

2011

International Relations 4701
The University of Western Ontario

BEYOND THE HEART OF DARKNESS

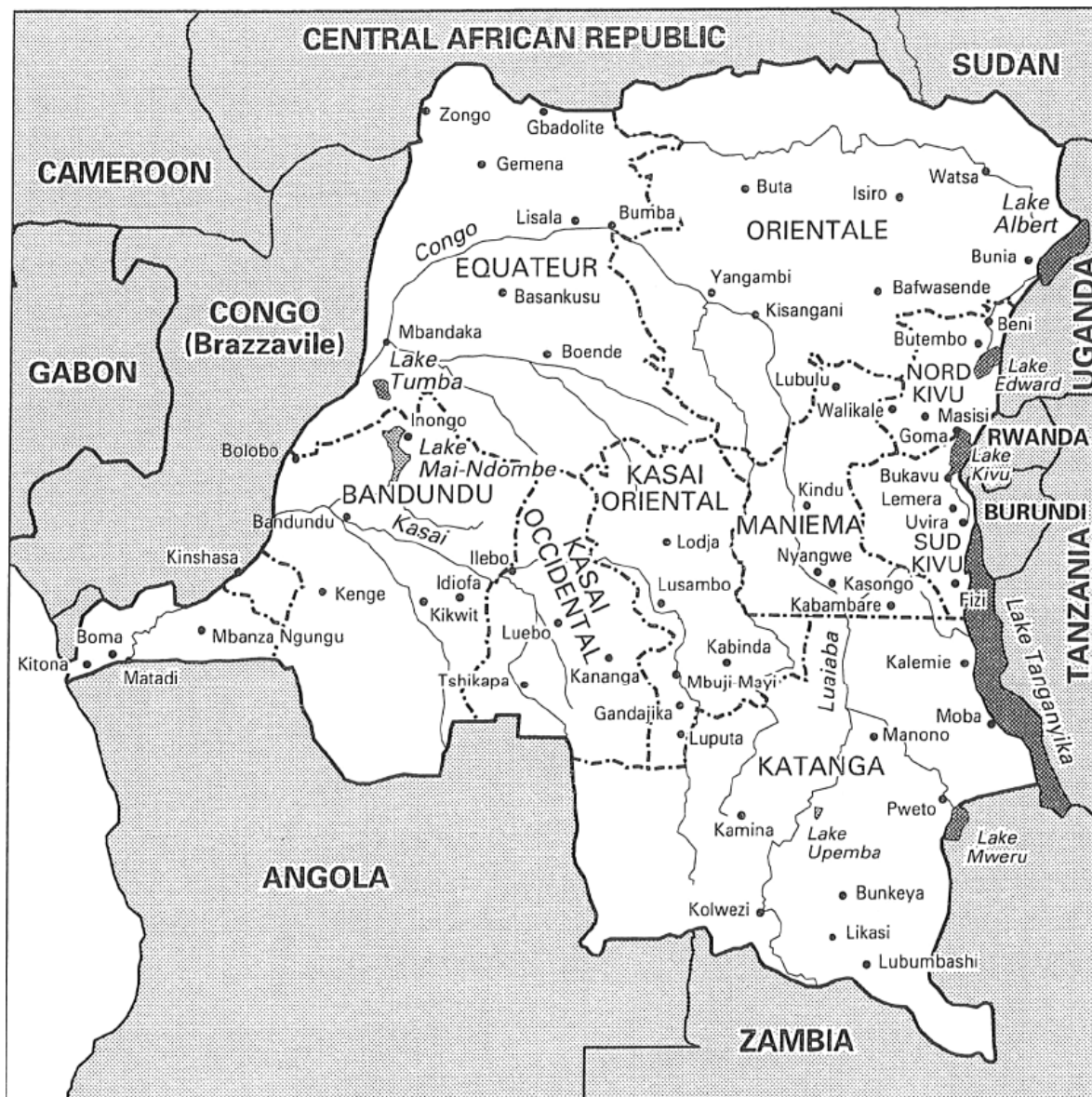
A Diagnosis of the Failed State and Recommendations for
Reform in the Democratic Republic of Congo

International Relations Class of 2011

Sean Acklin Grant	Cynthia McGill
Anna Aminzadeh	Emely Melendez
Melanie Bergin	Jason Minor
Thomas Cameron	Mikolaj Niski
Shikha Dilawri	Amy O'Brien
Daphne Edmonds	Erin Peters
Katrina Finnigan	Miriam Puttick
Sergio Galvis-Amaya	Christopher Rhind
Lisa Grant	Aaron Robinson
Emily Hartman	Erica Sammut
Marci Hay	Melissa Semenuk
Ashley Hopkins	Saima Maleha Shah
Kristen Hyodo	Jasmine Tabibi
Ramiro Jimenez	Matthew Tong
Peter Keane	Radu Venter
Kyle Kerr	Derek Verbakel
Jane Loyer	Ceyda Yetkiner
Victoria McDougall	

Table of Contents

<u>Introduction</u>	4
State Failure	5
Causes of Congolese State Failure in Historical Perspective	6
Philosophy: The Role of International Actors in the Reconstruction of the DRC.....	15
Organization.....	16
<u>Governance</u>	17
<u>Security</u>	32
<u>Economics</u>	41
<u>Judiciary</u>	52
<u>Human Rights</u>	59
<u>Conclusion</u>	67
<u>Appendices</u>	
Appendix 1: List of Abbreviations	68
Appendix 2: Constitutional References.....	70
Appendix 3: Children’s Rights Legal Framework	79
Appendix 4: African RECs.....	80
<u>Bibliography</u>	81



Democratic Republic of the Congo

Introduction

The Democratic Republic of the Congo (DRC) fits any conventional definition of a failed state. The Congolese territory is generally divided into four regional enclaves, three of which are under the precarious control of externally sponsored rebel groups. The government has failed to disarm the rebels and regain territorial control, and despite a peace agreement in 2002, fighting continues particularly in the Eastern DRC.¹ Provinces such as North and South Kivu, Katanga, and Ituri experience ongoing clashes between various armed rebel groups and militias vying for control of the country's rich mineral resources.

Fragmented state control has created an informal economy and allowed extra-governmental groups to gain in autonomy. Conflict in the eastern DRC has internally displaced 1.2 million people, while the presence of additional refugees from Rwanda and Burundi has exacerbated instability in the region.² The Congolese state is unable to provide security for its citizens and protect them from violence. In addition to the crimes perpetrated by Congolese paramilitary groups, even soldiers and police regularly commit gross human rights violations, including sexual violence and rape.³ Furthermore, the Congolese state has failed to provide even the most basic of goods and services to the population: clean water is not available, education is rudimentary, critical health institutions and social services are non-existent in many areas, and much of the country's infrastructure has disintegrated.⁴ It is estimated that approximately 16 million Congolese are affected by disease, starvation and homelessness.⁵ According to Save the Children spokesperson George Graham, the Democratic Republic of the Congo (DRC) is the worst place in the world to be a child.⁶ In addition, as recorded by the United Nations Development Programme (UNDP), life expectancy at birth for a Congolese citizen is 48 years.⁷ These conditions are reflected in the DRC's current ranking on the Human Development Index (HDI), which is a "composite measure of three basic dimensions of human development: health, education and income."⁸ The DRC appears second lowest on the HDI index with a rank of 168 out of 169 countries. The HDI for DRC has declined by -0.4% annually since 1980, and currently sits at 0.239, which is below the regional Sub-Saharan average of 0.389.

While international recognition of the DRC as a sovereign state validates the central government on a global stage, the lack of domestic legitimacy presents a fundamental obstacle to economic growth, security, and state building. The lack of state capacity and the inability of the state to control its territory have rendered it illegitimate in the eyes of many Congolese people. As a result of this gradual erosion of administrative structures, the state has regressed from a

¹ René Lemarchand, "The Democratic Republic of Congo: From Collapse to Potential Reconstruction" in *Centre of African Studies*, 3.

² Pierre Englebert and Denis M. Tull, "Postconflict Reconstruction in Africa: Flawed Ideas about Failed States" *International Security* 32 no.4 (2008): 124.

³ Secretary General of the United Nations "Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo" (New York: United Nations Security Council, 2010), 4.

⁴ Lemarchand, "The Democratic Republic of Congo: From Collapse to Potential Reconstruction" 2.

⁵ *ibid*, 3.

⁶ Katherine Moloney, "Sexual Violence in the Congo" *Heath and Human Rights Journal OpenForum Archives*, October (2009): 1.

⁷ "International Human Development Indicators," accessed on March 29, 2010, <http://hdrstats.undp.org/en/countries/profiles/COD.html>

⁸ "International Human Development Indicators," accessed on March 29, 2010, <http://hdrstats.undp.org/en/countries/profiles/COD.html>

weak, authoritarian state capable of rudimentary state functions to a failed state that does not hold legitimate authority over its territory, cannot ensure security for its citizens, and cannot provide basic services.

State Failure

According to Rotberg, states fail “when they are consumed by internal violence and cease delivering positive political goods to their inhabitants. Their governments lose credibility, and the continuing nature of the particular nation-state itself becomes questionable and illegitimate in the hearts and minds of its citizens.”⁹ The government of the DRC does not have jurisdiction over its own territory and cannot protect its citizens from violence. It does not provide even the most basic of political goods to the population, and its legitimacy is almost nonexistent in some parts of the country.¹⁰ It is not surprising that the DRC is often regarded as a paradigmatic example of state failure. According to 2010 Failed States Index, issued by *Foreign Policy and The Fund for Peace*, the DRC ranks fifth among 60 of the world’s most unstable countries.¹¹

Nevertheless, there is disagreement among scholars over whether the DRC should truly be classified as a ‘failed’ state. Broadly, there are two schools: one assesses a state in comparison to an ideal type and the other maintains that traditional measurements of ‘state failure’ are irrelevant to the post-colonial context. The Weberian model is often held up in the first school as the ideal state to which others are compared.¹² Many policymakers, international donors and international financial institutions believe that economic liberalization and democratization can help build a ‘Weberian’ state out of one that has failed. This perspective is limited, however, because it is ahistorical. As Chang indicates, “a modern functioning Weberian state is more a product of development than an input into it.”¹³ The second view, referred to as functionalist position, argues that post-colonial states cannot be judged based on the Weberian model because it is irrelevant to their historical experience.¹⁴ Instead, the functionalist position points to the practical utility of analysing political legitimacy in a neo-patrimonial post-colonial environment. However, these models do not have to be diametrically opposed. The DRC can be evaluated based on the Weberian state functions and how they operate in the post-colonial context.

The Weberian state, building from the Westphalian tradition, is defined as a human community that “successfully claims a monopoly of the legitimate use of force within a given territory.”¹⁵ The three interrelated components of the Weberian concept of an ideal state are popular legitimacy, monopoly over the means of violence and territorial control. State legitimacy is derived from the active consent of the citizenry. Consent is built upon the state’s effective performance of certain minimal functions that promote the security and well-being of its

⁹ Robert I. Rotberg, “The Failure and Collapse of Nation-States: Breakdown, Prevention and Repair,” in *When States Fail*, ed. by Robert I. Rotberg (Princeton: Princeton University Press, 2004), 1.

¹⁰ Lemarchand, “The Democratic Republic of Congo: From Collapse to Potential Reconstruction” 7.

¹¹ Foreign Policy, “The Failed State Index 2010,” accessed on March 29, 2010

http://www.foreignpolicy.com/articles/2010/06/21/2010_failed_states_index_interactive_map_and_rankings

¹² Jonathan Di John, “The Concept, Causes and Consequences of Failed States,” *European Journal of Development Research* 22, no 1 (2010): 24.

¹³ Jonathan Di John, “The Concept, Causes and Consequences of Failed States,” 24.

¹⁴ Jonathan Di John, “The Concept, Causes and Consequences of Failed States,” 24.

¹⁵ Jonathan Di John, “The Concept, Causes and Consequences of Failed States,” 13.

citizens.¹⁶ The primary cause of state failure, with reference to the Weberian model, is a loss of legitimacy. Indicators such as corruption, illegality, a significant informal economy, crime, abusive bureaucracy, failing infrastructure, appropriation of public assets for private gain, lack of basic services such as health, education, and sanitation, highlight the weakness of a state's legitimacy.¹⁷ While these indicators may be present in all contemporary states, the degree to which they permeate state institutions determines the extent of state weakness and ineffectiveness.

State failure can also be understood in terms of loss of monopoly over the means of violence within an internationally recognized territory. Monopoly over the means of violence is a zero-sum game. This implies that only the state or state-sanctioned institutions can have a legitimate monopoly over the means of violence.¹⁸ The rule of law ensures that the state has a legitimate monopoly over the means of violence and will not exploit this position. State control through legitimate violence should encompass the entire expanse of its internationally recognized borders.¹⁹ The degree of state control can be measured by the extent to which persons and property are protected within its borders. A state's inability to maintain a monopoly over the legitimate means of violence is indicated by the emergence of armed groups that gain control over various parts of a state's territory.²⁰ When the legitimacy of a state's monopoly over the means of violence is either rejected by the polity or challenged by parallel organizations, the state is rendered unstable. However, it is not the challenge to legitimacy of the state's monopoly over the means of violence within its territory that indicates state failure. Rather, it is the state's inability to effectively undermine this challenge and incapability to reaffirm legitimate monopoly on violence in its territory that deems it failed.

The DRC progressed from a weak state to a failed state because it was built upon an illegitimate colonial state structure, it lacked internal control and legitimacy, and when challenged under Mobutu, it could not defend its territory from external interference.

Causes of Congolese State Failure in Historical Perspective

Post-Colonial State formation

The weakness and subsequent failure of the Congolese state is linked to colonial legacies. The three main features of the Congolese colonial experience that impacted state formation are the extractive colonial structure, a rapid transition to independence, and the unaltered colonial borders. These features led to the development of a post-colonial state characterized by clientelist

¹⁶ Jonathan Di John, "The Concept, Causes and Consequences of Failed States," 15.

¹⁷ Morten Boas, "Weak State, Strong Regimes: Towards a 'Real' Political Economy of African Regionalization" in eds. J. Andrew Grant and Fredrik Soderbaum *The New Regionalism in Africa* (British Library Cataloguing: 2003), 32.

¹⁸ Ashraf Ghani and Clare Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World* (New York: Oxford University Press, 2008), 128.

¹⁹ Ghani and Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World*, 126.

²⁰ Boas, "Weak State, Strong Regimes: Towards a 'Real' Political Economy of African Regionalization," 33. Nzongola-Ntalaja, 97.

and patrimonial norms. The inherent power politics promoted in the post-colonial Congolese state undermined the building of domestic legitimacy. In such a system, the goal is not to gain legitimacy through performing expected state functions, but rather to control state apparatus for personal ends. Consequently, by Weberian measures, the post-colonial Congolese state was not built upon popular legitimacy and was inherently weak.

In the late 19th century, King Leopold II of Belgium sought to promote Belgium as a prominent colonial power on the world stage. In 1884, 'Congo Free State' (CFS) was established under Belgian crown property. The focus of the Leopoldian colony was the extraction of resources, the unification of the colony through military conquest, and the economic destruction of the pre-existing kingdoms.²¹ Beginning in 1891, owing to the invention of the inflatable rubber tire, the Congolese were required by law to supply labour and rubber to the crown. Villages unable to meet rubber quotas were subject to “rape, arson, bodily mutilation and murder.”²² During the 1890s there was an outcry within the international community over the treatment of workers in CFS. By 1908, King Leopold was stripped of his authority over the Congo and power went to the Belgian government.²³ Despite this transfer of power, economic exploitation continued in varying forms and governance of the 'Belgian Congo' still rested primarily in foreign hands.

Colonial exploitation was institutionalized in the Congo as it developed into a ‘gatekeeper state,’ and was subsequently maintained through other means following its rapid transition to independence in 1960. Frederick Cooper describes a “gatekeeper state” as one that is “systematically conquered but not systematically ruled.”²⁴ Within these states, the value of controlling the state apparatus is more profitable than state-building. As a result, while these colonial states controlled the intersection between the national economy and the outside world, they lacked legitimacy and authority within their territories. This contributed to the weakness of the Congolese state, because it functioned for the purpose of controlling political and economic resources. The profitability of state control encouraged contestation, eliminating incentives to engage in democratic state-building.²⁵

State-building in the Congo was hobbled by the transition to post-colonial independence. A rushed independence process created a system where politics was based on political patronage as opposed to popular legitimacy. Independence occurred over a period of ten years. After WWII, European colonies found themselves without the financial resources to administrate their colonial possessions. A wave of decolonization started across Africa, with the Congolese achieving independence in 1960. However, while decolonization began the process of state building in the DRC, the hasty exit of the Europeans left insufficient institutional structures to build a modern state in the DRC. Initially, state control in the CFS was administered by African mercenaries that were organized into a colonial army, known as the *Force Publique*, first established in 1888.²⁶ Until World War I, the Force Publique functioned as both the national army and the police force. Upon independence, the *Force Publique* was rapidly turned over to the Congolese government and renamed the *Armée Nationale Congolaise* (ANC). Within days, the ANC began to mutiny all over the Congo and splintered into roaming bands of armed rebels,

21 Leslie J. Winsome, *Zaire: Continuity and Political Change in an Oppressive State* (Boulder: Westview Press, 1993), 8.

22 Nzongola-Ntalaja, 21-22.

23 Nzongola-Ntalaja, 26.

24 Di John, “The Concept, Causes and Consequences of Failed States,” 8.

25 Di John, “The Concept, Causes and Consequences of Failed States,” 17.

26 Hochschild, 123.

attacking those who were seen to be root cause of their problems: the now ex-colonisers.²⁷ Moreover, localized violence soon erupted into full-scale rebellion as various nationalist groups vied for power.²⁸ This process was evident when a full-scale rebellion erupted in 1960 between various nationalist groups, the *Alliance des Bakongo* (ABAKO), and the *Mouvement National Congolais* (MNC), as they vied for power in the post-independence power vacuum.²⁹ As such, the foundations of the post-colonial state were rushed and turbulent, and political organization in the newly independent Congo was fragmented. Moreover, the state lacked capacity to deliver public goods, and in inheriting an exploitative system lacked precedence to do so as well. Therefore, in order to gain territorial control, nationalist groups used patronage to buy loyalties of prominent leaders in rural areas.

Moreover, the colonial borders inherited by the Congo further complicated the process of state building. The newly emergent state was responsible for control over a vast expanse of an ethnically diverse Congolese territory. This had particular implications for the Kivu region in eastern Congo. Under Belgian colonialism, the immigration of thousands of Rwandan families into eastern Congolese territory was facilitated in order to meet European demand for labour. During the 1920s, copper mining provided a significant source of revenue for Belgian state-sponsored corporations such as the *Société Générale de Belgique* and necessitated the large-scale recruitment of labourers from the local populations.³⁰ This has contributed to a legacy of land disputes in North and South Kivu that have perpetuated ethnic violence throughout the region.³¹

Ethnically diverse populations, the absence of state-building initiatives, and the lack of monopoly over the means of violence prompted secessionist movements in the provinces of Katanga and Kasai upon independence in 1960.³² The first elected Prime Minister of the DRC, Patrice Lumumba, requested the assistance of the United Nations to curb the secessionist movements and help consolidate state control. By the time the *Organisation des Nations Unies au Congo* (ONUC) left in 1964, both secessionist movements had been put down.³³ Meanwhile, in the context of the emerging Cold War, Western powers had become increasingly weary of Lumumba's leftist political leanings. He was assassinated in 1961 in a U.S. and Belgian-led initiative. Using his position as Chief of Staff of the ANC, Joseph Mobutu took advantage of the secessionist crisis. The aversion of Western powers to communism and leftist ideology influenced their decision to aid Mobutu to seize power in a military coup.

Mobutu

The exploitative colonial system was exacerbated during the Mobutu era, ultimately leading the Congo toward state failure by the end of his rule. President Mobutu Sese Seko was Congo's head of state from 24 November 1965 until 17 May 1997.³⁴ Mobutu's neo-patrimonial regime was one of many that emerged following decolonization in sub-Saharan Africa. However,

²⁷ Trevor Finday, *The Blue Helmets' First War? The Use of Force in UN Operations* (Clemensport, NS: Canadian Peacekeeping Press, 1999), 20.

²⁸ Crawford M. Young, "Post-Independence Politics in the Congo," *Transition* 26 (1966): 34-41.

²⁹ Paul Semonin, "Mobutu and the Congolese" *The World Today* 24, no. 1 (1968): 23.

³⁰ Ralph E. Birchard, "Copper in the Katanga Region of the Belgian Congo," *Economic Geography* 16, no. 4 (1940): 433.

³¹ Lemarchand, "The Democratic Republic of Congo," 26.

³² Look to my presentation (Additional source info needed)

³³ Kevin Spooner, *Canada, the Congo Crisis and UN Peacekeeping, 1960-64* (Vancouver: University of British Columbia Press, 2009), 64.

