

CHAPTER 6

ANTI-CORRUPTION INITIATIVES DURING THE TRANSITION PERIOD

As articulated above, the political actors of the transition period were averse to any form of accountability and transparency. There was therefore no political will to tackle either corruption or the negative values inherited from previous regimes. On the contrary, in their efforts to amass the maximum amounts of money, political actors deepened the prevailing kleptocratic culture.

To ensure that bad governance and corruption did not threaten the completion of the electoral process, the international community from time to time put pressure on the government to take initiatives to avoid the complete collapse of the country. In fact, the international development partners of the DRC had come to believe that the delicate issue of corruption could only be addressed after the elections had taken place.

The initiatives taken included the NACS (which was finalised in 2002 but was still in force during the transition period), investigations by Parliament, the Kimberley Process Certification Scheme (KPCS), the Extractive Industries Transparency Initiative (EITI) and some aspects of public sector reforms related to governance and anti-corruption. These are discussed in turn below.

National Anti-Corruption Strategy

In 2002, a few months before the beginning of the transition period, the Congo completed its I-PRSP. In the consultation process that preceded the drafting of the paper, the overwhelming majority of the people interviewed in four provinces identified corruption, economic mismanagement, the poor quality of public service and social and economic infrastructure among the main

causes of poverty in the Congo. The analysis undertaken at the end of this process drew the following conclusion:

Being an obstacle to sustainable development, corruption is therefore an absolute evil that any government must resolutely endeavour to eradicate considering its negative impact. It basically explains the deepening of poverty in society (RDC 2002:6).

Based on this analysis, the I-PRSP emphasised the fight against corruption, which was considered an essential pillar in the effort towards economic recovery and addressing the DRC's political and social problems. To this effect, the paper recommended that a national strategy against corruption be developed.

An inter-ministerial committee in charge of drafting the strategy was put in place in 2002. It benefited from the technical assistance of the World Bank. The Ministry of Planning and Reconstruction provided the committee's technical secretariat. The committee's approach was participative and included consultations with the population, led by ministers through the media, focus groups involving civil society, public institutions, the private sector and the international community, a seminar to synthesize the results of the consultations and a technical workshop. Finally, also in 2002, a seminar bringing together decision-makers concluded the series of meetings, agreed on directions and outlined the content of the strategy. It is interesting to note that this seminar acknowledged the role that the mismanagement of state enterprises played in fuelling corruption. It also identified impunity, clientelism and insufficient political will as contributing factors to corruption.

To successfully fight against corruption, the seminar participants recommended that the national strategy emphasise the need for political commitment and will, concrete actions, strengthening controls, the drastic reduction of discretionary powers, decentralisation, good management of enterprises and the fight against clientelism, especially in the army (RDC 2002:7–8).

The objective of the NACS was defined as follows (RDC 2002:11):

...to strengthen the institutions of the republic with a view to the optimal functioning of democracy based on the transparent management of political and public institutions, and of the whole of the economy

which will result in durable development, the sine qua non condition for reducing poverty. [Author's translation]

The NACS was assigned four strategic directions (RDC 2002:11):

1. Prevention, awareness raising and raising of moral standards, including putting in place anti-corruption institutions.
2. Reforming public institutions, including public administration, the judiciary and the revenue authorities.
3. Repression of corruption.
4. Building a partnership between the public sector, the private sector, civil society and the international community.

Under each strategic direction, the NACS listed a number of activities that needed to be carried out by various institutions. It is worth noting that it recommended that the Commission in Charge of the Fight against Corruption, Fraud, Smuggling, and Counterfeiting of Currencies and Brands⁹² (the anti-corruption commission that was created before the transition period and succeeded by the CELC) be given the responsibility to develop, promote and implement a national anti-corruption law in collaboration with other national and foreign institutions. The NACS also recommended that the investigation responsibilities and capacities of the Commission be strengthened and that representatives of public institutions, civil society and the private sector be included in its membership.

