maneuver for key managers in the allocation of resources. Nor do they allow for the imposition of dissuasive sanctions on agents who act unethically and thus weaken the authority of those responsible. The nonexistence of a charter of rights and obligations for taxpayers exposes users to the discretionary powers of the agents of the three revenue administrations.

The exceptional complexity of the Congolese tax system creates incentives for corruption and abuse of power, harming the business environment. While the major state taxes (VAT, income tax, excise duties, customs duties) account for about 80 percent of the central government's revenues and are rather standard in nature, the non-tax revenues collected by sectoral ministries are so numerous and fragmented that a third revenue agency (DGRAD) is devoted to them. In addition, there are levies charged by nine special accounts, by hundreds of organizations in the budgetary annexes, by provinces, and by decentralized territorial entities. Therefore, the mapping of actual revenue is not yet under control and which includes several collections that are not properly formalized.

This confusion regarding fiscal legislation is reinforced by the absence of unified texts. There is no General Tax Code proper, other than a collection of texts which currently includes only the main taxes of the State. Should legal reform of the income tax be undertaken, the entire tax and non-tax

corpus that must be gathered and rewritten in order to increase transparency, first for the central government and then for all the entities collecting revenue. The tax procedure must also be unified, reviewed and codified.

The scope of the General Treasury account (TGA) remains narrow, while the remaining accounts are placed outside the TSA without proper oversight. The ban on cash payments seems to be effective. Fund transfers between the commercial banks and the central bank are monitored periodically. However, the scope of the TGA is very narrow, and the banking mechanism does not apply to considerable public resources (i.e., special accounts, assigned taxes, and the revenues of the annexed budgets). Numerous transfers of funds are transferred from the TGA to depositaries responsible for executing expenses. In December 2019, two thirds of State funds are managed outside the general Treasury account, in accounts opened in commercial banks in the place, under the name of de facto managers, some of whom are not legally authorized to handle public funds.

Although standardized, public financial management procedures in the public sector are not followed. The following steps, critical in the execution of expenditure, have worrying weaknesses:

- a) Public procurement. The effectiveness of the legal framework and of the institutions overseeing public procurement is marginal. In 2018, only 14 percent of public contracts were awarded in the form of a competitive tender. This would be mainly due to the fragmentation of the State functions (government institutions, funds and public enterprises) and would help explain the very poor performance of public investment in the DRC compared to its neighbors.
- b) Budget execution. Implementation of the expenditure chain is undermined by weak and ineffective controls on remunerations and the use of exceptional emergency spending procedures. The latter are rarely documented.
- c) Cash disbursements. There is not yet a properly structured network of treasurers and accountants in the DRC. A significant part of bank disbursements is made in the form of transfers of funds to natural or legal persons responsible for driving the final stage of the expenditure and settling the creditors of the State. These operations are carried out non-transparently, and they are rarely documented ex-post. They present a significant risk of fraud or customer poaching.

The low quality and coverage of budgetary reports and financial statements undermines accountability. The general accounts are still established in single entry accounting. Budget execution reports only cover receipts and expenditures. No consolidation has yet been carried out on the whole territory and the public sector. In the absence of good quality budget and financial reporting, the administration cannot establish budgetary transparency conducive to good governance, the accountability of managers and the fight against corruption.

Oversight mechanisms for state-owned enterprises are weak, with poor financial reporting and lack clearly defined oversight responsibilities. The State has centralized the management of public enterprises in the hands of the portfolio ministry and has created two consultative entities to conduct financial supervision and to implement public enterprises reforms. However, practice shows that reforms are largely determined by senior management, without the involvement of their teams. In addition, the quality of financial information remains poor, disclosures are minimal and, overall, it is unclear which agency has the authority to demand reliable and timely financial data from public enterprises. This issue is particularly important in the mining sector. For example, Gécamines (*Générale des Carrières et des Mines*) engages an external auditor but only publishes the opinion of the auditor and it is not clear that the government is responsible for responding to opinions.

The Central Bank of Congo (BCC) continues to take measures to follow up on the weaknesses in terms of financial sector supervision that the IMF's assessment of the Basel Principle 2013 had identified. Regarding monitoring, a process to adopt risk-based monitoring has started, but full implementation in both supervisory and financial institutions has not finished yet. With the help of AFRITAC Central, methodological guidelines on on-site risks and off-site training on monitoring and evaluation processes are being developed. Regarding prudential regulations, standards on corporate governance, transactions with related parties, internal controls and risk management for banks are being adopted. It should be noted that the IFRS (International Financial Reporting Standards) have not yet been adopted, which is needed to guarantee better quality of financial information.³

The judiciary faces many challenges in terms of resources, capacity and independence which undermine its ability to address corruption effectively. All stakeholders, including government officials, interviewed by the IMF mission said that there was very little confidence in the judiciary in the DRC and that parties to civil and commercial disputes do everything in their power (negotiations, out-of-court settlements, etc.) to avoid bringing a case before the formal judicial process. The authorities themselves acknowledge an underfunding of the justice system. This results in inadequate salaries for magistrates and judges, insufficient resources and infrastructure and a shortage of magistrates/judges at all levels to deal with the workload. The situation is further exacerbated by the fact that when official court decisions are made, few are published.

Linked to weaknesses in the justice system, the DRC suffers from serious problems in the execution of commercial contracts, which seriously hamper the business environment in the country. Resolving contractual disputes is problematic in the DRC as the current judicial process is not reliable. There is a perception that the justice system is fueled by corruption and can be manipulated.

³ IFRS has been postponed various times due to several reasons; and the new dates for IFRS 9 adoption and full transition to IFRS is January 2020 and 2021.

The process of registering real estate in the DRC is laborious and fraught with pitfalls.

Expensive, time-consuming and inefficient processes are among the main areas of concern. Newly issued land documents are kept only on paper, which increases the risk of losing or misplacing documents. Overall, the DRC has no reliable system to enforce property and contractual rights and resolve disputes.

Despite some reform progress in recent years, private sectors still face many governance challenges.

The government has taken steps in recent years to liberalize the country's trade and investment regimes (e.g., the introduction of the one-stop shop). Excessive discretionary application of regulations, however, is still pervasive combined with complex and unnecessary regulation and can encourage rent-seeking and create unequal conditions for businesses. The complexity and volume of tariffs, in addition to sectoral and provincial requirements, give rise to uneven and discretionary application of regulations. The complex tax and customs systems leads to abusive application of procedures or unfair advantages for businesses with political connections.

The anti-corruption framework in the DRC is disjointed and lacks several key elements.

Although the Observatory for Monitoring Corruption and Professional Ethics (OSCEP) seeks to raise awareness of corruption, it has no investigative or enforcement powers and suffers from a general lack of resources. In this regard, the country does not have an independent anti-corruption agency with the power to develop and implement specific measures for the prevention of corruption. The establishment of such an agency is an obligation of the signatories of the United Nations Convention against Corruption (UNCAC), to which the DRC acceded in 2010. In addition, the DRC has not initiated the first cycle of the mechanism of review of the UNCAC. The Constitution prohibits law enforcement agencies to investigate and prosecute parliamentarians. The asset declaration regime provided by Article 99 of the Constitution of the DRC is not implemented.

Overall, the AML/CFT regime presents significant deficiencies and is not compliant with the 2012 FATF standards. Corruption is one of the main predicate crimes for money laundering in the DRC. The DRC is particularly exposed to ML risks linked to the integration of proceeds from corruption generated by senior public officials into its financial system, often laundered domestically through the real estate sector and abroad as revealed by several cases reflected by prosecutorial actions initiated by foreign authorities. The National Financial Intelligence Unit (CENAREF) only received few Suspicious Transaction Reports (STRs), with only one resulting in prosecution, which stands in stark contrast to the country's risk profile. The legal AML/CFT framework does not sufficiently cover all financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) in the DRC. Some institutions operate entirely outside of AML/CFT requirements promulgated by the Central Bank, such as the insurance sector, electronic money services businesses and financial services provided by the Postal Service. Professions such as lawyers are not adequately covered.

KEY RECOMMENDATIONS

Table 1. DRC: Key Recommendations

	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
Public finance	<ul style="list-style-type: none"> The tax system is complex and opaque. The central government budget is unreliable, particularly revenue projections. 	<ul style="list-style-type: none"> Codify all central levies in a General Tax Code, including all non-tax revenue. Adopt the decrees necessary to relaunch the work to assess the 2020 tax expenditure assessment for 2018. Rationalize non-tax revenues in order to reduce their number to the strict minimum by the end of 2023. Rationalization of excise taxes. Reform of the derogatory regimes (tax exemptions). Launch a working group to oversee the development of provincial taxation and ETDs to develop an exhaustive code of levies from these governments. 	<p>Immediately</p> <p>Immediately and over the next three years (2020-2023)</p> <p>Immediately</p> <p>Gradual rationalization in the 2020 to 2023 budgets</p> <p>End-2021</p> <p>Immediately</p>

Topics	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
		<ul style="list-style-type: none"> Conduct a review of the special accounts, eliminate those that duplicate ministerial functions and entrust the collections of the remaining accounts to the tax agencies in place by the end of 2020. Complete inventory of organizations with annexed budgets and supervise their revenue practices. Eliminate the strategic partnership regime for value chains, as well as all conventions, approvals, agreements, letters or other that include tax exemptions, except in the codes currently in place. Conduct the census and unification of payroll and public service files.⁴ 	<p>Immediately, aiming to propose a more restrictive framework by the end of 2023</p> <p>Over 2020-2023</p> <p>End-2021</p> <p>Immediately</p>
Revenue collection	<ul style="list-style-type: none"> The tax and customs legal processes are unreliable, inconsistent and arbitrary. The revenue administration procedures remain largely manual. Revenue management is inefficient and control mechanisms are weak. 	<ul style="list-style-type: none"> Implement the short-term measures proposed by the mission (see Tables [3], [4], [5] and [7]). 	Immediately

⁴ This reform requires the mobilization of all services under the authority of the public service and the development of a single file and payroll management system.

Topics	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
		<ul style="list-style-type: none"> Develop a strategy to digitize the main procedures, modernize HR management, and strengthen internal control and monitoring. 	End-2021
Public financial management	<ul style="list-style-type: none"> Public financial management procedures are not standardized across the public sector. Legal and institutional framework for public procurement is rendered ineffective by the fragmentation of the State (<i>i.e.</i>, public institutions, funds and public enterprises). Weak and ineffective controls on budget execution. Budget and financial reporting are lacking and non-transparent. 	<ul style="list-style-type: none"> Extend the coverage of the TGA to all central government operations by: <ul style="list-style-type: none"> Funneling central and local revenue, as well as any parafiscal tax collected by a third party into the TGA open at the central bank. Securing critical liquidity on sequestered BCC sub-accounts reserved for these operations (<i>i.e.</i> VAT refunds, provisions for risks and precautionary cash to ensure the continuity of essential public services). Operating the extended TGA under the current conditions. Carry out the accounting reform to professionalize treasury and accounting functions.⁵ 	<p>Over 2020-2023</p> <p>All parafiscal taxes in the TGA by 2021</p> <p>All local revenue and public corporation cash in the TGA by 2023</p> <p>Sequester accounts ready by end 2021</p> <p>Immediately and continuous</p>

⁵ It is a question of setting up a network of public treasurer-accountants responsible for handling the money in all integrity. These agents will be placed under a specific pecuniary liability regime. This network should also constitute double-entry accounting, centralized according to new procedures under the authority of a central Treasury agency.

Topics	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
		<ul style="list-style-type: none"> Restore normal expenditure procedures.⁶ 	Starting immediately. Legal framework for Treasury functions ready in 2020 capacity reinforcement over 2020-2023
Extractive sector	<ul style="list-style-type: none"> Lack of transparency and accountability in the extractive industries, as well as weak regulation and rule of law. Lack of transparency in the rules regarding revenue projections, collection and sharing. Revenue projections from the mining sector are unreliable. 	<ul style="list-style-type: none"> Create a beneficial ownership registry. Ensure full consultation of any decree defining beneficial ownership. Ensure disclosure requirements on joint venture contracts and revenue projections. 	Immediately and over 2020-2021 Immediate and ongoing 2021
SOEs	<ul style="list-style-type: none"> Governance of SOEs is weak and ineffective. Control structure of SOEs is not transparent. The information on the financial performance of individual SOEs and the portfolio as a whole is not publicly available. 	<ul style="list-style-type: none"> Assess rationale for state ownership. Introduce accountability triggers for SOE performance contracts. Follow up on auditors qualified opinion. Develop a monitoring system for public policy obligations. 	Immediately and over 2020-2021 Immediately and over 2020-2021 Immediate and over 2020-2021 End-2021

⁶ It is a question of applying and generalizing common law procedures to secure expenditure and control budget execution. The expenses that can follow a specific procedure are those of debt and remuneration. Emergency spending should not exceed spending excluding debt and pay.

Topics	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
		<ul style="list-style-type: none"> • Invigorate the functions of the State Auditor on budget allocation. • Assess the need for additional magistrates to support the State Auditor mandate. • Identify and raise the bar of corporate governance for the strategically important SOEs. • Publication of financial statements of SOEs. • <i>Conseil Supérieur du Portefeuille (CSP)</i> to provide timely annual aggregate reporting for the SOE Portfolio. • Comprehensive publication of mining, oil, and gas contracts, in particular of contracts involving transactions between state-owned entities and private companies or between the latter and the Congolese state directly. • Legally expand the perimeter of the Ministry of Portfolio oversight to include indirect state participations. 	<p>End-2021</p> <p>End-2021</p> <p>End-2021</p> <p>Immediately</p> <p>End of the next financial year</p> <p>Immediately and ongoing</p> <p>End-2021</p>

Topics	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
Rule of Law	<ul style="list-style-type: none"> Meagre salaries of magistrates and judges create a clear opportunity to seek, or accept, bribes from parties to supplement insufficient salary. Lack of accountability and oversight of magistrates and judges. The property registry is unreliable and susceptible to abuse and manipulation. 	<ul style="list-style-type: none"> Establish a publicly accessible central repository of updated and laws and regulations. 	Immediately
		<ul style="list-style-type: none"> Create a digital property register to address the loss or falsification of property documents. 	Commence immediately and continue building up the digital register over the next 12 to 18 months
		<ul style="list-style-type: none"> Publish all court decisions. 	Immediately
		<ul style="list-style-type: none"> Conduct proper investigations of and impose actual sanctions on magistrates/judges who abuse office for personal gain. 	Immediately
		<ul style="list-style-type: none"> Publicize the fact of investigations and sanctions of magistrates/judges. 	Immediately
Anti-corruption framework	<ul style="list-style-type: none"> Lack of a centralized, coherent anti-corruption strategy and investigation/enforcement framework. Mechanisms and incentives for implementing the DRC's anti-corruption laws are weak. Law enforcement and anti-corruption institutions lack the capacity to act 	<ul style="list-style-type: none"> Engage in the first cycle of the UNCAC review mechanism.⁷ 	Enact legislation by end-2021
			Commence the process immediately with Mauritius and Vietnam (the reviewing countries for

⁷ Based on international obligations under the UNCAC, the DRC needs to reengage with the United Nations Office on Drugs and Crime (UNODC) to continue the UNCAC review mechanism.

Topics	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
	<p>independently of political interference and lack the required resources.</p> <ul style="list-style-type: none"> Absence of clear, effective asset declaration regime. 	<ul style="list-style-type: none"> Criminalize acts of corruption in line with the United Nations Convention Against Corruption. Establish and operationalize an independent anti-corruption agency. Abolish the immunity for Parliamentarians and the approval process needed to lift such immunity (National Assembly/Senate), to enable the Public Prosecutor to carry out its work. Enact a robust asset declaration law – in order to give effect to Article 99 of the DRC constitution.⁸ Confiscate proceeds of crime and assets of equivalent value, especially with the prosecution authorities in their investigations, focusing on the identification, location and tracing of existing asset values associated with an offence. 	<p>Review Cycle I)</p> <p>Mid-2021</p> <p>Immediately</p> <p>End-2020</p> <p>Immediately</p>

⁸ Further, the obligation to disclose assets should extend beyond the current very limited remit of Article 99, which covers only the President of the DRC and members of government. In cases of non-compliance, the country must enforce the sanctions that are envisaged by the constitution.

Topics	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
Market regulation & business environment	<ul style="list-style-type: none"> • Opaque and burdensome regulations and red tape with respect to business processes • Multiplicity of taxes and customs levies make for an unfavorable business environment 	<ul style="list-style-type: none"> • Ensure full operationalization and sustainability of the guichet unique and for bureaus/antennas to become financially autonomous. 	End 2021
		<ul style="list-style-type: none"> • Create a central registry of collaterals across all banking sector. 	End 2021
		<ul style="list-style-type: none"> • Create a Companies Registry database linked with business registration platform where companies will file annual accounts and the data maintained in a useable format. 	End-2021
		<ul style="list-style-type: none"> • Implementing ASYCUDA World in the electronic single window involving all stakeholders. 	Early 2022
Financial Sector Oversight	<ul style="list-style-type: none"> • Low capacity and lack of resources of the supervisor. • Weak corrective action powers. • Significant weaknesses in accounting and auditing practices 	<ul style="list-style-type: none"> • Implement upgraded regulations on banks' governance, internal controls and risk management. 	Immediately
		<ul style="list-style-type: none"> • Continue to work on adoption of risk based supervisory processes and practices. 	Immediately
		<ul style="list-style-type: none"> • Address corrective action disclosure and powers. 	Immediately
		<ul style="list-style-type: none"> • Continue working with AFC to improve implementation of licensing requirements. 	Ongoing

Topics	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
AML	<ul style="list-style-type: none"> Weak law enforcement. Weak enforcement of AML legislation regarding proceeds generated from embezzlement of public funds by senior public officials. CRF lacks the resources and expertise required to discharge its functions effectively. Informal economy, prevalent use of cash, weak level of financial inclusion and the ineffectiveness of legal and regulatory framework including for DNFBPs and NPOs. 	<ul style="list-style-type: none"> Amend the AML/CFT Law and related regulations to ensure compliance with the FATF standard.⁹ 	Immediately
		<ul style="list-style-type: none"> Implement a comprehensive asset declaration framework to strengthen the effectiveness of PEP measures. 	2021-2022
		<ul style="list-style-type: none"> Strengthen the CRF with the resources and independence to carry out its mission. 	2021-2022
		<ul style="list-style-type: none"> Strengthen the supervision of financial institutions by further developing risk-based supervision, in particular on banks. 	2021-2022
		<ul style="list-style-type: none"> Issue guidance on AML/CFT recommendations and encourage banks to file suspicious activity reports (including on money laundering typologies related to the extractive sector). 	Immediately

⁹ Among other measures, it is critical to strengthen due diligence requirements on domestic PEPs across financial institutions and DNFBPs, and to ensure that the legal framework for effective supervision of these measures is in place.