³⁴ Georges Nzongola-Ntalaja, *The Congo from Leopold to Kabila* (London: Zed Books, 2002), 141.

what rendered Mobutu's regime distinct was his "unparalleled capacity to institutionalize kleptocracy at every level of the social pyramid and his unrivaled talent in transforming personal rule into a personality cult and political clientelism into cronyism."³⁵ These characteristics were central to the strength of the Mobutu regime. However, the strength of his regime did not translate into a strong state. Mobutu's regime was responsible for gross violations of human rights, which included assassinations, extrajudicial executions, massacres of unarmed civilians, and banishment to remote penal colonies.³⁶ Furthermore, in the interest of preventing the rise of independent power centers that could compete with his ability to rule, Mobutu destroyed or neglected the economic and social infrastructure of the country. As a result, the basic needs of the Congolese people were neglected, and the improvement of their living conditions curtailed.³⁷ Therefore, the state under Mobutu was weak due to a lack of domestic legitimacy. In response to Mobutu's utter disregard of the aspirations of the citizenry, mass democratic movements threatened to challenge his regime.³⁸

Mobutu revoked the provisions of the 1964 Constitution and instituted a second constitution in 1967. The judicial system's capacity to uphold fundamental constitutional rights eroded because it was subject to underfunding, corruption, and patronage.³⁹ In 1968, he issued an ordinance that incorporated customary judicial practice into national law and decreed that professional magistrates would replace local notables as judges. Despite this ordinance, the lack of funding and infrastructure limited the impact of this law because numerous regions never had access to formal judicial mechanisms and customary traditions were left intact.⁴⁰ Where infrastructure was in place it was manipulated; the Council of the Judiciary, became one of the five organs of the government and magistrates were obligated to be active party members, and to "interpret the law in the spirit of the party". As Mobutu increasingly gained power, he sought to dissolve the power of any opposing individuals or institutions. The judicial system lost its legitimacy and effectiveness as a free and fair independent body.

Under the Mobutu regime, women's rights were eroded and violated. One example is the revised Family Law of 1987. Under the revised law, a Zairian husband could abandon his wife and marry another, take a wife's property, refuse to support his children, and have sex with underage girls.⁴¹ The 1987 code also gave the husband the right to claim his wife's property even if they were not living together.⁴² In terms of employment, women with little formal education or other special skills were forced into the most menial jobs in the informal sectors as unskilled workers for petty commodity producers, or as domestic workers for employed women.⁴³ Many women had to resort to prostitution in order to survive or to supplement their wages.

As Mobutu consolidated his power throughout the 1970s, he established several military forces to protect him from his enemies: the *Forces armées Zaïrois* (FAZ), the *garde*

³⁵ Lemarchand, "The Democratic Republic of Congo," 6.

³⁶ Nzongola-Ntalaja, 142.

³⁷ Nzongola-Ntalaja, 141.

³⁸ Nzongola-Ntalaja, 141.

³⁹ Theodore Trefon and Van HoyweghenSasia, StefaanSmis, "State Failure in the Congo: Perceptions and Realities," *Review of African Political Economy* 29, no. 93 (2002): 382.

⁴⁰ Ivo Aertsen, Jana Arsovska, Holger-C. Rohne, Marta Valinas, and Kris Vanspauwen (eds.) *Restoring Justice after Large-scale Violent Conflict: Kosovo, DR Congo and the Israeli-Palestinian case* (Willan Publishing, 2008), 362.

⁴¹ Chris McGreal, "Why Women Welcome Mobutu's Demise," *Guardian News*, 2 June 1997, <http://www.hartfordhwp.com/archives/35/026.html> (accessed 10 March 2011).

⁴² McGreal.

⁴³ Brooke Grundfest Schoepf, "Mobutu's Disease: A Social History of AIDS in Kinshasa," *Review of African Political Economy* 29 (1993/1994): 561-573. JSTOR. <http://www.jstor.org/stable/4006796>.

présidentielle (GP), the *garde civile* (GC), and the *Agence nationale de documentation* (AND). Mobutu then officially changed the name of his state from the DRC to Zaïre through his policy of “Africanization.”⁴⁴ Additionally, the ANC was renamed the “*Forces armées Zaïrois*” (FAZ).⁴⁵ However, unlike the GP, the FAZ was a weak organization. Unpaid, mistreated and poorly trained, the FAZ was not an effective military force. Due to the splintered nature of the FAZ (as were its predecessors, the ANC and the *Force Publique*), command structures were corrupt, bribes were common, soldiers would set up road blocks as a method to get money, and they regularly abused the civilian population.

In 1982, the FAZ was further fractured when the élite GP was created. The GP—also known as the *Division spéciale présidentielle* (DSP)—became another source of grievance to the FAZ. The GP was recruited specifically from the Ngbandi tribe (the tribe from which Mobutu originates), and were well-compensated for their efforts, thus ensuring loyalty to Mobutu. They were increasingly used as the main military force in Zaïre as a result of their élite training.⁴⁶ By 1984, the GC had been given the double mandate of complimenting the efforts of the FAZ in the protection of public security, ensuring public order and complimenting the efforts of the *Gendarmerie nationale* (GN) in maintaining border security to stem the flow of illegal mineral smuggling out of Zaïre.⁴⁷

The final military body that existed in Mobutist Zaïre was the secret police. Officially joined together through the AND, this organization was separated between internal and external security. The *Centre national de recherches et d'investigations* (CNRI) was to ensure internal security, while the *Service national d'information* (SNI) was to ensure external security.⁴⁸ By 1987, two more agencies would be added to the police in the form of the *Agence nationale de l'immigration* (ANI) and the *Service national d'intelligence et de protection* (SNIP).⁴⁹ As with the FAZ, the AND as its adjoining bodies have their roots in Zaïre's colonial legacy - the AND is the direct descendant of the Belgian colonial intelligence agency, *la Surété*.⁵⁰ The AND was directly linked to Mobutu and as such was able to use the judicial, financial and political bodies of the state as it saw it. Other than being a source of trouble for other public servants, the AND committed many human rights abuses and served as another body of repression in Zaïre as well as an instrument of reassurance to a constantly paranoid Mobutu.⁵¹

Growing authoritarianism under Mobutu severely undermined existing state institutions. In 1966, Mobutu disbanded the provincial police sectors and centralized police control under the Ministry of the Interior through a law establishing the National Police. This force focused its power on internal security and urban centres, largely ignoring far reaching rural problems.⁵² In 1972, the National police merged into the Gendarmerie and was put under the authority of the Department of Defense.⁵³ In 1984, the Civil Guard was instituted, a civilian police force in

⁴⁴Crawford Young and Thomas Turner, *The Rise and Decline of the Zairian State* (Madison: University of Wisconsin Press, 1985), 65.

⁴⁵ Winsome, *Zaïre*, 43.

⁴⁶ Winsome, *Zaïre*, 48.

⁴⁷ Winsome, *Zaïre*, 46.

⁴⁸ Jean-Claude Willame, *L'automne d'un despotisme: pouvoir, argent et obéissance dans le Zaïre des années quatre-vingt* (Karthala Éditions, 1992), 45.

⁴⁹ Willame, 45-46.

⁵⁰ Winsome, *Zaïre*, 46.

⁵¹ Winsome, *Zaïre*, 47-48.

⁵² Winsome, *Zaïre*, 47-48.

⁵³ APCOF, “An Audit of Police Oversight in Africa”. 19.

theory, but actually a force to suppress political opposition in reality.⁵⁴ In 1985, all these bodies merged into one rigidly centralized police force, the Police Nationale Congolaise, which remains today, numbering between 100,000-140,000 members.⁵⁵

Mobutu sought further economic “de-diversification” as a means of maintaining his hold on political power in the face of a high degree of societal opposition. Despite the incentives for diversification provided by the increasing volatility of foreign resource markets, Mobutu believed that investment in economic diversification and the development of infrastructure would strengthen opposition groups.⁵⁶ He allowed the disintegration of Zairian infrastructure and centralized the state’s economic activity under the control of his political allies, with an exclusive emphasis on the resource sector. By 1978, the state’s top three exports (all minerals) grew from 52% to 91% of total exports.⁵⁷

However, the astonishing longevity of his regime, despite a lack of domestic legitimacy, was due to external sponsorship and Cold War politics. The support for his regime was predicated on three premises: that the support of external powers who believed a ‘strongman’ would keep it together and prevent a possible communist takeover, the regime would support the US and its allies, and Zaire would promote Western interests in Central and Southern Africa.⁵⁸ The Mobutu regime received strong support from United States, France, Belgium, Israel, Egypt, Morocco, Saudi Arabia and apartheid South Africa. In addition to this external support, the strength of the Mobutu regime was dependent on his ability to control resources that would allow sustained payments for political loyalty and thereby maintain patronage.⁵⁹ Cold War support combined with control over resources was essential for Mobutu to maintain political loyalty, and by extension a monopoly of violence. Throughout the duration of Mobutu’s rule, this control gradually diminished.

‘Zairianization’ served to weaken Mobutu’s regime by challenging his control over resources and thereby diminishing patronage.⁶⁰ Although, initially intended to increase state control through the nationalization of foreign businesses, Zairianization served to counteract political loyalty. Through this policy, control over large portions of the economy was transferred to political and economic elites.⁶¹ As a result, these elites were no longer monetarily dependent on Mobutu, and this undermined existing patrimonial ties that were premised upon a system where “money was the only political tool for rewarding loyalty”.⁶² The resulting fragmentation of economic control between elites contributed to the informalization of the Zairian economy. This process weakened the Mobutu regime, which was no longer able to feed the appetite of its clientelistic ambitions and thereby maintain elite loyalty.

By the early 1990s, the state had undergone a high level of decay by virtue of both external and internal forces.⁶³ Externally, a changing global context posed severe constraints to

⁵⁴ APCOF, 19.

⁵⁵ APCOF, 19.

⁵⁶ Dunning, 453.

⁵⁷ Dunning, 465-466.

⁵⁸ Nzongola-Ntalaja, 161.

⁵⁹ Thad Dunning, “Resource Dependence, Economic Performance, and Political Stability,” *Journal of Conflict Resolution*, 49 no. 4 (2005): 466.

⁶⁰ Filip Reyntjens, *The Great African War: Congo and Regional Geopolitics, 1996-2006* (Cambridge: Cambridge University Press, 2009), 11.

⁶¹ Reyntjens, *The Great African War: Congo and Regional Geopolitics*, 11.

⁶² Lemarchand, “The Democratic Republic of Congo,” 6.

⁶³ Lemarchand, “The Democratic Republic of Congo,” 6.

the funding of the Mobutu regime. In the 1980s, international aid policies changed dramatically in response to the rising influence of the neoliberal paradigm.⁶⁴ This framework promoted conditionalities that aimed to reduce the relevance of the state in aid recipient countries to promote economic growth. On one hand, this further constrained Mobutu's ability to maintain his clientelist network, further weakening his regime. On the other hand, it limited the provision of public goods to a greater degree, thereby weakening the legitimacy of the state.

In addition, the end of the Cold War transformed the international scene, and played an integral role in the unraveling of both the Mobutu regime and the state. The end of Cold War politics signified the loss of Congo's strategic significance to the United States, and consequently its American backing.⁶⁵ In response, Mobutu looked towards the Bretton Woods institutions for support. The subsequent aid policies implemented in Zaire by the International Monetary Fund (IMF) and the World Bank were contingent upon three main factors: steps towards democratization, respect for human rights, and good governance.⁶⁶ The implementation of IMF-sponsored Structural Adjustment Programs in the 1980s, emphasized upon macroeconomic reform that would liberalize trade and pressure the DRC to focus its economic activity in the sectors for which it had a comparative advantage: natural resources.⁶⁷ Unfortunately this tactic failed to manifest into economic growth and by 1997, the country was poorer than it had been at independence in 1960.⁶⁸ In the early 1990s, aid to Zaire was suspended due to Mobutu's failure to effectively comply with the conditionalities put forth. This diminishment of aid from the West had severe implications for Mobutu's regime and the state.

The altered global context was central to a deteriorating internal reality in Zaire during the 1990s. Conditions within the country were characterized by an ineffective transition to democracy and a persistently shrinking state. In order to ensure the provision of aid from Bretton Woods institutions, Zaire began a transition to a multiparty democracy in 1990.⁶⁹ However, Mobutu's efforts to sabotage the transition to democracy severely weakened the state and his regime. In an effort to suppress emerging opposition parties, Mobutu bribed a multitude of individuals and developed factions friendly towards his regime.⁷⁰ This further financially constrained Mobutu's regime. In response, Mobutu decreased public spending on social services and began to print money. As a result, domestic legitimacy of Mobutu further weakened, inflation spiraled, and remaining loyalties to Mobutu were undermined.⁷¹

As a result of the accelerated weakening of the state, following the end of the Cold War, each sector of the state apparatus suffered a varying degree of paralysis. Although Mobutu was able to quell resistance to his regime until the outbreak of the First Congo War in 1996, from 1991 to 1993, the Zairian army went on looting sprees across the country.⁷² The acts of rampaging soldiers were attributed to the fact that they had not been paid salaries. Effectively, Mobutu no longer had the resources to maintain elite loyalty and suppress opposition, and as a result, the extreme weakness of the state came to bear. Moreover, there were security challenges

⁶⁴ Lemarchand, "The Democratic Republic of Congo," 6.

⁶⁵ Nzongola-Ntalaja, 143.

⁶⁶ Reyntjens, *The Great African War: Congo and Regional Geopolitics, 1996-2006*, 11.

⁶⁷ United Nations Economic Commission for Africa (UNECA) "Economic Report on Africa 2007: Accelerating Africa's Development Through Diversification" (2007): 116.

⁶⁸ Dunning, 467.

⁶⁹ Lemarchand, "The Democratic Republic of Congo," 20.

⁷⁰ Lemarchand, "The Democratic Republic of Congo," 20.

⁷¹ Lemarchand, "The Democratic Republic of Congo," 7.

⁷² Lemarchand, "The Democratic Republic of Congo," 7.

for the military due to increased cross-border rebel movements as well as potentially threatening neighbour states. However, the army was increasingly ill-equipped to meet these national security challenges.⁷³

This weakness of the Mobutu regime was furthered by certain decisive junctures that challenged the Zairian state. Ultimately, when Laurent Kabila's AFDL, backed by Rwanda and Uganda, crossed into eastern Zaire in November 1996, the state encountered a crucial juncture that would lead to its ultimate failure.⁷⁴ *The Democratic Republic Congo failed in 1998 with the fall of Mobutu and nearly half the territory being outside state control.*⁷⁵

Persistence of State Failure in the DRC

Laurent-Désiré Kabila launched a rebel movement with Rwandan and Ugandan support that succeeded in overthrowing Mobutu in May 1997. The coup exacerbated an already chaotic political environment. From that point until 2003, half of the Congo's vast territory was outside state control.⁷⁶ Rwandan forces entered Northern Congo in the mid-to-late 1990s to pursue the remnants of the Hutu genocidaire regime that had fled to the Congo following the Rwandan civil war. Uganda likewise violated the Congo's territory to stifle rebel militia groups that were based in that region. Angola also infringed upon the Congo's borders for the sake of weakening the National Union for Total Independence of Angola (UNITA), a rival political group that had enjoyed the patronage of Mobutu.⁷⁷

The 1996-1997 uprising saw the presence of eight major groups, mostly under the authority of the Alliance of Democratic Forces for the Liberation of Congo/Zaire, along with military forces and United Nations (UN) peacekeepers. Slightly over a year later, Kabila fell out with those allies that put him in power: Rwanda and Uganda, who had become unpopular among the Congolese. This put Kabila in a situation in which he could either keep his foreign support, and risk undermining his domestic legitimacy, or distance his regime from these allies, and face the consequences.⁷⁸ In 1998, Kabila ordered all foreign troops out of the country breaking diplomatic ties with his former allies. Uganda and Rwanda turned against Kabila, and each founded new rebel movements (RDC-Goma and MLC) in the eastern part of the country, while Angola, Zimbabwe, and Namibia intervened on the side of the "government". Thus, the country was effectively divided into three sections.⁷⁹ As a result of this "transborderness", international conflict in outside of the DRC has led to frequent cross border resource raids in the Eastern regions of the DRC. Because extended periods of conflict require funding, many groups have funded their militia efforts by stealing valuable resources from the Congo.⁸⁰

These competing factions generated a military stalemate that led to the signing of the Lusaka Agreement in 1999. The ceasefire agreement included the withdrawal of foreign forces and the organization of an 'Inter-Congolese Dialogue'. However, the Lusaka Accords were never

⁷³ Wrong, Michela, "The Emperor Mobutu", *Transitions* 81-82. 2000. 106.

⁷⁴ Lemarchand, "The Democratic Republic of Congo," 7.

⁷⁵ Pierre Englebert and Denis M. Tull, "Postconflict Reconstruction in Africa: Flawed Ideas about Failed States" 109.

⁷⁶ Lemarchand, 3.

⁷⁷ Lemarchand, "The Democratic Republic of Congo," 14.

⁷⁸ Stein S. Eriksen, "The Liberal Is Neither: Peacebuilding, State Building and the Reproduction of Conflict in the Democratic Republic of Congo," *International Peacekeeping* 16, no. 5 (2009), 655.

⁷⁹ *Ibid.*, 658.

⁸⁰ Jeremy Weinstein, "Africa's 'Scramble for Africa': Lessons of a Continental War," *World Policy Journal* 17, no. 2 (2000): 13.

implemented; reform of the military, policing and intelligence bodies in the DRC was not undertaken.⁸¹ There is clear evidence that Kabila consistently sabotaged the organization of the Inter-Congolese Dialogue, mainly because he felt that, at the end of the road, he would have to share or even abandon power.⁸²

After Kabila was assassinated by one of his bodyguards in early 2001, and in the absence of constitutional rules of succession, the regime's inner circle designated Kabila's son, Joseph Kabila as interim leader of the Congo. Kabila Jr. appeared to be more willing to negotiate with the rebels and cooperate with international organizations, giving hope to the Congolese people and the international community.⁸³

Kabila's speech on the day of his inauguration opened the doors for the re-launching of the Lusaka process, among other promises. With the government's "OK" to start negotiations, the Inter-Congolese Dialogue started in the Sun City Resort (South Africa) in 2002. However, this process was perpetually threatened with collapse due to violence on the ground, ceasefire violations, and constant repositioning of the participating parties. Even though the fragile situation continued throughout the process, constant international pressure (Mbeki) led to the signing in of the "Global and Inclusive Act on the Transition" in Pretoria that same year. This act was the plan for the establishment of a new transition government. By March 2003, a draft of the constitution and a memorandum on the restructuring and integration of the national army were signed. The new transition government was to include the "1 + 4 formula": Kabila, and four vice-presidents, a 500-strong National Assembly, and Senate of 120 members.

The international community put the DRC under *de facto* international trusteeship in 2002.⁸⁴ The creation of committees such as the CIAT (*Comité international d'accompagnement de la transition*) allowed the international community to count with essential players on the ambassadorial level, avoiding breakdown of the process through flexible interventions. Under Chapter VII of the UN Charter, the MONUC peacekeeping mission was created, comprising 17,000 troops and a \$1 billion budget for that year. Its responsibilities included implementing and monitoring the ceasefire agreement, DDRRR (Disarmament, Demobilization, Repatriation, Resettlement, and Reintegration), and facilitating the process leading to elections.⁸⁵

External actors also played a central role in designing the constitutional structure of post-war governance in the DRC. The current Congolese Constitution was created in December 2005, and came into effect with the swearing in of current President Joseph Kabila on 6 December 2006. The Congolese Constitution of 2006 re-structures the judiciary, asserting that a judicial service council is responsible for the administration of justice. The judicial service of council (*Conseil Supérieur de la Magistrature*) is made up of public prosecutors and judicial officers.⁸⁶ In response to the re-arrangement of the judiciary, an amendment bill was introduced in parliament on November 5, 2007 requesting change in the composition of the council.⁸⁷ The bill

⁸¹ Rouw and Willems, 296.

⁸² Filip Reyntjens, "The Democratic Republic of Congo, from Kabila to Kabila," *African Affairs* 100, no. 311 (2001), 313.

⁸³ Catherine Gegout, "The West, Realism and Intervention in the Democratic Republic of Congo (1996-2006)," *International Peacekeeping* 16, no. 2 (2009), 235.

⁸⁴ Gegout, 310.

⁸⁵ Gegout, 236.

⁸⁶ Dunia Zongwe, Francois Butedi and Clement Phebe, *The Legal System and Research of the Democratic Republic of the Congo (DRC): An Overview*, GlobaLex: 2010.

⁸⁷ Zongwe, Butedi and Phebe, "Legal,"

amends the Constitution so as to include the President, independent representatives from civil society, and the minister of justice into the said council.⁸⁸

With the constant pressure of the international community, the Independent Electoral Commission (CEI) was created in 2004. It consisted of 250,000 electoral agents, specially trained and recruited for the elections. The polls took place with relative calm and voter turnout was 70%. Joseph Kabila ran as an independent and came first with 44.81%, and Jean-Pierre Bemba placed second with 20.03%. Kabila won the second round in October 2006, with 58.05%. Bemba, who received 41.95%, eventually accepted the outcome, and promised to engage himself in a “strong and republican opposition.” Kabila’s victory in the provincial elections, however, can be attributed to corruption.⁸⁹

Since his victory in the 2006 election, Kabila has used force against political challenges to the authority of the state. Repression has escalated since 2007, and public criticism of presidential decisions has sparked an increasingly harsh response from the National Information Agency. This intelligence service works under the president’s control and is present in all provinces, repressing and censoring national and international actors, such as the international media and NGOs.

