CORRUPTION AND INFRASTRUCTURE MEGAPROJECTS IN THE DR CONGO

A recipe for failure?

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Corruption and Infrastructure Megaprojects in the DR Congo: A Recipe for Failure?

1. Executive Summary

Corruption can be broadly defined as the abuse of public power for private gain.¹ This paper explores the extent and mechanisms of corruption in the Democratic Republic of Congo (DRC), particularly in the domain of public works. The findings reveal very high risk of corruption undermining the development goals of the Grand Inga Dam scheme. We explore how various factors contribute to the nation’s high levels of corruption, including DRC’s political and economic history, its prevailing business climate, the level of democracy, and the capacity of the citizens to demand accountability.

The Democratic Republic of Congo is endowed with immense natural resources, yet development of these resources has thus far failed to lift the majority out of abject poverty. Unemployment is very high, literacy levels are very low and technical capacity is limited. Most people who now generate income rely on informal trading. The country heavily relies on the outside world for technical capacity to develop its natural resources. On the other hand because of civil unrest in most of the eastern provinces where mineral resources are abundant, only daring companies are prepared to risk their investments. All sectors of the economy are rife with corruption and poses huge risks to investments. Strengthening the legal mechanisms to ensure accountability, enacting a comprehensive Access to Information Law (Right to Information Law), establishing an efficient Income, Assets, investments and level of indebtedness public disclosure system, ensuring asset recovery, strengthening the institutional capacity of organs charged with combating corruption, signing Integrity Pacts with potential bidders, contractors and subcontractors should strongly be considered in order to curb corruption and promote investment in the DRC.

2. Political and economic History

The history of the DRC since its independence from Belgian colonial rule has been marred by civil war, poor governance and corruption. After its independence from Belgium in 1960, the Republic of Congo (as it was then called) underwent 5 years of increasing civil tension. In 1965, the dictator Lt. General Mobutu Sese Seko seized power and named the country Zaire.

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He ruled the country for 33 years, with absolute power granted to him in the 1974 constitution. During his reign corruption was an accepted and tolerable reality earning the term “coop”, an abbreviation for cooperation, and “le mal Zairois” or “Zairean sickness”, (gross corruption, theft and mismanagement) coined by Mobutu himself. Mobutu and the ruling elite looted the nation’s resources to enrich themselves and their families. Mobutu’s personal fortune was estimated by Transparency International and others at between $1 billion and $5 billion, which he kept in Swiss banks. Mobutu’s “kleptocracy” resulted in uncontrolled inflation, a large debt, and massive currency devaluations.

Mobutu had extremely poor financial acumen and many of his development projects were not properly conceived. For example Inga I (135 MW) and Inga II (1,424 MW), commissioned in 1972 and 1982 respectively, stands as testament of a failed industrial development scheme under Mobuto. Poor maintenance for many years, wars and neglect caused the dams to operate far below their expected capacity. These two dams, and a 1,770 km transmission line, known today as the Inga-Kolwezi line, contributed heavily to the country’s spirally debt crises and are considered by many to be amongst Congo’s biggest ‘white elephants’.

Mobutu’s dictatorship was brought to an end in 1997 by a civil uprising led by Laurent Kabila. Kabila’s uprising owes its success to the support he enjoyed from Rwanda, Uganda and Burundi and the presence of a demoralized and disorganised national army in the DR Congo. The three neighbouring countries first invaded the Eastern part of the DR Congo forcing the government to spend the limited cash resources on arms and ammunitions for the national army. However, due to the prevalence of corruption and poor remuneration soldiers’ salaries were often embezzled and their arms sold off by top-officials within Mobuto’s circle. This situation made it easier for Kabila, and the Rwandan and Ugandan invaders to easily topple the Mobuto regime.