Topics	Key Governance Vulnerabilities	Recommendations (Priority in Bold)	Due Date
		<ul style="list-style-type: none"> Revise the legal framework applicable to legal persons and arrangements in line with the FATF standard. Implement a mechanism to ensure that, at a minimum, competent authorities can obtain adequate, accurate and current beneficial ownership information on legal persons and arrangements, in a timely manner. Define a penal policy oriented at suppressing ML and its underlying predicate crimes, supported by parallel financial investigations, focusing on the main risks identified in the NRA. Develop a procedural manual for international cooperation in order to clarify processes priorities, timeframes and levels of confidentiality for MLA requests. Create within the office of the Public Prosecutor at the Court of Appeal, a dedicated unit for international cooperation to track and manage MLA requests, including those related to ML/TF. Sign bilateral agreements and formalize international cooperation with countries with which the DRC shares informal channels for information exchange, prioritizing those with heightened ML/TF risks 	<p>Immediately</p> <p>2021-2022</p> <p>During 2021-2022</p> <p>During 2021-2023</p> <p>During 2021-2023</p> <p>During 2021-2023</p>

EVALUATION

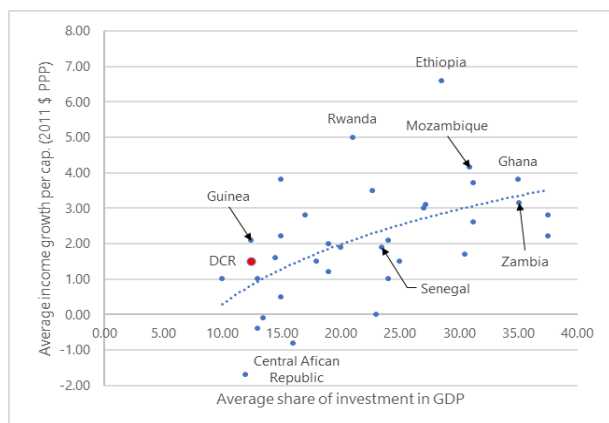
I. Fiscal governance

A. Public Financial Management

1. To achieve sustained economic development, the DRC needs considerable public and private investments in human capital (health and education) and in infrastructure. However, public investment requires significant mobilization of revenue, as well as efficient public spending. Yet with only 10 percent of GDP in tax and nontax revenue in 2018, and barely one-twentieth of this amount in domestically financed public investment, the central government of the DRC has just the minimum amount of resources it requires to operate. This makes the DRC dependent on foreign support, which by nature is volatile, and on an undeveloped private sector to finance its development. The result is one of the worst performances in Sub-Saharan Africa in terms of investment and growth (see Figure 1).

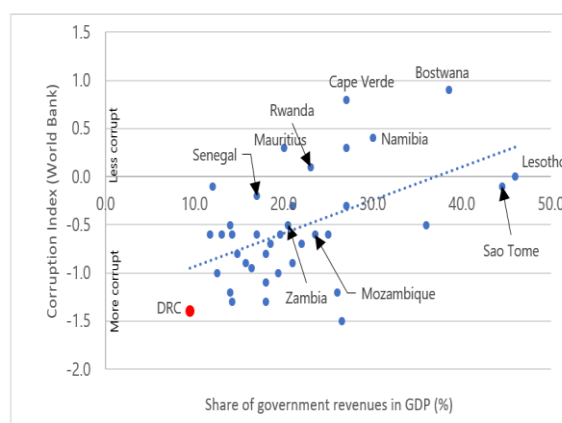
2. There is a close link between low revenue and spending inefficiency. Corruption in Sub-Saharan Africa is one of the main handicaps for revenue performance. This is particularly the case in the DRC (see Figure 2). Moreover, taxpayer compliance is generally weakened by the widespread sentiment that ultimately the tax system is of no benefit to taxpayers. In this respect, the strength and quality of public spending may play an important role in tax compliance, as the increase in social spending and infrastructure directly affects the citizens. Consequently, it is a powerful factor promoting synergies in the effort to mobilize resources.

Figure 1. Investments and Growth in Sub-Saharan Africa (2000-2018)



Source: IMF (WEO), mission calculations.

Figure 2. Government Revenue and Governance in Sub-Saharan Africa (2000-2018 averages)



Source: IMF (WEO), World Bank, mission calculations.

3. The DRC's budgetary problems are linked to three major issues of governance. First, the tax system is complex and opaque, and it must be streamlined significantly notably by the adoption of clear legislation that is complete and accessible, as well as nondiscretionary processes. Second, the inefficient management of revenue, and the weakness of control mechanisms leads to systematic waste of revenue, and hence the need to strengthen the revenue agencies. Third, the budget process lacks credibility, mainly because it is based on unrealistic revenue projections and fails to cover all government expenditures. In addition, it is fragmented and often short-circuited.

Tax System: Complex and non-Transparent

4. The tax system in the DRC is incredibly complex and there are many types of taxes with low yields. Each level of government (*i.e.*, central, provinces and the decentralized territorial entities or ETDs) collects revenue. The central government's key tax revenue is comparable to that of other countries (VAT, income taxes, excise taxes and various import duties). These account for 79 percent of central government revenue.¹⁰ However, the sectoral ministries generate a large amount of nontax revenue (classification of 246 tax categories), so that a third revenue agency – the General Directorate of Administrative and Government Property Revenue (DGRAD) – is in charge of collecting and returning the revenue to the Treasury (21 percent of central revenue, half of which is from a few royalties on natural resources). In addition, there are also up to 137 possible types of taxes/charges by the 26 provinces, as well as 38, 34 and 38 possible types of taxes/charges by cities, communes and chieftaincies, respectively.¹¹ Furthermore, there are 11 special funds, each with their own revenue source,¹² as well as roughly 800 entities of specific central government budgets (*Budgets annexes* - primarily health and education network entities), whose revenue practices are not yet indexed or codified. Finally, there are the often poorly supervised collections from public enterprises and an entire series of special types of taxes that are somewhat supervised, due for example to hiring private managers for public services in public-private partnerships (PPP), whose proceeds do not necessary go into the TGA.

5. In fact, and despite some rationalization efforts, the number of revenue instruments could increase further in the future. Although high, the number of types of taxes collected by the DGRAD was reduced sharply with the implementation of a classification that is periodically

¹⁰ These taxes are however complex in themselves. Excise taxes include, for example, no fewer than 84 lines and different rates, including taxes on soap, shampoo, toothpaste, plastic bathtubs, etc. The architecture of the income tax also lacks some conventional characteristics.

¹¹ The types of taxes of cities, communes and chieftaincies are not cumulative, so that local government consists exclusively of one of the three entities.

¹² The National Road Maintenance Fund, the Fund to Promote National Education, the Fund to Promote Industry, the Office of Small and Medium-Sized Enterprises of the Congo, the Fund to Promote Tourism, the Fund to Promote Culture, the National Forest Fund, the Airways Agency, the Mining Fund for Future Generations, the Mining Registry, and the Counterpart Fund.

tightened (the number of categories of taxes fell from 1,232 in 2000 to 246 in 2018).¹³ Nevertheless, although there is real tightening of central nontax revenue, sometimes it is artificial and there are many gaps (e.g. combining two revenue lines into just one with two subcategories), still very incomplete¹⁴ and its impact has yet to be measured. Moreover, the establishment of unique provincial and local classifications in 2018 was done on the basis of an inventory of all the effective practices of the provinces and ETD (based or not on an appropriate legal instrument). Thus, if this exercise helped to clarify the fields of competence of the central government, the provinces and the ETDs, it also had the effect of widening the scope of the possible direct revenue instruments for each of them. The mission's meetings with two of the 26 provincial authorities underscored the determination of the provinces to fully use the fields proposed by the new classification by adopting in the coming years the necessary provisions to make them operational.

6. The greatest threat to streamlining the revenue lines remains nonetheless the poor credibility of the central government budget. Revenue projections are systematically overestimated and hence seldom reached, which forces the government to make drastic and arbitrary spending cuts during the year. Budgeted revenue rose from 12.5 percent of GDP in 2019 to 21.1 percent in 2020, whereas recent revenue numbers are closer to 10 percent. These cuts usually affect the peripheral sectors, i.e. those that are not essential to the operation of the government (in particular investments, transfers to the provinces, goods and social services, etc.). Anticipating these credit shortages, sector ministries, provincial governments and ETDs had to rely more on their own revenues. Over time, the various government entities have thus begun to charge for their services (within an appropriate legislative framework or not), including those that are free by nature, as well as the application of simple regulatory standards.¹⁵

7. Revenue legislation is scattered and difficult to access. Even though the DGI worked with the World Bank and coordinated with the IMF to begin a makeover of the key legislation (e.g. income tax, now in progress), there is no General Tax Code, other than the incomplete compilation of tax statutes that substitute for it. Excise taxes have their own code (managed by the General Directorate of Customs and Excise Taxes – DGDA – including domestic excise taxes), and the types of taxes the central sectoral ministries charge are detailed in a series of joint orders from the sectoral ministry and the MoF (usually with several orders per ministry). The special funds have their own revenue statutes (and collection services), and it is nearly impossible to obtain copies of the

¹³ See Order-Law No. 18/003 of March 13, 2018 establishing the classification of central government duties, taxes and royalties and Order-Law No. 18/004 of March 13, 2018, establishing the classification of taxes, duties, fees and royalties of the provinces and decentralized territorial entities, as well as the procedures for earmarking them.

¹⁴ For example, there is still an "Authorization to serve as head chef," charged by the Ministry of Culture and the Arts, as well as a 3 percent tax on the turnover of mobile telephone companies, charged by the Ministry of Telecommunications (and the DGRAD), in addition to the 10 percent excise tax on the same turnover charged by the DGDA. Several provinces also use roadblocks, as does the National Road Maintenance Fund (the latter has about 50 throughout the country and sometimes in PPPs with local businesses).

¹⁵ In this context, the DGRAD was set up in 1995 to ensure that the revenue from the sectoral central ministries is transferred back to the Treasury.

revenue statutes of the provinces and ETDs. In addition, several provincial revenue categories are based for now on ad hoc conventions with entities or businesses (revenue based on agreements), and therefore they are not properly made official. Thus, the tax procedure is also fragmented (despite recent efforts of the central government) and often the implementing decrees are missing.¹⁶ There is no tax guidelines or compilation of tax administration decisions that could serve as legal precedents. Finally, there is no transparency for the revenue of entities that are set forth in the *Budgets annexes*.

8. The proliferation of types of taxes and the opaque statutes – and even the absence of legal provisions or the difficulties involved in gaining access to them – all facilitate petty corruption. The large number of types of taxes increases contact points between civil servants and the public, and hence a near-total intrusion in economic and citizen activities. From completing real estate procedures and obtaining copies of university graduation certifications (and even the actual diplomas), to roadblocks and health inspections and the issuance of demolition permits or payment of taxes for pollution by electric generators, the payments and audits (justified or not, licit or not) never end. This perversion of the civil service has over time inevitably led to a situation in which civil servants truly fail to understand the rules that govern nontax revenue or the normal methods for financing public services, which in turn leads to strong resistance to reform since the civil servants believe they are justified in requiring payment for all their interactions with the general public.

9. The legal framework governing imports results de facto in a personal daily import exemption allowance of \$2,500, which is quite probably a major source of tax evasion as well. The floor value from which an import license (and, consequently, a preshipment inspection) is mandatory is \$2,500. However, there are no restrictions below this threshold, hence a de facto personal daily import exemption of \$2,500. This disproportionate “allowance” for personal needs or small-scale cross border business is in fact used to split up entire containers, have middlemen take them across the border, and then put the cargo back together again on the Congolese side of the border. Although the goods should theoretically be declared, illegal payments are frequently made in exchange for crossing the border. Thus, in 2017 and 2018, the DGDA counted just 0.22 percent of imports (in value) as allowances, which is the equivalent of about 20 individual daily border crossings for the entire country (using the amount of \$2,500). Considering the extent observed by all services, these low figures speak more to the magnitude of corruption and under-reporting at the border than to the marginal nature of the phenomenon. Merely strengthening controls without amending the legal framework would not solve this problem.

¹⁶ For example, for the new Mining Funds for Future Generations, the deposits for which were discontinued as there were no implementing regulations.

10. Exemption regimes are discretionary and even arbitrary. There are many tax regimes with exemptions in the DRC,¹⁷ and the known loss of earnings totals 5.7 percent of central government revenue (in addition to tax expenditures granted under the Mining Code, the Forestry Code and the Hydrocarbons Code, and not all three are covered here – see Table 2). The regimes are also managed in a discretionary manner; this is the case in particular of strategic partnerships, the benefits of which are entirely negotiable. For businesses that have permits under the Investment Code, the benefits are better overseen by a duly established commission, but they remain discretionary, contrary to more neutral mechanisms for promoting investment, for example, investment tax credits or accelerated depreciation schemes.

11. For the first time, the authorities estimated tax expenditures in 2019 (based on 2017 data). Tax expenditures would represent 22.3 percent of central government revenue and are mainly concentrated in the Mining Code and government contracts using external financing. The low revenue benefitting the central government and from industrial activities, as well as the preponderance of mining activities, would explain the relatively low portion of non-mining exemptions in the revenue; however, the calculation of losses of earnings is currently incomplete, and the scope of the calculation should increase in subsequent editions. The report of estimated tax expenditures was submitted to Parliament as part of the 2020 budget debates, and the work on a second edition has started. The authorities must adopt a decree that facilitates the collection of more accurate data, and a rationalization plan is expected to be formulated in 2020 based on a provisional draft that the IMF proposed.

Table 2. DRC: Tax Expenditures in the DRC (2017)

Tax expenditures	Lost revenue (MM of CDF)	Share of the total (%)	Share of central tax and non-tax revenues (%)
Ordinary rules	29.8	2.9	0.7
Tax code	9.1	0.9	0.2
Customs tariffs	20.7	2.0	0.5
Special derogations	987.8	97.1	21.7
Investment code	61.6	6.1	1.4
Mining code	480.1	47.2	10.5
Public contracts with external financing	158.9	15.6	3.5
NGOs and NPOs	69.7	6.8	1.5
Strategic partnerships	40.1	3.9	0.9
Agricultural exemptions	1.6	0.2	0.0
Cooperation projects	1.2	0.1	0.0
DGRAD	174.6	17.2	3.8
Total	1017.5	100.0	22.3

Source: Authorities, mission calculations.

¹⁷ See inter alia: (1) Law No. 004/2002 of February 21, 2002 on the Investment Code; (2) Decree No. 13/049 of October 6, 2013 on the strategic partnership on value chains; (3) Ministerial Order No. 076 of January 13, 2012 on special provisions applicable to government contracts that use external financing; (4) Law No. 11/022 of December 24, 2011 on fundamental rules for agriculture; and (5) special conventions (not included in Table 2).

Revenue administration: need to modernize it and re-establish taxpayer trust

12. Strengthening the governance of the three main revenue administrations and reducing the vulnerabilities to corruption of their agents involves four groups of measures, namely: (1) restoring taxpayer's trust through better consideration of their rights; (2) digitizing procedures and streamlining the interventions of the administrations; and (3) improving the statutory frameworks and revise the human resources management process; and (4) strengthening supervision and internal and external control and promote accountability. Upon discussing with the appropriate units; these measures, which are not all-inclusive, are intended to be fine-tuned based on capacities, and then they should be incorporated into the strategic plans of the three main administrations.

Restoring Trust and Respect for Taxpayer Rights

13. A culture of transparency should be promoted, and taxpayer rights and the powers of the administrations should be balanced in order to restore public trust and foster taxpayer compliance. These actions, to be taken at the various levels in the DGI, the DGDA and the DGRAD, are essential for facilitating reporting obligations for taxpayers and for paying duties and taxes, thus sheltering them from temptations to make illegal arrangements with staff members.

14. The authorities should improve transparency and make available a wide range of information to taxpayers, using all available communication channels. Originally, the DGI and DGDA websites (the DGRAD does not yet have a website), were updated periodically with some information but often in narrative form (speeches, reports on events, etc.). Users of the three revenue administrations are entitled to expect to have clear, accurate and updated information available to them, which will enable them to meet their tax obligations securely, consistently and coherently. To do so, the administrations must use all available means of communication (websites, social networks, TV or radio programs, workshops, posters, etc.). Table 3 describes the key useful information which, if published, can improve taxpayer compliance levels and prevent users from attempting to negotiate directly with staff members.

Table 3. DRC: Information to be Published on the DGI, DGDA and DGRAD websites (site to be created)

Nature of information	Impact on reducing corruption	Periodicity
All texts of a fiscal, customs or non-fiscal nature.	Facilitates the fulfillment of users' tax or customs obligations.	Immediate and permanent
Anonymized responses to individual user requests.	Assurance of a neutral administration and a fair and non-discretionary tax system.	
Procedures manual, job description and professional directory of agents.	Support the detection and prevention of unethical behavior.	Immediate and permanent
Signing and decision-making powers and delegations	Empower public officials.	