Human security in North and South Kivu has suffered due undermined border security and the massive influx of cross-border refugees as a result of repeated regional conflict. Following the RPF’s victory during the Rwandan civil war, North and South Kivu was flooded with over 700,000 Rwandan Hutu refugees. This caused deep ethnic divisiveness between Tutsis and Hutus who were transplanted to the Congo.⁹⁰ As a result, Hutu refugees in North and South Kivu began to rise up in arms as “refugee warriors”. Eastern Congo has become the base from where the Hutu refugees attempt to claim back the land from which they were forced out of in Rwanda.⁹¹ Given the destabilizing effects of the refugees in the DRC, the Zairean government announced that the Rwandan refugees were to be expelled. This was because the Zairean government feared the permanent settlement of the Hutu refugees would exacerbate land disputes and any settlement would lead substantial losses of land.⁹²

Conflict continues to plague the eastern regions of the DRC. The government continues to lack territorial control owing to the presence of paramilitary and rebel groups. The Kabila government has failed to provide security or build state capacity through provision of public goods, thereby undermining domestic legitimacy. The legacies of colonialism continue to pervade the neopatrimonial state. The DRC failed under Mobutu when he was unable to protect it from external interferences and Joseph Kabila has failed since to build popular legitimacy and regain territorial control through a monopoly over the means of violence.

Philosophy: The Role of International Actors in the Reconstruction of the DRC

The international community has been involved in the DRC from its colonial past to the present day. Initially created as a colonial state, then propped up extensively by external actors during the Cold War, the DRC continues to experience international involvement. The current

⁸⁸ Zongwe, Butedi and Phebe, “Legal,”

⁸⁹ Reyntjens, “Democratic Republic of Congo: Political Transition and Beyond,” 314.

⁹⁰ Reyntjens, 16.

⁹¹ Reyntjens, 19.

⁹² Reyntjens, 17.

government, in its corrupt, repressive and authoritarian form, is recognized by the international community as sovereign. This external recognition effectively entrenches poor governance. Since international recognition of statehood is assured, the government has little incentive to build domestic legitimacy. A fundamental cause of governance weakness in the DRC has been a failure to connect the government to the people and establish internal legitimacy.

Accordingly, the priorities and policy recommendations of this report seek to reverse this trend by emphasizing the partnership of top-down and bottom-up approaches geared towards increasing government accountability and relevance. Within this approach, the agency of local actors is paramount. Therefore, we envision a marginal but supportive role for the international community in the process of reforming the DRC. In this role, the international community should actively reinforce the processes of government, security, economic, judicial and human rights reform, as determined by domestic Congolese actors, in order to ensure transparency and reinforce an incremental increase in the legitimacy of the State.

Organization

This report lays the foundations for change and rehabilitation within the DRC, focusing on the immediate priorities of the conflict while identifying long term goals for the future. The five pillars of the modern state – governance, security, the economy, judiciary, and human rights – play a causal role in both the failure and rehabilitation of the state and thus form the foundation of this report. Each section offers a diagnosis of the current situation, and identifies corresponding policy recommendations. Because the challenges faced by the DRC are deeply ingrained within the historical context of the country and continue to evolve, this report does not seek to provide a fully comprehensive diagnosis and solution. Rather, key priorities for both short and long term goals have been identified within areas that present the greatest cause of concern for the future of the DRC. The rationale behind the organization of this report follows from the idea that governance holds the central role within the DRC. Recommendations in other sectors rely upon a functioning, democratic and accountable governance system to effectively implement change throughout state. Furthermore, deficiencies in the governance, security and economics sectors are seen as the initial fundamental causes of the DRC's problems, while the challenges with the judiciary, as well as the human rights violations are understood to be outcomes of these initial causes.

The challenge of this report is to synthesize an understanding of state failure in the DRC based on both the role of colonial legacies as well as contemporary actors. This foundation then informs the five major areas for reform described above, in each of which urgent and far-reaching changes are needed to restore state legitimacy. It is necessary to reconcile the notions of the ideal Weberian state with the post-colonial state as they apply to the current issues of corruption and violence in the DRC. Furthermore, although international intervention has been a long-standing and systematic cause of state failure, there remains a role for international actors to play. This role must be clearly defined and supplementary to the essential agency of domestic Congolese actors.

Governance

Nominally the DRC is an electoral democracy. In practice, however, governance in the DRC can hardly be described as democratic. According to Chabal and Daloz, the holding of multiparty elections in African nations is rarely able to change the fundamental nature of politics.⁹³ The DRC has long been characterized by a neo-patrimonial system of governance. Under neo-patrimonialism, power is exercised through a network of loyalties connecting government actors with other members of society.⁹⁴ Leaders achieve legitimacy not by delivering public goods to society at large, but by providing material benefits to a network of clients in exchange for political support.⁹⁵ Such orders become entrenched because many societal actors benefit from the patron-client relationships, and have little interest in overthrowing the system. Following the 2006 elections, democracy has merely been adapted to this entrenched logic of clientelism.

The current regime frequently pays parliamentarians to pass legislation or to vote in the government's favour.⁹⁶ According to Prunier, the presidential coalition is an "incoherent gaggle" of groups acting in "completely mercenary interests."⁹⁷ The coalition's disorganization allows President Kabila to monopolize decision-making.⁹⁸ In 2009, for example, Kabila made the decision to undertake joint military operations with Rwanda without even informing the National Assembly. There are worrying indications that the trend since 2006 has been towards a greater concentration of power in the executive rather than towards the decentralization of power envisioned in the Constitution. The 2006 Constitution called for the creation of 26 provinces instead of the 11 currently in place. Governors would be elected by provincial assemblies and would manage 40% of national tax revenues.⁹⁹ To date, these reforms have not been properly implemented. Kabila has hinted towards changing the Constitution, claiming that the plan for decentralization is not viable and could not be financed with the current budget.¹⁰⁰ The true intentions of the central government are questionable, especially given the rapidly approaching national elections and Kabila's desire to hold onto power.¹⁰¹

Government services at all levels suffer from inadequate funding. In recent years, international donors have provided between half and a third of the state budget.¹⁰² The 2010 budget was approximately US \$5 billion, which is very small for a country endowed with so

⁹³ Quoted in Theodore Trefon, "Administrative Obstacles to Reform in the Democratic Republic of Congo," *International Review of Administrative Sciences* 76, no. 4 (2010): 707.

⁹⁴ Louise Anten, *Strengthening Governance in a Post-Conflict District of the Democratic Republic of Congo: A Study of Ituri* (The Hague: Clingendael Institute, 2010), 23.

⁹⁵ Patrick Chabal, "The Quest for Good Government and Development in Africa: Is NEPAD the Answer?" *International Affairs* 78, no. 3 (2002): 450-451.

⁹⁶ International Crisis Group, 9.

⁹⁷ Gérard Prunier, *From Genocide to Continental War: The 'Congolese' Conflict and Crisis of Contemporary Africa* (London: Hurst, 2009), 315.

⁹⁸ Trefon, 708.

⁹⁹ Anten, 10.

¹⁰⁰ International Crisis Group, 14.

¹⁰¹ Trefon, 709.

¹⁰² Trefon, 709.

many natural resources.¹⁰³ Many government employees are paid irregularly or are not paid at all. They are then driven to extort money from the citizens to make up for this deficiency.¹⁰⁴ The DRC is one of the most corrupt countries in the world, placing 164th out of the 178 countries rated by Transparency International in 2010.¹⁰⁵

Civil society is weak and dissent is often repressed. In March 2008, Kabila's presidential guard shelled the residence of Jean-Pierre Bemba, Kabila's main contender in the 2006 presidential elections. Many of Bemba's followers were subsequently arrested and tortured.¹⁰⁶ In March 2009, opposition leader Norbert Luyeye Binzunga was arrested after organizing a peaceful protest against foreign military intervention in the DRC, and the following month another opposition leader was detained after criticizing the government on television.¹⁰⁷ The International Federation for Human Rights has documented scores of arbitrary arrests of human rights advocates, civil society representatives, students and journalists over the course of 2009.¹⁰⁸ Media outlets are also raided and looted after broadcasting criticism of the government.¹⁰⁹

Despite these repressive tactics, the regime has not managed to consolidate control over large areas of the DRC. The *Rassemblement congolais pour la démocratie* (RCD), a rebel movement, controlled the two Kivu provinces as well as large areas of *Haut-Congo* and Katanga from 1998 to 2005.¹¹⁰ According to Autesserre, most rural inhabitants were completely unaware of the upcoming national elections in the period leading up to the vote. Those who had heard of it had serious misconceptions about the objective of the elections.¹¹¹ In the Ituri district, which is now classified as a post-conflict region, most inhabitants remain loyal to their customary leaders rather than the government.¹¹² Large portions of the population have never had any positive interaction with the central government. Therefore, the regime does not have legitimacy. The results of a 2005 survey capture the gravity of the problem. When asked what they would do to the state if it were a person, the majority of Congolese responded "kill him."¹¹³ When contemplating governance reform in the DRC, often the more pressing question is not what to do, but where to start.

Priority #1: Consolidating Democracy

Often in the discussion of where to begin rebuilding a failed state democracy has been seen as a point of departure. Recently however, the role of democracy in post-conflict transitions has been the subject of scholarly debate in both academic and policy circles. William Maley

¹⁰³ Trefon, 714.

¹⁰⁴ Anten, 10.

¹⁰⁵ Transparency International, "Corruption Perceptions Index 2010 Results," accessed March 7, 2011, http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results.

¹⁰⁶ Autesserre, 234.

¹⁰⁷ Freedom House, *Freedom in the World 2010 - Congo, Democratic Republic of (Kinshasa)*, 3 May 2010, accessed March 7, 2011, <http://www.unhcr.org/refworld/docid/4c0ceafac.html>.

¹⁰⁸ International Federation for Human Rights, *Democratic Republic of Congo: The Authoritarian Drift of the Regime* (Paris, 2009), 13-15.

¹⁰⁹ International Crisis Group, 12.

¹¹⁰ Pierre Englebert, *Africa: Unity, Sovereignty and Sorrow* (Boulder, CO: Lynne Rienner, 2009), 49.

¹¹¹ Autesserre, 241.

¹¹² Anten, 18.

¹¹³ World Bank, cited in Trefon, 713.

defines democracy as a “political system marked by institutional arrangements that permit citizens to change their government without violence.”¹¹⁴ Democratization has been a priority in most post-conflict transitions, including in the DRC. Multiparty elections are usually among the first steps taken towards restoring order.¹¹⁵ Those advocating for democratization believe that only a popularly legitimated government can improve state capacity and in turn consolidate peace and security.¹¹⁶

Consolidation of democracy in post-conflict regions has, however, proven problematic, since, “leaders who are less than fully committed to democracy resist responsibility to popular needs and, as a result, citizens withdraw still further from the orbit of an already marginal state.”¹¹⁷ This has called into question the viability of democracy in places like the DRC.

Some radical scholars believe that democracy will never work in Africa because the concept is alien to African culture, tradition and values.¹¹⁸ These values include communalism and collective decision-making, principles that many scholars feel are at odds with the individualism of Western society. Those who share in this school of thought often see democracy as a neo-imperialist imposition in Africa.¹¹⁹ Their conclusion holds that this system is not a product of African social forces and as such can never be truly legitimated by African citizens.

In response to this argument there are those, like Emeka Nwokedi, who believe that even if democratic values were not present in African pre-colonial history, democracy has become a universal concept and is now a fact of African culture.¹²⁰ Others, including Francis Offor, believe pre-colonial African society did in fact embody democratic values. Offor cites the aspects of participation and communal consensus that helped to organize pre-colonial African societies.¹²¹ A possible solution as suggested by Offor may be to promote a form of democracy that is more flexible than liberal democracy and more responsive to unique African values.¹²² The cultural argument is relevant to consider, but the idea that democracy cannot be implemented based on cultural differences has not been widely accepted.

Ian Spears offers a different approach to explain why democracy has not been consolidated in many African states. Spears states that, “the principal problem is that efforts to solve Africa’s many challenges through benevolent leadership, democratization, and intervention do not address the most fundamental structural problems that have been a consequence of African state building.”¹²³ Focusing specifically on the role of violence in European state formation, he says that, “much of the state building process in the West involved the

¹¹⁴ William Maley, “Democratic Governance and Post-Conflict Transitions,” *Chicago Journal of International Law* 6, no. 2 (Winter 2006): 684-685.

¹¹⁵ Brennan M. Kraxberger, “Failed States: Temporary Obstacles to Democratic Diffusion or Fundamental holes in the World Political Map?” *Third World Quarterly* 28, no. 6 (2007): 1061.

¹¹⁶ Michael Bratton and Eric C. C. Chang, “State Building and Democratization in Sub-Saharan Africa: Forwards, Backwards, or Together?” *Comparative Political Studies* 39 no. 9 (November 2006): 1077.

¹¹⁷ Bratton and Chang, 1063.

¹¹⁸ Emeka Nwokedi, *Politics of Democratization: Changing Authoritarian Regimes in Sub-Saharan Africa*, (Munster: LIT, 1995), 7.

¹¹⁹ Francis Offor, “The Quest for Good Governance in Africa: What Form of Democracy is most Suitable?” *The Journal of Social, Political and Economic Studies* 31, no. 3 (Fall 2006): 274.

¹²⁰ Emeka Nwokedi, *Politics of Democratization: Changing Authoritarian Regimes in Sub-Saharan Africa* (Munster: Lit Verlag, 1995), 16.

¹²¹ Offor, 274.

¹²² Offor, 266.

¹²³ Ian S. Spears, “When Good Governments Go Bad: Leadership and the Limits of Intervention in Africa,” *International Journal* 62, no. 2 (Spring 2007): 345.

centralization and consolidation of a coercive power over a territory. There was a shift from multiple sources of power, to one source at the center.”¹²⁴ Democracy was the eventual outcome of a process of state building that included violence and did not always uphold human rights.

In contrast, African nations were created by colonial powers, and then granted independence. Their borders are not the product of state consolidation in the European sense. The African state lacks the legitimacy that territorial consolidation through violence afforded European states. Furthermore, the grievances within society, stemming particularly from colonial legacies, prevent a consensus on power sharing from being achieved.

Many scholars agree with the precept of Spears’ argument that, “encouraging inclusiveness requires the consolidation of authority and the achievement of security first, rather than the mere and premature imposition of an inclusive agreement.”¹²⁵ Bratton, Kraxberger, and Maley also argue that strong state institutions are the basic prerequisite for democracy. The preconditions to democracy include political stability, government effectiveness, regulatory quality, rule of law and control of corruption.¹²⁶ Elections will be meaningless until the state has the capacity to implement these preconditions.¹²⁷ Furthermore, democracy can be divisive and, if established prematurely, can have dire consequences in a place as ethnically diverse as the DRC.¹²⁸ For these scholars, democracy is not taking root because the sequencing of reform is incorrect.

The counter argument to the theory that state institutions must come before democracy brings the debate full circle. This argument holds that in order to strengthen state capacity citizens must grant political legitimacy to the structures of authority.¹²⁹ In most cases this can only be done by increasing accountability and transparency, the precepts of democracy. The relationship between state building and democratization is a vicious cycle that Bratton and Chang discuss, noting that, “a capable and legitimate state is not only a precondition for successful democratization, but, reciprocally, is itself also a product of the installation of democracy.”¹³⁰ When and how to promote democracy in post-conflict reconstruction remains unclear, but the fact that it should have a role in the process at some point is difficult to disprove.

Policy Recommendations

1.1 Immediate: Building State Capacity

As many scholars have demonstrated, building state capacity is an essential prerequisite to democratization. An efficient bureaucracy must precede democratic consolidation. A decentralized government that takes a bottom-up approach to state building is a desirable policy option to strengthen state capacity locally. By bringing state institutions closer to the people, the government becomes more relevant in everyday life. Having the government clearly visible in local communities encourages people to voice their grievances and channel demands to the

¹²⁴ Spears, 346.

¹²⁵ Spears, 356.

¹²⁶ Bratton and Chang, 1065.

¹²⁷ Maley, 700.

¹²⁸ Maley, 700

¹²⁹ Bratton and Chang, 1061.

¹³⁰ Bratton and Chang, 1061.

appropriate institutions. Ideally the civil servants in these institutions will be members of the small communities they serve, which will further strengthen the quality of the services provided and help to eliminate corruption. At the local level the state would be tasked with providing basic health care, education, local security and local administrative duties. This is a building block approach to recreating a viable central government in the DRC. This bottom-up approach to state building allows for a strong foundation on which the central government can gain legitimacy. Once state institutions are built at the local level, local elections can be held. The current Congolese Constitution calls for the creation of 26 provinces. Building local institutions requires decentralization and this must be initiated by the Central Government. Kabila must recognize regional power and establish a clear division of power between the provinces and the Central Government. The international community must support the decentralization of the Congolese Government, pressure the Central Government to uphold its constitution, and carry out the governance functions outlined within it.

1.2 Short-term: local elections

Local elections are the next short term priority for strengthening the state and moving towards democratic consolidation throughout the country. The goal is to build democracy through a bottom up approach, beginning at the local level. This will be a gradual process. This building-block approach to democratic consolidation mirrors the bottom-up approach of state building; both processes are aimed at addressing root issues.

The credibility and success of local elections can be strengthened by the involvement of civil society engaged in consensus building. Ideally, as the state builds its institutions, civil society can begin to strengthen itself (for more strategies see the section on civil society). One approach particularly relevant that deserves mention here is Howard Wolpe and Steve McDonald's strategy to build "collaborative capacity" among key leaders. The idea behind collaborative capacity is to engage local power holders in discussions of power sharing.¹³¹ This is primarily done through civil society groups capable of taking up this initiative, ideally with the support of the international community. The international community can positively reinforce this, but it ultimately must be a Congolese-led initiative, and cannot be viewed as imposed.¹³²

The engagement of the Congolese government in guaranteeing the function of the Independent National Electoral Commission during the local elections will ensure freedom and order during the electoral process. The role of the National Electoral Commission is not only to count votes, but also to engage the different sectors of civil society in the democratic process and to coordinate this with national and international monitors. The National Electoral Commission will also need guaranteed funding from Parliament and the promulgation of the electoral law that will be implemented during the elections.¹³³

The International Community offered to fund \$131 million of the \$163 million total cost of the local elections that were scheduled for January 2008. The Congolese were left with the task of setting up of an Independent National Electoral Commission, updating the boundaries of

¹³¹ Howard Wolpe and Steve McDonald, "Democracy and Peace-Building: Re-Thinking the Conventional Wisdom," *The Round Table* 97, no. 394 (2008): 141.

¹³² *Ibid.*, 143.

¹³³ Constitution of the Democratic Republic of the Congo, Articles 2, 3, and 196, Kinshasa, 2006.

the local electoral districts and raising the remaining \$32 million.¹³⁴ A committee of relevant Congolese Ministers, Ambassadors and MONUC Officials was set up to overview the electoral process at the local level. Another technical committee was set up to represent Congolese officials and international experts from PACE (Project in Support of the Electoral Cycle), which at the same time represents the international donors, MONUC, and the PNUD (United Nations Development Programme.)

1.3 Short-term: citizenship reform

Local elections also act as a fundamental component in addressing the issue of citizenship. A long history of ever-changing citizenship status has produced discontent and confusion within the varying ethnic groups living in the DRC.¹³⁵ Confusion among the populace regarding the criteria necessary to obtain citizenship has created an environment in which government officials fail to implement citizenship rights as listed by the Constitution.¹³⁶ Since the beginning of the war in 1996 citizenship disputes have become linked to the regional struggle for economic control and politico-military power. The current structural organization of land is at the root of the regional conflicts in the eastern part of the country, where the land is an asset of political and economic power, and a function of citizenship rights. Unequal access to land as defined by unequal citizenship rights has intensified local competition and evolved into disputes and violence between ethnic communities.¹³⁷ The purpose of broadening the definition of citizenship is to grant political and civil rights, thus creating agency for the entire population within the DRC. Agency secured by inalienable rights can ensure greater representation and access to fundamental rights.

Notions of citizenship within the DRC must include two dimensions: ethnic and civic.¹³⁸ Ethnic citizenship denotes group rights, including the right of access to customary courts. Civic citizenship refers to individual rights, usually including civil and political rights, commonly outlined in the Constitution. Restructuring the cultural understanding of citizenship must include reform in the areas of both civic and ethnic citizenship, highlighting the value of both the greater Congolese national identity, as well as traditional, provincial identities.¹³⁹ Moreover, implementing the inclusivity of the Constitutional definition of citizenship tackles the issue of land rights, particularly in the eastern region. Establishing a policy of inclusivity will extend citizenship rights to those currently without rights to land and property. The law on nationality, promulgated in 2004, provides Congolese nationality to every individual, and his or her descendants, who lived in the DRC as of the 30th of June 1960.¹⁴⁰ The problem does not lie in the definition of citizenship, but rather in the political and social will to implement the constitutional definition of citizenship.