Other actions recommended by the NACS included:

- The promulgation, promotion and implementation of an anti-corruption law
- The creation of independent anti-corruption NGOs
- The reform of public finance management and public procurement
- The rationalisation of the chain of payments
- Regular audits of state enterprises

This was the first attempt by the DRC to develop a national anti-corruption strategy. The participatory approach taken by the inter-ministerial committee

in charge of developing the NACS was appropriate and could facilitate local ownership of the final product. However, the consultation was limited to Kinshasa and did not involve the rest of the country. Another major weakness was that the exercise was donor-driven. In fact, there was no political will on the part of the Kabila government to engage in the fight against corruption. On the contrary, corruption increased and immunity was guaranteed for the powerful corrupt networks that had captured the state.

As mentioned, the NACS was based on the diagnostic of the I-PRSP, which showed the role that corruption had played in increasing poverty. However, the strategy was not based on a more systematic analysis of the underlying causes of corruption rather than just its symptoms. Further, a thorough analysis of the ethical issues related to corruption should have been undertaken and its findings used to recommend remedies. To complement this information, the existing anti-corruption legal framework and institutions should have been assessed in order to identify the strengths that could be built upon and the weaknesses that needed to be remedied. Previous attempts at fighting corruption should have been evaluated with a view to determining what worked, what did not and the reasons why.

On the positive side, the NACS had a detailed action plan with clearly defined responsibilities and timeframes for implementation. There were, however, no clear priorities set and no sequencing of the actions recommended. Further, the actions were not measurable and neither monitoring nor evaluation mechanisms were built into the strategy.

The NACS was finalised in November 2002, i.e. one month before the signing of the Sun City Accord in South Africa in December 2002. The transition period government that came into power thereafter did not consider the NACS as its own and ignored it. During the field mission for this report in December 2006 and January 2007, it was difficult to find a copy of the strategy or an official who could discuss its implementation in the Ministry of Planning and National Reconstruction – which had provided the secretariat for the inter-ministerial committee in charge of designing the NACS. In any case, the prevailing political environment characterised by open tolerance of corruption would have made the implementation of such a strategy very difficult.

Audits of state enterprises

As of July 2006, the Congolese state wholly owned 53 enterprises whose activities were very important for the Congolese economy (RDC, Ministère du Portefeuille 2006) and encompassed a wide range of economic sectors: mines, energy, industry, agriculture, transport, communication, finance, service, trade, construction, research, forestry and training. Furthermore, they were either monopolies or the dominant players in some key sectors. For instance, Gécamines, based in the Katanga Province, dominated the mining sector and was virtually a state within a state during the colonial period and most of the post-independence period. In the energy sector, the National Water Authority (Regideso)⁹³ and National Electricity Company (SNEL)⁹⁴ controlled the distribution of water and electricity respectively. National Insurance Company (SONAS)⁹⁵ was the only insurance company in the country. Postal services were the monopoly of the Congolese Posts and Telecommunications Office (OCPT).⁹⁶ Road building and maintenance were the exclusive responsibility of the Road Authority (OR),⁹⁷ (RDC, Ministère du Portefeuille 2006). They were placed under the dual purview of the sectoral ministries and the portfolio ministry.⁹⁸

In accordance with the Sun City Agreement, the management of these enterprises was allocated to the signatories of the Agreement. The managers appointed by the former warlords helped themselves freely to the coffers of the enterprises that were allotted to them while the ministries in charge of the enterprises regularly tapped their resources. Pressured by the international development partners of the DRC, President Kabila requested the Court of Auditors to audit a number of state-owned enterprises, in collaboration with other organs that were responsible for auditing public bodies, including the General Inspectorate of Finance, the Supreme Council of the Portfolio⁹⁹ and the Permanent Council of Accounting of the Congo.¹⁰⁰ The finance minister refused to let the team audit the revenue authorities (General Directorate of Taxes, DGI,¹⁰¹ and the General Directorate of Administrative and State Revenues, DGRAD¹⁰²) and OFIDA, whose managers had been appointed by the president's camp. In spite of the limited time (14 days) that it was given to complete work covering a 27-month period (from 1 January 2002 to 31 March 2004), the team uncovered massive looting of state enterprises by the management and governing boards appointed by the former warlords (Mabi 2006).¹⁰³