Table 3. DRC: Information to be Published on the DGI, DGDA and DGRAD websites (concluded)

Nature of information	Impact on reducing corruption	Periodicity
	Increases the transparency of the Immediate and permanent administration.	
Vision, strategic plan, means and performance of the revenue collected.	Restores the confidence of the general public and businesses in particular.	Annual
Anonymous complaints and opinion polls on service perception.	Supports the detection and prevention of unethical behavior.	Permanent
Statistics of complaints or appeals lodged and of tax audit.	Restores the confidence of the general public and businesses in particular.	Quarterly
List of chronic defaulters and large debtors	Improves the transparency and accountability of administrations.	Quarterly
Statistics of disciplinary measures taken by type of offense.	Assurance of a neutral administration and a fair and non-discretionary tax system.	Monthly
Taxpayer lists, location, liability status, tax clearance.	Assurance of a neutral administration and a fair and non-discretionary tax system.	Monthly
Organic framework, Code of ethics and Administrative Regulations.	Supports the detection and prevention of unethical behavior.	Permanent
Customer service charters and job performance standards.	Guarantees the rights of users and protects them from discretionary and arbitrary decisions.	Permanent

15. Put in place legislative and regulatory frameworks based on principles of fairness and balance between taxpayer rights and the rights of the revenue administrations. These imbalances are shown by the excessive powers of the DGI, the DGDA and the DGRAD. To illustrate this: (1) unjust procedures for processing claims (eligibility requirements, high surety payments, lengthy times for investigation, and tacit rejection if no reply is forthcoming by the administration's deadline); (2) no independent body for appeals before legal action; (3) multitude of tax assessment related penalties and collection at rates that are in many cases very high. In this context, there is a need to Table 3 lists specific and achievable measures to re-establish balanced relations, to reduce the room for negotiation, and ultimately to raise the "costs of corruption."

Table 4. DRC: Urgent Measures to Improve the Processing of Complaints or Appeals

Measures to be taken	Impact on curbing corruption	Priority
Eliminate the "surety" ¹⁸ to take advantage of the additional time allowance for collection.	Lowers vulnerability to arrangements because it may ease cashflow tensions for businesses.	High
Shorten and harmonize time frames for investigating files from 6 to 1 month. ¹⁹	- Strengthens the rights of users of the administrations. - Protects users from arbitrary decisions.	High
Tacit acceptance of the complaint if no reply is forthcoming by the deadline.	- Does not cause uncertainty about users to continue for too long and thus reduces the risk of arrangements.	

¹⁸ Currently it is 10 percent of the amounts disputed in the DGI, 100 percent in the DGRAD and 100 to 200 percent of duties in exchange for releasing goods.

¹⁹ Best practices require processing complaints within 30 days (TADAT POA7-20).

Table 4. DRC: Urgent Measures to Improve the Processing of Complaints or Appeals (concluded)

Measures to be taken	Impact on curbing corruption	Priority
Put in place an independent and parity entity for pre-legal action appeals. ²⁰	- Strengthens the rights of users of the administrations. - Protects users from arbitrary decisions.	Medium
Streamline tax relief decisions on tax relief by unburdening the ministry.	- Holds administration officers accountable. - Neutral and unfair administrative decisions.	Medium
Reduce, simplify and group fines ²¹ and penalties ²² by category.	Reduces vulnerability to arrangements as doing so may ease cashflow tensions for businesses.	High
Adopt late interest at a low rate and eliminate prosecution costs. ²³	Facilitates collection and limits collection pending litigations, which often promote arrangements.	Medium
Charge moratory interest for VAT refunds ²⁴ in case of delays.	- Holds administration officials accountable. - Strengthens the rights of users of the administrations.	Medium

16. The legal process is not procedurally reliable as rulings are not always consistent.

Unfortunately, to better ensure taxpayer rights, there are not always methods to ensure that the revenue administrations are consulted or for them to express their opinions before a law, regulation or decision with consequences for revenue is enacted.²⁵ Laws, rules and procedures that are clear and stable are not always guaranteed. This promotes arbitrary decisions made under nebulous conditions (unilateral tax relief, issues with advance tax payments).

Digitalization of Procedures and Streamlining of Interventions in Businesses

17. Re-establish tax justice, streamline the interventions of the administrations with businesses and digitize everyday procedures to reduce compliance cost and limit interactions between taxpayers and staff members. The multitude of administrations (DGI, DGDA, DGRAD²⁶ and the 58 national tax assessment units, 26 revenue agencies with 10 province-based tax assessment units) that are involved in calculating, auditing and collecting taxes promotes direct

²⁰ The Commission for the Settlement of Customs Litigation is not "independent" because there is not equal representation and it is comprised mainly of government representatives (Administrative Court of Appeals and assistant judges appointed for their technical skills who are on a list prepared by an order of the finance minister).

²¹ 7 types of increases ranging from 25 to 300 percent in the DGI and 100, 200 and 500 percent in the DGDA.

²² 12 types of penalties ranging from CDF 25,000 to CDF 10,000,000 in the DGI, and from CDF 500,000 to CDF 2,000,000 CDF minimum for fines in the DGDA.

²³ Formal notice: 3 percent, seizure: 5 percent, sale: 3 percent, all of which are used by DGI staff members who are qualified as process servers.

²⁴ The procedure for requesting VAT credit refunds may be likened to formalizing a request for vested rights.

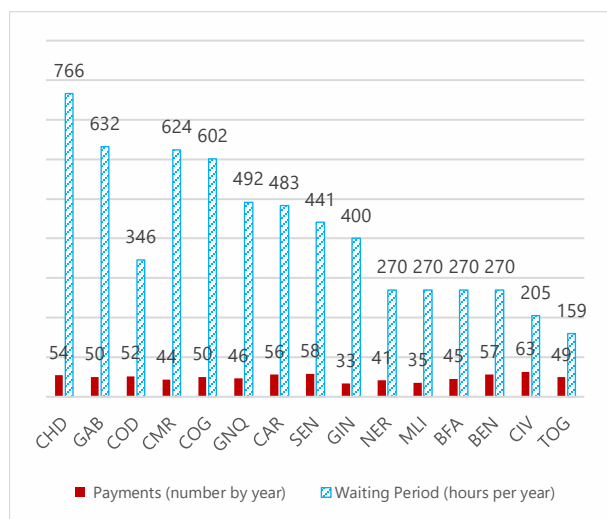
²⁵ The DGDA was unaware of the customs provisions in the Mining Code until the draft was adopted and the DGI was unable to take part in drawing up the final provisions of the Oil Code or of the tax regime applicable to businesses eligible for the value chain strategic partnership.

²⁶ Revenue collected by the DGI, the DGDA and the DGRAD is 4.8, 2.4, and 2.5 percent respectively of GDP in 2018.

interactions and thereby raises the risks of collusion between users and staff members. As described in Figure 3 below, such an environment, on the average, results in the following: (1) a business is required to use an employee full time for one month to complete their tax returns; and (2) it takes at least 22 days to prepare the documents needed for goods to clear customs.

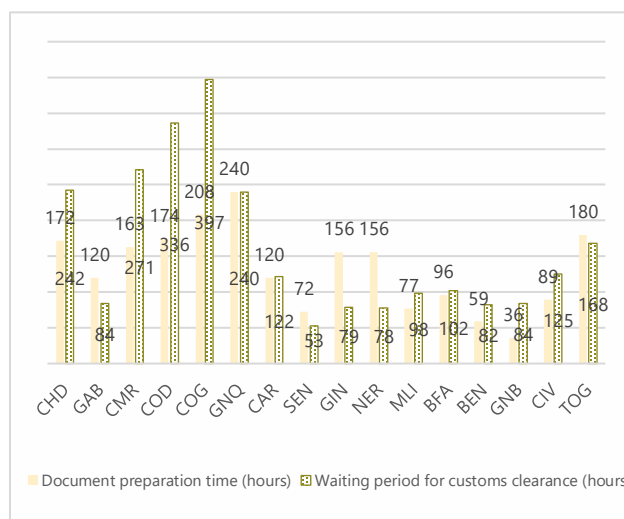
Figure 3. Illustrations of Vulnerabilities in the DGI and the DGDA

Figure 3 (A). Payment of Taxes in Sub-Saharan Africa



Source: World Bank (Doing Business 2019)

Figure 3 (B). Time it Takes to Import Goods in Sub-Saharan Africa



Source: World Bank (Doing Business 2019)

18. At the risk of further deterioration of the business climate and continuing support for corruption through a predatory system developed over time, the DGI and DGRAD should accelerate their digital transition. Digitalization of reporting and payment procedures and the creation of an online tax account for users will facilitate compliance with obligations and improve traceability in the DGI and DGRAD. Despite the growing use of banks for payments of taxes and fees, from the taxpayer viewpoint, DGI procedures and those that are divided into four steps in the DGRAD (verification, payment authorization, payment and updating) with the 58 tax assessment units of the sectoral ministries and the 10 province-based tax assessment units, are still manual, so that a number of parties are involved, and this requires significant travel.

19. Customs procedures are computerized by using ASYCUDA World, but they do not yet completely eliminate some redundancies for users since the Single Foreign Trade One-Stop Shop (GUICE) does not include ASYCUDA World. For example, in the customs clearance platform, the DGDA collected CDF 1,477 billion for the general budget and CDF 521 billion as related revenue²⁷ in 2018. Limiting the number of parties involved in the customs clearance platform and

²⁷ The DGDA collects customs duties, the VAT and the import royalty [redevance rémunératoire]. The Congo Audit Office receives 2 percent of the CIF value and laboratory costs; the National Coffee Office collects from 2 to 4.5

the computerization of all customs clearance procedures (some are still manual) would decrease direct contacts, shorten customs clearance times and costs, and would mitigate the sentiment of harassment that users experience. One initial specific short-term solution to improve this situation would quite simply be to enforce Decree No. 036 of February 28, 2008 that designates the entities authorized to work in customs posts, and Decree No. 13/052 November 11, 2013 on strengthening collections for imports and exports as modified as of today.

20. Costs of compliance are high and represent an incentive to corruption. The detrimental effects on the efficiency and performance of the entities, the costs of having users meet their legal obligations, and the risks of corruption that cause so many parties to interact with businesses, should be mitigated by digitizing the key procedures. Table 4 provides some avenues to upgrade reporting and payment procedures to lower risks related to corruption, improve traceability and transparency of operations, lower costs of compliance and improve the effectiveness of the administrations. The final stage of this transformation would be implementing a single distance procedures platform accessible to users, which would be backed by the "revenue chain."²⁸

Table 5. DRC: Specific Measures to Upgrade Reporting and Payment Procedures

Measures to be taken	Impacts on reducing corruption	Deadline
DGI. Create online tax accounts that large businesses can access.	<ul style="list-style-type: none"> - Improves transparency and traceability - Limits contacts between users and agents - Lowers costs of taxpayer compliance 	June 2020
DGI. Bring remote reporting and remote payment into widespread use for large businesses.		October 2020
DGI. Online procedure for complaints and requests for VAT refunds.		October 2020
DGI. Launch the project for payment of small taxes via mobile terminals.		December 2020
DGI. Launch remote reporting and remote payment for medium-sized enterprises.		April 2021
DGDA. Enforce Decree No. 036 of February 20, 2008 and Decree No 13/052 of November 11, 2013.	<ul style="list-style-type: none"> - Limits contacts between users and agents - Lowers costs of taxpayer compliance - Lowers time frames for goods to clear customs 	Immediate 2020
DGDA. Interconnect ASYCUDA World with the GUICE application.		Immediate 2020

percent of the FOB value and the costs of certifying agricultural products; the Fund to Promote Industry charges a 2 percent tax on the CIF value plus customs duties; the Multimodal Cargo Management Office collects a 1.8 percent commission on cargo and 0.59 percent on the CIF value, as well as costs for the electronic information (continued) sheet for imports (60 euros) for a 20' container, and 110 euros for a 40' container; Lignes Maritimes Congolaises collects maritime traffic fees; Société commerciale des transports and des ports charges a tax of \$20/ton for handling the boat at the dock and \$32 /ton for transit costs, and the province charges a boarding fee.

²⁸ The revenue chain consists of three tools: (1) the government financial data exchange network (RE.DO.FIE), (2) the ISYS-REGIES application, which will automate the bank collection process, the process of transfers to the BCC, recording in the Treasury and electronic updating for the revenue collection agencies; and (3) the data warehouse which should facilitate exchanges of revenue collection data. Implemented by the MoF, this project aims to make the public revenue collection system reliable and stronger, as it will soon be operational.

Table 5. DRC: Specific Measures to Upgrade Reporting and Payment Procedures (concluded)

Measures to be taken	Impacts on reducing corruption	Deadline
DGRAD. Remote reporting and remote payment for large mining businesses.	- Improves transparency and traceability	November 2020
DGRAD. Extend remote reporting and remote payment for the other businesses.	- Limits contacts between users and agents	June 2021
DGI/DGRAD. Create a virtual one-stop shop for reporting and payment.	- Lowers costs of taxpayer compliance	December 2021

21. The justification of ineffective service interventions in companies will reduce all kinds of harassment and limit the risks linked to corruption. For several years, the control and recovery procedures considered to be too restrictive, have been the subject of strong criticism from the private sector. This situation is the consequence of the complex tax system and the myriad of parties involved.²⁹ Finally, the efficiency of inspections remains to be demonstrated due to the low yields that have been recorded (4 and 0.2 percent of revenue collected by the DGI and DGDA respectively in 2018).

22. The normalization of relations between users and the revenue administrations with regard to inspections or collection activities requires the following as well: (1) review the system for compensating the advisors, who may or may not be staff members of the administrations, which is abnormal; (2) improve the occupation of tax advisor or customs declarant; and (3) overhaul the system for setting and giving pending litigation bonuses. A climate of easing tensions between staff members and businesses would re-establish trust and encourage taxpayer compliance. Simple measures that aim to normalize relations between the administrations and users and reduce the impacts of untimely interventions in businesses by the units in charge of audits or collection are presented in Table 5.

Table 6. DRC: Measures to Streamline and Normalize Interventions in Businesses

Measures to be taken	Impacts on reducing corruption	Deadline
Limit the total time of on-site audits in businesses to two months.	- Reduces temptations that can generate excessive familiarity between staff members and users.	June 2020
Lower the number of audits in businesses by the staff members of the MoF.	- Lightens the burden and costs of administrative procedures for businesses.	June 2020
Review notifications with high stakes or with significant amounts of back taxes.	- Improves the quality of scheduling audits and enhances staff productivity.	August 2020
Put in place the regularization procedure during an audit without any increase or fine.	- Improves relations and encourages better taxpayer compliance without arrangements.	January 2021
Put in place the audit procedure based on demand without an increase or penalties.	- Lightens the burden and costs of administrative procedures for businesses.	January 2021

²⁹ For example, mining companies still have to “deal with” no fewer than 10 inspection and collection entities, at both the central and local levels.

Table 6. DRC: Measures to Streamline and Normalize Interventions in Businesses (concluded)

Prohibit current or retired staff members from working as tax advisors or customs declarants (must wait four years).	- Enhances the profession and limits influence peddling with working staff members.	January 2021
Eliminate the share of advisors of the revenue administrations and the IGF.	- Eliminates "rainmakers" who often also serve as go-betweens.	January 2021

23. An unfair and inequitable tax system which creates unfair competition between economic operators and promotes fraud and acts of corruption. The problem of "unauthorized" cross-border imports persists and even worsens. This can be seen in particular at the following "border posts": Lufu in the Kongo-central province, Kasumbalesa in Haut Katanga, Ishasha and Kasindi in North Kivu, and Mahagi in Ituri. Goods imported through these stations are subject to a simplified customs clearance regime and manual payment of "standard customs duties." In addition, they are not subject to all the quality control series to which the goods are subject, imported by importers in the formal sectors in the main computerized customs clearance offices. These situations cause loss of revenue for the central administration. They distort competition between operators and encourage acts of corruption. Once the resources of these offices have been strengthened, these imports must be subject to computerized import procedures in accordance with trade laws and exchange regulations.

24. Internal control needs to be reinforced to ensure the effective and uniform application of procedures and improve the traceability of operations. The inspection services of each administration as well as the General Inspectorate of Finance (IGF) regularly carry out internal control and spot or program audit work annually. The implementation of an automated and robust operations monitoring system (such as the ASYPM performance measurement module in ASYCUDA World at the DGDA) facilitates and makes internal control actions and audit work more reliable. These automated systems will also greatly improve the traceability of operations through the use of cookies and the exploitation of access logs.

25. Promoting accountability and restoring public confidence is essential. The use of all communication channels (website, social networks, etc.) will increase awareness of the actions and performance of the three revenue administrations. Indeed, there are still no express requirements for them to regularly publish reports, except for the DGDA, on their performance and resources. It will be a question for the administrations concerned to report as faithfully as possible to the public and to the taxpayers of the results of the actions which they carried out under the mobilization of the receipts and the fight against the frauds. The implementation of the various aforementioned tools will also make it possible to carry out large-scale opinion surveys or to collect comments on the interactions of the public with the agents, including the reporting of unethical behavior.

26. The framework and practice of managing human resources in revenue administration agencies are characterized by subjective resource management. The compensation system is complex, and it does not encourage good performance. There is a culture of impunity exacerbated by weak sanctions. Despite well-established personnel administration rules, the human resources management system still faces a number of challenges, mainly: (1) senior civil servants are appointed or promoted and the general directors have no say in this (the DGI currently has 30 directors 'attached' without a position); (2) the lack of turnover for some employees (30 percent of employees in the Large Enterprises Directorate, which produces 85 percent of the DGI's revenue, were and still are in their positions since the directorate was established in 2002); (3) attempts to assign long lists of unqualified newly hired employees with no training by the Ministry of Civil Service, without considering intake capabilities or the needs of the units. This situation impairs the credibility of the highest-ranked officials, weakens the management framework, creates internal frustrations and promotes illegal withdrawals and corruption.

27. From all of the above, the mission concluded that a complete overhaul of the personnel administration frameworks of the DGI and the DGDA, less for the DGRAD, is not essential. Nevertheless, necessary improvements must be made in order to reduce in the short term the bad practices which make officials and agents even more vulnerable to corruption. Table 6 below presents some pragmatic measures to improve human resources management.

Table 7. DRC: Concrete Measures to Improve the Resource Management Framework

Measures to be taken	Impacts on the reduction of corruption	Deadline
Adoption of clear rules of limitation to 4 years the assignment in positions in contact with the public.	- Reduces frustrations between agents which are often sources of corruption.	August 2020
Reinforcement of disciplinary measures and sanctions, within administrative frameworks.	- Ends the culture of impunity for crooked agents by example.	January 2021
Rationalization of bonuses and upward revision of base salaries.		
More equitable and standardized distribution of litigation premiums among all agents and elimination by advisers.	- Responsible for general managers and directors.	
Introduction of a technical bonus or "IT bonus".	- Improves the traceability of operations. - Limits direct contact with users.	May 2020

28. Salaries paid to civil servants at the revenue administrations are generally higher than average. Like the tax system, the revenue administrations have complex and sometimes unfair compensation systems, but they provide an acceptable level of salaries compared to salaries paid in the other administrations or the private sector. Entry-level salaries of the employees in the three revenue administrations are applicable to career employees in the government civil services. In addition, there is a multitude of bonuses of all types.