¹³⁴ International Crisis Group, *Congo: A Stalled Democratic Agenda*, 1.

¹³⁵ Koen Vlassenroot and Chris Huggins. "Land, Migration and Conflict in Eastern DRC." in *From the Ground Up. Land Rights, Conflict and Peace in Sub-Saharan Africa*, rev. ed., ed. Jenny Clover, Chris Huggins, Prisca Kamungi-Mulemi, Herman Musaraha, Benson M Ochieng, Johnstone S Oketch, Johan Pottier and Koen Vlassenroot (Pretoria, South Africa: Institute for Security Studies, 2005), 126-7.

¹³⁶ Constitution of the Democratic Republic of the Congo, Title II, Chapter 3, Kinshasa, 2006.

¹³⁷ Chris Huggins, "Land, Power and Identity: Roots of violent conflict in Eastern DRC." *International Alert* (2010).

¹³⁸ Constitution of the Democratic Republic of the Congo, 131.

¹³⁹ Constitution of the Democratic Republic of the Congo, 144.

¹⁴⁰ Constitution of the Democratic Republic of the Congo, 159-60.

The political importance of “indigenous” status was first institutionalized by the Belgians, during the colonial period. The Belgians created separate legal and political spheres, first according to distinctions of race, in which Europeans had more rights than black Africans, and another according to the distinctions of ethnicity, which was exclusively among the Congolese natives.¹⁴¹ When these divisions were carried on into the post-colonial period, civic (Congolese citizenship) rights could be claimed by anybody claiming Congolese nationality, while ethnic citizenship depended upon membership of a particular ethnic community with historic claims to Congolese lands and by consequence an organized leadership structure.¹⁴² To avoid conflicts between ethnic groups in the DRC, the current legal definition of citizenship must be reconciled with rights granted to ethnic groups. It is at the local level where the political structures that define Congolese (civic) citizenship meet with the main issues that cause conflict (land distribution and property rights). It makes sense that the initiatives to attack the exclusionary logic of ethnic citizenship take place at this level. This approach to standardize citizenship and the rights that come along with it under the Constitutional definition, will lead to a partial restructuring of ethnic identity rights. Otherwise, these ethnic identities, like they have in the past, could potentially transform in competition for land access and eventually conflict.

The government in Kinshasa must also pass a law immediately stating that those who have citizenship should be allowed to vote in the upcoming November elections. This law will reflect the desire for citizenship rights amongst those living in the DRC and will ensure that the 2011 elections do not further undermine stability and democracy. The process of voter registration should be the function of electoral committees acting in accordance with the Constitution and working toward granting citizenship to all individuals currently in the DRC. In addition, citizenship cards should be distributed to individuals upon registration, detailing the person’s biometric characteristics, rather than ethnicity, and will also serve to indicate which individuals are seeking citizenship.

In the DRC the nature of political identity contributes to social exclusion. The citizenship question in the DRC has evolved gradually through its history; however, neither the colonial administration nor the Mobuto regime were able to determine the legal status of those communities. This provoked constant political and civic insecurity mainly in the eastern part of the country. Even under the new Citizenship law promulgated in 2004, those ethnicities included (the ones present in the DRC in 1960 during independence) have to confront the political will of the government in Kinshasa and the will of the Congolese people themselves to implement the inclusive definition provided by the Constitution of 2005. The proposed local elections present the perfect scenario for the implementation of the Constitution and its articles on Congolese citizenship, civil rights, as well as an overall assessment on the current status of Congolese identity.

In order to guarantee that the aforementioned recommendations are realized, the international community should collaborate with local communities to guarantee the transparency of the voter registration and voting processes. The Technical Committee on Elections, chaired jointly by MONUC and the Independent Electoral Commission, should oversee the process and fund voter registration and the distribution of citizenship cards at the local level. In addition, the international community, in cooperation with MONUC, should pressure the central government in Kinshasa to pass a law guaranteeing voting rights for all citizens.

¹⁴¹ Huggins 15.

¹⁴² *Ibid*, 16-7.

1.4 Long-term: legitimate national elections

Presidential elections are scheduled again for November 2011. It is not realistic to postpone this process, as this would send a negative message to the Congolese people and the international community. That being said, the elections this fall will be plagued by the same corruption of the past. The immediate and short-term goals outlined above are aimed at initiating a gradual process of democratization in the DRC. Democracy is an end goal, not a starting point, as the failure of the current initiatives by the international community has shown.

Priority #2: Civil Society

A general criticism of foreign state-building intervention has been that it has undermined the capacity of the Congolese people to manage their affairs. By operating with a fixed conception of what the state should look like and by excluding domestic actors' determination of the nature of the state, state-builders have undermined both self-determination and the prospects for domestic support. Furthermore, by providing tied-assistance and shaping the reconstruction of the state apparatus according to its own conception of the ideal moral and bureaucratic form, namely, along parameters of a liberal democratic state, the UN has been accused of acting as a neo-colonial power.¹⁴³

Stated differently, the underlying criticism of state-building endeavors in the DRC has been the failure to engage domestic actors. Key domestic actors must share the goal of creating the type of state that state-builders want, because stability depends upon the creation of political alliances with a civil society that is both interested in strengthening the state and that has sufficient power to do so.¹⁴⁴ This has not been the case in the DRC, where a state-building program began with, and international recognition and access to aid was conditioned upon, a mission to create a government of national unity. Patricia Daley also argues that the model for state-building in the DRC is flawed because it has consistently alienated civil society in favour of the political elite.¹⁴⁵ Negligence in this area has been noted with regard to both the established framework in which the peace agreement was signed in 1999 and the later Global and All Inclusive Agreement, which were both limited to warring parties. It was also evident in the Inter-Congolese dialogue which, despite the initial involvement of more than 300 organizations, became an exclusive dialogue between the government created by the warring parties and the warring parties that had yet to sign the ceasefire. The dialogue responsible for drafting the Constitution, determining the structure of the ruling administration and bureaucracy, and reorganizing the army was even more exclusive.¹⁴⁶ De Heredia notes that the AU, given its regional focus, was in a good position to identify a number of groups that could have taken part in the ceasefire. The AU is still well-placed and, indeed, obligated by its Constitutive Act to

¹⁴³Eriksen, "Liberal Peace," 663 and De Heredia, "Absences and Presences," 9.

¹⁴⁴Eriksen, "Liberal Peace," 661.

¹⁴⁵Patricia Daley, "Challenges to Peace: Conflict Resolution in the Great Lakes Region of Africa," *Third World Quarterly* 27 (2006): 304.

¹⁴⁶De Heredia, "Absences and Presences," 11.

engage civil society and promote the participation of the African people.¹⁴⁷ More recently, the formation of a new electoral commission to oversee the 2011 elections sparked controversy precisely because it did not include civil society representatives.¹⁴⁸

In light of these criticisms, the international donor community has begun to realize the importance of civil society for promoting and consolidating democratic governance. Most definitions of civil society conceptualize it as an associative realm that is relatively autonomous from the state and acts as a buffer between state and citizen.¹⁴⁹ In the radical tradition, scholars such as Gramsci see civil society taking on an anti-hegemonic, anti-state and oppositional function. Linz and Stepan similarly uphold the importance of civil society for democratic governance, and Diamond sees it as helping to effect transitions and consolidate and deepen democracy.¹⁵⁰ Edward Shils also offers a similar argument, arguing that civil society relationships foster cooperation between divergent interest groups and contributes to functioning democratic institutions.¹⁵¹

There is less agreement over whether the concept of civil society is relevant in African contexts. Some scholars see civil society as an essentially Western phenomenon, emerging from the historical experience of industrialization and the rise of a middle class.¹⁵² Others note that the very concept of civil society is predicated on a theoretical separation between state and society, which may not exist in neo-patrimonial regimes such as the DRC where private and public interests are constantly conflated.¹⁵³ In the DRC, where democratic governance is weak and civil and political rights are repressed, civil society is bound to be fractured and disunited.¹⁵⁴ In such a situation, as David Bartlett has argued, civil society may not play the constructive role it has played in the West but may instead be a site of exploitation and conflict, filled with groups only seeking to promote parochial interests.¹⁵⁵ Other scholars, however, see points of commonality between civil society in Europe and Africa in that both are involved in a struggle against patrimonial states.¹⁵⁶ Augustine Ikelegbe argues that civil society in Africa has made impressive contributions to regime change, liberalization, and respect for civil rights.¹⁵⁷ Research also points to the correlation between sustainable peace and high civil society participation in peace processes.¹⁵⁸ From the perspective of international donors, local civil society

¹⁴⁷ De Heredia, "Absences and Presences," 6.

¹⁴⁸ Theodore Trefon, "Administrative Obstacles to Reform in the Democratic Republic of Congo," *International Review of Administrative Sciences* 76, no. 4 (2010): 710.

¹⁴⁹ For example Augustus Norton, quoted in Eboe Hutchful, "The Civil Society Debate in Africa," *International Journal* 51, no. 1 (1995/1996): 55.

¹⁵⁰ Georgina Waylen, *Engendering Transitions: Women's Mobilization, Institutions and Gender Outcomes* (Oxford: Oxford University Press, 2007), 50-1.

¹⁵¹ Quoted in Arnila Hevena Santoso, "Understanding Kivutien Civil Society and its Roles in the Congolese Peace Process," (MA diss, American University, 2010), 47.

¹⁵² Abdalla Bujra, "African Civil Society, Democracy and Development," in *Breaking Barriers, Creating New Hopes: Democracy, Civil Society and Good Governance in Africa*, ed. by Abdalla Bujra and Said Adejumo (Addis Ababa: Development Policy Management Forum, 2003), 28-29.

¹⁵³ Patrick Chabal, "The Quest for Good Government and Development in Africa: Is NEPAD the Answer?" *International Affairs* 78, no. 3 (2002): 461.

¹⁵⁴ Santoso, "Kivutien Civil Society," 74.

¹⁵⁵ David M. C. Bartlett, "Civil Society and Democracy: A Zambian Case Study," *Journal of Southern African Studies* 26, no. 3 (2000): 430.

¹⁵⁶ Quoted in Hutchful, 62.

¹⁵⁷ Augustine Ikelegbe, "Civil Society, Oil and Conflict in the Niger Delta Region of Nigeria: Ramifications of Civil Society for a Regional Resource Struggle," *The Journal of Modern African Studies* 39, no. 3 (2001): 439-440.

¹⁵⁸ Anthony Wanis-St. John and Darren Kew, quoted in Santoso, "Kivutien Civil Society," 71.

representatives are often seen as efficient vehicles for implementing peace since they are less visible, less expensive and more flexible.¹⁵⁹

Foreign donors have already provided financial assistance to specific organizations with the goal of strengthening their role in an emerging civil society, and the majority of civic associations in Africa would be unable to sustain themselves without external funding. However, this approach to strengthening civil society is not without its pitfalls. When domestic associations become accountable to foreign funders, they lose their autonomy as they are forced to make their strategies and objectives conform to the stated or implicit goals of their funders.¹⁶⁰ Civil society organizations lose their value when they become mere vehicles for foreign policy objectives. It was precisely these elite, foreign-funded civil society groups that were invited to negotiate the 2008 Goma Agreement, to the exclusion of grassroots organizations with deeper connections to the population.¹⁶¹ A strategy must be devised that allows foreign donors to help with the state-building process in the DRC without robbing local civil society organizations of their agency and autonomy.

Policy Recommendations

2.1 Civil Society Forums

A fresh approach to the international community's strategy of strengthening civil society is needed. Interviews conducted with civil society groups in the DRC reveal a general consensus among civil society leaders that a cohesive mentality of patriotism is lacking in efforts to bring these groups together in a sustainable peace. According to Paul Richards, a significant explanation as to why a durable peace has eluded the DRC is that a sense of collectivity has not been established.¹⁶² Foreign donors should not focus their funds on sponsoring individual civil society organizations, which has the effect of constraining their agency and compromising their local rootedness. Instead, they should sponsor civil society forums that allow diverse organizations operating in the DRC to come together, discuss key issues, and establish shared visions.

In their work on peace-building, Howard Wolpe and Steve McDonald have recommended a strategy for building "collaborative capacity" between leaders on the ground. They suggest hands-on workshops which go beyond the conventional methods of lectures and readings and instead engage local leaders in simulations, interactive exercises, mock negotiations, and role-playing. The idea is to overcome the "zero-sum-game" mentality, to re-humanize relationships between groups on the ground to build trust, and establish a consensus on the rules of the game. According to Wolpe and McDonald, international actors can use their leverage to bring actors who might not normally have any interaction together in one room.¹⁶³

¹⁵⁹Santoso, "Kivutien Civil Society," 71.

¹⁶⁰ John Mw Makumbe, "Is There a Civil Society in Africa?" *International Affairs* 74, no. 2 (1998): 311.

¹⁶¹ Arnila Hevena Santoso, "Civil Society and Peace Processes in Kivu," *Forced Migration Review* 36 (2010): 35-6.

¹⁶² Quoted in Santoso, "Kivutien Civil Society," 8.

¹⁶³ Howard Wolpe and Steve McDonald, "Democracy and Peace-Building: Re-Thinking the Conventional Wisdom," *The Round Table* 97, no. 394 (2008): 141-142.

The intent of these forums is not for international actors to impose their own agendas, but to aid and encourage local actors to come up with their own agendas.

By organizing such forums, the international community will help civil society organizations to establish channels of contact and collaborate on common goals that they themselves establish. The result will be the creation of social capital, underwritten by trust, cooperation and inclusiveness.¹⁶⁴ Moreover, the increasing institutionalization of positive social forces should help prevent the emergence of interest groups who seek advantages through special relationships with legislators and bureaucrats.

2.2 Engage civil society in state-building

A critical step for national and regional leaders, including the government in Kinshasa and the African Union, is to stay true to their stated objectives of including civil society representatives at key moments in the state-building process. Future peace negotiations, for example, should begin with full and inclusive participation of civil society groups. The international community has a role to play in exerting pressure to make sure these obligations are met. This is especially critical in the context of the upcoming presidential elections, where the inclusion of civil society representatives in the national electoral commission is an urgent priority.

It is necessary to make efforts to recognize the role of women in state- and peace-building processes. Women are among the most marginalized actors in society and they benefit the least from the current situation in the DRC. The experience of violent conflict in the DRC has seen the proliferation of many active women's groups, such as those which raise awareness of sexual violence and provide support for victims of rape.¹⁶⁵ Women's groups have been organizing marches, producing documents and travelling abroad to raise awareness of the situation in the DRC.¹⁶⁶ Women have in the past proven instrumental in the peace-building process, such as at the Sun City meeting of the Inter-Congolese Dialogue when negotiations were at a standstill and women formed a human chain blocking the exits of the committee room and forcing the delegates present to come to an agreement.¹⁶⁷ Far too often, state- and peace-building are conceived in gender-neutral terms to the effect that the plight of women is overlooked, with disastrous consequences. Any approach to governance reform will be ineffective if it does not address the particular needs of a group of people representing 52% of the population in the DRC.

On 31 October 2000, the United Nations Security Council passed Resolution 1325, which categorically linked violence against women during conflict and their marginalization during peace processes with the short and long term challenges of maintaining international peace and security. The implementation of 1325 has proven quite daunting. The Resolution's clauses call for a range of changes that include: the increased participation of women at decision-making

¹⁶⁴ Santoso, "Kivutien Civil Society," 73.

¹⁶⁵ Louise Anten, *Strengthening Governance in a Post-Conflict District of the Democratic Republic of Congo: A Study of Ituri* (The Hague: Clingendael Institute, 2010), 24.

¹⁶⁶ Yolanda Sadie, "Women and Peace-Building in the Democratic Republic of Congo," *Strategic Review for Southern Africa* 32, no. 1 (2010): 38.

¹⁶⁷ Shelly Whitman, "Women and Peace-building in the Democratic Republic of the Congo: An Assessment of their Role in the Inter-Congolese Dialogue," paper presented at the Southern African Universities Social Sciences Conference (2005), 42.

levels in conflict resolution and peace processes such as negotiations and peace agreement implementation; the incorporation of a gender perspective into peacekeeping operations and peace-building initiatives; and special measures to protect women and girls from gender-based violence, particularly sexual abuse. Internal developments that need to occur for this recommendation to be realized include creatively bridging the equality gap in participation, expanding the pool of eligible peacemakers, broadening the space for negotiators to include women at the grassroots level and normalizing gender mainstreaming.¹⁶⁸

The role of the international community within governance reform is to facilitate open and inclusive civil society forums. The international community should pressure the Congolese government to expand the inclusion of civil society within the state-building process.

Priority #3: Decentralization

Discerning how the Congolese state can be reconfigured to promote governance that advances peace and reconstruction requires examining the role played by ethnicity in the DRC. It is first necessary to discuss whether ethnicity itself prompts conflict. It has been suggested that ethnicity in the DRC is mobilized in response to grievances felt by the people, perpetuated by the state. Rene Lemarchand points to political, economic and social exclusion from citizenship, land rights, and political participation as a catalyst for ethnically mobilized violence and competition.¹⁶⁹ This argument is echoed by Christopher J. Bakwesegha who states: “the bottom line to ethnic conflict in Africa is not the ethnic factor itself but rather the sharing of power and national resources.”¹⁷⁰

Any state building project would have to address ethnic grievances in order to quell potential conflicts to the state. Lemarchand notes that although ethnicity is mobilized by exclusion, crafting a state building process around total inclusion, in a national identity building process or a power sharing arrangement, may not be an appropriate prescription. Since conflict in the DRC involves groups that are spread across borders in competition for power and resources, inclusive measures of conflict resolution such as power sharing or broadened parliamentary participation will not successfully mitigate conflict.¹⁷¹

Other methods of mitigating ethnic conflict such as creating territorially autonomous regions or creating federal structures for the provinces may be suited to addressing the grievances of ethnically mobilized groups in the DRC. The case made for decentralization is most convincing. Ted Gurr in particular has argued that there exists a positive relationship between decentralization and the minimization of ethnic conflict particularly because rebellion most often occurs in areas with highly centralized governments.¹⁷² While centralization may exacerbate ethnic conflict, Michael Hechter notes that decentralization can intensify ethno-

¹⁶⁸ Angela Muvumba-Ndinga, “Who Said it was Simple? Implementing 1325,” *Policy and Practice Brief: Knowledge for Durable Peace*, n.2 (October 2010): 2
http://www.accord.org.za/downloads/brief/policy_practice2.pdf.

¹⁶⁹ Rene Lemarchand “Exclusion, Marginalization, and Political Mobilization: The Road to Hell in the Great Lakes” *Facing Ethnic Conflicts*, ed. Andreas Wimmer et al. (Toronto: Rowman & Littlefield Publishers, Inc. 2004), 66.

¹⁷⁰ Hurst Hannum “Territorial Autonomy: Permanent Solution or Step Towards Secession” *Facing Ethnic Conflicts* ed. Andreas Wimmer et al. (Toronto: Rowman & Littlefield Publishers, Inc. 2004), 279.

¹⁷¹ Lemarchand, 74.

¹⁷² Ted Robert Gurr “The Etiology of Ethnopolitical Conflict.” *People Versus States*, 2002, pp. 65-95

nationalist conflict because it can provide potential patronage and resources to ethno-nationalist leaders who will then promote ethno-national violence.¹⁷³ If decentralization can address political, economic and social exclusion then groups will be less likely to mobilize along ethnic lines that challenge the state.

There are methods of reconciling decentralization with a strong centralized state that involve re-examining the current policy of decentralization outlined by the 2006 Constitution. The 2006 Constitution essentially outlines a ‘top-down’ approach to decentralization that seeks to build capacities in all three levels of government and make the provinces and sub-provinces the centers of economic and social development. However, implementation of this policy has been stalled by the central government. It has continuously reneged on promises to deliver transfer payments to the provinces as well as promises to organize local elections. The government cites a lack of funding and administrative capacity as the reason for its inability to implement the decentralization measures outlined in the Constitution.¹⁷⁴

The World Bank Report on decentralization in the DRC is a critical report that focuses on a top-down approach to decentralization. It argues that the funding approach of development partners¹⁷⁵ currently focuses on giving money directly to regional actors and therefore does not allow the central government to develop funding capacities. This argument supports the government’s claims of a lack of funding. However, many donors use this approach because they cannot be sure that their funds will be effectively channelled through the highly corrupt central government. Several international aid organizations have supported the decentralization approach, giving money to actors that fulfil the functions of the state, and have simultaneously noted the inability of the central state to support decentralization.¹⁷⁶ This dilemma is one that demonstrates the need for a bottom-up approach to decentralization. A bottom up approach, however, does not necessarily have to diminish the capacity of the central government or undermine its power. Building regional capacity that is linked to the central state can simultaneously deliver services and goods to local regions while building legitimacy for the central government.