Kabila’s rule was sadly similar to Mobutu’s. In order to raise money to equip his invading armies, Kabila is noted to have conferred legality or legitimacy on activities that were clearly

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2 1974 Constitution.
illegal. An example is the granting of concessions to mining companies such as American Mineral Fields Inc. (AMF) (a Canadian junior enterprise), Ridgepointe Overseas Development (Zimbabwean), Resources Russell Group (Australian) and American Diamond Buyers (a subsidiary of AMF) well before he reached Kinshasa and proclaimed himself head of state.7

Between 1998 and 2001, there was no State budget and no new constitution. He ruled by decrees and he almost crippled the economy through military spending, lack of financial oversight and poor monetary policies.8 It is asserted that assets were openly looted by the Rwandan, Ugandan and Burundian occupying forces9 and Kabila’s own entourage, political activists and adventurers from the Congolese diaspora in North America and Western Europe who had joined Kabila were appointed to high positions in government and other key institutions, in spite of their lack of experience and expertise. They quickly learned the ropes of how to benefit from their positions.10 Kabila’s alliance with Uganda and Rwanda ended in August 1998. Both countries withdrew their troops to the eastern fringes of the DR Congo and from there, tried to re-conquer the country. The country was again invaded for the second time by the same coalition. Kabila’s regime was saved by support from Angola, Namibia and Zimbabwe. This divided the country into two, with the western half of the country remaining under the control of Kabila and his new allies (Angola, Zimbabwe and Namibia) and the northern and eastern fringes of the country being divided up among proxy warlords supported by Rwanda, Uganda and Burundi.11 Kabila’s new allies (Angola, Zimbabwe, Namibia and Chad) also set to carve out DRC’s natural resources for themselves. Systematically, they plundered the stocks of minerals, timber, coffee and cattle they found in the occupied territory. They were granted mining concessions and exonerated from taxes for all their business activities and they signed joint venture contracts.12 Kabila’s rule ended with his assassination in 2001.

His son Joseph Kabila took over and immediately signed a peace deal with the various warring factions; he formed a transitional government in 2003. Through donor pressure, Joseph Kabila initiated many reforms geared towards reviving the country’s economy and maintaining peace. A new constitution was approved in a referendum in 2005 and the first multiparty elections were held in July 2006. Notably, some laws required to administer the constitution have not yet been enacted and therefore certain key provisions covered by the constitution are still to be put into action – for example, the provision on the administrative division of the country from 10 to 26 new provinces by 2009. Through all these political changes, corruption became ever more deeply entrenched into government systems, fuelled further by civil wars and poverty. Self-enrichment by the political elite was also perhaps encouraged by lack of certainty of how long peace would prevail. Kabila has failed to gain control of the vast country, and most eastern cities and regions are under rebel rule, who in turn are financing the war through plunder of minerals and forests. Several reports mention that army generals (past and present) are grabbing mineral-rich land and privately negotiating with foreign investors for mining concessions. From independence to the present day, the DRC has struggled with a legacy of entrenched corruption at all levels of society. According to Transparency International, petty and grand forms of corruption permeate all sectors of the DRC’s economy, undermining development prospects and compromising the fragile post-conflict equilibrium.13

3. The donor community and resurgence of large infrastructure projects

The signing of the Peace Accord between the Government of the DRC and the various warring factions in 2003 signalled the re-entry of donors to support reconstruction projects across the country, with most focusing on large infrastructure development projects. The World Bank, the African Development Bank (AfDB) and other multilateral development banks have allocated huge funds to promote their specific agenda of large infrastructure development projects, such as large dams and transport corridors, and have made them attractive for private investment through public guarantees and other incentives. These banks have been instrumental in the recent efforts to launch the Grand Inga Dam scheme on the Congo River, arguing that “centralized infrastructure with private participation will lower the

costs of services”. The Grand Inga Dam scheme would be the world’s largest hydropower scheme, and is part of a greater vision by the international economic community to develop a power grid across Africa that is supposed to spur the continent’s economic development.

Infrastructure investment in Africa is a key priority for both the World Bank and the AfDB. Both Banks’ focus on infrastructure development is underpinned by their conviction that improvements in infrastructure necessitates regional integration, enables intra-regional trade, connect regions to global market and attracts private sector investment. This can be said to be one of the underlying reasons why the both Banks are in support of the Inga Dam scheme.