29. Thus, in the DGI there are: the revenue collection bonus (55 percent of proceeds from issuance of bonuses, amounting to 5 percent of revenue collected), bonuses for additional services provided, the interim bonus, the diploma bonus, fringe benefits, the rural bonus (*prime de brousse*),³⁰ the pending litigation bonus based on the series of penalties (40 percent of the amount of penalties, 20 percent of which is for the advisors, and the rest is divided among the employees using procedures set by the general directors. There is also a guaranteed minimum pending litigation bonus, paid from a budget allocation evaluated based on capital gains that are generated.

30. The DGDA has no fewer than 16 types of different bonuses: the interim bonus, the incentive bonus,³¹ the special incentive bonus, the responsibility bonus, the housing allowance,³² the risk bonus, the cash bonus, the inconvenience and health bonus, the loyalty bonus, one-time bonuses, the annual bonus or gratuity (if results are achieved), the compensatory overtime bonus, the rural bonus, the on-call and office presence bonus, the non-private client bonus, the pay bonus and the pending litigation bonus.

31. **A just and equitable distribution of bonuses is needed pending an overhaul of the method of financing for the compensation system in revenue administration agencies.** The current bonus distribution system in force: (1) fails to encourage performance (bonuses are issued monthly whether the revenue targets are met or not); (2) it is unstable and unpredictable over time; and (3) it leads to a hectic rush to issue sanctions and charge severe penalties which are often collected before the back taxes that are earmarked for the government budget. Pending the modernization of the employees' remuneration system, the mission proposes to meet two challenges: (1) define a more equitable and balanced mechanism for distributing bonuses among all the agents on the job and according to their performance; and (2) find an appropriate mechanism (budgeting of bonuses, etc.) to increase fixed wages and not depend on the penalties collected during tax or customs checks.

32. **Disciplinary sanctions are ineffective because their scope is limited by the legal and organic framework for the management of public officials by the public service.** Sanctions are provided for by the administrative rules of revenue administrations, and sometimes they are included in disciplinary measures (5 at the DGI and 34 at the DGDA in 2018). The only real sanctions that general managers can impose are limited to temporary suspensions not exceeding six months, to the freezing of bonuses and allowances, or simply to the change of position. However, these measures are still too often subject to appeal to the Ministry of the Civil Service.

³⁰ Article. 38 of Law No. 81-003 of July 17, 1981.

³¹ The monthly stimulation bonus varies according to rank from \$174 to \$1,210.

³² The special monthly stimulation and responsibility bonuses and the housing allowance vary respectively based on rank from \$110 to \$750, from \$87.50 to \$250, and from \$120 to \$1,000.

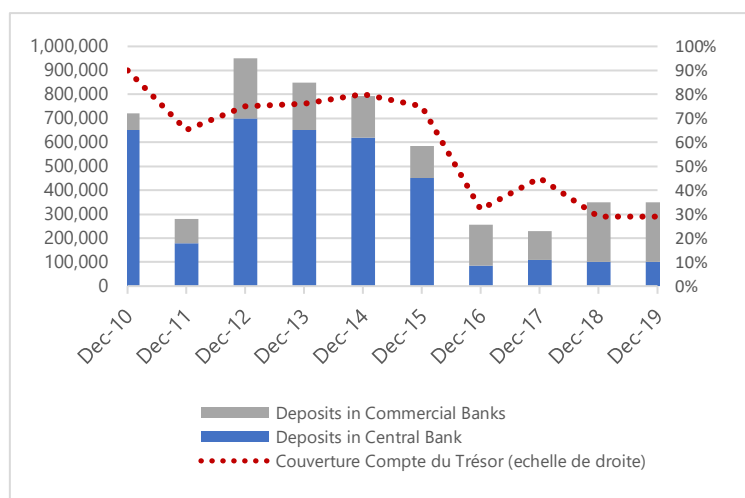
Expansion of the Perimeter of the Treasury General Account

33. The DRC has banked the collection of revenue and established a TGA pending creation of a Treasury single account (TSA). The TSA will be held at the Central Bank and will henceforth be a statistical entity composed of a wide range of subaccounts. The banking mechanism will now have the following requirements:

- Taxpayers and other parties that owe money to the central government must deposit their payments in a fund deposit institution such as banks, savings banks or the post office;
- The institutions in questions must level out the balances in their government revenue deposit accounts in the TGA within 48 hours after they are deposited;
- The BCC must make the funds deposited in the TGA available to managers based on orders from the accredited authorities and in accordance with the expenditure chain.

34. This mechanism is a good practice that should be made universal. Private and public operators we met in the field stated that cash deposits are in fact prohibited. Movements of funds (balance management) between commercial banks and the central bank are verified at periodic reconciliation meetings and the banking systems are interconnected with the revenue administrations so that revenue can be monitored.

35. However, the scope of the TGA is very narrow. The banking mechanism does not apply to considerable amounts of public resources. Special accounts, earmarked taxes and specific budgets ("budget annexes") are exempted from using the bank revenue circuit and the requirement of depositing into the TGA. Numerous transfers of funds to custodians responsible for carrying out expenditures are also taken out of the TGA. Over time, these exceptions have reduced the TGA coverage considerably (Figure 4). In December 2019, the TGA was the depository of only 28 percent of public liquidity. In other words, two-thirds of government funds are currently managed outside the TGA in accounts in commercial banks, in the name of *de facto* managers, some of which are not legally authorized to handle public funds.

Figure 4. Coverage for the Treasury General Account

Scale on the left: amounts in M of CDF.

Scale on the right: percentage of cash placed in the BCC compared to cash deposited in commercial banks

Source: BCC monetary surveys submitted under surveillance art. IV

36. Three processes are critical in the execution of expenditures: government procurement, budget execution, and cash disbursements. Government procurement procedures, and in particular those that are applied to investment projects, are particularly vulnerable³³ to corruption. The practice of bribes, commissions or concealed kickbacks affect the efficiency of investment expenditure by raising production costs considerably. The expenditure chain, whose purpose is to control expenditures and make them secure, may be subject to fraud, particularly during simplified procedures. Finally, handling public funds, a function usually reserved for treasurers or government accounting officers, generates somewhat minor attempts to divert funds. If this becomes widespread, they impoverish government coffers and destroy the trust of those who are subject to the administration in the government's finance function. These critical points should be given special attention, and they are discussed below.

Introduction of Competitive Bidding

37. The legal framework and the institutions have been in place for almost 10 years. The Procurement Code was adopted in 2010³⁴ and sets the introduction of competition as a general principle applicable to procurement. The regulatory framework was adopted and updated periodically (in particular procurement thresholds). The Public Markets Oversight Directorate and the Public Markets Regulatory Authority (ARMP) have been operating since around 2011. Procurement and contracting units are operational in the sectoral ministries, institutions and public enterprises and establishments. The ETDs are included in the Procurement Code and are subject to

³³ See Fiscal Monitor April 2019, Curbing corruption.

³⁴ Law 10/10 of April 27, 2010 on government procurement.

the same procedures and procurement thresholds. Even though the administration does not yet have an effective information system³⁵ for procurement management, this system overall is quite complete at the central level. It is still very incomplete in the provinces where the ARMP has been only partially deconcentrated, and the procurement units are seldom made available to the governors. Orders from the ETDs thus account for only a minute share of all contracts made in these last few years.

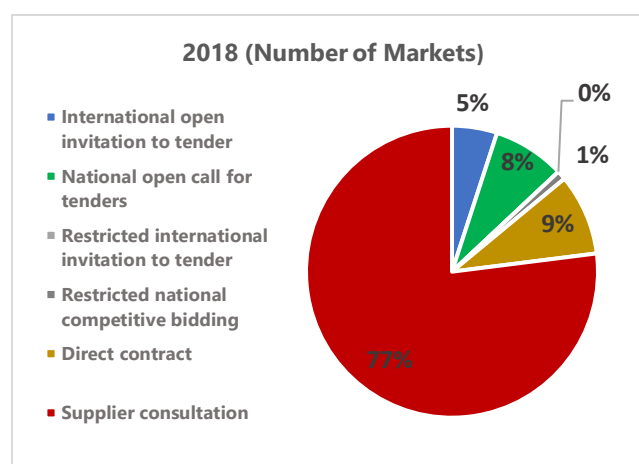
38. The practices that are observed are very far from the principle of introducing competition.

The use of noncompetitive procedures (private agreements, direct agreements or mere consultation with suppliers) became the rule in 2018 (Figure 5). This drift is mainly due to the divisions of the State (public establishments, funds and public enterprises), and it seems to explain the very poor performance of public investment in the Congo compared to its neighbors (see above, Figure 3). This contributes to the widespread sentiment that there is collusion between economic operators and public decision-makers. This sentiment is especially strong in civil society (cf. articles from the local press) and degrades the country's business environment and the attractiveness for sustainable private investment. Several factors may explain this to some extent: the length and complexity of procurement procedures which may discourage bidders, and the poor competitiveness of some economic sectors due to a low degree of market diversification, and especially the widespread use of predatory practices aimed at taking commissions, kickbacks or undue advantages when contracts are awarded.

Figure 5. Government Contracting Procedures by Category

In 2018, just 14 percent of government contracts were made through competitive bidding. Most contracts in 2016-2017 were made outside the general government budget by public enterprises or establishments. The share of contracts implemented by the territorial entities is minimal.

<i>en Millions US\$</i>	2016	2017
Institutions	381.48	350.88
Services Publics	219.23	69.10
Etablissement publics	368.96	835.16
Societes commerciales	1057.31	85.86
Unites de coordination	398.48	100.12
Provinces	40.11	0.00



Source: Public Markets Regulatory Authority (ARMP)

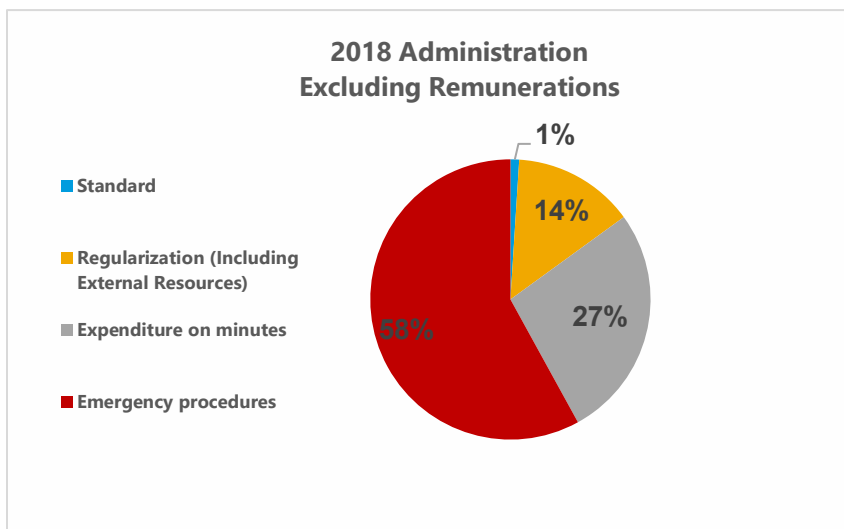
³⁵ The process of computerizing government procurement management was initiated through the acquisition of Integrated Government Procurement Management System (SIGMAP) software.

39. The management framework for large PPP project management is a work in progress.

The statutory framework that applies to PPPs is very recent (2018)³⁶ and regulatory and operational implementation is still in progress. The institutions in charge of procurement and monitoring the PPPs are not yet in place. However, informal PPPs exist already as delegations of public service or spontaneous and self-financed bids.³⁷ This gap may be very detrimental in the medium term if the government develops major projects in partnership with foreign operators as spontaneous bids or PPPs. Studies will need to be conducted to give the administration a reliable management framework for this type of partnerships.

40. The expenditure chain in principle follows a classic process of separation of tasks and control of acts. A procedures manual specifies these processes retraced in an information and budget management system maintained by an interdepartmental coordination cell and integrated into the expenditure chain. The current procedure consists of four phases: the first two (commitment and liquidation) are placed under the authority of sectoral ministries, previously under the control of the Minister responsible for the budget, while the last two (authorization and payment) are respectively placed under the authority of the MoF, through the Treasury and Authorization Department, and under the authority of the Central Bank, as the State cash office. The share of expenditure normally executed according to these procedures has decreased in recent years (Figure 6).

Figure 6. Expenditure Categories According to the Normal Mode of Execution



Expenditures made under emergency procedures became preponderant in 2018. Expenditures made under standard procedures now account for only about one percent of non-compensation expenditures.

Source: Inter-ministerial Coordination Unit for the Expenditure Chain

³⁶ Law No.18/016 of July 9, 2018 in respect of public-private partnerships.

³⁷ The stock of fixed capital established in PPPs according to the definition adopted by the international institutions amounted to 4.6 percent of GDP in 2015.

41. There are risks in some specific expenditure procedures:

- **Debt service (low risk).** The procedures that apply to servicing the debt do not imply receipt of goods or services; usually they are paid using a simplified procedure with no great risk of fraud or misappropriation.
- **Compensation (higher risk):** Today's controls seem to be poor and barely operational. Payroll files and civil service files are being consolidated. The ministry of civil service plans to conduct a survey to detect potential duplications, fictitious employees and other anomalies.
- **Emergency procedures (macro critical risk given their volume (0.7 percent of GDP in 2018)).** Two options exist for these exceptional expenses: payment without prior authorization or payment on the order of the Minister responsible for the budget. Expenses are rarely documented ex post. They do not meet the usual transparency standards.

Securing the Handling of Government Funds

42. Payment is the final stage in the expenditure execution chain according to the Budget and Cash Management Law (LOFIP) and the General Regulation on Public Accounting. This operation discharges the government from its debt to a creditor. It implies real movements of cash. In principle it is executed through a bank transaction in the TGA or another bank account. The LOFIP and the general public accounting regulation assign in principle responsibility for handling government funds to government accounting officers, transparent, i.e. properly appointed and monetarily accountable.

43. There is still no network of properly structured government accounting officers in the DRC. A significant part of bank disbursements is made in the form of transfers to individuals or legal entities responsible for performing the final stage of expenditures and paying government creditors. These transactions are executed with no concern for transparency, and they are seldom documented ex-post. They are a significant risk in terms of misappropriation, fraud or cronyism.

44. The quality of financial statements is still very poor. General accounting is still prepared using a single-entry system. Budget execution reports only cover expenditures. To date there is still no consolidation throughout the entire country and the public sector. These gaps cause the DRC to lag behind almost all countries in the subregion that have established double-entry accounting, based on clearly defined and properly structured accounting networks. Lacking a high-quality budgetary reporting, the administration is unable to establish budgetary transparency conducive to good governance, the empowerment of managers and fighting corruption.

Strengthening Control over the Entire Public Sector to Foster Decentralization

45. The public sector encompasses all economic and social activities carried out under total or partial control of the central government, the provinces and the ETDs. It consists of three components:

- **The public administrations**, which are theoretically in charge of activities of general interest. These include the central government and the 26 provinces (one of which is Kinshasa, a city-province). They are in turn divided into ETDs, which are cities (with or without communes, sectors or chieftaincies).
- **Public institutions** that provide public services which in principle are not market-related, but there are well-known exceptions. These establishments provide essential public services such as education, health, various types of regulation or the maintenance of public services and essential infrastructure. Unlike public enterprises, the establishments in principle are not intended to be profitable.
- **SOEs** in which the central government or local governments hold at least 51 percent of the share capital. Their statutes vary. They may fall under private law (usually a joint stock company) or public law (public law institution).

46. Public sector governance is poor. The non-financial public sector³⁸ includes, in addition to the provinces and ETDs, institutions³⁹ and SOEs⁴⁰ over which the government conducts fairly loose oversight. These institutions, agencies, offices and companies sometimes benefit from assigned parafiscal taxes. They sometimes present profit and loss accounts with delay and more rarely balance sheets establishing their assets and liabilities. State guardianship is poorly organized. There is no structured policy for public sector management.

47. While the decentralization process has yet to be completed. Under the 2006 Constitution, local elections should have been held to establish local democratic institutions. In 2019, the provincial assemblies were directly elected, and the provincial governors elected by these provincial assemblies. In the absence of sub-regional elections, the ETDs are today headed by mayors, mayors

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⁴⁰ SOEs are enterprises in which the central government or local governments hold at least 51 percent of the share capital. Their statutes vary. They may fall under private law (usually a joint stock company) or public law (public law establishment).

or chiefs appointed by the central administration. Some of these officials have formed informal mechanisms of participatory governance.

48. Local administrative capabilities are extremely weak. The standard structures (those in charge of managing resources and government procurement) have yet to be put in place in all provinces. Information systems are nearly nonexistent, and their scope of management is fragmented. Sectors, cities and groups are essentially devoid of modern management capabilities, even though the new mining code provides for transfers of considerable resources from a few ETDs. In addition, the transparency of local finances has yet to be established. In the absence of clear and timely information on local resources, the budgets and financial statements of the provinces and ETDs are drawn up late. The authorities have not consolidated the accounts of central and decentralized administrations. It is therefore not possible to draw up a table of financial operations covering all public administrations and compliance with the latest standards in public finance statistics.

49. This absence of transparency poses structural risks:

- **Approximate governance:** currently available financial information at the provincial level fails to shed light on the conduct of public policies, let alone detect potential fraud or inefficiencies in local spending.
- **Financial disparities:** The growing revenue gaps among the ETDs are barely offset or poorly offset by the equalization systems that are in place, which poses a political risk for the stability and unity of the territories.
- **Distorted local markets:** Local economic structures, often marked by their poor competitiveness, promote the formation of collusive oligopolies as well as rent-seeking, to the detriment of effective local development.

Stronger Human Resources Management

50. The staff members we met mentioned that the administration's human capabilities are poor. The services met show the weak human capacities of the administration, which can create incentives for rent-seeking and petty corruption. Recruitment for a long time has been based on title as opposed to competitive testing. The National School of Administration is only in its sixth class of students. The school issues about 100 new diplomas per year but is struggling to bring about a rejuvenation of the administration. Older employees postpone their retirement because they are not certain of receiving their pensions. Exceptional recruitments conducted in 2018-2019 (of the order of 700,000) brought to the administration a new and abundant workforce, sometimes overwhelming depending on the services, and often unqualified. Finally, public service salaries are unattractive, or even insufficient to cover the needs of some employees who find a second paid position in the private sector, at the risk of conflicts of interest or absenteeism.