In February 2005 the audit team's findings were submitted by the government to the Economics and Finance Committee of the National Assembly, led by Professor Bakandjeja wa Mpungu. A report of this committee was debated in a plenary session of the National Assembly the same month. The committee reported that, of the 20 state enterprises audited, only 12 had boards of directors, revealing very weak corporate governance in these institutions. However, where boards of directors did exist, they took over the day-to-day management of the enterprises. Members of some boards granted themselves 'loans' which were never reimbursed, thus infringing the 1978 law governing the functioning of state enterprises. With one exception all the enterprises audited had kept no accounts for two to seven years, making a proper audit impossible. Board members were paid monthly salaries amounting to up to US\$16 800 in addition to substantial allowances. They were also paid exorbitant allowances for the missions that they carried out regularly on behalf of the enterprises (Mabi 2006).¹⁰⁴

In violation of the law and regulations governing state enterprises, which required the prior authorisation of the minister in charge, the management teams routinely decided on their own remunerations and various benefits. In one of the enterprises, CEEC, the CEO earned US\$25 000 per month in addition to numerous generous allowances, many of which were invented by the beneficiary himself. His monthly salary was reduced by the government to US\$8 300 thereafter (Mabi 2006:6).

The managers of the enterprises also went on long missions for which they received very high allowances, way beyond the levels allowed by the regulations. In an extreme case of abuse, a member of a management team went on 14 missions abroad in one year for a total of seven months.¹⁰⁵

Furthermore, the management teams colluded with the representatives of the trade unions whose role was no longer to defend the rights of the workers but to keep them in check so that the looting of the enterprises could continue. Trade unionists were bribed to prevent industrial actions by workers, who were paid irregularly.

It is important to note that none of the enterprises reviewed had internal auditors. At the time of the audits, some of the state enterprises had not drawn up balance sheets for seven years. In the rare cases where annual accounts were produced, none had been audited either internally or externally. The ministers

in charge ignored the mismanagement of state enterprises as long as they also benefited from this parlous state of affairs. It was not surprising that the contribution of state enterprises to the state budget dropped from 10% in 1969 to about 1% in the early 1990s and to almost nothing by the end of the transition period (Vibidio 2007).

Faced with the publicity given to this scandal in the national media and the public outrage that it caused, in February 2005 the President suspended six ministers – who, according to the audit reports, had participated in the plundering of the state enterprises – and the management boards of ten state enterprises. This measure was hailed as a turning point in the fight against corruption in the DRC. However, to the public's disappointment none of the corrupt officials were prosecuted. Furthermore, the requests of the public and Parliament for the audits to continue in other state enterprises and in other parts of the country were ignored by the authorities.

During the discussion of the 2007 budget in the National Assembly in June 2007, Prime Minister Antoine Gizenga, in his assessment of the performance of the state enterprises during the transition period, called them 'useless monopolies' which had turnovers amounting to millions of dollars but that contributed nothing to the state treasury (Ben-Clet 2007).

The Lutundula Commission

Resolution no. DIC/CEF/04 of the Inter-Congolese Dialogue, adopted in April 2002, requested that the Parliament of the transition period establish a special commission to review the validity of the economic and financial conventions signed during the wars of 1996–1997 and 1998–2003 (commonly known as the Lutundula Commission).¹⁰⁶ This issue had already been raised in the preliminary meetings of the Inter-Congolese Dialogue in August 2001 and it had then been agreed that there was an urgent need to examine all the conventions and contracts signed during the wars with a view to:

- Establishing the truth about the conventions and contracts and the responsibilities of the individuals who negotiated them
- Evaluating the economic and financial damages that the wars had caused to the country

- Re-establishing the rights of the Congolese people and salvaging the national interests
- Stopping the massive outflow of the wealth of the country
- Putting an end to irregularities and impunity
- Laying the foundations of the rule of law in the DRC

In keeping with the resolution, the National Assembly created the Lutundula Commission whose missions were:

- To make an inventory of all the conventions
- To examine them
- To assess their economic impact
- To validate or reject these conventions

The Lutundula Commission was requested to recommend appropriate measures for reparations for damages caused by the conventions and contracts to the Congolese state. It was also tasked to propose measures to prevent the illegal exploitation of natural resources.