The construction and operation of infrastructure megaprojects is beset by corruption throughout the world. The Multilateral Development Banks’ Working Group on Infrastructure finds that “mismanagement and corruption contribute to significant losses (estimated at 10 to 30% of project’s value) during construction projects.” Public works and construction has been singled out and confirmed by Transparency International as the sector most prone to corruption. Large dams such as the Inga projects illustrate the corruption risks of this sector. As Transparency International’s Michael Wiehen has written,

Wherever large financial commitments are called for, and especially where there is a high degree of technical complexity and a large number of contracts and parties involved – all characteristics of large dam projects – then it happens frequently that firms will try to influence the decision making in their favor by bribing officials, or by colluding with their competitors, or both. Equally, officials in the decision making structure of the host country may be ready to abuse their position of power and seek to obtain personal gain .... The complexity of large dam projects means that on the host country side, several ministries and departments will be involved, and even if there are no active rivalries between the various offices, the management of such a project offers numerous opportunities for disconnect, inadequate cooperation and

17 Idem.
19 See Global Corruption Report 2005, p.2
collaboration, confusion, and thus for a serious lack of transparency and undetected and often even undetectable manipulation and abuse.\textsuperscript{20}

The Grand Inga Dam’s massive price tag of $80 billion, coupled with the poor governance record of this country, could be a recipe for serious corruption problems.

3. Extent of Corruption in the DRC

Various anti-corruption organisations as well as the World Bank have come up with measures for assessing corruption within a country. In 2010, the DRC ranked in the 3\textsuperscript{rd} percentile for their corruption control (Table 1). The table shows that there has been no improvement in corruption control between 2005 and 2011.

Table 1. The World Bank index for corruption control in the DRC.

<table>
<thead>
<tr>
<th>Country</th>
<th>Sources</th>
<th>Year</th>
<th>Percentile Rank (0-100)</th>
<th>Governance Score (-2.5 to +2.5)</th>
<th>Standard Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONGO, DEM.</td>
<td>10</td>
<td>2011</td>
<td>3.3</td>
<td>-1.37</td>
<td>0.17</td>
</tr>
<tr>
<td>10</td>
<td>2010</td>
<td>2.4</td>
<td>-1.39</td>
<td></td>
<td>0.18</td>
</tr>
<tr>
<td>10</td>
<td>2009</td>
<td>3.3</td>
<td>-1.38</td>
<td></td>
<td>0.19</td>
</tr>
<tr>
<td>8</td>
<td>2008</td>
<td>7.3</td>
<td>-1.17</td>
<td></td>
<td>0.22</td>
</tr>
<tr>
<td>8</td>
<td>2007</td>
<td>4.9</td>
<td>-1.31</td>
<td></td>
<td>0.22</td>
</tr>
<tr>
<td>7</td>
<td>2006</td>
<td>2.9</td>
<td>-1.48</td>
<td></td>
<td>0.21</td>
</tr>
<tr>
<td>7</td>
<td>2005</td>
<td>4.4</td>
<td>-1.43</td>
<td></td>
<td>0.19</td>
</tr>
</tbody>
</table>


A comparison made by the World Bank of the government’s anti-corruption measures from 2005 to 2011 reveals a decline in the DRC’s control of corruption percentile rank from 4.4 in 2005 to 3.3 in 2011, and a slight improvement in governance score from -1.43 in 2005 to -1.37 in 2011 as seen in Table 1.

The World Bank’s Government Effectiveness Index for the year 2011 ranked the DRC among the lowest of the countries in the world. It percentile rank stood at 1.9 out of 100 and

its governance score, on a scale of -2.5 to +2.5, stood at -1.66 marking a slight improvement from a governance score of 1.72 in 2010, (Table 2).

Table 2. The World Bank’s Government Effective index for DRC.

<table>
<thead>
<tr>
<th>Country</th>
<th>Sources</th>
<th>Year</th>
<th>Percentile Rank (0-100)</th>
<th>Governance Score (-2.5 to +2.5)</th>
<th>Standard Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONGO, REP.</td>
<td>9</td>
<td>2011</td>
<td>1.9</td>
<td>-1.66</td>
<td>0.19</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>2010</td>
<td>1.4</td>
<td>-1.72</td>
<td>0.19</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>2006</td>
<td>2</td>
<td>-1.66</td>
<td>0.22</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>2005</td>
<td>2.9</td>
<td>-1.59</td>
<td>0.19</td>
</tr>
</tbody>
</table>


Other organisations have also corroborated this assertion with their own analyses. The extent of corruption in the DRC is also reflected on the 2013 Heritage Foundation’s Index of Economic Freedom. The DRC has an economic freedom score of 39.6, making it the 171st freest economy in the 2013 Index – a decline from its ranking in 2012. This reflects a significant deterioration in control of government spending. The country ranks 44th out of 46 Sub-Saharan countries in terms of economic freedom. This score is far below the regional average 53.6. In terms of freedom from corruption, the country scored 20, on a scale from 0 to 100. Political unrest, mismanagement, and a culture of corruption institutionalized during the tenure of Mobuto Sese Seko have been identified as major obstacles to doing business in the country.