51. These weaknesses are particularly evident in the central government's finance function.

This function should be understood as a coherent and interconnected whole, applied to ensure honest public financial management. The financial function is not limited to the responsible for finance and the budget respectively. It also concerns all the actors involved in public management, primarily the sectoral ministries through their departments and directorates in charge of financial affairs or planning. These actors should be considered the natural extension of the finance departments in the institutions, agencies and sectoral ministries.

Box 1. Towards an Integrated Public Finance Reform Strategy

The problems of revenue and expenditure are intimately linked, the fragmentation of the former being linked to the inadequacies of the latter, hence the question: where to start? While it is tempting to start by rationalizing revenues, it must be remembered that natural resource royalties and state revenues (VAT, customs, income tax, excise duties, royalties on natural resources) represent almost nine-tenths of the revenue and that simplifying non-tax revenue, if it would greatly improve the business climate, would in itself generate little additional revenue. The weakness of state revenues is therefore more immediately a problem of revenue administration (extension of the tax base) than of fiscal policy and increasing these revenues should facilitate simplification by channeling more funds to sectoral ministries. However, channeling such funds also depends on a strengthening of the budgetary processes and an extension of the budget perimeter (in particular by the integration into this perimeter of special accounts, annexed budgets, etc.), as well as strict monitoring, budgetary procedures and central control over all public expenditure, in particular through a single functional Treasury account.

The mission is therefore of the opinion that reforms of the tax administration (in particular to the DGI) and budgetary reforms must take priority and be carried out immediately and in parallel over the next three years (2020 - 2023), which implies between others realistic revenue forecasts. The codification of all central government tax texts could be accomplished quickly (end 2020), but the rationalization of non-tax revenues should be accomplished over a longer horizon (implemented end 2023), such work being facilitated by an increase in revenue and requiring difficult inter-ministerial coordination. A rationalization of excise taxes could, however, go ahead immediately, as well as a reform of the derogatory regimes. Reforms at the provincial level could then follow (2023 - 2028), which does not, however, prevent discussing its substance immediately, in particular by establishing a complete inventory of texts and practices.

B. Extractive Sector Governance

52. Of the three main extractive sectors, the mining sector is by far the most important.

This accounts for 95.3 percent of exports, compared with 3.7 and 0.3 percent respectively for hydrocarbons⁴¹ and forest products. The observations and analyzes below will therefore mainly

⁴¹ There is only one oil exploitation (Perenco, with 25,000 bl / d in mature fields).

concern at institutional settings and norms which relate to six [CHECK] public enterprises: Gécamines (copper/cobalt), Okimo/Sokimo (gold), Sodimico (copper), Cominières (tantalum, niobium, wolfram, lithium, gold), Sodimika (copper/cobalt) and Miba (diamond), of which Gécamines is by far the most important.⁴²

1. The Institutional Setting

53. The governance of the mining sector is ensured the Ministry of Mines,⁴³ and the Ministry of Portfolio.

54. The regulatory and supervisory functions of the Ministry of Mines are weak. The main regulatory function of the ministry is to grant and withdraw the various permits according to financial and technical criteria, but the decisions of the agencies in charge of ascertaining the facts and preparing the files (in particular the mining cadaster) must be individually approved by the Minister. To date, the mining cadaster has only five provincial branches and is not sufficiently equipped to manage mining at the national level. The status of Cadaster employees is also precarious (*agents de l'Etat*).⁴⁴ Employment contracts do not entail permanent jobs, even though they fall under the *agents publics d'Etat* category, as defined by the decree-law on the Code of Conduct for *agents publics d'Etat*.⁴⁵ In addition, several companies only partially (or not at all) meet their documentary obligations to the Ministry of Mines (particularly with regard to financial statements). This results in obvious weaknesses in the management of permits, the turnover of which is not optimal. The presence of public enterprises which are not very transparent and difficult to access, and which do not fulfill their regulatory obligations either also complicates the work.

55. Before the 2002 Mining Code, the mining sector was a monopoly of the State, today the mining rights are for all practical purposes a monopoly of the SOEs. The issuance of the 2002 Mining Code was intended to break the monopoly and to allow private interests into the sector. While the 2002 code introduced the cadaster to manage mining rights, it also assigned the mining rights related to public domain to the SOEs (article 340 of the old mining code). Today the SOEs in the mining sector continue to remain the holders of these rights on behalf of the State, renew their licenses with the Cadaster if about to expire, and represent the main entry point for any private company that want to enter the mining sector. As of today, Kamoa-Kakula is the only major

⁴² A new public company (Entreprise Générale du Cobalt) has since been created by Decree 19/15 of November 5, 2019, made public in January 2020.

⁴³ For the petroleum and forestry sectors, these are the Ministry of Hydrocarbons and the Ministry of Environment and Sustainable Development, respectively.

⁴⁴ *Agents de l'Etat* are contractual employees. As such, they receive much more advantageous remuneration than that of civil servants but have no job security.

⁴⁵ The Lubumbashi Provincial Mines Division (Ministry of Mines), for example, is well-stocked with civil servants, but does not have the means to access all the lots in order to verify their use.

project not associated with any of the SOEs (the DRC government holds a direct 20 percent interest in it).

56. The Ministry of Portfolio manages and supervises the State's holdings in public enterprises.⁴⁶

The Ministry of Portfolio manages and supervises the State's free interests in a number of mining companies on the basis of information provided by the Ministry of Mines as part of the conversion of exploration licenses into mining licenses. Free interests (carried interest) also exist in several dozen companies, under the provisions of the Mining Code and are also managed by the Ministry of Portfolio, with support on request from the Ministry of Mines.

57. However, the boundaries of oversight and control of the Ministry of Portfolio do not currently include indirect participations of the State. This leaves out any contract that SOEs enter in with other partners, which means that while the Ministry of portfolio has scope to oversee the SOEs themselves, it remains removed from monitoring and overseeing any obligation through which SOEs create new companies (JVs). This is a major flaw in the governance structure, as the DRC's mineral production is overwhelmingly related to these JVs.

58. Against this institutional set up, the SOEs remain at center of a rent seeking scheme which is hard to quantify. Disclosures of mining contracts are minimal and financial statements of SOEs are hard to come by. For example, Gécamines hires an external auditor but releases only the auditor opinion, and it is not clear who from the government is charged to follow up on the opinions, which have now been qualified for three years in a row.

2. The Mining Code

59. The 2002 Mining Code amended in 2018 (as well as the related regulations)⁴⁷ is the sector's benchmark legal instrument. The 2018 changes were intended to tighten transparency and accountability provisions as well as increase the tax burden and better distribute revenues to provinces and local communities.

60. The Mining Code contains several ambiguities and certain provisions could be strengthened. First, the repudiation of the stability clauses of the 2002 Mining Code by the 2018 amendment (immediate application rather than with 10-year time limits as planned in 2002) calls into question legal stability and the rule of law. In addition, the tax on excess profits (art. 251 bis) is based on an ill-defined base, the application of which is partial and for the moment largely negotiated on a case-by-case basis according to the information available. The designation of strategic substances

⁴⁶ Public companies are commercial companies in which the state owns more than 50 percent of the share capital. These companies are all former state-owned enterprises, i.e. created by law.

⁴⁷ Loi No 007/2002 du 11 juillet 2002 portant Code minier; Loi 18/001 du 9 mars 2018 modifiant et complétant la Loi No 007/2002 du 11 juillet 2002 portant Code minier; et décret No 038/2003 du 26 mars 2003 portant règlement minier tel que modifié et complété par le décret No 18/024 du 8 juin 2018.

subject to a 10 percent royalty rate is discretionary (s. 7 bis), as is the Minister's ability to grant operating exemptions in certain provinces (s. 220). The legal and administrative framework of the contribution to community development projects (0.3 percent of turnover - art. 285 g) must also be specified in order to regulate the use of these large sums. It also appears that the procedures for evaluating exported goods lead to divergent results as to the amount of foreign currency to be repatriated (art. 269), the export license being granted ex ante on the basis of a mercurial value, whereas the company relies on the actual ex post value of the transaction.

61. Implementation of the new code also poses many new challenges, of which the management of finances by sub-national governments and the implementation of the beneficial ownership considerations for suppliers of services of the mining industry. While the new code imposes to pay part of the royalties directly to sub-national governments, it is not clear to what extent some sub-national governments, which in light of these provisions will see their budgets increase markedly, will be able to manage these resources and which controls are in place to ensure that rent seeking does not explode at the sub-national level. In addition, while the requirement to disclose beneficial ownership interests in the sector is contained in the code, an implementing decree will have to define materiality, Politically Exposed Persons (PEPs), and other important elements to concretely identify who owns these services. EITI has been charged to lead the process of the drafting of the decree.

62. According to mine operators, relations between operators and revenue agencies de facto involve several points of friction. The separation of the assessment (settlement and settlement) and collection (payment and payment) services for non-tax revenue (DGRAD) generally results in duplicate checks, each service being able to recover a percentage of revenue and penalties. If relations seem less problematic with the DGI and the DGDA, several still note unrealistic adjustments and VAT refunds (now reduced by the exemption from VAT on imports) remains despite all sources of problems, in particular because of the ad hoc and unpredictable nature of reimbursements by offsetting with other taxes. Several other state services (including provincial and local governments) also visit mining companies, such as the Industry Promotion Fund and the Cultural Promotion Fund, resulting in a heavy compliance burden related to both the multiplicity of collections and the administrative processes of revenue agencies.

63. The information necessary for the establishment of the base and its recovery circulates badly. Discussions with the Ministry of Mines have revealed that several companies do not meet their reporting obligations, particularly with regard to production statistics, which are essential for establishing or verifying the bases of the various taxes, fees and other levies. In addition, the information transmitted to the Ministry of Mines is not automatically shared with the MoF. Thus, not only is there insufficient information, but its distribution is not aligned with each other's responsibilities: the DGI, which is the income tax assessment service, is generally short of information on the operations necessary to verify its complex base, while the DGRAD has more information on the simpler base of fees, but is not in charge of establishing this base.

64. The multiplicity of revenue collection channels linked to the extractive industries increases the dispersion of public funds and complicates their management. The collection services, in principle only competent for the collection of liquidity and the management of the treasury of the State or its dismemberments, have circuits and bank accounts often foreign to the single Treasury account, thus increasing the dispersion of resources financial. A significant part of the manipulations is thus carried out by de facto accountants who do not report their operations to the public accounts. It therefore turns out to be impossible to consolidate a sincere accounting of receipts at the different management levels (State, communities, Establishments and public enterprises). The DRC does not have an exhaustive vision of its revenues from the mining sector and the exhaustiveness of the reports issued within the framework of the Extractive Industries Transparency Initiative (EITI) has not been established.

C. State Owned Enterprises

65. There is a vast amount of literature (OECD and others) that show that SOEs may be particularly exposed to corruption risk. Around the world, state ownership tends to concentrate in high-risk sectors, such as extractive and infrastructure, where public and private sectors intersect via valuable concessions and large public procurement projects. Strong and responsible state ownership is essential to effectively mitigate these corruption risks. At the same time, SOEs in many economies also continue to provide essential public services. The cost to the public and the perverse effects of misallocated resources by corruption in SOEs can dangerously undermine citizens' trust in public institutions.⁴⁸ All these aspects characterize the DRC context. The quality of corporate governance of SOEs and the way in which the state exercises its ownership rights can help to address many of these issues.

66. In DRC, SOEs are of macro critical importance for the national economy. The book value of the SOE portfolio at the end of 2016 was \$16.5 billion, representing close to 50 percent of gross domestic product (GDP).⁴⁹ The DRC Government controls all key utilities such as electricity, water, transport, the national oil and gas company, and the most important sector, the mining sector, remains in the hands of a number of mining companies owned by the state. At the same time, the private sector remains heavily dependent on the services and infrastructure provided by these SOEs.

67. Overall SOE portfolio performance remains poor, has led to increasing losses, and remains a high source of fiscal risks. In 2014, their total losses were around \$3 billion, and in 2017 the total was close to \$4.4 billion.⁵⁰ This is due to extremely high labor costs, as SOEs hire an

⁴⁸ Today, 102 of the world's largest 500 enterprises are state-owned, and the trend is clearly upward. The number has tripled since the turn of the century. As their role as global competitors continues to grow, it is more important than ever that SOEs operate with transparency and efficiency.

⁴⁹ Government estimates reported by World Bank.

⁵⁰ World Bank Data.

extremely large number of civil servants and *agent d'état* (contractors with private sector salary), poor service-delivery in key utilities, like electricity and water, and large sums (arrears and overall invoices) owed by the government to SOEs.

68. At the core of these inefficiencies lies a perceived lack of integrity in oversight, management, and operations of SOEs. The Government initiated more than a decade ago a process to reform the way in which they organize and manage their SOEs, yet institutional arrangements, legal framework, and corporate practices continue to represent a major obstacle to fully grasp the economic benefits that SOEs can deliver back to the Government and the people of DRC. The perceived lack of integrity in the public sector is linked to: (i) lack of professionalism in the exercise of state ownership; (ii) risk management and corporate controls that are insufficient or ignored; and (iii) weak enforcement.

i. Composition and Performance of the SOE Portfolio

69. A reform process has been put in place with a focus on SOE corporatization and institutional set up. The law on transformation of SOEs (Law No. 08/007 of 7 July 2008) corrected the 1978 Act imperfections which placed under one that all public companies regardless of their purpose and nature of their activities while the law on the organization and management of the state portfolio (Law No. 08/010 of 7 July 2008) ended the dual responsibility of the line Ministry and the SOE Ministry (the Portfolio Ministry) in overseeing SOEs. Of the 51 SOEs, those with a commercial vocation (20) have been transformed into commercial companies and are now governed by company law. Those that were an extension of the State or pursuing a public service mission were transformed into public institutions (21) or public services (4), and the rest was dissolved and liquidated (6).

70. Of the 20 commercial SOEs (unipersonal joint-stock companies), seven remain strategic. The seven strategic SOEs are fully owned by the State and are the country's largest corporate entities and employers (five of them employ more than five thousand employees). With the exception of the *Société nationale d'électricité* (SNEL), they have been loss-making since 2011 with an average aggregate loss of \$411 million between 2011 and 2017, with Gécamines and SNCC scoring the lowest on performance.

Table 8. DRC: Revenues, Net Income and Debt of Strategic SOEs in 2017 (\$ million)⁵¹

SOE	Revenues		Net Income		Debt at End-2017		
	2017	2011-17 av.	2017	2011-17 av.	Financial	Tax/Social	Total
GECAMINES	370.9	288.1	(285.8)	(149.3)	702.4	436.3	1,138.7
REGIDESO	153.5	142.3	(15.7)	(25.2)	11.8	99.0	110.8
RVA	91.5	89.2	(6.1)	(19.7)	11.8	88.7	100.5
SCPT	34.9	19.0	0.2	(26.5)	290.5	115.1	405.5
SCTP	87.9	139.1	(52.1)	(66.5)	61.4	115.3	175.4
SNCC	39.8	42.3	(150.6)	(141.3)	135.1	221.1	356.2
SNEL	582.5	503.1	3.8	17.1	1,932.7	190.0	2,122.7
Total	1,361.0	1,223.1	(506.3)	(411.4)	3,145.7	1,265.5	4,409.8

Note: average 2011-2017 excludes 2013.

71. Small SOEs continue to record losses. EITI reports that the seven smaller extractive SOEs – including MIBA, SOKIMO and the gasoline distribution company SONAHYDROC – had combined losses of close to \$50 million in 2016.

72. The poor economic performance of the state portfolio has not generated urgency in taking action. This is partially due to inertia of the Government and partially due to the fact that the corporatization process is far from being complete. As Société Anonyme, the corporatized SOEs should operate on commercial footing and deliver commercial results, yet years of losses have not truly generated changes in management, re-composition of boards, and/or demand for better disclosures to fully understand why these losses persist. For example, most if not all of the SOEs in the extractive sector have de facto stopped production, hence it is not fully clear where these costs are arising from, considering also the fact that the extractive SOEs have delegated production to a number of private companies (*joint venture*) via leasing of mining rights and should be collecting profits from these joint ventures.

ii. Institutional Arrangements and Controls

73. Institutional arrangements for SOEs have evolved over the years. The law on the organization and management of the state portfolio (Law No. 08/010 of 7 July 2008) centralized the management of SOEs in the hands of the Ministry of Portfolio, and created an advisory entity, COPIREP, to deal with SOE reforms. Later, in 2013, the *Conseil Supérieur du Portefeuille* (CSP) was given institutional autonomy, the same that COPIREP has today, and placed under the Ministry of

⁵¹ World Bank.

Portfolio as a second advisory body in charge of financial oversight, internal controls, and external audit for SOEs.⁵²

74. The institutional setting appears sound on paper, yet implementation is far from being effective. While the advisory entities should inform the political decisions on how, what, and why to reform certain SOEs, the practice shows that reforms are largely a top down approach, with limited analytical work feeding into it. CSP should provide the key financial information to decide what to reform, *Comité de Pilotage pour la Réforme des Entreprises Publiques* (COPIREP) should inform the how to reform and why, and the Ministry of Portfolio should then inform cabinet and Government Presidency on what steps to take. Missing the opportunity to filter the political decisions via economic and commercial considerations impacts the quality of the reform, and ultimately the economic performance of the SOE portfolio.

75. The control structure for SOEs remains at best ineffective. On financial oversight, two institutions have a role to play: The State Auditor and CSP. The State Auditor, established with a 1987 Law but operational only since 2007, is resource-constrained and lacks financial and operational independence to deliver on its mandate. The audit of SOE accounts is practically not existent, and the decentralization effort (a new law introduces 26 offices in 26 provinces) to empower local offices is far from complete. It is also not clear what the ultimate division of labor, roles, and responsibilities between local offices and central offices truly is. Of note, the State Auditor has also judiciary function, but the last time a judge sworn in was thirty-two years ago. CSP is in charge of aggregating financial reporting for the SOE portfolio, yet the latest published report dates back to 2017, and in the preceding years disclosures have been sporadic. Against this setting, the quality of financial information of SOEs remains poor, and disclosures are minimal. For example, Gécamines hires an external auditor but releases only the auditor opinion, and it is not clear who from the government is charged to demand the full financial statements, and who in charge to check that there is follow up on the audit opinions, which have now been qualified for three years in a row.