The bottom-up approach generates fear that such a system would exacerbate corruption, human rights abuses and provincial inequality by failing to address these problems at a national level. There are, however, examples of successful methods of decentralization sanctioned by the central government in the DRC’s history. In the early Mobutu years a successful system was in place where there were two leaders for every local administrative unit. One was an outsider who was required to have no ethnic or family ties to people in the region, while the other was a local leader appointed by the people of the region. Having these two leaders represent one territory permitted the populations to hold both accountable for abuses. Moreover, since this system was sanctioned by the central government it established greater linkages between the population and the state. The system was dismantled shortly after because it forwarded more requests to the

¹⁷³ Michael Hechter “Containing Ethnonationalist Violence” *Facing Ethnic Conflicts* ed. Andreas Wimmer et al. (Toronto: Rowman & Littlefield Publishers, Inc. 2004) p. 297

¹⁷⁴ Caroline Millet and Jocelyne Nkongolo “DRC Case Study For the Informal Development Partners Working Group on Decentralisation and Local Governance” *The World Bank: Local Governance & Decentralisation* (Washington, DC) 2010, <http://www.dpwg-lgd.org/cms/nl/pdf/DRCCaseStudy.pdf>.

¹⁷⁵ Millet and Nkongolo. The development partners involved in helping the DRC government implement Decentralization are: AfDB, Belgian Cooperation, DFID, EU, UNDP, USAID, and WB. Spain and Canada have also manifested their interest in becoming involved in this process.

¹⁷⁶ Millet and Nkongolo, 12-14.

central government than it was unwilling to address.¹⁷⁷ Indeed, this system demonstrates that there are methods of decentralization that can combine a ‘top-down’ and ‘bottom-up’ approach to forge ties between the population and the apparatuses of the central government.

Policy Recommendations

3.1 Long-term: implement decentralization gradually

There are generally two ways of implementing decentralizations: The Big Bang approach, and Gradualism. A Big Bang package of reforms institutes all decentralization measures in a single motion implemented over a short period of time.¹⁷⁸ The timing of the 2006 Constitution that outlined decentralization was appropriate as an important political transition, but the central government did not have the capacity or the willingness for implementation at that time. The gradual approach is advisable where local participation is weak and the local government is captured by the elite, or where service delivery and/or revenue collection break down because of weak local government capacity.¹⁷⁹ Since decentralization has been stalled by the lack of will and capacity at the central government, implementing decentralization gradually is a policy more appropriate for the DRC.

The top-down mechanisms for decentralization are hindered by serious obstacles to successful implementation. Without a greater respect for the Constitution at a national level and greater transparency in policy creation and implementation, many of the agreed upon Big Bang package changes of decentralization are unlikely to ever happen. The gradual approach to decentralization, therefore, might be more useful for understanding how decentralization can happen given the nature of the government in the DRC. Generating a greater time horizon for deciding upon decentralization reforms that focus on developing local capacities for self-government may be the necessary long-term approach. There are both formal and informal organizational structures that can be mobilized to promote the decentralization process.

3.2 Short-term: develop ties between traditional leaders

Harnessing the power of traditional leaders can allow the decentralization process to occur gradually and successfully. Paul-Robain Namegabe Rugabura argues that ties between elected local officials and traditional leaders are the key for legitimate governance structures in the DRC. The role of traditional chief in the daily administration and management was established 1957 as a method of integrating local authority in Mobutu’s *Movement Populaire de la Revolution*.¹⁸⁰ Throughout the Mobutu years the power of chieftancies was diminished and strengthened over different periods. For example, an elected council of chiefs in charge of

¹⁷⁷ Weiss and Nzongola, 6.

¹⁷⁸ Anwar Shah and Theresa Thompson “Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures” *World Bank Policy Research* (Washington, DC) 2004, 19, http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/07/29/000090341_20040729134144/additional/107507322_20041117184014.pdf.

¹⁷⁹ Shah and Thompson, 19.

¹⁸⁰ Shah and Thompson, 19.

development, personnel, topography, census centralization and the registry office was convened in South Kivu over a long period to fill the gaps of the Mobutu regime. Their meetings were subsequently halted in August 1998. When war prevented the organization of groups like the South Kivu chieftancy meeting, the central government took over their responsibilities.¹⁸¹ It is clear that there is an historical institutional framework of traditional power that can be useful to the decentralization process. The 2006 Constitution recognized the right of traditional authorities to exercise their power according to customary law, as long as it is not contrary to the Constitution, the law, public order and good moral standards.¹⁸² Including traditional chiefs and customary law into the decentralization process allows, in the long term, a social dialogue to occur with all the most relevant actors participating in the implementation of policy.

3.3 Short-term: local elected officials

While traditional leaders act as legitimate political actors in their community, elected officials are necessary to the implementation of decentralization because they can create linkages between local initiatives and the central state. Weiss and Nzongola-Ntalaja note that since the 1980s local actors and civil society groups have been forced to fulfil the role of the state in sectors such as education and health care. Parents in many communities took charge of supporting the restoration of schools and have since played a large role in the education of their children.¹⁸³ Gradually allowing state representatives at the local levels to fulfil the functions of the state that have been long neglected will slowly legitimate the state in the eyes of the Congolese.

The international community must promote civil society workshops at the local level. The Congolese government must be limited through international pressure, as the DRC government has demonstrated that they will not implement decentralization reforms for fear of strengthening local groups. Thus, global actors must encourage and monitor local elections to ensure that they will not be co-opted by the central government or other corrupt groups or officials. It is also essential for the international community to gradually channel aid funding through the central government as they become more accountable to their population.

¹⁸¹ Namegabe Rugabura, 85.

¹⁸² Namegabe Rugabura, 92; Article 207 of the Constitution 2006.

¹⁸³ Weiss and Nzongolo-Ntalaja, 7.

Security

Priority #1: Military Reform

Scholars have identified military reform as a priority in any post-conflict state-building effort. Political, economic and cultural rebuilding of the state cannot commence without the establishment of security. The military is responsible for managing crises of sufficient magnitude, both internally and externally, which other forms of diplomacy are not capable of managing.¹⁸⁴ Additionally, the military is expected to play a role in creating a safe environment for a comprehensive and inclusive post-conflict political and social order.¹⁸⁵ Scholars such as Schnabel and Erhart have identified potential problems that can arise in post-conflict peace-building contexts which can prolong instability: inflated armies lacking civilian control, irregular and paramilitary forces, an overabundance of arms and ammunition in private or government hands, and a lack of trust in and legitimacy of the government's control over the monopoly of violence.¹⁸⁶ Furthermore, a 2006 International Crisis Group (ICG) report on security sector reform in the DRC emphasized the need to protect national territory, foster adherence to the rule of law and protect citizens' basic rights.¹⁸⁷

Territorial control is premised on physical control, which requires the existence of a national army with effective operational capacity and capabilities. At present, undisciplined, corrupt and ill-trained soldiers terrorize and extort the local population in a systematic manner, thereby weakening the power the FARDC in the eyes of the Congolese people.¹⁸⁸ Roger Kibasomba points to the FARDC's dysfunctional command structures, as well as a lack of regular support and payment of salaries to its forces, as contributing factors to the indiscipline within the armed forces.¹⁸⁹ For the armed forces to effectively provide security they must be accountable and accepted as a legitimate actor by the Congolese people.¹⁹⁰ A widely agreed upon, long-term goal of reconstruction is to establish robust and enduring civil-military relations as well as to increase civilian oversight of the armed forces.¹⁹¹

¹⁸⁴ Sébastien Melmot, "Candide in Congo: The expected failure of Security Sector Reform (SSR)," *Focus stratégique*, n° 9bis, (April 2009): 18, accessed March 11, 2011

http://www.ifri.org/?page=detail-contribution&id=5337&id_provenance=97

¹⁸⁵ Albrecht Schnabel and Hans-Georg Ehrhart, "Post-Conflict Societies and the Military: Challenges and Problems of Security Sector Reform" in *Security Sector Reform and Post-Conflict Peacebuilding* eds. Albrecht Schnabel and Hans-Georg Ehrhart (Tokyo: United Nations University Press, 2005), 5.

¹⁸⁶ Schnabel and Ehrhart, "Post-Conflict Societies and the Military," 6.

¹⁸⁷ "Security Sector Reform in the Congo," *International Crisis Group* (13 February 2006): 2.

<http://www.crisisgroup.org/~media/Files/africa/central-africa/dr-congo/>

[Security%20Sector%20Reform%20in%20the%20Congo.ashx](http://www.crisisgroup.org/~media/Files/africa/central-africa/dr-congo/Security%20Sector%20Reform%20in%20the%20Congo.ashx)

¹⁸⁸ Vlassenroot and Raeymaekers, "Kivu's intractable security conundrum," 477.

¹⁸⁹ Roger Kibasomba, "Post-War Defence Integration in the Democratic Republic of the Congo, ISS Paper 119" *Institute for Security Studies, South Africa* (Dec. 2005), 18.

¹⁹⁰ Roger B. Myerson, "Rethinking the Fundamentals of State-building," *Prism//Center for Complex Operations: National Defense University* (March 1, 2011): 98.

¹⁹¹ Rocky Williams, "African Armed Forces and the Challenge of Security Sector Transformation" in *Security Sector Reform and Post-Conflict Peacebuilding* eds. Albrecht Schnabel and Hans-Georg Ehrhart (Tokyo: United Nations University Press, 2005), 51.

Scholars debating security sector reform in the DRC unanimously recognize disarmament, demobilization, reintegration, rehabilitation, and resettlement, DDR(RR), as necessary steps towards this goal.¹⁹² Furthermore, the ICG maintains that the culture of impunity must change to render the army a protector of Congolese citizens' rights rather than abusers or violators of rights.¹⁹³ A justice-sensitive approach to security sector reform focuses on three priority areas within a broader security sector reform program: building the integrity of the security system, strengthening its legitimacy, and empowering citizens.¹⁹⁴

Policy Recommendations

1.1 Develop and strengthen the legitimacy of the armed forces

The FARDC's dysfunctional, overlapping command and control structures must be reformed to prevent individuals from using the armed forces to pursue personal enrichment or political aims. There should be one centralized hierarchy of command with no military units existing outside of that hierarchy. Those who deviate from this command structure must be subjected to appropriate disciplinary actions and/or legal repercussions. The establishment of a government mandated anti-corruption agency would provide a mechanism to subject individuals to judicial oversight and thereby discourage unlawful behaviour, increase accountability, and improve integrity and legitimacy. In order to facilitate this, Joseph Kabila's private military office, the *Maison militaire*, should be dissolved, and there should be greater civilian oversight of the military.

The hierarchical command structure is very weak and therefore cannot cope with the widespread corruption practiced by some military officials. Congolese soldiers are seldom paid and when they are, they rarely receive proper remuneration for their services. As a result, they often resort to looting or desertion in order to survive and provide for their families. To help prevent embezzlement by corrupt officials, which affects the behaviour of soldiers, the payment system must be fixed. It should be decentralized and diverted away from those who undermine it. The establishment of government mandated oversight committees to monitor the payment system would reduce corruption and create mechanisms of accountability for criminal behaviour. Experiences in Afghanistan with 'mobile currency' payments schemes for soldiers show promise in reducing payment embezzlement.¹⁹⁵ This kind of innovation is similarly needed in the DRC to ensure that soldiers receive compensation for their services.

1.2 Generate increased financial support from international actors

International donors must contribute to the reform of the armed forces. This is necessary in order to proceed with creating conditions for the Congolese government to assume

¹⁹² Séverine Autesserre, "The Trouble With Congo: How Local Disputes Fuel Regional Conflict," *Foreign Affairs* 87.3 (May/June 2008): 94-110.

¹⁹³ "Security Sector Reform" 16.

¹⁹⁴ Laura Davis, "Justice-Sensitive Security System Reform in the Democratic Republic of Congo." In An IFP Security Cluster Country Case Study: DRC, February 2009, 25.

¹⁹⁵ Dan Rice and Guy Filipelli, "One Cell Phone at a Time: Countering Corruption in Afghanistan," *Small Wars Journal*, 2 September, 2010, <http://www.michaelyon-online.com/images/pdf/mobile-money-in-afghanistan.pdf>, accessed 28 March, 2011.

responsibility for its own security. The Congolese government must present itself to the international community as a reliable and trustworthy partner so it can garner support for reforms it desires to carry out. Immediate assistance will be an investment that results in long-term stability.

To stimulate increased financial support, the goal of tackling issues of corruption and inefficient financing, guaranteeing proper payments for military personnel, and implementing decentralized payment structures and transparent bookkeeping methods must be undertaken. The Congolese government should prepare a detailed presentation on defence spending as part of its annual budget.¹⁹⁶ Improvement in governance is essential to the efficiency of this strategy.

There must be increased cooperation between international and domestic political actors.¹⁹⁷ A coordinated effort should be made to improve cohesion and develop a vision explaining joint objectives and determining reasonable means by which they can be met. Successful efforts to meet objectives will make it apparent to the international community that increased financial support and involvement will yield positive results and encourage further participation.

1.3 Create Robust and Sustainable Structural and Institutional Bases

At present there are no reliable service records that detail specific and accurate military personnel numbers. To ascertain the true number of Congolese serving in the FARDC, a military census should be held. The main focus should be reforming the army and the *Garde Présidentielle (GP)*. The *GP* should be integrated into the command structures of the FARDC. There should be an increase in the number and capability of personnel in the air force given the vast territory of the DRC in order to provide transportation. Mobility is vital for the success of ground troops given the poor state of Congolese infrastructure. With respect to the navy, there should be a general increase in the number of sailors, as well as their training. Changes in the army and *GP* should be considered short-term goals, while changes in the air force should be considered a medium-term goal, and reform of the navy should be considered a long-term goal.

Reducing the size of the army brings forth the possibility for unemployment and the loss of soldiers to rebel groups, thereby exacerbating other security problems. Soldiers should be able to transfer to the air force or navy if they choose to do so. For those who chose to release from the military, the DDR(RR) process will be made available.

The logistics branch of the military is currently unable to supply the provisions necessary for the armed forces to function effectively. Provision of basic needs such as food, clothing, weapons, and ammunition must be improved. Streamlining the logistics branch of the FARDC will shrink the military bureaucracy, which will allow the army to operate more effectively and efficiently.

In accordance with Article 189 of the 2006 Constitution, military personnel must represent all provinces in the DRC.¹⁹⁸ This provision should be further enforced to strengthen a

¹⁹⁶ “Security Sector Reform in the Congo,” *International Crisis Group* (13 February 2006): 29. <http://www.crisisgroup.org/~media/Files/africa/central-africa/dr-congo/Security%20Sector%20Reform%20in%20the%20Congo.ashx>

¹⁹⁷ International Crisis Group, “Security Sector Reform in the Congo,” 29.

¹⁹⁸ Constitution Article 189.

sense of national identity and cohesion between units. Recruitment should be conducted on an equal opportunity basis so that all qualified Congolese citizens have the opportunity to serve in the armed forces.

Much of the training that the FARDC currently receives is done by members of the international community. International actors should continue to guide training under EUSCC/EUSEC. This training should be uniform, coordinated and standardized. The goal should be long-term self-sustainability of the FARDC and withdrawal of international troops should be completed as soon as possible.

1.4 Create a More Effective and Efficient DDR(RR) Process

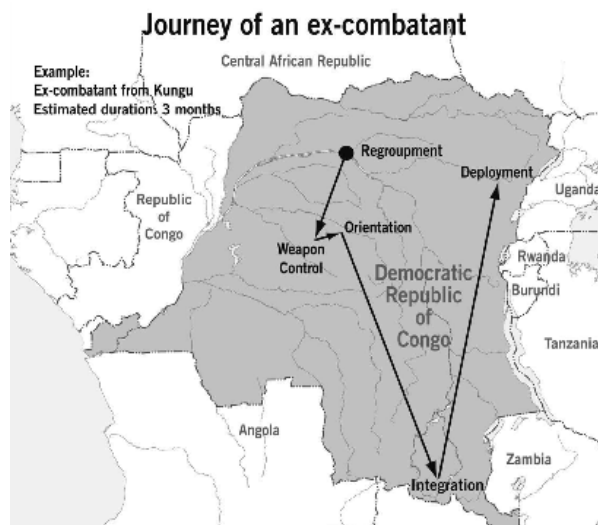
Disarmament, Demobilization, and Reintegration (DDR) and Disarmament, Demobilization, Repatriation, Rehabilitation and Resettlement [DDR(RR)] programs have been flawed from their inception.¹⁹⁹ Militias and paramilitary groups were brought to the negotiation table and given representation based on their membership numbers, which thereby conferred them with legitimacy on them. To take advantage of this, existing paramilitary groups are recruiting and new paramilitary groups are emerging. Once members of such groups have completed DDR(RR) programs, they are eligible for resettlement funds, and this has encouraged abuse of the system in order to take advantage of the payoffs.²⁰⁰ Flaws in the DDR(RR) process exacerbate fragmentation and factionalization which follow the contours of old ethnic/tribal allegiances. There are many individuals with strong links to military-political groups with whom they were previously involved, and as a result, their prejudices and personal interests do not disappear.²⁰¹ The map below depicts the addition of another ‘D’ to the DDR process – displacement. Reintegrated soldiers might end up in areas of the country where the ethnic demographics are different from their own, causing them to be rejected as illegitimate actors and perceived as intruders. Soldiers may fail to develop positive relations with the populations in the regions in which they serve and this hinders their ability to carry out their protective duties.

¹⁹⁹ Multi-Country Demobilization and Reintegration Program, “DDR in the Democratic Republic of Congo,” www.mdrp.org/PDFs/DRC_Program_Update.pdf, 4.

²⁰⁰ Vlassenroot, Koen & Raeymaekers, Timothy. “Kivu’s Intractable Security Conundrum,” *African Affairs* 108 (2009): 475-477.

²⁰¹ Amnesty International, “Democratic Republic of Congo: Disarmament, Demobilization and Reintegration (DDR) and the Reform of the Army,” www.amnesty.org/en/library/info/AFR62/001/2007/en, 41.

*This map is taken from the 2006 International Crisis Group Report. It shows the journey of an ex-combatant from regroupment through to deployment in the DDR program.*²⁰²



The DDR(RR) process must be limited and documented more effectively. In the short term, an initial deadline must be set for the registration of paramilitary groups who wish to be recognized by the government as legitimate participants in the DDR(RR) processes. A time limit on the duration of the DDR(RR) process should be set. This time limit will encourage the paramilitary and militia groups to definitively stake their position. The aim is to purge hostile armed groups from the DRC. FARDC and MONUSCO soldiers should coordinate their efforts to complete these objectives.

The reintegration process must also better take into consideration soldiers' ethnic and regional affiliations. Individuals taken from militias and paramilitary groups in one region should not be deployed in places where they are likely to be poorly received by the population. This will grant soldiers more legitimacy in the areas where they are deployed and increase their accountability to the people whom they protect. Reintegration camps should be refurbished. Currently, they are not capable of housing large numbers, and, as such, many individuals become dissatisfied with the conditions of the reintegration process. EUSEC has already restored the camps at Kisangani and Luberinzi²⁰³ and should continue this process.

Bureaucratic channels also need to be improved for the entire DDR process. The transfer of military records of soldiers is often delayed or records being lost. As a result, soldiers are stranded in camps, unable to move to the next phase of the DDR process, further clogging spots for new entrants. Excessive delays result in many ex-combatants abandoning the DDR program and returning to their militias. Minimizing bureaucracy and achieving regionalization would make the DDR process more efficient.

Priority #2: Police Reform

²⁰² International Crisis Group, "Security Sector Reform in the Congo," 24.

²⁰³ International Crisis Group, "Security Sector Reform in the Congo," 20.

Police reform in the DRC must acknowledge the existence of both formal and informal policing bodies, and effectively coordinate both approaches to improve security in the DRC. The general notion of ‘police’ in Africa can be subdivided into two types of police: state police and non-state police.²⁰⁴ The state police are a body of national authority, officially designated to uphold stability, peace and security within the nation’s borders. Non-state police include voluntary associations of private citizens who have organized to combat crime, and most importantly, customary chiefs who intervene in criminal cases. According to the Organization for the Economic Development and Cooperation, non-state police account for at least 80% of all the justice services in Sub Saharan Africa.²⁰⁵ Scholars such as Bruce Baker argue that any attempt at police reform in Africa should be based on the existing non-state police actors. However, establishing a police reform based solely on private citizens and chiefdom will further erode the state’s monopoly over the use of force. A sustainable police reform must emphasize state police while acknowledging the role of non-state police actors in determining the state’s security.

In addition, the Congolese people must perceive Police sector reform as an endogenous movement, thereby expanding the legitimacy of the state. Scholars such as Arnout Justaert suggest that the PNC reform must be a Congolese reform, where the *Police Nationale Congolaise* (PNC) itself is the “Primal Architect.” While this does not exclude the participation of external actors such as the EU or the UN, international efforts and initiatives must cohere with DRC’s national strategies.²⁰⁶ International actors must surrender some leadership to uphold the legitimacy of the PNC. This would ensure that the PNC is the architect of its own reform while encouraging external actors to pressure the DRC to maintain standards of legitimacy.