The 2012 Transparency International’s Corruption Perception Index for DRC ranked 160, out of 179 countries. This rank is based on how corrupt a country’s public sector is perceived to be. The Index compiles its information by drawing on corruption-related data from surveys carried out by various institutions and from the information, a score is then allocated to the country. Scores range from 0 (highly corrupt) to 100 (very clean). The DRC scored 21.

22 www.heritage.org/index/country/democraticrepubliccongo (accessed 23 July 2013)
23 www.transparency.org/country#COD (accessed 23 July 2013)
4. Mechanism of Corruption in the Public Work Sector

Corrupt practices have been identified within the public work sector of the DRC for various projects at all stages, starting with planning, procurement, implementation and operation and maintenance. A few cases that have been reported are summarized below.

Procurement and tendering has been noted to be particularly prone to corruption if the products offered cannot be standardized. For this reason, the construction sector leads the world’s hit-list of corruption-prone activities.\(^{24}\) To combat the proliferation of corrupt cases in 2010, a Public Procurement Code was passed by the DRC parliament, as donor agencies mounted pressure on the government. This law sets out the rules governing the award, execution, control and litigation of contracts; be it supply, service or intellectual property contracts made by the State, provinces, decentralised territorial entities, public enterprises and public institutions. As per this legislation, procurement is done through tenders, which may be open, closed or competitive.\(^{25}\) However, procurement may in exceptional cases be made through an over-the-counter procedure.\(^{26}\) The Procurement Code imposes the obligation to make public – through advertisement, national or international media or by electronic means – contracts whose value equals or exceeds the regulatory threshold. Absence of publicity invalidates the procurement procedure.\(^{27}\)

Despite this regulation, there have been reports of cases (especially in the mining and oil sectors) where contracts were awarded in secret, without a tender process. A good case in point was raised by the Financial Times concerning Mr Gertler; a businessman close to the Congolese President. Mr Gertler is held to be one of the main partners in two offshore companies that obtained oil blocks in north-eastern DRC under controversial circumstances. The Financial Times quotes Congo’s oil minister, Crispin Atama Tabe Mogodi, as saying Mr Gertler is “in the team Caprikat”, one of two offshore companies that obtained block 1 and 2 in Congo’s Lake Albert basin in 2010. The two companies – Caprikat and Foxwhelp – obtained their licences after the government cancelled licences for the same blocks that had been attributed to other firms. The reason why these two companies were chosen as the new licence-holders to the oil blocks remains unclear. These two companies are said to have no known track record in the oil industry, they are registered in the British Virgin Islands and the

\(^{24}\) Transparency International (2003), The Bribe Payers’ Index.
\(^{25}\) Article 17 of the Procurement Code (Loi No.10/010 du 27 Avril 2010 relative aux Marches Publics).
\(^{26}\) Article 20 of Procurement Code
\(^{27}\) Article 34 of Procurement Code.
real owners and directors of the companies are secret. Mr Gertler has also been mentioned by Global Witness to be involved in secret sales of prize mining assets in the DRC: mines were sold off in secret without tenders and far below their commercial value.28 It is speculated that Mr Gertler may have benefitted from his friendship with the president to obtain the mining assets. We do not have any knowledge of such incidents in the public work/infrastructure development sector, but such incidents could happen with the award of contracts relating to any type of infrastructure development.

The awarding of contracts in an infrastructure development project is the phase most prone to corruption, with bribery, deception and collusion as the most often used mechanisms. Bribery at this stage involves the contractor paying a representative of the client a fee to secure the award of the contract.29 The consulting engineer may sometimes be bribed so that he can advise the client that the briber’s bid is the best. It is not uncommon to hear of engineering firms bribing their way through the contract award phase of infrastructure development projects in developing countries.