76. The boundaries of oversight and control do not currently include indirect participations of the State. This leaves out any contract that SOEs enter in with other partners, which means that while the Ministry of portfolio has scope to oversee the SOEs themselves, it remains removed from monitoring and overseeing any obligation through which SOEs create new companies (JVs).

iii. Legal Framework

77. There are three main challenges that make it difficult to define the legal perimeter that pertains to SOEs. These relate to the true corporate nature of SOEs, the norms that new mining

⁵² The second advisory entity (CSP) was also created in response to IMF concerns (during program engagement) related to a relevant production contract that involved SOEs that was never disclosed, in violation with the IMF expectations to disclose any contract signed during the program period.

code introduces, and the corporate governance norms that define the way SOEs are actually organized.

78. Defining the true corporate nature of SOEs remains a challenge, as today the SOEs engaged in the extractive sector appear to be a de facto sectoral cadaster and less a commercial operation. The first challenge is to clearly qualify what type of ‘corporate’ entities the SOEs are, especially the ones operating in the extractive sector. Before the 2002, the mining sector was a monopoly. In 2002, the mining code was introduced with the objective to open up the sector to private companies, hence the contextual creation of the mining cadaster, in charge of managing mining rights. Yet the old mining code (a new mining code has been issued in 2018) regulated only mining rights related to land in the public domain, i.e. owned by the Government, and de facto transferred all the mining rights (permits) to the strategic SOEs on the basis of their extractive focus. This in turn has created for any private player that wants to engage in mining in DRC the need to go get an exploration license first with the Cadaster, but then the actual permit will have to be negotiated with the referenced SOE. On this front, first it is not clear why the SOEs should be the permit owners of public domain land, second there appear to be no rules on managing SOE discretion in setting pricing, and overall lack of guidance on how to assign the licenses and close deals.⁵³

79. The 2018 mining code introduces new legal challenges that will require immediate attention. The new code increases uncertainty for private investors, but it also introduces important aspirational concepts that will have to be followed through with ad hoc decrees, and that is where the relevance of the new mining code can be annulled or enhanced. The new code introduces mandatory disclosures on revenue and joint venture contracts, and no guidance has been issued on who is charge of disclosing and who in charge of monitoring disclosures or act if disclosures simply do not happen. The code also proposes disclosures of beneficial ownership of private businesses related to the extractive industry and suggests the creation of a beneficial ownership registry. On beneficial ownership for example, several concepts need to be clarified: whose profiles to disclose, i.e. individuals and PEPs, how, i.e. via a form, how to define materiality, which agency will be in charge to monitor and vet the information received, i.e. Cadaster for domestic or ANAPI for international for example, which beneficial ownership registry is envisioned, i.e. one per sector or an integrated one. These details will have to be adequately analyzed to propose effective solutions that keep in check the mining and extractive sectors.

80. Defining the corporate governance perimeter for SOEs remains an additional challenge. COPIREP has developed guidance on what the corporate governance expectations for SOEs are, and SOEs have to an extent implement them. Yet now the OHADA bundle of provisions adds one layer of

⁵³ Of note, according to the 2002 mining code, there is a cap on number of permits that one individual SOE can manage, and Gécamines is in violation of that norm.

norms and directly impacts the corporate architecture of all SOEs. Clear guidance on how to adopt and adapt to this new framework has not been developed yet. The issue becomes quite complex in the mining sector, where the recently issued mining code adds an ulterior new layer of requirements but keeps alive old norms from the 2002 mining code leaving for example mining rights still in the hands of SOEs.

81. The bar of professionalism in the way the SOEs are run has not been raised yet, and SOEs are currently suffering from it. While performance contracts have been put in place to monitor how SOEs behave and perform, it remains unclear how targets and milestones are generated, what guidance is followed on fit and proper criteria, what is the current appointment policy, and what are the mechanisms to evaluate the performance of the staff.

82. Preventing corruption and promoting integrity in SOEs requires mutually reinforcing approaches from the state and SOEs. Relying first on the integrity of the state and its faithful execution of ownership responsibilities and, second, on good practices of the SOE sector that can both signal and support legitimate state ownership. Corruption and irregular practices damage brand and company reputation and affect SOE performance. But they also erode public trust and worsen the quality of the investors being attracted to do business with.

83. Actions to be taken will have to be geared towards better disclosure and reinforcing control functions. To date, the Ministry of Mines has published 145 basic contracts and related documents on natural resources, pertaining specifically to mines and hydrocarbons, for a total of 581 published documents comprising contracts, annexes, and amendments.⁵⁴ Comprehensive publication of mining, oil, and gas contracts, publication of financial statements of SOEs, annual aggregate reporting from CSP, and revitalization of the functions of the State Auditor represent the initial conditions without which becomes extremely hard to propose a set of institutional reforms that re-address the way the State governs its assets.

84. A true accountability framework to work with should be the second item on the reform agenda. Once the contracts bring to light centers of power and clarify roles and responsibilities in the negotiation processes, an accountability framework should be designed with the objective in mind to avoid any blurring of roles among the different Government functions.

85. Lastly, the Government of DRC should decide what to do with the way the SOEs truly operate. At the moment, SOEs do not appear to operate as commercial entities, hence the Government should decide what type of commercial activity is envisioned, especially for the strategic SOEs. This is particularly important given the limited availability to financial resources by the public sector and the chance to mobilize private sector resources to help tackle DRC's development needs.

⁵⁴ www.mines-rdc.cd/resourcecontracts and www.ctcpm.cd.

II. Central Bank Governance and Operations

86. This section⁵⁵ focuses on the vulnerabilities in the BCC's legal framework, as well as its governance and operations. In line with good international practice, such vulnerabilities could be prevented by taking steps to ensure that the autonomy of the BCC, which is a pre-requisite for the central bank to be able to fulfill its mandate, is safeguarded in a context of enhanced framework for transparency and accountability.⁵⁶

87. In addition to autonomy, vulnerabilities should be reduced by providing for strong governance arrangements, including through a robust decision-making structure and a system of "checks and balances" to ensure strong independent oversight of the BCC in the conduct of day to day operations.

A. Legal Framework

88. The organization and functioning of the BCC are governed by the Law no. 18/027 of December 13, 2018. The Law provides for the autonomy of the central bank in executing its mandate, whose main objective is to ensure price stability. The BCC Law also provides for the adoption by the Board of the BCC of policy rules and internal regulations, as well as regulatory acts within the framework of the BCC's mandate.

89. The BCC Law was strengthened through major amendments in 2018. The amendments improved the central bank's *de-jure* autonomy, governance arrangements, accountability and financial transparency. The BCC Law reaffirms the institutional and personal autonomy of the central bank by protecting it from undue influence by other entities, and prohibiting government officers and, more generally, all public officials from membership on its Board. Accountability is reinforced through provisions on the BCC's Board oversight and the establishment of a Board Audit Committee (AC). Operationalization of these amendments however remains outstanding (see below).

90. Notwithstanding the changes, further improvements could be made to the legal framework. In particular, the procedure and eligibility criteria for the appointment of non-executive members of the BCC Board should be improved to protect their independence and ensure that they collectively possess the requisite skills and expertise to assume their oversight function. In addition, decision-making should be facilitated through stronger modalities to mitigate the risk of

⁵⁵ This section draws on the outcome of the safeguards assessment mission to the Banque Centrale du Congo (February 3-13, 2020). The assessment was conducted in connection with the disbursement under the Rapid Credit Facility for the Democratic Republic of Congo approved by the IMF Executive Board in December 2019.

⁵⁶ The concept of autonomy, which refers to the ability of central banks to exercise their functions without the interference of political bodies and private economic interests, can be broken down into functional, institutional, personal and financial autonomy.

concentration of executive powers. The BCC's recapitalization provisions to safeguard the central bank's financial autonomy could also be strengthened.

91. Despite the positive legal reform, the implementation of the new Law remains outstanding and should urgently be completed. Operations at the BCC are not yet in compliance with the newly established legal framework on aspects such as credit to government, governance arrangements, lending operations, and transparency requirements. For example, in addition to discontinuing monetary financing, the BCC needs to align its decision-making and oversight structures, as well as its financial reporting practices with the new legal requirements (see below). The BCC should develop a compliance function to strengthen accountability and reporting mechanisms for breaches with the Law. This should be upheld by a strong "tone at the top" at the senior executive team and Board levels, and active engagement by the Board in instilling strong oversight, and monitoring compliance with the BCC Law and internal policies.

B. Governance Arrangements and Oversight

92. The BCC's decision-making modalities are not in line with leading practices and center on the Governor. While the Law provides for a Management Committee to assist the Governor in some of his prerogatives, such a body is not yet established. As a result, executive management decisions are exclusively concentrated with the Governor, including most authorizations and procedures. Therefore, in order to implement a more collegial decision making at the executive level, the BCC should establish the Management Committee as stipulated in the Law, complemented by a delegation framework approved by the Board, through which the involvement of senior bank staff in the decision making could be allowed.

93. The BCC's governance structure is not yet in compliance with the amended legal framework and presents reputation and conflicts of interest risks. Under the new Law, the central bank is governed by a Board consisting of the Governor, two Vice-Governors, and eight non-executive directors, six of whom should be present for a quorum to be met. However, the current BCC Board has vacancies for a second Vice-Governor and three non-executive positions. These gaps carry legal uncertainty risks with respect to Board decisions and impairs the oversight function.⁵⁷ In addition, the Board has two non-executive directors (the chairman of a state-owned mining company and a senior official in the tax administration) that contravene the incompatibility criteria for BCC Board members, which prohibit officials of government authorities and public enterprises. The independence of members of an oversight body such as the BCC Board is a fundamental governance principle. These breaches should be addressed urgently as they introduce possible political interference in the Board's oversight responsibilities and raise conflict of interest concerns.

⁵⁷ The current Board comprises the Governor (as chairman), one Vice-Governor, and five non-executive directors. The Governor was appointed in 2013, the Vice-Governor in 2011, and one director in 2017. The remaining four directors were appointed in 2003 and carried forward with their mandates since then through tacit renewals.

94. Oversight arrangements at the BCC are not well established and should be strengthened. The BCC Board is *de jure* entrusted with responsibilities on policies formulation and oversight of executive management responsible for the implementation of these policies. In practice, however, the Board's own compliance with the BCC Law is limited with respect to its responsibilities. It is not actively engaged in overseeing daily management, or audit and control mechanisms. Examples include the lack of approval of policies and internal regulations that should govern key activities such as reserves management and lending operations, and the absence of evaluation of the external and internal audit mechanisms, or risk management and internal control systems. The Board should be actively engaged in approving key policies and overseeing the BCC's conduct of core operations. The AC has similar shortcomings and its current oversight modalities are not in line with leading practices and it lacks the requisite expertise.⁵⁸ Going forward, the BCC should secure such expertise through future appointments on the Board, and the latter should leverage the oversight tools available to it, including internal and external audits, and most importantly a proactive AC.

C. Autonomy

95. Fiscal dominance and monetary financing in breach of the Law undermine the autonomy of the BCC. The BCC's financial autonomy is undermined by significant fiscal dominance. Government debt of US\$1.8 billion at end-December 2018 (representing about 60 percent of total assets) is indicative of government pressures on the central bank. The debt includes unremunerated advances in violation of prohibitions in the central bank legal framework, government securities that are remunerated below market rates, and past losses pending recognition and securitization by the government. The advances mainly relate to processing of government payments outside the expenditures channel in the budget leading to the creation of significant overdraft balances. Further, certain loans contracted by the government are guaranteed by the central bank through deposits in foreign currency held at domestic commercial banks as collateral, which encumbers an important portion of the foreign official reserves and not only represents an indirect financing of the government, but also infringes on the central bank's ability to carry out its policy objectives.⁵⁹

D. Transparency and Accountability

96. Deloitte Congo is the BCC's external auditor since 2016 and audits are conducted in accordance with International Standards on Auditing. The 2018 audit opinion on the BCC's

⁵⁸ An Audit Committee is typically a sub-committee of the Board comprising independent (non-executive) members exclusively that are not involved in day-to-day management and can have objective views in their role. Such committee is usually mandated with oversight of governance, audit, financial reporting, control, and risk management processes. A fundamental requirement for an Audit Committee to function effectively is for at least one member to have background and expertise in audit, accounting, and financial reporting.

⁵⁹ The allocation of foreign exchange reserves to guarantee government debt is a form of monetary financing and prone to the risk of mismanagement of resources. In addition, the BCC's willingness to guarantee any loan proposed by the government is problematic as it represents an improper use of the central bank's resources.

financial statements is unmodified (clean), but highlights breaches of monetary financing prohibitions as a key issue. The BCC annual audits are delayed, and the publication of audited financial statements is not systematic. The delays are mainly due to lags in the central bank closing its year-end accounts and deficiencies in the accounting control processes. Steps are needed for the BCC to normalize the cycle of its annual financial audits in line with statutory requirements and ensure that audited financial statements are published on a timely basis.⁶⁰

97. The BCC has not adopted International Financial Reporting Standards (IFRS) for the preparation of its financial statements. Key gaps are presentation and disclosure shortcomings, and absence of fair value accounting for government debt. Transition to IFRS is necessary to align the central bank financial reporting processes with leading practices and improve transparency.

98. The internal audit function falls short of international standards. The function lacks independence, as some responsibilities that are the prerogative of the Board and the AC are in practice assumed by the Governor. Furthermore, the function faces capacity constraints given the limited expertise in IT audits and the lack of professional certifications.

99. Governance vulnerabilities are revealed in certain operational areas. In particular, reserves management practices are not subject to proper oversight by the Board. A significant portion of foreign reserves (around 38 percent at end-2018) are deposited with domestic commercial banks that are unrated or rated below investment grade, which exposes the BCC to substantial credit risk. The BCC should adopt an exit strategy to divest these balances and establish ex ante controls and reserves management reporting practices to the Board. The BCC's lending to the banking sector does not differentiate between standard monetary policy operations and Emergency Liquidity Assistance (ELA). The lack of proper board-approved policies in these areas expose the central bank to financial risks.

E. Recommendations

Governance

1. The BCC Board should be fully constituted in accordance with the requirements of the Law (including a second Vice-Governor). The appointments should also address the non-compliance of two current non-executive directors with incompatibility criteria for appointment to the BCC Board (June 2020).

Autonomy

2. The BCC and the government should enter into an agreement through a Memorandum of

⁶⁰ The 2018 Law provides for the annual audits to be concluded and audited financial statements to be published, no later than four months after the end (December 31) of the fiscal year.

Understanding to regularize the outstanding credit to government, including remuneration of the central bank on outstanding government advances (June 2020).

Transparency and Accountability

3. The BCC should finalize the FY 2019 audit and publish the audited financial statements (June 2020).
4. The BCC Board should adopt IFRS as the accounting framework and develop an implementation plan for compliance with IFRS for FY 2021 financial statements (i.e., IFRS implemented on January 1, 2021).
5. The BCC Board should adopt a medium-term plan to divest its domestic investments in the foreign exchange reserves portfolio (October 2020).
6. The BCC should implement a Board approved governance framework that clearly distinguishes between (i) emergency liquidity assistance (ELA) with collateral requirements, and (ii) other lender of last resort operations for solvency support and related collateral modalities (December 2020).

III. Financial Sector Oversight

100. The BCC has taken steps to follow-up on oversight and regulatory weaknesses that 2013 Basel Core Principle assessment had detected. The process to adopt risk-based supervision has begun. With the help of AFRITAC Central, risk methodological guidance has been developed for onsite visits and training on supervisory reviews and evaluations processes have been completed for off-site monitoring. On the regulatory side, BCC has issued new norms on corporate governance, risk management, licensing criteria and internal controls have been passed. Of note, IFRS standards have also been adopted and new credit bureaus (with the help of several IFIs) will soon be established.

101. One governance challenge for the BCC will be to ensure that the implementation of these reforms is harmonized, and that there is capacity deliver its functions effectively under the enhanced framework. The new requirements on risk management, internal control and corporate governance will have to be tuned into the newly established supervisory risk based approaches, and the supervisor will have to develop additional guidance on how to assess these thematic areas not only to ensure regulatory compliance, but also and especially to ensure consistency of supervisory processes and effective risk detection.

102. To fully deliver on its mandate, the BCC will have to address its current operational challenges. Many of these vulnerabilities relate to supervisory resources, corrective actions, and accounting and auditing practices. The allocated budget to supervisory function remains limited,

uncertainty remains on what corrective actions have been taken in the recent past, and it remains unclear whether IFRS standards have been adopted for banks, as IFRS (as of January 2019) appears mandatory for issuers of securities under the OHADA Law requirements.

103. The new licensing criteria can prove useful moving forward. Instruction N18 of May 2019 introduces new conditions for approval of credit institutions, board members, and executives, which applies to banks, financial companies and their auditors. The instruction also includes guidelines regarding the outsourcing of control functions (now subject to BCC approval), and it includes three templates for the auditors. It also introduces requirement that the outsourcing of essential services is also subject to the prior authorization of the Regulatory and Control Authority. It requires prior authorization from the BCC for a certain number of operations, in particular all those which substantially modify the economic model of the credit institution; it tightens the obligations borne by the shareholders, requiring to be able to provide capital or liquidity support in the event of difficulty for the credit institution.

104. The integrity of the system will ultimately depend on the effectiveness of new organic law, and the efforts that BCC is willing to put in motion on related party regime, and AML monitoring efforts. The newly adopted organic law (2018) will have to prove quality and strength in its application. For example, the new law increases the size of the council by two, but appointment processes to fill these important vacancies have not been completed yet.

105. The related party regime (RPT) has not been updated and remains narrow in scope as the 2013 FSAP had highlighted. The lack of a clear and comprehensive RPT regime may critically undermine licensing criteria effectiveness, corporate governance requirements, and overall detection and assessment of banks' risks, and supervisors' ability to address potential risks from related party transactions and exposures. This will have ramifications for the soundness of the banking system in DRC and can be seriously aggravated by the current lack of an AML monitoring effort.