Policy Recommendations

2.1 International Support for the PNC

The first step to reforming the police in the DRC is an audit of local security needs in each region, city or village by EUPOL and MONUSCO. Beginning in July 2005, South Africa has been helping to record data on local police forces in the DRC.²⁰⁷ South Africa should continue to do so, consistent with its role as a leader in Africa. This should include current police forces, command structure, command buildings, ethnic and gender make up of forces, sources of corruption and humans rights abuses, and local traditions and informal laws. This will allow EUPOL, MONUSCO, and the DRC government to create a plan of action and address the strengths and weaknesses in each region.

Training should encompass the upholding of the rule of law, provisions that deter acts of corruption, and protecting human rights in accordance with the Constitution of the DRC. The PNC would become more cohesive by undertaking uniform training in core issues such as

²⁰⁴ Bruce Baker, “Security in post-conflict Africa: the role of Nonstate Policing” (Boca Raton: CRP Press, 2010), 27.

Bruce Baker, “Security in post-conflict Africa: the role of Nonstate Policing” (Boca Raton: CRP Press, 2010), 27.

²⁰⁶ Justaert, Arnout. "Coordination et Alignement Européen dans la Réforme de la Police Congolaise." *IIEB*, 2010: 2

²⁰⁷ Hoebeke, Hans & Carette, Stephanie & Vlassenroot, Koen. “European Union Support to the Democratic Republic of Congo,” *Centre d’Analyse Strategique, Republique Francais* (Brussels: 2007), 9.

sensitivity towards cultural practices. For example, disputes are often rectified at the tribal level. Chiefs often bring security issues to relevant actors such as the police to collaborate in solving problems.²⁰⁸ Currently, international support for policing is coming from MONUSCO across the state²⁰⁹, while European Union Police Mission (EUPOL) is based in Kinshasa, with satellites in Goma and Bukaka²¹⁰. This practice needs to expand to all regions of the DRC. EUPOL and MONUSCO should be working as supporting actors instead of taking a leading role when it comes to policing duties. International actors should be involved to assist with creating legitimate decentralized command structures, training programs, and police force monitoring only.

2.2 Enforce constitutional provisions for provincial police authorities

As stated in the 2006 constitution, the provincial assembly will control provincial and local public services, including the police.²¹¹ This would mean establishing local police command centers and assuring that all regions have the capacity to provide local security to their citizens. The police at provincial and local levels must be made legally accountable to the provincial assembly in order to provide effective protection to their citizens.²¹²

Fix alignment of this box

2.3 Establish civilian review boards

Civilian participation in local-level policing process of the DRC must be strengthened. All regions should establish a civilian review board for policing services. This would allow local cities and regions to express their concerns and comments to the provincial command centers and external actors such as EUPOL and MONUSCO.²¹³

2.4 Increase representation of women in the police force

When public security diminishes, women often become the first victims of abuse. Scholars such as Anderlini and Conaway argue that women in post-conflict societies can have a fundamental effect on the status of women if they are active in the reform of the security sector.²¹⁴ Both MONUSCO²¹⁵ and EUPOL²¹⁶ aspire to end human rights abuses against women

²⁰⁸ Rouw and Williams, 23.

²⁰⁹ United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo. "Police Mandate and Development." <http://monusco.unmissions.org/Default.aspx?tabid=4151> (accessed March 11, 2011.)

²¹⁰ "EUPOL RD Congo." European Union External Action, March 27, 2010.

<http://www.consilium.europa.eu/showPage.aspx?id=1303&lang=en>

²¹¹ Constitution, 197.

²¹² Myerson, 98

²¹³ Schnabel and Ehrhart, "Post-Conflict Societies and the Military" 8-9.

²¹⁴ Naraghi Anderlini and Pampell Conaway, 34-5.

²¹⁵ United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo. "Police Mandate

by educating the police force on sexual violence. Victims of sexual violence feel more comfortable approaching female police officers and their inclusion would lessen the fear and illegitimate feelings towards security forces in the DRC.

Priority #3: Border Security

Border security is contingent upon an effective military; however, the role of the military in protecting, regulating and securing the borders must be clarified. The two primary roles of the military as per the 2006 Constitution are to defend the national borders and to deter potential external aggressors.²¹⁷ Regional instability in combination with “transborderness”²¹⁸ in the Great Lakes Region pose a great threat to the military’s ability to secure the borders. Therefore, any attempts to secure the borders will be fruitless if they do not incorporate long-term regional stability. It has been found that instability within a state is rarely rooted in domestic issues. Rather, destabilization is connected to a state’s regional environment.²¹⁹ The December 15, 2010 “Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region,” illustrates the necessity of regional stabilization efforts.²²⁰ This report demonstrates the need for the international community to aid in strengthening and supporting regional security efforts, while making internal commitments to regional security.

In addition, there has been scholarly debate regarding the role of external actors in securing borders. Susan Woodward argues that international assistance has not dealt adequately with re-establishing ties between people and their government and has not been aligned with domestic sources of instability.²²¹ Externally based assistance priorities regarding border security need to focus more on regional stability. This requires both internal and external actors working together to attract support for border guards and customs services to prevent corruption, criminalization, and illicit trade, and enhancing border control and internal security mechanisms to avoid the spread of small-arms.²²² The international community must work together with actors within the DRC in order to create security mechanisms particular to the needs of the region.

Policy Recommendations

3.1 Re-secure the borders and resource-rich areas, especially in the northeast, with a special military task force acting as a border patrol

In order for the DRC to develop legitimate authority over the use of force and its own natural resources, the state needs to gain uninhibited control both within and over its borders. As

and Development.”

²¹⁶ “EUPOL RD Congo.” European Union External Action

²¹⁷ See Appendix 2: Constitutional References.

²¹⁸ Reyntjens, 14.

²¹⁹ Reyntjens, 154.

²²⁰ International Conference on the Great Lakes Region, “Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region,” Lusaka, December 15 2010.

²²¹ Woodward, 161.

²²² Woodward, 7.

Nicola Dahrendorf and other scholars engaged in the border security debate argue that one of the root causes of border insecurity in the DRC is the influx of Rwandan and Ugandan militia groups that seek to exploit the DRC's own natural resources. Concerted action must be taken to address this problem.²²³ Once sufficient military reforms are underway and a degree of efficiency is restored, there should be a special military task force assigned to restoring the sovereignty and integrity of the DRC's resource-rich areas by driving these foreign militia groups out of the country. To ensure that these or similar foreign rebel groups do not encroach upon sovereign Congolese territory again in the future, this special military task force should be instituted as a permanent fixture in enforcing border security.

3.2 Use short-term international aid to develop border agencies.

Financial assistance from actors such as the UN will be beneficial in the short-term in developing the DRC's own border agencies and institutions. The DRC will be given the opportunity to develop long-term, stable border security plans after a strong foundation has been laid with the help of external actors and donors. At the same time, internal actors must collaborate with external security providers and deliver noticeable results – otherwise external actors will choose not to provide political and financial support. There should be an externally-driven effort to fund and train the DRC's border security apparatus in an attempt to re-establish the effectiveness of state institutions such as the *Direction Générale de Migration* (DGM), the Congolese government agency that administers immigration controls, and *L'Office des Douanes et Accises* (OFIDA), the customs agency of the DRC. MONUSCO has the capacity to coordinate foreign aid. However, this proposed assistance scheme of external actors should in no way be construed as a permanent measure.

3.3 Development of border agencies through self-sustainability

Regional security expert Roger Kibasomba suggests that, since border security is one of the strongest indicators of state sovereignty, the DRC should fund the development of its border security forces by a small tax on Congolese natural resource extraction activities.²²⁴ With an initial externally-driven initiative to re-establish border security establishments, the next step would be for the Congolese state to re-assume control once this first step of foreign assistance has been successfully completed. In tune with Kibasomba's proposal, funding Congolese border security with the Congo's own natural resources would create a self-sustainable and internally-driven border security apparatus down the road.

²²³ Nicola Dahrendorf, "MONUC and the Relevance of Coherent Mandates: The Case of the DRC," in *Security Sector Reform and UN Integrated Missions*, eds. Heiner Hanggi and Vinceza Scherrer (Zurich: Deutsche Nationalbibliothek, 2008), 67.

²²⁴ Kibasomba, "A Failing State", 271.

Economics

The presence of weak institutions since independence in 1960 is a signature of colonialism that has been perpetuated by Mobutu and the divide-and-rule tactics that characterized Zairinization. These weak institutions undermined the ability for effective governance and have led to the emergence of a rampant informal economy. This informal economy has perpetuated the conflict, enabling rebel groups to find funding through illegal mining operations. The informal economy has also denied the government access to significant sources of revenue that would come from taxation of the state's vast natural resources. Foreign companies have also helped prop up the informal economy through the purchase of minerals from rebel groups who have mined them illicitly and through forced labor. Neoliberal conditionality placed on external aid and investment props up these weak institutions as well and undermines the government's ability to direct funding. Without government investment in certain sectors such as agriculture, these sectors have not been able to develop and contribute to a lack of diversity in the Congolese market. The prioritization of private and public investment in the mining sector has prevented any substantial investment in alternative sectors that would have helped stabilized the economy and made it less susceptible to market fluctuations, thereby combating the resource curse. In fact, past governmental policies have resulted in the de-diversification of the economy, driving some sectors into the informal economy.

Priority #1: Mining Sector Reform

In order to explain the hindrances to development that countries with abundant natural resource wealth face, scholars such as Richard Auty, Paul Collier, and Michael L. Ross have extended the "Resource Curse" thesis or the "Paradox of Abundance".²²⁵ Proponents of this thesis emphasize that countries with large endowments of natural resources often fare worse economically than those with fewer resources. In addition to economic difficulties, Collier has drawn out a positive correlation between primary resource dependence and civil war, and Ross has proposed that lootable commodities are directly linked to the length of conflict.²²⁶ Although the "Resource Curse" remains contested and proponents emphasize different reasons for the emergence of the paradox, many scholars have pursued the question of how to direct natural resources towards development rather than conflict in resource-rich developing countries.

Building more effective states is one approach to dealing with the resource curse; however, scholars are divided over how to proceed. Ashraf Ghani, Clare Lockhart and Michael Carnahan emphasize two principal functions of the state: the formation of the market and the management of the state's assets.²²⁷ The latter deals with the state's capacity to regulate and license particular industries. Adequate regulation of business plays an increasingly important role for harmonization in the global market especially in upholding certain quality standards.²²⁸ Pauline Jones Luong and Erika Weinthal add that, "... strong fiscal and regulatory institutions are more likely to emerge under private domestic ownership because it creates a set of actors

²²⁵ Olarinmoye, 23.

²²⁶ Ross, 338.

²²⁷ Ghani et al., 111.

²²⁸ Ghani et al., 114.

who have a mutual interest in establishing formal guarantees to increase fiscal predictability and reduce transaction and monitoring costs.”²²⁹ Effectively, by limiting the state’s control over the usage and extraction of its natural resources, corruption can be curbed and government will have an incentive to build institutions that allow them to effectively obtain revenue from private owners, regulate the private sector, and generate other sources of revenue outside the natural resource sector.²³⁰ However, critics argue that such neoliberal reforms are merely designed to increase investment, and consequently neglect issues such as regional development, economic diversification, environmental protection, and social impacts.²³¹ As a result, in order to escape the ‘paradox of abundance’ and devote resources towards development, Bonnie Campbell argues against widespread privatization.

The mining sector in the DRC is both central to perpetuating conflict in eastern DRC and a viable source for state-building and development in the country. Throughout the history of the country, economic and social structures in the DRC were organized around profits from mining. The vast diversity of minerals in the country include an estimated 50% of the world’s cobalt reserves, 30% of its diamonds, and 10% of all copper deposits. Most of these deposits can be found in the resource-rich provinces of North and South Kivu, Katanga, Maniema, and Kasai. There are two key forms of mining that take place in the DRC: large-scale industrial mining (LSM), and artisanal and small-scale mining (ASM). The former is conducted by international companies in the DRC within formal channels of the economy, while the latter is labour-intensive and is conducted by local actors on an informal basis.²³²

Despite the vast source of potential wealth in the DRC, LSM accounted for only 13.4% of the country’s GDP of US\$ 6.5 billion in 2008.²³³ ASM activities dominate the mining sector, accounting for approximately 80% to 100% of mineral production depending on the mineral.²³⁴ For example, cassiterite, a key component in the production of tin, can be extracted from surface deposits effectively with simple tools and minimal investment.²³⁵ Exploitation of cassiterite in North Kivu is 100% ASM, with exports valued at about US\$115 million.²³⁶ Although an estimated 1/5 of the population of the DRC depends on ASM to earn a livelihood, the vast majority of revenues generated through ASM production by-passes state apparatuses and is thus excluded from GDP calculations, which currently stand at about US\$ 10.3 billion.²³⁷ As a result, the mining sector is a key contributor to the expansive informal sector in the DRC.

Since the outbreak of the First Congo War, armed groups have and continue to practice looting and extortion, often controlling specific mines as well as mining areas. In turn, these groups generate revenue and funding for continued operations. Some major armed groups involved in the militarization of the mining sector include the FDLR and the CNDP. In addition,

²²⁹ Jones Luong and Weinthal, 242.

²³⁰ Jones Luong and Weinthal, 254.

²³¹ Bebbington, Anthony, Leonith Hinojosa, Denise Humphreys, Maria Luisa Burneo and Ximena Warnars.

“Contention and Ambiguity: Mining and the Possibilities of Development.” *Development & Change* 39, no. 6 (2008): 896.

²³² “ITRI Artisanal and Small Scale Mining Policy,” *ITRI* (October 2008): 1.

²³³ “Country Report: Democratic Republic of Congo,” *Economist Intelligence Unit* (March 2011): 8.

²³⁴ Nicholas Garrett, “The Extractive Industries Transparency Initiative (EITI) & Artisanal and Small-Scale Mining (ASM): Preliminary Observations from the Democratic Republic of the Congo (DRC),” *Extractive Industries Transparency Initiative* (October 2007): 11

²³⁵ “ITRI Artisanal and Small Scale Mining Policy,” *ITRI* (October 2008): 1.

²³⁶ Garrett, 20.

²³⁷ Garrett, 14; “Country Report: Democratic Republic of Congo,” *Economist Intelligence Unit* (March 2011): 8.

the national army has a role in the persistent exploitation of Congolese resources. Whereas all trade with armed groups is illegal, artisanal mining in the DRC is defined as “a-legal” by Nicolas Garrett and Harrison Mitchell because the state has failed to properly enforce the laws in place.²³⁸ This renders it impossible for agents to act legally despite evidence that many would be inclined to join the formal economy if incentives were in place.²³⁹ Nevertheless, formal aspects of the mining sector are also faced with problems, as many mining contracts lack transparency and are disadvantageous for the state.

In order to address the mining sector, a number of reforms have been adopted since 2002. The purported aim of these measures is to strengthen institutional, legal, and management control mechanisms to ensure the implementation of ‘good governance’. These initiatives have followed the neoliberal approach to economic development and state-building, focusing on decentralization and privatization. In 2002, a new mining code was adopted, which has aimed to create an environment favourable to foreign investment.²⁴⁰ This code is characterized as one of the most liberal tax and customs regimes in Africa; however, the Congolese government has aimed to promote decentralization within a legal framework. In addition, in an effort to promote transparency, the DRC began to work towards implementing the Extractive Industries Transparency Initiative (EITI) in 2005, becoming a candidate country in 2008.²⁴¹ In the same year, the DRC and China formed a “minerals-for-infrastructure agreement” valued at \$3 billion that was criticized by the IMF and the World Bank.²⁴² Although initiatives adopted since 2002 appear to target problems including corruption and the underlying ‘resource curse’ that plagues the DRC, the institutions, infrastructure, and government control necessary to effectively implement these measures is limited.

Policy Recommendations

1.1 Increase transparency of mining activities and trade

Transparency measures are an important step towards increasing revenues by encouraging the gradual formalization of mining activities. Garrett states that many informal actors would choose to operate through official channels if presented with the opportunity or the incentive to do so.²⁴³ Transparent economic exchange between mining actors and the state discourages corruption due to increased accountability and thus encourages more legitimacy within the mining sector. The formalization of trade leads to an expanded revenue base, which would contribute to future development through economic growth.

The government of the DRC should continue to comply with the Extractive Industries Transparency Initiative (EITI) and implement a Certified Trading Chain system for mineral identification, and streamline the border customs process. Since 2008, the DRC has made significant strides towards EITI compliance: it has established a national committee, produced its

²³⁸ Nicholas Garrett and Harrison Mitchell, “Trading Conflict for Development: Utilizing the Trade in Minerals From Eastern DR Congo for Development,” *Resource Consulting Services* (April 2009), 23.

²³⁹ Garrett, *Trading Conflict for Development*, 23.

²⁴⁰ Campbell, 97-98.

²⁴¹ *Ibid.*, 412.

²⁴² Campbell, 99.

²⁴³ Garrett, *Trading Conflict for Development*, 9.

first EITI report, and submitted a validation report for complete membership.²⁴⁴ Its application to LSM and small-scale mining operations in which a minimum administrative structure already exists will be more conducive to EITI implementation than artisanal mining.²⁴⁵ However, many mining areas continue to remain in control of armed groups and are thus excluded from the EITI process. Its success will be contingent on the development of strong institutions as legitimate channels become more transparent.

Certified Trading Chains (CTC) will further the transparency of mining activity and trade in the DRC. While it will not directly mitigate military beneficiation in the short-run, a method of tracking the origin and flow of minerals will be crucial to future expansion and development of the mining sector. Currently, a pilot project is underway in Rwanda to implement a mineral sector CTC with the future objective of applying the process in the DRC.²⁴⁶ It is important that the outcome of this project be placed at the centre of planning initiatives in the DRC while also recognizing the inherent political, economic and social differences of its implementation. However, state implementation of a CTC would be difficult considering its limited capacity for overseeing and regulating the minerals sector.²⁴⁷ The development of institutional capacity via transparency initiatives will be an important precursor to successful CTC implementation.

The Governments of the DRC, Uganda, Burundi, Zimbabwe, and Rwanda, in cooperation with the UN, NGOs, and experts, should undertake to streamline the border customs process to facilitate the legal minerals trade. Currently, export procedures are encumbered with bureaucratic complications, resulting in significant delays and incentive to smuggle. A simplified process would reduce costs related to government inefficiencies while also mitigate lost business opportunities.²⁴⁸ More importantly, it would encourage traders to declare the value and type of goods in their possession more honestly and persuade increased interaction with official channels, resulting in substantial improvements in revenue collection from regional trade. However, shifting political alliances among countries in the region jeopardize cooperation on such an initiative, so it will be important to emphasize to regional actors the benefit of its realization.

1.2 Demilitarize the mining sector

Because armed groups earn up to 95% of revenues from taxation of mining activities and trade, demilitarizing mining is an essential element of future economic stability and growth.²⁴⁹ Considering the challenges presented by the various armed groups in the mining sector, recommendations vary depending on the group. Due to the concentration of cassiterite deposits in South Kivu, the operations of the Bisie mine are a unique challenge to demilitarization. The government of the DRC should recognize the existing taxation-security structure in place between the armed group in control and the artisanal miners as a basis upon which to develop

²⁴⁴ “Democratic Republic of Congo: Candidate Overview,” Extractive Industries Transparency Initiative, <http://eiti.org/DR Congo>. Web Source. Accessed on March 21, 2011.

²⁴⁵ EITI & ASM, 7.

²⁴⁶ Harrison Mitchell et al., “Certified Trading Chains: Pilot Project Rwanda: Report on Developing the Record Management System Standard,” *Resource Consulting Services* (September 2010): 12.

²⁴⁷ Garrett and Mitchell, 28.

²⁴⁸ Garrett and Mitchell, 35.

²⁴⁹ Garrett and Mitchell, 21.

incentives for production and reform. MONUSCO should deploy forces to Bisie to reinforce the existing incentive structure and provide increased security.

Companies or individuals involved in the trade of minerals with members of the FDLR should be prosecuted under international law. Such action is contingent on increased transparency of the mining sector, as well as on adherence to international standards of due diligence as defined by the UN Security Council, discussed below. Demilitarization is also contingent on security sector reforms as well as the development of state institutions.