The Lutundula Commission was led by Christophe Lutundula Apala (who represented the non-armed political opposition) and included 16 other members drawn from all the 'components' and 'entities' represented in the National Assembly. Lacking adequate financial resources, the Lutundula Commission encountered all kinds of difficulties. Its members were threatened and many of the former belligerents refused to co-operate with it. Some of the countries whose companies had signed contracts with rebels or the central government denied access to the information it needed for its investigations. In spite of all these difficulties, the Lutundula Commission finalised the first part of its work and submitted a report to the Speaker of the National Assembly in June 2005.

The report revealed that many of the contracts and conventions were illegal, one-sided or unfavourable to the Congo. The Lutundula Commission therefore recommended that they be either rescinded or renegotiated to ensure better terms for the DRC. It further recommended that no contracts be signed during the rest of the transition period. It suggested the prosecution of some Congolese

officials and foreign companies involved in signing the contracts.

However, the international community and the Congolese authorities allegedly put a lot of pressure on the Speaker of the National Assembly to prevent him from tabling the Commission's report for discussion in the National Assembly.¹⁰⁷ In fact, it was feared that an open discussion of the report would cause a great deal of trouble and even scuttle the electoral process. The report was brought to the attention of the public only when it was finally leaked and posted on websites of international NGOs. Thereafter, it was circulated to members of the Congolese Parliament but, for unknown reasons, it was not discussed.¹⁰⁸

The Government did not heed the Commission's recommendation to suspend the signing of mining contracts for the rest of the transition period. It signed further contracts with multinational mining companies that have been criticised by both local and international NGOs. Most of these contracts related to joint ventures with state mining enterprises, including Gécamines, Bakwanga Mining Company (MIBA)¹⁰⁹ and Kilo-Moto Mining Company (OKIMO).¹¹⁰ Investigations carried out by experts showed that these deals were negotiated, approved and signed with a total lack of transparency and even against the advice of IMC Group Consulting Ltd., appointed by the World Bank on behalf of the Congolese government to review some of the contracts (11.11.11 *et al* 2007). In section 2 above, some of these contracts have been briefly described and their significance for the economy and the future of the Congo (up to 40 years in some cases) has been analysed. The various one-sided contracts were approved and signed in spite of the existence of the Mining Code, which was promulgated in July 2002, before the transition period, and was still in force.

Public administration reform

Considering the important role that public administration could play in the development of the DRC, the development partners of the country, and especially Belgium and South Africa, undertook to assist the government to reform this sector. Following an evaluation of the public administration sector by Belgian and South African experts, in collaboration with Congolese counterparts, the following directions for reform were approved by the Congolese government in 2003:

- To enhance the use of public resources
- To improve personnel management and remuneration by conducting a census of civil service and building up the capacity to manage payroll
- To streamline and rationalise organisational structures (Kita 2006)

As corruption was considered too delicate an issue, no specific programme was put in place to tackle it. However, it was assumed that by 'fixing' the technical problems rampant corruption would be reduced. OCEP, which was in charge of promoting the implementation of the ethical code of public servants and the fight against corruption, was given a minor role in the reform process.

By the end of transition period, the census of the civil service had progressed in Kinshasa and had revealed a large number of 'ghost' employees. The exact figures of this exercise were being worked out at the time of the field research for this report.¹¹¹ However, a major weakness of the reform was the lack of attention to issues relating to the professionalisation of the civil service and the establishment of recruitment criteria, procedures and controls to prevent political appointments and nepotism.

Reform of public finance management

As part of the reform of public finance management the NACS recommended that particular attention be paid to the payment chain with a view to reducing opportunities for corruption. During the transition period, efforts were made to implement this recommendation with the assistance of the country's foreign partners. However, at the end of the period under review, the CELC was of the opinion that the system put in place was not yet effective because of administrative red tape (CELC 2006d:24). The Auditor-General believed that corruption was a major obstacle to the reform of public finance management.¹¹²

Public procurement was also identified by the NACS as a priority in terms of fighting corruption. A presidential decree dated 13 October 2004 put in place a public procurement reform committee¹¹³ and a national working group,¹¹⁴ which were both put in charge of leading the reform of public procurement. A tender system was put in place to prevent the prevailing practice of single-sourcing procurement and the corruption that it fuelled. However, the personnel

in charge of the procurement system had not been trained and lacked the skills to manage it properly. Moreover, by the end of the transition period, no tender boards had been set up in the provinces. The blacklist of dishonest bidders, which had been recommended by the NACS as a way of excluding corrupt entrepreneurs, had not been established (CELC 2006d:27–28).