IV. Rule of Law

A. Administration of Justice

106. Judicial institutions in the DRC suffer from widespread governance problems and a significant lack of resources. Inconsistent treatment under the law and a perceived lack of transparency exacerbate the problems and result in the judiciary being viewed by market participants as a serious constraint to doing business in the DRC. All stakeholders interviewed by the IMF mission have claimed that there is very little confidence in the judiciary in the DRC. Economic actors report doing anything in their power (negotiations, out-of-court settlements, etc.) to avoid taking a case through the formal judicial process. Moreover, economic actors are also induced to offer bribes or use political connections to obtain favourable judgments.

107. The judiciary in the DRC seems to be under-financed. This results in insufficient resources and infrastructure (lack of offices, computers, training facilities, etc.), and a widespread lack of magistrates/judges at every level to cope with the workload. The Court of Appeals of Kinshasa/Gombe in central Kinshasa does not even have a law library and salaries for judges, magistrates, and clerks are uncompetitive and inadequate. This results in a breeding ground for corruption and bribery, where participants to justice routinely attempt to ‘buy’ favourable treatment. This is exacerbated by severe delays in the processing of court cases and large backlogs in judges’ workloads.⁶¹

108. Authorities and private sector representatives highlighted serious concerns regarding the integrity and independence of the courts, which reflect the findings of perception-based indicators. Transparency International’s ‘Global Corruption Barometer – Africa 2019’ highlights a worrying lack of trust in the DRC judiciary, with nearly 75% of respondents in the country indicating that they view “most or all people” in the judiciary as corrupt. The 2019 ‘Worldwide Governance Indicators’ score the DRC poorly under its ‘Rule of Law’ dimension of governance, which reflects the perception of confidence in the court system, among other things. The DRC received a score of 2.88 out of 100. Additionally, the DRC received a weak score in the 2018 Mo Ibrahim Index of African Governance under the ‘Safety & Rule of Law’ chapter, giving it a score of 19.4 out of 100; this chapter assesses the extent to which states have effective methods of adjudicating disputes and enforcing laws through a judicial mechanism free of state control. The scenario portrayed by these rankings was corroborated by parties interviewed in Kinshasa, who claimed that many judges are perceived as operating above the law and abusing their official position for personal gain with impunity.

109. Lack of accountability and oversight of magistrates and judges contributes to corruption vulnerabilities. Judicial appointments are viewed by many as politically motivated and not merit-based. While Article 151 of the DRC’s Constitution calls for an independent judiciary, concerns persist about political interference in judicial decision-making and an overall lack of autonomy. There is a perception in the DRC of certain individuals ‘buying’ their way to justice. This is exacerbated by severe delays in the processing of court cases. Bribes can be paid to ‘speed up’ case management. The slim chance of being detected and prosecuted encourages flagrant abuse of the system. The Superior Council of Magistrates told the IMF mission that judges suspected of impropriety are routinely investigated and sanctioned, but there are no recent examples. Similarly, judges interviewed at the Court of Appeals of Kinshasa/Gombe reported that corrupted judges are sanctioned to the full extent of the law, although recent examples were not available at the time of the visit.

⁶¹ Judges interviewed by the IMF mission at both the Court of Appeals of Kinshasa/Gombe and the Commercial Court of Kinshasa all spoke of extensive backlogs in the DRC judiciary due to the insufficient number of judges in the system. Court administrators in the Superior Council of Magistrates said the same thing. Statistics on the ratio of cases-to-judge were requested in order to corroborate these claims, but no statistics were provided.

110. Further compounding the situation is that, where formal court judgments are handed down, the majority are not published. While court decisions are supposed to be published in a variety of places, the Superior Council of Magistrates admitted severe delays and confusion in where court decisions are published. Some are made available online (with long delays); others in hard copy; for many others, it is unclear if/where they are published at all. For the limited number that are published, there is no central database of decisions and it is unclear how citizens can go about obtaining copies of judgments. To instil confidence in the judiciary, all court decisions should be published promptly in a single centralized location and made available to the public. Moreover, as dissemination of public information (including legislation) is weak in the DRC, many citizens remain unaware of their rights. Laws are published in the DRC's official journal but not with any degree of frequency. In some cases, even magistrates and judges are not informed of the passage of new legislation. More generally, these practices form part of a pattern in the DRC of weak transparency. The obscurity of the system is a key ingredient fostering corruption. The absence of widely published court decisions (critical for predictability in the market and for institutional accountability) and of statistical data (critical for accountable governance) are serious shortcomings that ought to be addressed.

B. Contractual Rights

111. The resolution of contractual conflicts is problematic in the DRC. Linked to the above section on 'Administration of Justice', the DRC suffers drastic problems in the enforcement of commercial contracts, which severely hamper the business environment in the country. In this category, the World Bank's 2020 'Doing Business' profile of the DRC ranks the country in 178th place in the world (out of 190 economies assessed) and reports an estimated enforcement cost of 80.6% of the contract value and an average time lag of 610 days.⁶² The high costs and slow pace of resolving disputes take a significant economic toll on the DRC.

112. As noted above, there is a perception that the DRC judiciary is fuelled by bribery and corruption. More specifically, in a contractual dispute context, there are reports that the judicial system can be manipulated by offering inducements to unethical officials in exchange for the garnishment/seizure of the bank accounts or assets of an opposing party to a dispute. Numerous stakeholders interviewed by the IMF supported the view that contractual disputes are decided based on which party has more money at its disposal, rather than the legal merit of the claim. The weakened judicial system is seen as an integral component of the corruption network – essentially open territory for graft that is fuelled on both the supply side (by unscrupulous economic actors) and the demand side (by corrupt judges and magistrates).

⁶² World Bank. 2020. Doing Business 2020: Comparing Business Regulation in 190 Economies. Washington, DC: World Bank. © World Bank. <https://openknowledge.worldbank.org/handle/10986/32436> License: CC BY 3.0 IGO.

113. Problems are rife in the resolution of commercial disputes. While the DRC has established a system of specialized commercial courts in the country's eleven primary business centres (including Kinshasa, Lubumbashi, Matadi, and Kisangani), these courts suffer many of the same problems as the wider judicial system mentioned above. The ratio of judges to pending cases is problematic, with the aforementioned backlogs worsening the problems and leading to ever-increasing delays and rising costs for stakeholders. Even when a final judgment is rendered, stakeholders report difficulty in actually enforcing judgments, as corroborated by the 'Doing Business' profile.

C. Property Rights

114. Similarly, the process of registering real property in the DRC is laborious and fraught with difficulty. In this category, the World Bank's 2020 'Doing Business' report places the country at 159th place globally out of 190 economies assessed. Eight procedures are needed to register property, taking an average of 38 days, and costing over 10% of the value of the property being registered. In particular, the country scores poorly on the 'Doing Business' report's index measuring the reliability of property registration infrastructure.

115. The manual property registry is extremely unclear and gives rise to the possibility of corruption. For example, participants may pay inducements to speed up transactions, manipulate the system, generate false property deeds, among others. Newly issued land records are maintained only in paper format (not scanned or digital), increasing the risks of lost or misplaced records. There is no electronic database either for checking encumbrances over real property (liens, mortgages, etc.) or for recording property boundaries.

116. Notaries carry out their activities with negligible oversight. Aside from the mechanics of purchasing, transferring, and registering property in the DRC, market participants reported to the IMF mission serious problems related to the oversight of the notarial profession. The role of the notary in the DRC is, among other things, to act as a tax collection agent on behalf of the government in real estate transactions. However, in the DRC oversight of notaries is so weak that many in the profession do not comply with their obligation to pass the tax revenue to the government, without consequences.

117. Overall, the enforcement and protection of property and contractual rights, whether by individuals or commercial entities, requires a reliable dispute resolution system – something that is lacking in the DRC. The quality of the judiciary is at the core of a robust system for the enforcement of economic rights. Quality in this context covers both the technical competence of magistrates and judges, as well as their independence from outside interference.

V. Market Regulation and Business Environment

118. Comparative indicators point to significant weaknesses in the business environment with excessive regulation weighing heavily on the cost and competitiveness and corruption often cited as the biggest constraints. The DRC has low ratings in the World Bank Doing Business Indicators and in the World Economic Forum Global Competitive Index.⁶³ The Doing Business survey rates the DRC well on starting a business, dealing with construction permits, and registering property, but very poorly on protecting minority investor interests (22 score compared to the regional average of 38.5), paying taxes (40.29 compared with regional average of 57.8), trading across borders (3.5 compared to regional average of 53.6), and contract enforcement (33.3 compared with regional average of 49.6)⁶⁴ Similarly, the World Economic Forum survey singles out the heavy burden of government regulations in the DRC and the shortcomings of the legal framework to challenge regulations, as well as the burden of customs procedures and trade barriers.⁶⁵

119. Efforts are underway enhance efficiency - particularly in business registration to create a more conducive business environment. In 2012 DRC implemented the Organization for the Harmonization of Business Laws in Africa (OHADA)⁶⁶ framework which supersedes all contradictory provisions of national legislation dealing with the formation, incorporation, management and dissolution of companies. OHADA is still in the process of being fully transposed and integrated into the legal system in DRC. This remains a challenge as many significant adjustments were made including the choices of new corporate form, limitation on number of director positions held, obligation to appoint a statutory auditor etc. A single electronic registration system "guichet unique" has been introduced by the Investment Promotion Agency (ANAPI) consolidating different agencies involved in business creation (except for the tax agency) into one central point and even incorporating ancillary services, such as application of brands and patents, to the Trade and Property Credit Register (*Régistre du Commerce et du Crédit Mobilier* - RCCM) database.⁶⁷ The guichet unique bureaux and satellite antennae are in the process of being fully operational and financially autonomous to ensure sustainability. Other initiatives that have occurred are the liberalization of the insurance market and the piloting of a central registry of collaterals to

⁶³ <https://www.weforum.org/reports/how-to-end-a-decade-of-lost-productivity-growth>

⁶⁴ <https://www.doingbusiness.org/content/dam/doingBusiness/country/c/congo-dem-rep/ZAR.pdf>

⁶⁵ http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

⁶⁶ A framework for a series of laws and institutions framework intended to streamline business regulation, provide investors with more legal protection⁶⁶ and to provide a framework in the fight against corruption in the private sector: <http://www.ohada.com/>

⁶⁷ So far, there are 2 stations in Kinshasa (the primary commercial area) and another 9 across the country with plans to roll out to smaller bureaux in addition to developing software for online registration which has the potential for huge geographical coverage. A by-law was recently approved to map the Guichet unique to the 15 appeal courts so that there is now 60+% geographical coverage.

avoid multiple loans being underwritten by the same collateral.⁶⁸ As part of the RCCM, there are also efforts to create a Companies House where companies will file annual accounts and the data maintained in a useable format which can be simultaneously linked with business registration. Despite some progress, there still lacks comprehensive efforts and private sector continue to refer to widespread corruption which frustrate business activity and profitability and the biggest dissuading factor to new investors.

120. During the mission, representatives from the private sector pointed to the complex tax and customs system and unclear regulations and procedure as their biggest impediments to business operations. As indicated in paragraph 4 above, the tax system is arbitrary and characterized by the multiplicity of levies. The mission found that the most severe challenges to private sector interests do not exist at market entry but more in the day-to-day running of a business. Evidence of this can be found in the fact that the formal sector is small and shrinking - the National Institute of Statistics estimating that in 2012 the informal sector represented 88.6 percent of total economy and the proportion of enterprises in the formal sector having decreased to just 0.3 percent by 2019 with many businesses having moved from the formal to the informal sector or exited the market entirely as not being viable.⁶⁹ It highlighted the multiplicity of tax and customs levies and the many steps and procedures required to satisfy all sector requirements as key hindrances to running businesses.⁷⁰ Line ministry regulations and the lack of transparency makes navigating the business environment challenging, with varying procedures from one province to another. This opaque and complex regulatory environment produces many opportunities for rent-seeking.

121. Furthermore, the legal frameworks for tax and non-tax revenue do not guarantee respect for the principle of balance between the rights of users and those of administrations. This imbalance is manifested in particular by the instability of tax laws, the asymmetry of information, the excessive powers of administrations in handling user complaints, including the absence of a joint pre-litigation appeal body as well as the multiplicity of penalties at often very high rates. In addition, although having adopted the banking of revenues, the current procedures for declaring and paying duties and taxes which are still manual to promote promiscuity between businesses and agents, making them vulnerable to temptation. Finally, the feeling of "fiscal harassment" still remains omnipresent and creates a climate of permanent uncertainty among businesses due to the multiplicity of controls, often carried out by several entities (DGI, DGRAD, DGDA, IGF, sectoral ministry, city, etc.) simultaneously or not.

⁶⁸ So far Equity, BCDC and ROAR are piloting the project and there is a plan to roll out to other banks.

⁶⁹ Note au DG pour le FMI sur les Entreprises en RDC, INS.

⁷⁰ Even ANAPI reported to having difficulty in helping some of their clients navigate the complex business environment that contains many regulations, including at the sectoral and procedural level.

122. Property taxes and computerized customs clearance procedures also suffer from a large number of levies collected for the benefit of the several organizations present at the customs clearance platform. No less than 18 levies of different types are collected at the border crossing, including 4 by Customs and pay into the general state budget and 14 for the benefit of various public bodies. Unfortunately, all these direct debits are not supported by the computer system for processing customs declarations, Sydonia World. In addition, by setting up the Integral Single Window for Foreign Trade (GUICE), the DRC has reduced document preparation time by 122 hours for exports and by 42 hours for imports; border compliance time has also been reduced, from 219 hours for exports and 252 hours for imports.⁷¹ However, GUICE, which serves as an online "pre-clearance" platform, is not interconnected with Sydonia World. This situation induces an additional step for importers, and therefore additional harassment with possibilities of person-to-person interactions which encourage bad practices.

123. A significant amount of discretion lies in the hands of public officials. This can give rise to preferential treatment being given to favored operators and companies, which ultimately results in a skewed market with no level-playing field. Conflicts of interest and the fusion of business and politics in DRC has been well documented with, for example, "connected companies" involved in agriculture, mining, banking, real estate, telecommunications and airlines being awarded key government contracts and holding substantial stakes in the Congolese economy. Furthermore, deliberately inconsistent application of taxes and custom duties has meant that certain favored companies have not been required to pay taxes at the at the country's borders, while others have had to pay excess amounts. Such differential treatment has allowed preferred companies to undercut market prices⁷² and could potentially encourage businesses that have not received preferential treatment to operate within the informal sector or to engage in illicit activities such as smuggling.

124. The application of the laws is inconsistent and is sometimes politically motivated. Private sector representatives were keen to disclose to the mission that political influence is evident in all aspects of business operations including in the awarding of contracts, application of permits and in some cases court decisions. While government is the main source of contracts in the economy, the winners of such contracts are largely pre-determined - most having been awarded to a select few connected companies. In fact, only 14 percent of the value of public sector contracts is granted through competitive bidding, the majority being awarded as a result of a significant amount of discretionary behavior on the part of public officials. The 2017 law relating to subcontractors - that requires businesses to give preference to registered subcontractors with majority local ownership - further increases corruption risk by allowing connected persons to gain privileged access to large

⁷¹ https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf

⁷² An example of the effect of inconsistent imposition of tariffs at the border is that of the consortium of fuel importers made large losses in recent years, partly because administered retail prices were suppressed, but also because some other importers outside the consortium were permitted to bypass border tariffs.

hubs of commercial activity. Private sector lack of trust in the court system with, for example, concerns about powerful businesses being able to influence court procedure is manifest. The mission was informed of instances of connected parties gaining preferential access to the court system to disrupt the business rivals. A large number of court disputes relating to property registration and application for construction permits - largely a result of the complex and non-transparent regulation - can also lead to preferential treatment based upon connected interests or the highest bidder.

125. Critical commercial sectors, such as mining, are subject to heavy government influence and are essentially controlled by the state with a lack of transparency and clarity in the legal frameworks. SOEs control the operations of mining activities to an overwhelming degree. Gécamines, for example, holds a near total monopoly on copper/cobalt mining licenses and therefore largely determines access to the sector in the absence of clear legal and regulatory framework for mining license application by potential investors.⁷³ Through Article 336 and 337 of the 2002 mining code, SOEs were granted all permits of known deposits in the country, while the 2018 mining code legislates for an application process for any mining permit/license⁷⁴ held in the public domain. However, the new mining code does not provide regulation or guidance on how to apply for a permit/concession from privately held licenses (i.e. those controlled by SOEs). It is, therefore, not always clear to investors what legal framework applies for purchasing a permit, forming a joint venture and paying application fees. This opens up significant opportunities for discretionary behavior, bribery and corruption.

126. The introduction of the new mining code has created reservations within the private sector, where it is felt that it is not helping create a viable sector or adequately protecting their interests. With the new mining code, 60 percent of export receipts must be repatriated back to DRC while 40 percent can be held in an offshore account.⁷⁵ Article 264 legislates for the types of payments that can be made and sent for the benefit of non-residents, while article 269 (repatriation of export earnings) is somewhat contradictory, suggesting that the funds can be used only to service foreign debt. Article 274 on currency redemptions states that if the needs of national interest require it, the State and the Central Bank can buy foreign currency from the repatriated revenues at negotiated rates whereas the old mining code prohibited this. The amendment of article 220 also introduces the idea of incentives through minister discretion which could pose issues in discriminating against investors.⁷⁶ Currently, it seems that the total economic impact of the new fiscal regime and the lack of clarity in conducting business for investors is too great, especially after taking

⁷³ In the Katanga province, it is only Kamoa-Kakula related development that is held through mining cadaster.

⁷⁴ Article 33 of both the 2002 and 2018 mining code describes the license/permit process for documented/known deposits (again in public domain).

⁷⁵ Mining Code 2018.

⁷⁶ Art. 220 : « Toutefois, le Premier ministre peut, par décret délibéré en Conseil des ministres, accorder un certain nombre des mesures incitatives à l'endroit de provinces souffrant de déficit d'infrastructures pour booster leur essor économique à partir des ressources minières. »

account of the large number of de facto taxes that are collected outside the strict legal scope of the mining code, and mandatory payments to state-owned companies who operate in the sector (for example Africaine d'explosifs-AFRIDEX in the explosives industry). This can place restraints on the development of the most important sector of Congo's economy by failing to attract the most beneficial investment⁷⁷ to the country.