Priority #2: Development Aid

In the past, aid conditionality guided the allocation of development aid resources according to the priorities of foreign powers and institutions.²⁵⁰ This has been problematic because it has ignored domestic governmental development priorities and bypassed state decision makers, effectively undermining their rule, and de-legitimizing their authority to the population.²⁵¹ Bilateral agreements between foreign and domestic institutions allowed aid money to bypass the DRC government entirely, creating two separate bureaucracies and eliminating the accountability of the state government to the population because it was no longer responsible for providing services or funding.²⁵²

The international institutions that rely on neoliberal Washington consensus principles are often criticised for adhering to a “one-size fits all” approach to state building.²⁵³ This allocation of aid has failed to lead to a significant improvement in state capacity in the DRC and throughout much of the African continent. There is minimal evidence that the \$1.6 billion donated by the U.S. since 1960 has had a positive impact on development in the DRC.²⁵⁴

The DRC has been the sixth largest recipient of humanitarian aid between 1995 and 2008, in amounts that collectively totalled \$2.3 billion in 2009.²⁵⁵ In 2005, the amount of net official development assistance (ODA) as a percent of GNI was 26.3%. It declined to 15.9% in 2008, but remains a significant source of income for the DRC.²⁵⁶ Interest payments on the development money given to the DRC have fluctuated between \$289.8 million in 2002 and \$73.1 million in 2004. The most recent payment in 2009 was \$251.3 million, with similar payments being made in 2007 and 2008. Despite high interest repayment figures, the international community has also forgiven high levels of interest debt due to lack of DRC capacity to repay the full amount. In 2002 the international community forgave \$1.4 billion in DRC interest debt. They further forgave almost \$100 million between 2003-2005, and almost \$15 million between 2006-2009. Debt as a percent of GNI peaked in 2002 at 17.65% but following the international

²⁵⁰ Ashraf Ghani and Clare Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World* (New York: Oxford University Press, 2008), 99.

²⁵¹ Ghani and Lockhart, 97.

²⁵² Ghani and Lockhart, 98.

²⁵³ Theodore Trefon, “Administrative Obstacles to Reform in the Democratic Republic of Congo,” *International Review of Administrative Sciences* (2010): 704.

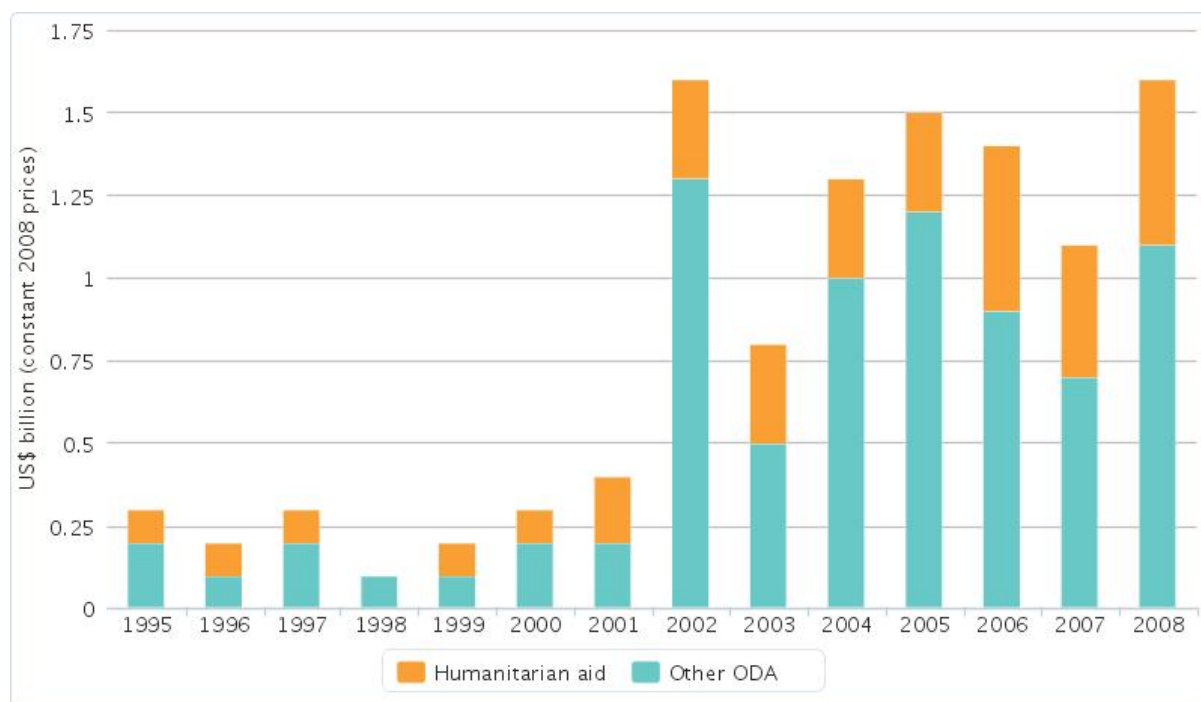
²⁵⁴ Trefon, 705.

²⁵⁵ “Democratic Republic of Congo: Timeline,” accessed March 27, 2011, <http://www.globalhumanitarianassistance.org/countryprofile/drc>.

²⁵⁶ “Net ODA Received (% of GNI),” accessed March 27, 2011, <http://data.worldbank.org/indicator/DT.ODA.ODAT.GN.ZS>.

debt forgiveness it fluctuated between 2-6% between 2003-2008, and rose again to 7.12% in 2009.²⁵⁷

Total Humanitarian Aid as a Share of Official Development Assistance, 1995-2008



Source: Development Initiatives based on OECD DAC (constant 2008 prices) data²⁵⁸

Policy Recommendations

2.1 Ensure compliance with international standards of due diligence

Resolution of issues pertaining to the mining sector will depend on the long-term compliance with international standards of due diligence. This can be attained over time by the widespread adoption of conflict mineral legislation and the promotion of international standards set out by the UN. In July 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law, requiring that all companies registered with the Securities and Exchange Commission (SEC) disclose the origin of the minerals used in the production of their products.²⁵⁹ Companies who use minerals originating from designated “conflict areas” are then required to submit a report to the SEC; the nature and consequence of

²⁵⁷The World Bank, *Democratic Republic of Congo*, accessed March 27, 2011, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CONGODEMOCRATICEXTN/0,,menuPK:349492~pagePK:141132~piPK:141109~theSitePK:349466,00.html>.

²⁵⁸ Global Humanitarian Assistance, *Republic of Congo*, accessed March 27, 2011, <http://www.globalhumanitarianassistance.org/countryprofile/drc#tab-timeline>.

²⁵⁹“The Hill Belongs To Them: The Need for International Action on Congo’s Conflict Minerals Trade,” *Global Witness* (2010): 22.

these reports has yet to be confirmed. The formalization of due diligence standards into state law in the developed world will discourage the persistence of unsavoury practices within the mining sector of the DRC as a matter of accountability and reputation. Reports should be made public in order to encourage responsible consumerism at the end of the trade chain.

The resolution supports due diligence standards directed towards preventing purchases that benefit illegal armed groups as well as “criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses, including those within the national armed forces.”²⁶⁰ Recognized standards will increase corporate accountability for their actions in the DRC, providing a strong incentive for their adherence. Further, international civil society groups and the international community at large should pressure the UN to act on their ability to punish supporters of armed groups through the mineral trade. According to the terms of the aforementioned Security Council resolution, the Council has the power to freeze assets and impose travel bans on those whose interactions with the DRC minerals trade have benefited armed groups. Although evidence of incriminating activities has been presented to the Council, the sanctions have yet to be employed.²⁶¹

2.2 Increase Funding to Microfinance and Financial Literacy Programs

Microfinance programs have proven effective at improving the financial position of many individuals in developing countries. These projects give funding directly to individuals, enabling them to invest in their own endeavours. Microfinance has also been effective at improving community relations through self-help groups (SHGs) and “joint-liability groups”.²⁶² This system builds group accountability and trust, both characteristics that were undermined by the Mobutu regime and his “divide-and-rule” tactics.²⁶³ This system of microfinance will empower the individual and provide the opportunity for them to create a source of income that can then be taxed by the government and reinvested in social programs.²⁶⁴

In addition to microfinance initiatives, financial literacy programs are essential to provide individuals with the knowledge to effectively manage their own finances and run a profitable business. Proposed investments from China include the funding of two new Congolese universities that will help educate the DRC’s population.²⁶⁵ The two proposed programs of microfinance and financial education will focus development at the grassroots level, building the capacity of the individual to provide a living for themselves and then be able to contribute taxes, assisting in the building of state institutions and social programs. As citizens become stakeholders in the process, they gain an interest in maintaining stability and profitability, putting pressure on the government to be accountable.²⁶⁶

²⁶⁰ “The Hill Belongs To Them”, 18.

²⁶¹ “The Hill Belongs To Them”, 21.

²⁶² Lindsay Clinton, “Indian Microfinance: Confusing Scale with Impact,” *GOOD*, November 26, 2010, accessed March 27, 2011, <http://www.good.is/post/indian-microfinance-confusing-scale-with-impact/>.

²⁶³ Trefon, *Administrative Obstacles*, 709.

²⁶⁴ Erica Enne, Giacomo Galanello and Eliana Marino, “Drivers of Change in the Democratic Republic of Congo: The Role of China in Re-Shaping the Country,” *Traditional Studies Review* 17 (2010): 302.

²⁶⁵ Enne, Galanello and Marino, 308.

²⁶⁶ Ashraf Ghani and Clare Lockhart, *Fixing Failed States*, 99.

Priority #3: Economic Diversification

The diversification of the economy seeks primarily to address the issue of the “resource curse” in the DRC. The state’s reliance on an economy centred upon the mineral sector has placed it in a vulnerable position in which it is exposed to the volatility of international demand and prices, and one in which secondary economic sectors have been crowded out. While the majority of the DRC’s economic actors rely on secondary sectors, the mining industry receives the majority of investment and the state’s infrastructural network is designed solely for the primary sector’s benefit.²⁶⁷ This creates a situation of low productivity in which local producers in alternative sectors are less competitive in global markets. This lack of investment and productivity, coupled with the spill-over of external economic shocks and price volatility, contributes to high unemployment levels and the perpetuation of the informal economy—both of which can both spur on civil conflict by producing disillusioned people with few options but to fight, as well as the networks by which rebel groups are funded.²⁶⁸ Ultimately, diversifying the economy would help to break the DRC’s over-reliance on the mineral sector, would create new jobs, and would encourage many members of the informal economy to formalize their activities. Ultimately, diversification is an important component for sustainable development and a necessity for the long-term stability of the DRC.

Since the signing of the Sun City Agreement in 2002, the Kabila government has faced the continued threat of rebel violence in the east, leading to the diversion of resources into security and away from alternative sectors.²⁶⁹ In a potential step towards overcoming the low priority attached to alternative sectors, investment agreements, such as one signed with China in 2008, have occasionally provided vital resources for the development of infrastructure in the DRC.²⁷⁰ There are also plans to develop a new hydroelectric dam—Inga III—250 km west of Kinshasa.²⁷¹ Moreover, Mathias Buabua, the head of DRC’s National Investment Promotion Agency (ANAPI), suggested in October 2009 that efforts to invest in alternative sectors were important: “We are diversifying the economy to include other sectors that can offer a safety net during hard times.”²⁷² However, the government of Joseph Kabila continues to be plagued by corruption and has failed to truly address the need to diversify and break the country’s over-reliance on the resource sector.

Diversification of trade can also help decrease volatility within the Congolese economy and foster economic growth. Geda and Kebret state that basic principles of trade theories fail to provide a hypothesis that can be applied in the African context. In order to address this, Fine and Yeo, suggest that the focus on regional integration within Africa should be reoriented in order to enhance economic growth. This new paradigm of regional integration could “contribute to

²⁶⁷ Richard Shediach, Rabih Abouchakra, Chadi Moujaes and Mazen Najjar, *Economic Diversification: The Road to Sustainable Development*. (Booz Allen Hamilton, 2008), 5.

²⁶⁸ Shediach, Abouchakra, Moujaes and Najjar, 8.

²⁶⁹ UNECA, 141.

²⁷⁰ Nelly Nyagah, “DRC: The new platform for growth in Africa,” *Trade Invest Africa*, November 11 2009, accessed March 27, 2011, http://www.tradeinvestafrica.com/feature_articles/314444.htm.

²⁷¹ “The Inga hydroelectric projects,” United Nations Environment Program, accessed March 27, 2011, <http://postconflict.unep.ch/congo/en/content/inga-hydroelectric-projects>.

²⁷² Nyagah, “DRC.”

economic growth in a very different way than envisioned previously, namely by helping to underpin stable and sound national macro-economic policies and rapid accumulation of human and physical capital”.²⁷³

At present, Africa has approximately fourteen Regional Economic Commissions (RECs) whose objective is to increase regional economic integration of member states. The DRC is currently partnered with the SADC, COMESA, CEMAC, ECCAS as well as the CEPGL. However, Longo and Sekkat suggest that infrastructure deficiency has been a major obstacle to intra-Africa trade. Therefore, it is critical that states involved in such agreements focus on the development of their infrastructure. The DRC, as previously mentioned, has a very weak infrastructure, which has contributed to lost economic revenue. Several studies that focused on regional integration in Sub-Sahara Africa and Western Africa have concluded that the experience of regional integration in the area failed in achieving its objectives of increasing intra-regional trade and fostering policy coordination.²⁷⁴ The Economic Commission for Africa conducted a study, which concluded that regional integration in Africa, has ‘proceeded weakly and unsteadily across sectors, countries and regional communities’.²⁷⁵

The DRC’s vision for developing a service-oriented economy includes improving relations with its neighbours as a long-term goal. This objective, however, must be followed after the successful development of the DRC’s state security. The improvement on state security may prompt other states to cooperate to establish significant regional development. In the case of Rwanda, for example, the state may have an inherent interest in a stabilized DRC.²⁷⁶ This is particularly true because Rwanda is trying to position itself as a regional economic hub for business activity. In order to align Rwanda’s value addition strategy with the sector development strategy for the DRC, the Congo needs to add value to its products by developing affordable and reliable energy and improving its failing infrastructure and state security.²⁷⁷

Policy Recommendations

3.1 Invest in alternate sectors

The DRC has great potential for the development of profitable alternative economic sectors. The Congo River Basin provides a tremendous opportunity for the development of a strong hydroelectric sector, holding 60% of Africa’s possible hydroelectric capacity and having the potential to produce roughly three times the continent’s current energy consumption.²⁷⁸ Additionally, this water system could provide the source for irrigation systems supporting both large- and small-scale agriculture.²⁷⁹ Agriculture comprises roughly 42% of the DRC’s GDP and is the mainstay of the informal economy. However, commercial agricultural production and processing is limited. The great majority of agricultural production is subsistence-based and only

²⁷³ Geda and Kebret, 6-7.

²⁷⁴ Geda and Kebret, 7-8.

²⁷⁵ Geda and Kebret, 8.

²⁷⁶ Geda and Kebret, 7.

²⁷⁷ Geda and Kebret, 7.

²⁷⁸ “DRC: a country with immense electrical supply potential,” *25 Degrees in Africa*, June, 2009, accessed March 27, 2011, http://www.25degrees.net/index.php?option=com_zine&view=article&id=655:drc-a-country-with-immense-electrical-supply-potential&Itemid=81.

²⁷⁹ Moin Siddiqi, “Africa bruised, not battered,” *African Business*, 360 (2010): 29.

10 million of a possible 80 million hectares of arable land are being utilized for permanent crops.²⁸⁰

There are several measures that the government of the DRC should take in order to succeed in diversifying the economy. First, it should allocate a much larger proportion of its revenues from mineral sectors towards investment in alternative and potentially profitable sectors. In addition to state investment, the government should also work to promote domestic and international private investment in these sectors. Moreover, in order to encourage foreign investment and to facilitate the growth of new sectors, investment in the state's infrastructure is vital. Finally, the government should invest in human capital through technical and vocational education and training to ensure the Congolese people have the necessary skills to productively engage in newly developed economic sectors.

The international community also has an important role to play in the diversification of the Congolese economy. First, international businesses should recognize and responsibly capitalize on the potential profitability of these undeveloped alternative economic sectors. Additionally, international economic actors should engage in trade and aid agreements, as well as investment ventures, that promote the DRC's economic diversification and the development of its infrastructure. Finally, international markets need to make room for newly developed Congolese exports so as to provide a forum through which the DRC's new export sectors can successfully develop and mature.

There are several obstacles facing the implementation of these policy recommendations. First, the development of infrastructure and alternative economic sectors such as hydropower and agriculture has potentially serious environmental implications.²⁸¹ Second, any foreign investment or any priority given by international actors towards opening markets for new Congolese commodities, must be in those actors' interests. Otherwise, it is doubtful that they will occur. Finally, the ultimate implementation of any amount of diversification will be reliant upon political will and good governance. Economic diversification must occur in conjunction with the development of effective institutions, and thus must be preceded by the establishment of a secure, conflict-free environment, the successful diminishment of political and economic corruption, and the establishment of a strong judiciary system.

3.2 Develop regional integration through regional economic commissions

The DRC's mineral trade has crucial regional development implications. Trade reforms should be structured in the context of developing regional integration. This can be accomplished through the Regional Economic Commissions, which should help to build the bridge between the DRC and its neighbouring states in terms of expanding "mutual economic benefit." RECs should have annual rotating regional mineral trade forums that permit communication and dialogue, which eventually contribute to trust building and mutual learning of all parties. In collaboration with other policymakers, RECs should work to promote domestic mineral sector development, while at the same time aligning neighbouring countries' domestic resource mobilization strategies to permit expansion.²⁸² The Economic Community of the Great Lakes Countries

²⁸⁰ "Why the DRC Matters?" MONUC, www.un.org/en/peacekeeping/missions/monuc/documents/drc.pdf.

²⁸¹ "The Inga hydroelectric projects," UNEP, <http://postconflict.unep.ch/congo/en/content/inga-hydroelectric-projects>.

²⁸² Garrett and Mitchell, 9.

should be restored by policy makers and should act as a forum for future mineral trade dialogue for Burundi, Rwanda and the DRC.

Two types of reforms are also required in order to properly develop the regional integration agenda. There need to be hardware reforms and cross-border infrastructure links.²⁸³ These must go hand in hand with supporting software reforms that tackle various impediments to policies, regulations, and standards.²⁸⁴ In order to achieve such regional goals, the programs objectives need to be clear and national interests, regional goals and sovereignty issues need to be harmonized with the priorities of grassroots organizations.²⁸⁵ It is necessary to promote the private sector to finance regional economic activities, coordinate effective action among the member countries, allow the analytical studies in preparation for negotiations of economic partnership agreements (EPAs), and finally to distribute and share knowledge among partners.²⁸⁶

There are several explanations of the lack of progress in regional integration efforts in Africa. Reducing trade barriers in African economies is extremely problematic because tariff revenue is one of the most significant sources of government revenue.²⁸⁷ The issue of revenue loss therefore complicates the tradeoff between the short-term loss of revenue and the forecasted long-term effects that emerge from regional integration. Another weakness of regional integration efforts is the outstanding issue relating to the problem of poor private sector participation. Implementation of such treaties requires the understanding as well as confidence by the private sector of the economy. However, with inadequate government resources to ensure full involvement and commitment, “participation is limited at the level of the chamber of commerce officials”. The failed attempts at regional integration in Africa indicate that member states are still hesitant to transfer power to a supra-national body.²⁸⁸

²⁸³ The World Bank, *Democratic Republic of Congo*.

²⁸⁴ The World Bank, *Democratic Republic of Congo*.

²⁸⁵ The World Bank, *Democratic Republic of Congo*.

²⁸⁶ The World Bank, *Democratic Republic of Congo*.

²⁸⁷ The World Bank, *Democratic Republic of Congo*.

²⁸⁸ Geda and Kebret, 8.

Judiciary

The DRC's judicial system is a civil law system. The private law structure is based on the Napoleonic Civil Code of 1804.²⁸⁹ More specifically, it is based on the Belgium legal system as a result of colonial legacy. Native authorities, such as tribal or village chiefs, were used as intermediaries between the African population and the European government.²⁹⁰ The chiefs retained their declaratory, executive, and judiciary powers as determined by native custom, controlled and manipulated by colonial leaders.

As the result of increasing government-endorsed oppression and violence, growing emphasis has been placed on the role of traditional law within the DRC. European legal institutions and concepts have been superimposed on a traditional, indigenous legal structure. This has resulted in dualistic legal systems combining European (or written) law and indigenous (or customary) law. Despite the fact that the Europeans heavily influenced customary law, it nevertheless survives as one of the most durable of social institutions.²⁹¹

The social structures that underlie customary law are the family, the clan and the tribe. The nucleus of the whole tribal concept is the extended family, but the clan is the most significant political unit. Currently, the tribes tends to hold the most formal power in the judicial system. Tribes represent cultural and ethnic groupings such as common language, traditions or ethnic affinities. Throughout the DRC tribes range from a few thousand people to a few million and generally have a strong sense of tribal loyalty and affiliation but lack functional cohesiveness.²⁹² Despite the fact that traditional law is heavily prevalent throughout the DRC, the Constitution denounces the role of localized and traditional authorities in contributing to state-building and stability.²⁹³ Though the Constitution explicitly states that traditional law contributes to the erosion of Congolese values, it is necessary to acknowledge that these statements are politically-motivated and therefore, must be addressed.