In addition to bribery, deception and collusion as a mechanism for winning contracts in the DRC, there are other mechanisms such as political patronage and clientelism. This involves the siphoning of public resources to sustain a web of patronage networks. Political patronage and clientelism in the DRC is reflected by the overrepresentation of individuals close to the President in the Cabinet.30 President Kabila has replaced the heads of 37 state enterprises with people personally connected to him, thereby tightening his grip on economic and political power.31 Influential business tycoons with links to the President or a minister are known to have secretly won some state contracts, especially in the mining sector. This situation casts a shadow to the President’s efforts in promulgating anti-corruption laws. The case involving Dan Gertler mentioned above is worth reiterating. It is speculated that Mr Gertler’s ties with the President was one of the basis on which he secretly obtained prize mining assets in the DRC. A businessman, Alphonso (who declined to use his last name while talking about corruption) is noted to have said “why should I give money earned with

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difficulty to the government? I have relatives and friends at all levels of the country. I can easily get the false invoices that I want.”

Corruption in the DRC is widespread through all levels of society. A 2008 report by Global Integrity stated that inefficient government structures, low salaries and an absence of oversight provide civil servants with opportunities and incentives for extorting money from the population. Bureaucratic and administrative corruption is held to be widespread across all public services and departments. People feel obliged to pay bribes to civil servants as a way to ‘motivate’ them. This is due to civil servants’ poor remuneration. In 2004, average monthly salaries ranged from US$6 for the lowest-ranking civil servant to US$25 for the highest level. One public servant stated:

“With our average salaries of less than US$30 a month, how can we survive without accepting bribes? We know quite well that it is forbidden by law, and that we are harming our country. But if we don’t do it, then we can’t have food for ourselves and our children, and we can’t send them to school.” A traffic policeman added, “All vehicles that pass through the roundabout where I am stationed must slip me a small banknote, even if the driver has all the correct papers. Otherwise, I invent and accuse him of an offense against the Highway Code and send him to my superiors, who will fine him more and keep the money from themselves.”

This illustrates the prevalence of petty corruption, spurred by low salaries and a weak government.

Corruption at procurement stage takes the largest part of the cake. Globally, official procurement is estimated to amount to approximately US$3 trillion per year. Even if the added cost of projects due to corruption is estimated at a modest 10% of contract value on average, the amounts wasted globally each year are staggering – and especially distressing if

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one considers what these amounts could do to improve the lives of the poorest people in our society who suffer most basic needs.36

5. Corruption in the Energy Sector

Bribery, collusion and deception are not uncommon in the construction, operation and maintenance phases of large infrastructure development projects. For any large investment, adequate maintenance of the completed asset is critical; maintenance deferred can lead to deterioration of the asset and the need for expensive repairs.37 The Inga I and Inga II dams stands as a testimony to this point. Constructed in 1963 and 1972 with an expected output of 351MW and 1,424 MW respectively, these two dams were later left to deteriorate due to mismanagement, wars and technical challenges from siltation. These caused the dams to produce only 40% of their capacity by 2002. Efforts are currently underway to rehabilitate the two dams at a colossal sum of US$883 million provided by the World Bank, African Development Bank, the German government agency KfW and DRC electricity utility SNEL.

Société Nationale d’Electricité (SNEL), the country’s national utility company has been fraught with problems for decades. During the Mobutu years, it failed to collect electricity tariffs from government entities, residential users and mining companies. SNEL is currently unable to provide electricity to all of Kinshasa because of low production levels at the Inga I and II dams and the aged, poorly maintained state of its transmission lines. As a result, SNEL only provides power during specific time slots to different neighbourhoods, leaving portions of the capital without power for days and weeks. Power cuts due to damaged transmission lines are common, but it has been reported that they are sometimes provoked by SNEL technicians who then receive bribes to repair the lines or reconnect the customer.