Security sector reform

As mentioned in an earlier section of this report, the embezzlement of the salaries of soldiers in the integrated national army (Armed Forces of the Democratic Republic of Congo, FARDC¹¹⁵) was one of the causes of indiscipline and harassment of the population by soldiers. Massive human rights violations by the army represented mounting threats to the electoral process and needed to be urgently addressed. The monthly bill for soldiers' salaries amounted to US\$8 million (Swiss Peace 2006:12), payable to the 300 000 soldiers who had been declared by the former belligerents. The actual number of soldiers was 130 000, the balance being 'ghost' soldiers whose pay was pocketed by corrupt army officers. Worse still, even the 130 000 soldiers were not regularly paid their salaries, which started at US\$10 (Swiss Peace 2006:12–13).

The European Union's Security Sector Reform Mission in the DRC (EUSEC), which had been created at the request of the Congolese government, was asked in December 2005 to put in place a chain of payments that would be independent of the chain of command and would supposedly reduce corruption in the army. The mission was also to address other issues relating to the soldiers' appalling conditions of service (ICG 2006:19–20). By the end of the transition period, however, the efforts of the EUSEC team of 27 experts had not succeeded in significantly reducing corruption in the FARDC. This was due mainly to the fact that the mission encountered serious logistical problems (Swiss Peace 2006:12–13). One could imagine that they also met stiff resistance from corrupt generals.

Extractive Industries Transparency Initiative

In March 2005, Vice-President Jean-Pierre Bemba attended the second symposium on EITI in London. He seized this opportunity to announce the

intention of the Congolese government to join this initiative and to implement its principles and criteria. This was an important step in the fight against corruption. In fact EITI, which was launched by the UK government in 2002, aims to improve accountability and transparency of governments and companies in resource-rich countries. To this effect, it requires companies operating in the oil, gas and mining sectors to fully publish – on a voluntary basis – their payments to governments, while the latter are meant to publish their revenues from these sources in turn.

At a forum convened by the Minister of Planning, held in Kinshasa in May 2005 on the theme ‘Natural Resources, Transparency and the Reconstruction of a Prosperous Congo: The Stakes and Perspectives,’ the vice-president made a statement affirming the determination of the government to implement EITI. Congolese and international civil society organisations, the private sector and the Congo’s development partners participated in this forum.

In August 2005, the planning minister, who was in charge of the implementation of EITI, signed two departmental orders establishing the EITI Provisional Committee and appointing its members who were drawn from government departments, civil society and the private sector. The Committee was requested to develop the relevant legal framework, to propose a plan of urgent action and to identify funding sources. Based on its proposals and the conclusions of a workshop held in late August and early September 2005, a National EITI Committee was created¹¹⁶ and put in charge of ensuring the implementation of EITI (RDC 2005). It included a steering committee and a technical committee and its members were appointed by the planning minister in May 2006 (RDC, Ministère du Plan 2006). However, as this was the end of the transition period, the imperatives of the forthcoming elections soon took over and the initiative was shelved.

The Kimberley Process Certification Scheme

The KPCS was launched in November 2002 as a joint government, international diamond industry and civil society initiative. Its main objective is to stop the flow of conflict diamonds (also known as blood diamonds), i.e. diamonds that are mined in rebel-held areas and the sale of which finances rebels’ fights against legitimate governments. The scheme was born of the realisation of the

link between the trade in blood diamonds and the devastation and corruption that had been visited on African countries, including the DRC, Angola, Sierra Leone, Liberia, and, more recently, Côte d'Ivoire.