127. Some critically important sectors (electricity, telecommunications) are stifled by malfunctioning regulatory agencies, either because a decree is missing or because regulators have not yet been appointed. Failing to quickly resolve the issues could create serious drag on the economy and entrench the current monopolistic or oligopolistic structure of these industries.

VI. Anti-Corruption Framework

128. The anti-corruption framework in the DRC is disjointed and is missing several key components. In Transparency International's most recent 'Corruption Perception Index' from 2018,⁷⁸ the DRC rates badly with a score of just 20 out of 100. Looking back as far as 2004 (when the DRC appeared in the index for the first time), the situation has consistently been bleak. The country has perennially been ranked amongst the lowest in the world. This is consistent with the findings of the 2019 'Worldwide Governance Indicators,' which score the DRC poorly across the six dimensions of governance assessed by that methodology.⁷⁹ Similarly, the 2018 Mo Ibrahim Index of African Governance gives the DRC an overall governance score of 32 out of 100.

129. DRC is a signatory to various international conventions on corruption. The DRC acceded to the United Nations Convention Against Corruption (UNCAC) on September 23, 2010⁸⁰ and is bound by the terms of that convention. However, the DRC has failed to engage in the first cycle of the UNCAC review mechanism and should prioritize undertaking this step.⁸¹ In 2007, DRC ratified a protocol agreement with the Southern African Development Community (SADC) on Fighting Corruption. The country also signed the African Union Convention on Preventing and Combating Corruption on December 5, 2012 but has not yet ratified it.⁸²

⁷⁷ <https://resourcegovernance.org/blog/democratic-republic-congo-new-mining-fiscal-regime-task>

⁷⁸ Available at this link: <https://www.transparency.org/cpi2018>

⁷⁹ The six dimensions of governance are: (1) Voice and Accountability, (2) Political Stability and Absence of Violence, (3) Government Effectiveness, (4) Regulatory Quality, (5) Rule of Law, and (6) Control of Corruption. The 2019 findings are available at this link: <https://info.worldbank.org/governance/wgi/>

⁸⁰ <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

⁸¹ <https://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=COD>

⁸² <https://au.int/sites/default/files/treaties/36382-sl-AFRICAN%20UNION%20CONVENTION%20ON%20PREVENTING%20AND%20COMBATING%20CORRUPTION%20%281%29.pdf>

130. The lack of a centralized, coherent anti-corruption strategy and enforcement framework present obvious loopholes for abuse. The DRC does have an anti-corruption strategy, but it was put in place under a previous political administration. While that strategy covers a broad range of sectors (e.g. judicial, financial, natural resources, healthcare, and others) and is frank in its assessment of the scale of corruption vulnerabilities facing the DRC, the wording was not matched by meaningful action. The strategy is therefore outdated and no longer operable. The current DRC government has made the fight against both corruption and the embezzlement of public funds a priority.⁸³

131. Enforcement institutions report great difficulty in pursuing corruption cases, especially against public officials. Obstacles in the path of existing enforcement institutions hamstringing their work and create ample scope for corruption.⁸⁴ Both the Congolese National Police (PNC) and the Public Prosecutor are unable to investigate and pursue public officials for any offenses (not just corruption-related offenses) as they enjoy immunity from investigation. Such immunity is granted by Article 107 of the DRC constitution and, while the constitution purports to limit such immunity to parliamentarians only, the IMF mission was told that this immunity is interpreted more broadly than that in practice and extends beyond the intended constitutional remit. Further, the immunity can only be lifted if agreed to by the National Assembly or the Senate of the DRC. Unsurprisingly, this presents immense obstacles to the effective function of the anti-corruption work of the PNC and the Public Prosecutor. The presumed immunity for public officials, and the manner in which it may be lifted, should be abolished by the DRC as a matter of urgency.

132. Corruption is pervasive at all levels but there is a growing awareness of the severity of the consequences of corruption by government officials. The PNC spoke to the IMF mission of its intention to establish a dedicated anti-corruption taskforce, but this has not yet happened. Like many other public agencies in the DRC, the PNC told the IMF mission of a general lack of manpower and funds that prevent it from doing its work effectively. Officers in the PNC assigned to work on corruption cases receive no specialized training, with officers being drafted in to work on corruption cases from other teams such as the drug trafficking unit, according to the PNC. Similarly, the Public Prosecutor reported the office's chronic under-funding and insufficient number of staff for a country of the DRC's size and complexity. As a backdrop to the above, Transparency International's *'Global Corruption Barometer – Africa 2019'* paints a concerning picture of the PNC, with 75 percent of

⁸³ Allocution du Chef de l'Etat - Etat de la Nation devant le Parlement réuni en Congrès. Kinshasa / RD Congo - 13 Décembre 2019. <https://www.kivuavenir.com/duscour-du-chef-de-letat-sur-letat-de-la-nation-devant-le-parlement-reuni-en-congres/>

⁸⁴ The Congolese National Police provided statistics to the IMF mission that highlight the very low incidence of investigating corruption cases – there were 2 cases of corruption in 2018, 2 cases in 2017, 3 cases in 2016, 3 cases in 2015, and 7 cases in 2014. The IMF mission also asked the Public Prosecutor's office for statistics – these were never provided.

respondents reporting having paid a bribe to the police in the preceding 12 months. Trust in the police force is consequently low.

133. The DRC has established an institutional framework to combat corruption, but it is dysfunctional. The DRC has a government-supervised anti-corruption body, the *Observatoire de Surveillance de la Corruption et de l’Ethique Professionnelle* (OSCEP), which is overseen by the Ministry of Public Functions and is charged with 15 stated aims, including the promotion of good governance and the fight against corruption. While OSCEP seeks to raise awareness by, among other things, publishing reports to generate debate on the scourge of corruption, it has no investigative or enforcement powers. In this regard, the country lacks an independent anti-corruption agency with power to investigate corruption offenses and to report to Parliament. The establishment of such an agency is an obligation of signatories to the United Nations Convention Against Corruption (UNCAC), which the DRC acceded to in 2010, as noted above, and this needs to be addressed.

134. The two key agencies charged with the oversight of public finances are the Court of Auditors (Cour des Comptes or ‘CdC’) and the IGF. The CdC is tasked with carrying out independent audits/inspections of public institutions and state-linked bodies. Its role is to assess financial statements and accounts and thereafter produce reports with a view to enhancing financial governance and accountability. However, the CdC is obstructed in its mission by a lack of support and its staff reported difficulty in obtaining the financial statements of various state agencies/bodies. Due to financial constraints, the agency is forced to compromise, and it coordinates all of its work from a single office in Kinshasa. This presents clear difficulties in a country that is almost four times the area of France with a population approaching 100 million people. The CdC also told the IMF mission that they received no funding for staff training and development last year. They reported being severely understaffed with an inadequate number of auditors, investigators, and magistrates to carry out the agency’s work. All in all, the CdC is largely a bystander and faces difficulty in fulfilling its mandate.

135. The IGF plays the role of a state comptroller in the DRC and it oversees all public finances, revenue, and spending. Much like the CdC, the IGF reported major difficulties in the execution of its work. The IGF is under-funded, has an aging workforce (the IMF mission was told the average staff member is 63 years old), and – like the CdC – has only one office in Kinshasa.

136. Neither agency has a specific mandate to target or investigate corruption, but each claimed that they readily investigate corruption cases that are detected and that the Public Prosecutor would be engaged with in such instances. That said, no recent examples of corruption investigations were given during interviews at the headquarters of each agency in Kinshasa. Further, as noted above, the work of the Public Prosecutor in investigating corruption is hampered significantly by constitutional obstacles. The Public Prosecutor cited difficulty in investigating corruption cases and was unable to produce any statistics or data on recent corruption cases.

137. The absence of clear, effective oversight of the wealth/assets of public officials presents a gilt-edged opportunity to engage in corrupt behavior without consequences and act with impunity. Change in the DRC must start from the top and a robust example must be set by those in power. There is no asset declaration agency in the DRC. One of the stated aims of OSCEP, mentioned above, is to develop suitable measures (presumably by lobbying for legislation) for asset declaration by public figures, but this is not happening in practice and there are major shortfalls in the asset declaration framework. Article 99 of the DRC's constitution requires that the President and members of government must provide to the Constitutional Court a written declaration of their family's wealth and assets (including details of shares, bank accounts, and real estate). In the absence of such declaration, the individual is deemed to have resigned from office after a grace period of 30 days elapses. However, compliance was described to the IMF mission as purely voluntary with very few members of government opting to declare their assets. There are no known cases of resignation for non-compliance with Article 99 and there are seemingly no consequences for the failure to abide by it. Parties interviewed by the IMF mission reported that the minimal compliance with the asset declaration requirement results in a complete lack of transparency for the general public. In short, there is no visibility in the DRC on the assets and wealth of public figures. This fosters a culture of distrust of public officials.

VII. AML/CFT

A. Overview

138. Since 2017, the DRC is a member of GABAC, a FATF-style regional body, which represents an important step toward strengthening its AML/CFT regime. In early September 2017, the government of the DRC signed an agreement with the Central African Economic and Monetary Community (CEMAC), to become a full member of the Action Group Against Money Laundering in Central Africa (GABAC), the Financial Action Task Force (FATF)-style regional body for Central Africa. The forthcoming Mutual Evaluation Report (MER), which is scheduled for adoption at the October 2020 GABAC Plenary, was based on the FATF Methodology and on the assessment onsite visit conducted in the DRC in August 2018.

139. Corruption is one of the main predicate crimes for money laundering in the DRC. The DRC is particularly exposed to ML risks linked to the integration of proceeds generated from embezzlement of public funds by senior public officials into its financial system, often laundered domestically through the real estate sector and abroad as revealed by several cases reflected by prosecutorial actions initiated by foreign authorities. Other predominant proceed-generating crimes include tax and customs fraud and poaching and trafficking in protected wildlife and minerals. These fragilities are exacerbated by the importance of the country's informal economy, the prevalent use of cash, its weak level of financial inclusion and the ineffectiveness of its legal and regulatory framework including DNFBPs and NPOs.

140. Overall, the AML/CFT regime presents significant deficiencies. While an AML/CFT law (*Loi N° 04/016 du 19 Juillet Portant Lutte Contre le Blanchiment Des Capitaux et le Financement du Terrorisme*) was enacted in July 2004 and several AML/CFT institutions and committees have been created (e.g. CENAREF⁸⁵, COLUB⁸⁶, CNCLT⁸⁷ and FOLUCCO⁸⁸), this legal framework does not appear to be compliant with the FATF standards. The CENAREF has only received few Suspicious Transaction Reports (STRs) since it started operations, with only one resulting in prosecution, which stands in stark contrast to the country's risk profile.

141. The legal AML/CFT framework does not sufficiently cover all financial institutions and DNFBPs.⁸⁹ Some institutions operate entirely outside of AML/CFT requirements promulgated by the BCC, such as the insurance sector, electronic money services businesses and financial services provided by the Postal Service. Professions such as lawyers are not adequately covered.

B. Analysis of AML Measures Supporting Anticorruption Efforts

142. The weaknesses of the AML/CFT framework fosters impunity as proceeds of corruption are laundered so they can be enjoyed without fear of conviction or confiscation. An effective AML/CFT regime makes it more difficult to engage in corruption by making it more difficult to obtain and enjoy gains. Within a country, an effective AML/CFT regime protects the financial system from abuse by corrupt officials and the launderers of the proceeds of corruption (e.g., through measures on Politically Exposed Persons and Beneficial Ownership) and minimizes the supply side of corruption (e.g., by organized crime). In this context, an analysis of the AML/CFT framework looks at the following four areas and their effectiveness:

- a) **Preventive Measures:** Proceeds of corruption are prevented from entering the financial and other sectors (e.g., lawyers, accountants, real estate) or are detected and reported by these sectors.
- b) **Transparency of companies and trusts:** Information on beneficial ownership is available to competent authorities without impediments and limits the opportunity of facilitation that arises through the misuse of legal persons and arrangements in order to obfuscate payments of bribes by firms to public officials (e.g., by hiding beneficial ownership).

⁸⁵ Cellule Nationale des Renseignements Financiers.

⁸⁶ Comité de Lutte contre le Blanchiment.

⁸⁷ Comité National de Coordination et de Lutte contre le Terrorisme International.

⁸⁸ Fonds de Lutte Contre la Corruption.

⁸⁹ Designated Non-Financial Businesses and Professions.

- c) **Criminal justice measures:** Money laundering activities related to the proceeds of corruption are detected and disrupted, and criminals are sanctioned and deprived of illicit proceeds.
- d) **International cooperation:** International cooperation facilitates action against corrupt officials and their assets.

C. Preventive Measures

143. Overall, the banking sector displays a basic understanding of ML/TF risks and is applying due diligence measures, however these remain unsatisfactory. Other sectors such as microfinance businesses, credit unions and Money or Value Transfer Services businesses have no understanding of the ML/TF risks related to their clients, products or services.

144. In terms of regulation and oversight, the BCC displays some understanding of ML/TF risks and has established prudential supervisory mechanisms. Their effectiveness is however limited in practice. Supervision is not risk-based, sanctions are not dissuasive, and most of the DNFBPs are not even regulated.

145. The legal framework for domestic PEPs is deficient and overall, not implemented. In particular, the definition of a PEP does not include senior judicial and military personnel, family members or close associates of PEPs. Additionally, there is no requirement to identify the source of funds of a PEP who is the beneficial owner of a customer, or to verify that the beneficial owner of a transaction is a PEP. In light of the weak supervisory framework, there is no incentive to implement the minimal measures in place.

146. The authorities should ensure the compliance of the AML/CFT Law and related regulations with the FATF standard. Among other measures, it is critical to strengthen due diligence requirements on domestic PEPs across financial institutions and DNFBPs, and to ensure that the legal framework for effective supervision of these measures is in place. For instance, the publication of comprehensive asset declarations for PEPs would assist financial institutions in DRC and abroad to effectively implement enhanced customer due diligence measures. In addition, the Central bank should strengthen the supervision of financial institutions (banks, in particular), by further developing risk-based supervision, including with robust offsite and onsite components focused on risks related to the laundering of proceeds of corruption.

D. Transparency of Companies and Trusts

147. Legal persons and arrangements are not sufficiently prevented from being used for criminal purposes. While all legal persons under DRC law have to register with the RCCM, the authorities demonstrate insufficient understanding of the ML/TF risks associated with the abuse of legal persons and arrangements. Information on the identification of beneficial owners is not

available or only through a tedious process, as reporting is not required and there is no mechanism for systematically collecting such information. Furthermore, the DRC does not have a legal framework applicable to trusts because these legal arrangements are not known. However, due to the absence of an explicit prohibition and dissuasive sanctions, foreign trusts may nevertheless operate in the DRC.

148. The legal framework applicable to legal persons and arrangements should be revised to bring it in line with the FATF standard. A mechanism should be implemented to ensure that, at a minimum, competent authorities can obtain adequate, accurate and current beneficial ownership information on legal persons and arrangements, in a timely manner.

E. Criminal Justice Measures

149. The laundering of proceeds of acts of corruption is not sufficiently investigated and prosecuted and ML offences are not yet comprehensively criminalized. The authorities indicate a political willingness to combat ML/TF, but there is no well-defined criminal justice policy proportional to the risks identified nor a common strategy for law enforcement authorities to prioritize ML investigations. To a lesser extent, investigative and prosecution authorities handle investigations for predicate crimes such as corruption or fraud, but do not consider the ML element related to proceeds of crime. The CENAREF has submitted several files to the General Prosecutor, yet none resulted in a ML investigation.

150. In the case of ML investigations, authorities encounter difficulties such as legal privileges and immunity, access to information and lack of internal expertise. The legal framework for confiscation is not compliant with FATF standards and the authorities have not prioritized the confiscation of proceeds generated from predicate crimes nor do they integrate them in their investigations. FOLUCCO, the fund established to combat organized crime, is in charge of managing confiscated assets and instruments of crime but is not operational. A policy oriented at suppressing ML and its underlying predicate crimes should be defined, focusing on the main risks identified in the NRA, and supported by parallel financial investigations.

F. International Cooperation

151. Despite the transnational character of corruption, international cooperation against ML is limited. To date, there has not been any assistance on AML/CFT requested or received. Mutual legal assistance (MLA) and extradition are accorded for in the national legislation, different international conventions ratified and in bilateral agreements, but they are rarely drawn upon due to the lack of formal mechanisms and procedures. The DRC does not have a centralized case management system for foreign requests which results in delays.

152. Other forms of cooperation are used only in a limited manner. The CENAREF shares information with a limited number of foreign financial intelligence units. Other competent authorities

such as the DGDA and the BCC have cooperation channels with foreign authorities, but exchanges specifically on ML/TF are limited, if any. There is no formal mechanism for exchanging information on beneficial ownership.

153. The Congolese authorities should strengthen the capacity of the competent authorities to make better use of international cooperation to tackle financial crime. As a first step, a procedural manual for international cooperation should be developed in order to clarify processes priorities, timeframes and levels of confidentiality for MLA requests. A dedicated unit for international cooperation to track and manage mutual legal assistance requests, including those related to ML/TF and corruption. Furthermore, the CENAREF concluded a dozen cooperation agreements with other financial intelligence counterparts.

ANNEX

I. List of Government Entities Participating in the Diagnostic Report and Other Entities Consulted

Government Entities

Ministry of Finance
Ministry of Justice
Central Bank of the Republic of Congo
Public Prosecutor's Office of the Republic
Congolesse National Police
National Investment Promotion Agency
Court of Auditors
Inspectorate General of Finances

Judiciary

Superior Council of Magistrates
Court of Appeals of Kinshasa/Gombe
Commercial Court of Kinshasa

International Organizations

World Bank

Foreign Governments

Embassy of the United States of America, Kinshasa
Embassy of the Netherlands, Kinshasa
Embassy of France, Kinshasa
Embassy of Belgium, Kinshasa
United Kingdom's Department for International Development (DFID), Kinshasa

A range of Nongovernmental Organizations based in Kinshasa and Lubumbashi

Business Sector

Congolesse Banking Association
American Chamber of Commerce, Kinshasa
Company Registration Service
Multiple private law firms and notaries headquartered in Kinshasa