SNEL has been linked with grand corruption scandals as well. In 2008, two of SNEL’s top directors were interrogated after the disappearance of US$6.5 million ear-marked for Inga II rehabilitation. The money was never recovered or accounted for. In 2011, President Kabila fired all of SNEL’s directors and hired a new CEO because of the utility’s poor performance

(and public protests). Big scandals related to SNEL have been less frequent (or better kept secret) since its restructuring, but SNEL is still having difficulties in collecting fees owed.

One SNEL employee dared to tell us about the impunity and evils that permeated deep into SNEL structures and operations. He was once in charge of billing mines in the Katanga region, and claims that high political elites in the government would go as far as organising large mobs to disrupt operations at the SNEL billing kiosks in order to stop them billing certain mines. He called it the Congolese Political Mafia and stated that he was convinced that the World Bank or any investor into the energy sector would never recoup their investment because of how the system operates.

6. Frameworks for combating corruption in the DRC

Transparency International states unequivocally that without political will, little can be done to stop corruption. The organization has challenged leadership in the public and private sectors to be fully engaged to stop this scourge. There is certainly a growing awareness about the problems, and fighting corruption has spawned movements in India and protests in China, and has become the platform for a number of new political leaders.

But the DRC has a very steep hill to climb in the field of fighting corruption. It still suffers from weak legal and institutional mechanisms to ensure accountability, as well as limited capacity to respond to its governance challenges. According to Matti, high levels of political patronage have undermined the establishment of transparent, accountable institutions, and rent-seeking elites generally lack the incentive and political will to build strong institutions to curb corruption. In 2005 the DRC enacted an anti-corruption law which brought provisions of the United Nations Convention Against Corruption and African Union Convention on Preventing and Combating Corruption into the national context, purportedly providing an adequate legal framework to fight corruption. The Congolese Penal Code forbids all forms of corruption and in its Articles 147-151 specifically bans the abuse of public office for

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personal gains, punishable by up to 15 years in prison. President Kabila has on numerous occasions made reducing corruption a priority of his government.\(^{42}\) He launched a ‘zero-tolerance’ campaign in 2009. This included the creation of a Financial Intelligence Unit to combat money laundering and financial crime. During his ‘zero-tolerance’ campaign, the government dismissed several high ranking civil servants for corruption, including a minister and the head of a State-run company. However, it has been reported that very few officials have been successfully prosecuted in court.\(^{43}\) It is also known that many developing countries responded to the UN and other donor requirements to legislate against corruption simply as a paper exercise in order to continue to access aid. The practice on the ground tells its own story.

As far as regulation is concerned, under pressure from donors, Joseph Kabila’s government has promulgated many laws to rein in corruption and improve procurement systems. In June 2011, the Senate adopted a new public finance law which aims to improve management and transparency in public expenditures. Several steps have been taken to increase transparency, especially in the natural resources sector. In 2011, the government signed a decree requiring that all contracts on natural resources be published within 60 days of being signed.\(^{44}\) Many contracts were published on the website of the ministry of mines, but the state-run mining company Gecamines failed to publish some of its contracts, citing confidentiality clauses.\(^{45}\)

Donors like the World Bank, the African Development Bank and the British Department for International Development (DFID) have been deeply concerned about corruption in the DRC and have taken measures to curb or limit corrupt practices. The DFID has supported efforts in the DRC to reduce corruption, with support ranging from supporting better access to information about services for Congolese citizen (for example, by helping local and provincial government representatives to consult communities about their budgets and priorities and helping to establish ways for people to give feedback on performance and value for money), improving public financial management, developing a stronger evidence base on


\(^{44}\) “Equity in Extractives: Stewarding Africa’s natural resources for all” *Africa Progress Report* 2013, p.56.

the causes of corruption in Congolese society, among others.\textsuperscript{46} It should however be noted that donor agencies have in the past failed to sustain these efforts and have in most cases continued pouring funds into the government with amazing complacency. This has led to a perception that the donor organisations do not take corruption seriously enough.