The KPCS is a voluntary system that imposes extensive requirements on the participating states and regional economic integration organisations that have fulfilled its minimum requirements and are eligible to trade in rough diamonds in accordance with its rules. Participants commit themselves to implementing internal controls in order to prevent blood diamonds from entering the arena of legitimate trade, in which trade can only be undertaken with other participants in the scheme. A KPCS certificate must accompany all exports of rough diamonds.¹¹⁷

The DRC is one of the biggest producers of diamonds by volume in the world and diamonds provide a sizeable percentage of state revenue. Most of the diamonds produced and exported from the country are mined by artisanal diggers. During the transition period, MIBA, the majority of whose shares (80%) were held by the Congolese state, almost went bankrupt because of its mismanagement by corrupt political appointees. It owed its survival to usurious loans contracted in rather opaque conditions. The other operator in the formal sector was Sengamines, which was created in 1999 as a joint venture between MIBA and Oryx Natural Resources representing the interests of President Joseph Kabila's Zimbabwean allies. The conditions under which the company was created were tainted with corruption and were one-sided in favour of Oryx. It ceased its activities in 2005 for reasons that are still to be fathomed.

The DRC joined the KPCS in May 2003. The scheme's implementation is governed by Ministerial Decree no. 193 dated 31 March 2003. By Presidential Decree, the CEEC was put in charge of implementing the KPCS and, more specifically, of supervising the activities of diamond buyers and making sure that diamonds are exported in accordance with the terms and conditions of the KPCS. The Small-Scale Mining Technical Assistance and Training Service (SAESSCAM),¹¹⁸ which was set up in March 2003 within the Ministry of Mining, also had the responsibility to monitor the flow of diamonds with a view to bringing diamonds from artisanal production into the formal sector. The DRC soon had, at least on paper, all the controls that were required under the scheme (Global Witness and Partnership Africa Canada 2004:8–11).

The implementation of the KPCS was bedevilled by numerous problems. While there was an increase in the volume of diamonds exported through official channels, smuggling through the neighbouring countries continued. Inaccurate valuations of the exported diamonds allowed tax evasion. The lack of capacity in the provincial offices of CEEC and the Ministry of Mining made it difficult to control the production and marketing of diamonds, which are mined mainly by 700 000 diggers scattered over the whole of the expanse of the country. The activities of the Ministry of Mining and CEEC officials on the ground were not properly coordinated (Global Witness and Partnership Africa Canada 2004).

While the figures relating to smuggling are difficult to estimate, it should be said that during the transition period the DRC recorded an increase in the volumes of diamonds going through official channels. It has been reported that in 1995, the DRC's diamond exports were valued at US\$331 million while by 2005 the official exports had climbed to US\$895 million. This is the highest figure since the discovery of diamonds in 1907 (Partnership Africa Canada 2006:2). That is not a mean achievement considering the fact that, as the main mining company was almost bankrupt, most of the diamond production came from the alluvial fields mined by diggers in a vast country with porous borders and a weak public administration.

Conclusion

To conclude, the anti-corruption initiatives reviewed here either failed or achieved limited success. The reasons are manifold.

Firstly, most initiatives were inspired and imposed by the international community and were not owned by the Congolese ruling elites. Even in those schemes that were initiated within the framework of the implementation of the Sun City Agreement, there was no political will to carry them out.

Secondly, the international community itself only gave lip service to the fight against corruption as it feared that robust action could jeopardise the electoral process. The Congolese ruling class knew also that the country's development partners did not have a common position on this matter and that they put the interests of their individual countries before those of the international community.

Thirdly, all the initiatives reviewed above were undertaken in an *ad hoc* manner and were usually taken out of fear of seeing the electoral process unravel. They were not based on a thorough analysis of the situation and were not part of an overall anti-corruption strategy. The Congolese ruling elites, who knew that the international community lacked the political will and unity to follow through on these initiatives, only went through the motions to placate their international partners and made sure the initiatives failed.

Fourthly, the Congolese political actors knew corrupt activities could be conducted with impunity as the international community had adopted a *laissez-faire* attitude toward corruption and all other crimes to make sure that the electoral process was not derailed. Anyway, they were also aware that the power-sharing arrangements that they put in place in Sun City disabled all checks and balances and guaranteed impunity for the whole of the transition period.