The COMIDE scandal is a case in point. In 2012, the IMF stopped a loan programme after the government failed to publish full details of a mining deal involving Gecamines generally referred to as “the COMIDE scandal” in the DRC. The IMF had started a $551 million loan in 2009 to improve the business climate in DRC with the condition that all mining contracts and transactions would be made public. However the government failed to disclose the trade of 25% stake of the COMIDE SPL copper mining venture. The recipient of the deal was a company registered in the British Virgin Islands.\textsuperscript{47} Following this incident, the IMF decided to halt three tranches of loans totalling about US$225 million and the AfDB announced that it was withholding a planned US$87 million in budget support.\textsuperscript{48} The World Bank had briefly suspended loans in 2010 because of related concerns over concessions arrangements.\textsuperscript{49} In April 2013, the World Bank debarred SNC-Lavalin, a Canadian engineering giant and potential bidder for the development of the Grand Inga scheme from participating in any World Bank funded project for a period of 10 years following misconducts in Bangladesh and Cambodia. Leonard McCarthy, the World Bank’s Integrity Vice President, hailed the debarment as a testimony to collective action against global corruption. Employees of this Company had for years used a secret internal accounting code for bribes on projects across Africa and Asia.\textsuperscript{50}

New scandals advanced by new entries working in DRC are also being reported. Due to the dysfunctionality and lack of capacity in the government, many projects are being traded in

\textsuperscript{46} Department for International Development (January 2013) \textit{DFID’s Anti-corruption Strategy for the Democratic Republic of Congo} Department for International Development.

\textsuperscript{47} Corruption risks means the IMF was right to halt Congo loan programme Global Witness (5 December 2012), available at \texttt{http://www.globalwitness.org/library/corruption-risks-mean-imf-was-right-halt-congo-loan-programme} (accessed on 22 August 2012).


\textsuperscript{50} See “SNC-Lavalin International Used Secret Code For ‘Bribery’ Payments” The Huffington Post (05/15/2013), available at \texttt{http://www.huffingtonpost.ca/2013/05/15/snc-lavalin-international_n_3277347.html} (accessed on 8 October 2013).
exchange for mineral resources or logging rights without due diligence. Recently the Chinese consortium Sicomines landed a $6.5 billion megadeal in exchange for mining copper and cobalt with Congo’s state mining agency. The Chinese Sicomines deal is of concern in that the DRC government has no studies that estimate the potential value of the minerals at the site and also that there was a ‘signing bonus’ of $350 million whose recipient is not publicly known. (NB: Sicomines includes China’s largest dam builder, Sinohydro, which is in talks to build the Grand Inga scheme.) Also there have been reports recently that the State owned Gecamines Company is at an advanced stage of negotiations to sell its stake in a lucrative copper mine without the informing the Congolese ministry of mines.51 This raise further corruption concerns in the DRC.

7. Ways forward

The DRC has a long record of poor governance, with corruption being an acceptable and tolerated reality that has permeated all sectors of the economy and undermined the economic, administrative and social fabrics of the society. Despite some measures by the government and some of its donors, there has been a deterioration of the situation from 2005 to 2011. In a bid to move the country towards economic development, the World Bank, African Development Bank and other donors invested; immediately after President Joseph Kabila signed a peace deal with the various warring factions in 2001; and are still pumping billions of dollars into the DRC for infrastructure development projects, with the Grand Inga Dam scheme being the most recent and most expensive of such projects. With an enormous price tag of US$80 billion and given the fact that construction projects has been documented to be most prone to corruption, the prevalence of corruption in the DRC despite measures put in place to curb it, one may be justified to think that this “development scheme” will not be spared the cancer of corruption.

What these cases have shown is that with all the various projects taking place in the DRC and investors rushing in from every part of the world, these investments will not alter the poverty in DRC but instead will continue to enrich the elite. It is also clear that all efforts to reign in corruption over the last decade have not improved the situation in the DRC but perhaps have

helped to make corruption more sophisticated than before. For every “corruptee there is a corruptor”; both sides of corrupt deal-making need to be tackled.

Tackling corruption on a project the scale of the Inga dam complex, will require major changes to the status quo of doing business in DRC. In order to curb corruption in the infrastructure sector, the DRC government should:

*Strengthen the legal mechanisms to ensure accountability.* The 2005 Anti-Corruption Laws, the Penal Code, the 2010 Procurement Code of the DRC and the 2011 finance laws can be hailed as a good step in the right direction. However, as seen from the preceding paragraphs, the enforcement or implementation of these laws remains problematic. The DRC government officials should strongly consider implementing or enforcing these laws without favour or fear of whosoever. The government’s Financial Intelligence Unit should carry out prompt investigations of corruption allegations and impose stricter sanctions on individuals or companies found in violation of these legal instruments.

*Enact a comprehensive Access to Information Law (Right to Information Law) to supplement the 2011 decree on the publication of all contracts on natural resources.* This law would ensure a proactive disclosure of information and promote transparency and accountability in procurement with respect to all contracts. An access to information law ensures an active inclusion of citizens in the business of the government. This is achievable where there are secure and reliable information storage systems in government to preserve documents particularly those relating to public expenditure.

*Establish an efficient Income, Assets, investments and level of indebtedness public disclosure System.* The government should set up an efficient income, assets, investments and level of indebtedness system. Mandating officials to divulge information about their wealth allows a public employee’s wealth to be monitored and thus deter the less determined or those tempted to steal from the public but fearful their wrong doing might be revealed. The DRC has a non-public disclosure regime. A confidential disclosure regime requires that the agency administering it must be politically neutral and it enjoys the confidentiality of the citizens. However, this is a difficult condition to meet in a country like the DRC. A public disclosure regime will allow civil society and the media to help enforce the program. This disclosure system should of course be backed by strict sanctions in cases where employees lie about their assets, income, investments or level of indebtedness.
Ensure Asset Recovery. It is not enough for anti-corruption efforts to stop at preventing corruption and imposing sanctions on those guilty of corrupt practices. The DRC government should make efforts at asset recovery. The bank accounts of those guilty of corruption should be frozen and efforts should be made at ensuring that assets that are the proceeds of corruption crimes are returned. DRC’s financial institutions should be obliged to scrutinize the deposits in high value accounts made by prominent public officials for the purpose of detecting and reporting to the appropriate authorities any suspicious transaction. Public officials with interests in financial accounts in foreign countries should be obliged to report that relationship to appropriate authorities and maintain appropriate records related to those accounts.

Strengthen the institutional capacity of institutions charged with ensuring accountability and transparency. The current institutional mechanisms to fight corruption in the country, notably the courts and the Financial Intelligence Units are weak given the fact that many individuals have been dismissed from their posts on charges of corruption, but very few have been prosecuted and sentenced by the courts. This makes a mockery of the efforts against corruption.

Consider setting up a Construction Sector Transparency Initiative (CoST). This is a multi-stakeholder initiative that brings together the public and private sectors as well as civil society all of which benefit from a more open, stable and predictable construction environment.

Sign an Integrity Pact with bidders, contractors or subcontractors of a public contract. An integrity pact is a formal agreement between a Government agency and bidders, contractors and sub-contractors for public contracts establishing rights and obligations between parties, providing sanctions in case of violations, providing alternative dispute resolution and external, independent (third party) monitoring. IPs should be signed for all types of contracts.

Establish a Social Accountability and Contract Group within the infrastructure sector. Social accountability promotes the participation of citizens and communities in exacting accountability from Governments, including in (third party) monitoring of contracts’ award and implementation.

Assure participation of civil society in decision-making processes. Public participation in decision making is an essential element to any transparent, accountable and democratic
political system. Civil society organisations play an important role in such participation mechanisms, providing a link between citizens and decision makers and uncovering corrupt practices. Civil societies in the DRC should be invited to participate actively in all decisions relating to the Inga scheme. At a time when trust in government’s commitment to fight corruption is declining, it is imperative to allow civil societies to participate in efforts aimed at curbing corruption. If civil society is not on board, it will make it harder to hold the DRC to account and easier for corruption to continue to flourish.

It would be unfair to end this article without pointing out that corruption is a worldwide phenomenon and is not isolated to poor, political unstable and struggling economies like the DRC, Somalia, Sudan, Syria, among others. The 10 top-ranked nations (Canada, Australia, New Zealand, Switzerland, Singapore and the Scandinavian Countries) on Transparency International’s recently published Corruption Perception Index (2013) are not spared from the phenomenon of corruption. Hugette Labelle, the Chair of Transparency International says that while “the top 10 performers clearly reveal how transparency supports accountability and can stop corruption, (they) face issues like state capture, campaign finance and oversight of big public contracts,” especially with regards to corporate involvement in economic and governmental affairs.52

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