The 2006 Constitution divides the judicial system into three distinct jurisdictions: Ordinary/ Judiciary, Public/ Administrative and Constitutional. The clear distinction is intended to ensure efficiency, specialization and effectiveness. The Constitution identifies three corresponding courts: The Court of Cassation (the highest court in ordinary law), the Constitutional Court, and the State Council (the highest court in public/administrative matters). Although these courts have been identified in the Constitution, they have yet to be established in the DRC. The judiciary template outlined in the Constitution differs from the current situation in the DRC. There are five courts currently in existence in the DRC, including: The Supreme Court, the State Security Court, the Court of Appeals, The Tribunal de Grande Instance and the Magistrate's Court. The Supreme Court is the DRC's highest court, comprising three sections: administrative, legislation and judiciary. Subsequent courts hear and determine questions of public prosecutions and security of the state, amongst other things.²⁹⁴ Due to the fact that the

²⁸⁹ Dunia Zongwe, Francois Butedi and Clement Phebe, *The Legal System and Research of the Democratic Republic of the Congo (DRC): An Overview*, GlobaLex: 2010.

²⁹⁰ Jacques J. Maquet, "The Modern Evolution of African Populations in the Belgian Congo," *Journal of the International African Institute* 19 (1949): 268.

²⁹¹ John H. Crabb, *The Legal Systems of Africa Series: Congo- Kinshasa* (Virginia: The Michie Company), 19. ²⁹¹ Crabb, 19.

²⁹² Crabb, 36.

²⁹³ Constitution of the Democratic Republic of Congo, Preamble, 2006.

²⁹⁴ Crabb, 36.

Constitutional Court does not yet exist, any changes to the Constitution must be the result of passing an organic law, with an absolute majority.

Priority #1: Restore the independence of the judiciary

The restoration of independence to the judiciary can play a crucial role in the reestablishment of the rule of law, providing a sense of justice for the Congolese population, and reinforcing the legitimacy of state institutions. The majority of the scholarly literature devoted to the restoration of judicial independence accepts some form of aid from the international community. International experience has shown that prosecuting individuals in positions of power who are complicit in crimes committed during the war is particularly difficult for domestic judiciaries.²⁹⁵ In order to meaningfully contribute to the judicial process, the international community must incorporate itself in the Congolese justice system through some form of mixed or hybrid tribunal process. Hybrid tribunals combine international and domestic law, procedure and personnel, allowing for both efficient administration of justice, while at the same time strengthening domestic courts by exposing them to international expertise.²⁹⁶ While mixed systems pose significant opportunities to improve the independence and effectiveness of the judiciary, there is much debate on how to best achieve this system.

One method would be to incorporate a mixed chamber under domestic legislation, which would allow for the creation of a specialized judicial jurisdiction inside the DRC and dictate the involvement of international expertise. By including it under the domestic law, Congolese ownership of the justice process would be ensured. However, because it would be a domestic institution this would present significant challenges for trying war criminals outside of the country, especially when many of the DRC's neighbours, including Rwanda and Angola, have a ban on extradition.²⁹⁷

Another way to structure the hybrid tribunals would be through an agreement between the United Nations and the Congolese government establishing a special court that sits outside of the domestic justice system. Through this method the chamber could be provided with the authority to issue orders on the Congolese government. As this would be a treaty-based court it would still not have jurisdiction to try foreign nationals.²⁹⁸

Policy Recommendations

1. 1 Establish a hybrid tribunal

This recommendation requires significant international involvement. The timeline for this project would attempt to establish such a system in the short-term, but commitments from the international community could be relieved gradually as Congolese citizens are empowered to control their legal system. Under this system, the majority of cases would be tried within the DRC giving local residents greater accessibility to the trials. The importance of this is to

²⁹⁵ Human Rights Watch, *Discussion Paper: A "mixed chamber" for Congo?* (2009), 2.

²⁹⁶ Rachel Kerr and Eirin Mobekk, "Peace and Justice: Seeking Accountability After War" *Polity Press* (2007), 80.

²⁹⁷ Human Rights Watch, *Discussion Paper*, 3.

²⁹⁸ Human Rights Watch.

establish respect for the rule of law, while simultaneously training and equipping local lawyers. The hybrid tribunal does not directly reform the judicial system but rather aids in the process by creating a more independent judicial system with the integration of the International Criminal Court.²⁹⁹ Through a hybrid tribunal, the international community can establish a court system that is independent of Kabila's influence.

1.2 Address the physical constraints of the infrastructure

The establishment of basic judicial infrastructure is a long-term goal. This would involve increasing the judicial budget, which is alarmingly low, only 0.3% of the national budget. This figure is staggering when considering that it is not even sufficient to cover the salaries of the judiciary for even one month.³⁰⁰ It will also involve the recruitment and training of more judges in the long run. With a larger budget the judicial sector will be able to develop into a stronger system, with a greater capacity to serve the people of the DRC. The international community must financially support this process in the short run. Once again, this may pose a problem as international will can be lacking where monetary contributions are concerned.³⁰¹

1.3 Limit the role of the judiciary in verifying the 2011 elections

By temporarily suspending the jurisdiction of the judiciary over elections, the extent to which the judiciary can be manipulated for political ends can be mitigated. This prescription will aid not only in ensuring that free and fair elections take place, but will send a strong message to the constitutional courts that elections are to be respected and their role in the DRC is to act independently and not for the government. The international community will have to commit resources to monitor the elections and ensure that they are free and fair. However, most election observation organizations have been willing to contribute to the development of democracy in underdeveloped regions.³⁰²

1.4 Establish a comprehensive strategy for dealing with war crimes

In the short term this will involve targeting those most responsible for mass violations, such as public officials, military officers and others involved in orchestrating large-scale crimes.³⁰³ The judicial system should pursue cases with readily available evidence likely to result in a conviction to ensure the judicial process is quick and that the limited resources available will

²⁹⁹ Kerr and Mobekk, *Peace and Justice*, 85.

³⁰⁰ International Bar Association, *Rebuilding Courts and Trust: An assessment of the needs of the justice system in the Democratic Republic of the Congo* (2009), 45.

³⁰¹ International Bar Association, 45.

³⁰² Kerr and Mobekk, *Peace and Justice*, 106.

³⁰³ Tyrone Savage and Olivier Kambala wa Kambala, "Decay, decimated, usurped and inadequate: the challenge of finding justice through informal mechanisms in the DR Congo" in *Restoring Justice after Large-scale Violent Conflict: Kosovo, DR Congo and the Israeli-Palestinian case*, ed. Ivo Aertsen, Jana Arsovska, Holger-C. Rohne, Marta Valinas, and Kris Vanspauwen (Willan Publishing, 2008), 342.

be used in cases where conviction is likely. Through convictions the people's faith in the judicial system can be restored. Furthermore, it is necessary to tackle patterns of abuse through prioritizing recidivism. An issue that has arisen in regards to this recommendation is that by only selecting cases according to these three criteria, those who have committed crimes that do not fit the criteria are allowed to escape justice perpetuating the culture of impunity.³⁰⁴

1.5 Increase access to justice

Providing equal access to justice through state funded lawyers is a long-term goal. For the judiciary to gain relevance, representation must be provided for those unable to afford it. This prescription is directed to the provincial governments; however, it is stressed that this is a significantly long-term goal that can only be completed after government reform.³⁰⁵ The geography and history of the DRC act as potential barriers to addressing this issue. Providing the population with accessible courts that equally represent their needs throughout the country will be costly. However, it is a necessity if the judicial system is to function properly.³⁰⁶

Priority #2: Incorporate traditional legal authority

The debate about the role of traditional authority structures in the modern state generally takes two opposing stances. The first portrays traditional communities and their authorities as constitutive of social harmony. The second position makes traditional authority responsible for the social "backwardness" that prevents the society from evolving.³⁰⁷ This argument assumes that a successful judiciary is one that is modern in the Western sense. Therefore, it will be recommended that local and traditional legal structures be utilized in order to achieve representation and trust in the judiciary that will then lead to increased support for the formal judiciary in the long-run.

Policy Recommendations

2.1 Acknowledge and validate traditional legal practices

Many Congolese lack knowledge of and confidence in the current legal system. Therefore, incorporating traditional and localized forms of legal authority can aid in developing a sense of inclusion, responsibility and trust in the judiciary. There must be a middle-ground agreement where traditional forms of legal authority are included and reconciled with the current European judicial framework. When attempting to provide a synopsis of the customary law of

³⁰⁴ Savage and Kambala wa Kambala, 345.

³⁰⁵ Joris Voorhoeve, *From war to the rule of law: peace building after violent conflicts*, (Amsterdam: Amsterdam University Press, 2007).

³⁰⁶ International Bar Association, *Rebuilding Courts and Trust*, 46.

³⁰⁷ Namegabe Rugabura, 98.

the DRC, it must first be recognized that there are basic limitations. First, the DRC is large and diverse; therefore, it is inevitable that there will be diversity of customs. Thus, the customary law that is most commonly shared will be the basis for this report. Secondly, customary law is not static. In the DRC customary law has been directly subjected to European influence, although uneven in its impact. As a result, customary law will be presented in its pre-colonial form to avoid further complexities.³⁰⁸

One virtually universal theme in customary law is the affiliation with the community of a clan, or family. In the DRC, statutes have extended and developed jurisdictions of the customary law and have made it relevant in courts of the written law.³⁰⁹ It is recommended that the central government in Kinshasa acknowledge local leaders as legitimate authorities, thereby validating traditional practices of law. In addition, acknowledging traditional rule will remain a long-term practice in order to further incorporate traditional mechanisms into hard law and to continue legitimizing clan authority as a means of legal authority.

If the people of the DRC can experience concrete improvement in their lives as a result of local and traditional institutions to which they identify, the legitimacy of the institution will surely increase. This legitimacy can further contribute to central-state legitimacy if the population recognizes that the change is endorsed and sustained by the state through various means.³¹⁰ Thus it is necessary that authority be distributed in a way that proves that local attributions are an extension of state, and vice versa.³¹¹ This distribution of responsibility and authority can even potentially create a level of competition between jurisdictions to provide incentive for the government to create more effective institutions.

2.2 Implement quotas

Representation remains a key priority within judicial reform. It is recommended that ethnic and tribal quotas be implemented into all levels of the judiciary, to ensure equal representation of all groups living within the DRC. The international community, working with MONESCU, should provide assistance in creating sufficient law schools with adequate materials. It will also be suggested that law school admissions be based on a quota system to ensure that representatives from the judicial quotas are equally and well educated.

2.3 Reform the current Truth Commission

In addition to the proactive measures of legitimizing local authorities and installing quotas, there is a need for reactive measures. In terms of reconciliation, Truth Commissions are a high priority. The current truth and reconciliation commission within the DRC, *Commission Vérité et Réconciliation* (CVR) is ineffective due to its unrealistically large mandate. Corruption is present among the magistrates and the Commission lacks the ability to grant amnesty and the

³⁰⁸ Crabb, 60-61.

³⁰⁹ Crabb, 31.

³¹⁰ Namegabe Rugabura, 96.

³¹¹ Rouveroy van Nieuwaal, E.A.B., "Chieftaincy in Africa : Three Facets of a Hybrid Role," in *African Chieftaincy in a New Socio-Political Landscape*, ed. DIJK, Rijk van & Rouveroy van Nieuwaal, E.A.B., (Leiden: African Studies Centre, 1999), 34.

CVR is riddled with governance problems.³¹² Restitution, compensation, rehabilitation and satisfaction should be the key focuses. Truth needs to come before reconciliation for the peace to last and for the judicial system to be trusted again.³¹³

Congolese civil society distrusts the current Commission due to its highly politicized composition.³¹⁴ Numerous consultations must take place with civil society groups so that issues may be addressed and a feeling of cooperation and trust for the CVR may be built. Without the trust of the civil society, past problems will carry forward and the CVR will remain unsuccessful. Currently much of the CVR resources are spent on dealing with micro issues within communities rather than dealing with the larger picture of reconciling the population to the past conflict. These smaller community issues need to be addressed before the Commission begins its work, saving the few resources it has to deal with its mandate.³¹⁵

A main source of challenge to the CVR may be the vast tribes, clans and family ties by which the Congolese associate. The characteristic fragmentation of society into localized autonomous jurisdictions means that any given unit of specific customary law is often applicable only in a limited region corresponding to a clan or closely allied clans. A given customary legal system could cover a substantial population with considerable uniformity. Hence there needs to be a promotion of interaction between groups to further develop a functioning local judiciary as well as further develop a sense of identity and unity.

International involvement lends legitimacy to the domestic court systems, which have for years been viewed as illegitimate due to the influence of the government.³¹⁶ Through a hybrid tribunal, the international community can establish a court system that is independent of Kabila's influence. International actors, such as the United Nations and ICC, could take the lead in providing the DRC with infrastructure expertise and potentially with international aid.³¹⁷ The European Union has also contributed monetary aid to different domestic training programs. However, international aid can only help establish infrastructure goals in the short-term, the funding for court systems should come in the long-term from the provincial governments in tandem with the governance's groups plan to decentralize power in the DRC.³¹⁸

In the case of supervising the November 2011 elections, a short-term goal is to appeal to the international community to aid in the monitoring of not just national elections, but regional elections as well. The United Nations Development Programme's election advisors are being called upon to assist in this process.³¹⁹ The ICC can assist in establishing a strategy for dealing with war crimes. International assistance will lend legitimacy to the court systems and provide additional funding and judicial staff to increase the efficiency of the process.³²⁰

In order to bypass such challenges, the international community must participate in the aforementioned recommendations and provide aid and pressure. Funding for local authorities will allow them to carry out traditional legal practices within their designated locations.

³¹² Savage and Kambala wa Kambala, *Decay, Decimated, Usurped and Inadequate*, 32.

³¹³ Kerr and Mobekk, *Peace and Justice*, 92.

³¹⁴ Theodore Kasongo Kamwimbi, "Between Peace and Justice: Informal Mechanisms in the DR Congo" in Ivo Aertsen, Jana Arsovska, Holger-C. Rohne, Marta Valinas, and Kris Vanspauwen (eds.) *Restoring Justice after Large-scale Violent Conflict: Kosovo, DR Congo and the Israeli-Palestinian case* (Willan Publishing, 2008): 368.

³¹⁵ Kamwimbi, 370.

³¹⁶ Kerr and Mobekk, *Peace and Justice*, 83.

³¹⁷ Kerr and Mobekk.

³¹⁸ Kerr and Mobekk.

³¹⁹ International Bar Association, *Rebuilding Courts and Trust*, 46.

³²⁰ Kerr and Mobekk, *Peace and Justice*, 89.

Combined with funding, pressure on the central government will promote the validation of traditional legal practices, as implemented by corresponding authorities.

Furthermore, the international community should work concurrently with MONUSCO to oversee traditional legal practices and the process of implementing quotas, to ensure that they do not contradict the Congolese Constitution. Involvement of the international community by way of facilitation and monitoring of local practices, will contribute to the process of validating traditional legal norms. Moreover, the international community should aid in overseeing the process of reforming the Truth Commission, to ensure that restorative justice measures are conducted in a conciliatory and peaceful manner.

Human Rights

Within the DRC, four priority concerns have been identified: the provision of basic human rights, women's rights, children's rights, and civil and political rights. Many of the issues surrounding human rights in the DRC stem from a long history of systemic and systematic neglect by the state. The more recent failure of the state and the ongoing violence, particularly in the eastern and north-eastern regions of the state, constitute the most significant challenge to the protection and enforcement of rights in the DRC.

While the preamble of the 2006 Constitution states an adherence to upholding human rights within the DRC, this is not the case in practice.³²¹ Specific mention of the Universal Declaration of Human Rights (UDHR), the United Nations Conventions on the Rights of the Child and the Rights of Women, and additional instruments relating to the protection and promotion of human rights are made. The focus of these recommendations highlights the concerns of women, children, refugees, and internally displaced people (IDP).

<p>Priority #1: Ensure the provision of basic human rights</p>

Although the DRC has signed and ratified the UDHR, massive human rights abuses continue to be perpetrated by both state and non-state actors. In order to establish a well-functioning state and restore social harmony, the people of the DRC need to be guaranteed the right to life, liberty and security of person.

The ability to access clean drinking water is one of the most fundamental conditions of human development.³²² Despite having the greatest quantity of water within sub-Saharan Africa, in 1998 only 32% of the population in the DRC had access to clean drinking water.³²³ Since then, this situation has declined. Currently only 22% of the population has access to clean drinking water.³²⁴ Food is also scarce and 76% of the population is undernourished.³²⁵ Contributing to this extremely undernourished society is the fact that local food prices have more than doubled. In Kinshasa, imported rice prices were 159% higher than the international price of rice.³²⁶ Furthermore, the country's food production capacity has significantly decreased and food reserves are kept at a bare minimum due to the, "volatile political and economic environment, as well as the frequent threats of looting."³²⁷ The result of these debilitating factors

³²¹ See Appendix 2: Constitutional References.

³²² Peter H. Gleick, "The Human Right to Water," *Water Policy* 1 (1998), 488.

³²³ Anton Earle and Daniel Malzbender, "Water – and the Peaceful, Sustainable Development of the SADC Region," *ACWR* (2007), 27.

³²⁴ USAID, "Democratic Republic of the Congo: Water and Sanitation Profile," *US Agency for International Development*, http://pdf.usaid.gov/pdf_docs/PNADO929.pdf.

³²⁵ FAO, "Price Monitoring and Analysis Country Brief: Democratic Republic of the Congo," *Food and Security Information for Decision Making*, <http://www.foodsec.org/web/publications/briefs/countries/africa/dem-rep-of-the-congo>.

³²⁶ FAO, *Price Monitoring*.

³²⁷ World Food Programme, *Congo, Democratic Republic Of: Overview*, <http://www.wfp.org/countries/Congo--Democratic-Republic-Of/Overview>.

is a sharp spike in illness caused by curable diseases such as tuberculosis, typhoid, diarrhea, intestinal parasites, and malaria which is the number one killer of children.³²⁸

The provision of basic human rights applies to the entirety of the DRC, but additionally to refugees and IDPs. Within the DRC, there are 2 million internally displaced Congolese people, and more than 450,000 Congolese refugees in neighbouring countries.³²⁹ The human rights concerns pertaining to these two groups of society fall within the provision of basic human rights; they have also previously been addressed within the security recommendations formerly discussed.

Policy Recommendations

1.1 Upgrade and expand the capacities of the current Water Supply and Sanitation (WSS) infrastructure to rural communities and villages

Currently a major obstacle in implementing this recommendation is the abundant number of actors who have overlapping institutional jurisdiction over the WSS, as currently the WSS is spread amongst twelve ministries and public bodies.³³⁰ Issues of jurisdiction, accountability, and authority will be mitigated by making the WSS more accountable. This would be made possible by bringing both operations under the sole supervision of the ministry of public works. Another problem that will need to be overcome is the DRC's lack of drills available to tap into aquifers. There are only four companies within the DRC that can provide this service, making the process of expanding water services to rural communities very inefficient.³³¹ In order to overcome this obstacle the government can re-invest the savings from reforming the WSS and ministry of public works into contracts, which will provide incentives to establish new drilling companies. Another prerequisite for realizing such a project is a strong judiciary able to enforce contracts.

Constructing these transportation linkages across the country will provide farmers with access to a greater number of markets and increase their earning potential. The enormous size of the DRC creates an economic obstacle in creating transportation links across the country. In order to overcome this obstacle, the DRC should coordinate and partner with NGOs and non-profit organizations such as engineers without borders to more efficient. The government should also pressure mining companies to become more socially responsible and invest in the communities around them. The most pertinent development would be a successful resolution of the internal conflict that is currently plaguing the country. Once the conflict was resolved the Congolese government would be more effective in its capacity to hold companies and ministries accountable for their actions.

1.2 Implement accountability measures for the ministry of health

³²⁸ World Health Organization, "The Democratic Republic of the Congo: quantifying the crisis," *Bulletin of the World Health Organization* 87, no. 1 (2009).

³²⁹ "DR Congo: Overview," *Refugees International* (March 24, 2010), <http://www.refugeeinternational.org/where-we-work/africa/dr-congo>.

³³⁰ USAID, *Water and Sanitation*.

³³¹ USAID, *Water and Sanitation*.

Of the health clinics that are still standing, 30% are run by churches, 10% by companies, while the rest are under state control.³³² Hospitals have not received renovations or updates in over two decades and what surgical tools there are get sterilized over a fire.³³³ The health care system is receding. There is no longer a centralized pharmaceutical supply agency; one must pay for consultations and many doctors and nurses haven't received salaries since 1996.³³⁴ Another crippling cause of the dilapidation of the health care system is corruption. In May 2006 \$4 million had been 'lost' within the ministry of health. This amounted to approximately half of the entire health budget.³³⁵ Furthermore, of the 130 beds currently in use within the DRC there are 136 nurses on the payroll.³³⁶

The government of the DRC should research and implement accountability measures that will mitigate corruption within the health care system. In order to best reform this ministry and provide the best quality of care, fiscal accountability is necessary and all payments must be authorized. In order to address problems of efficiency, investing in technologies will automate everything and thereby cut down wait times and track medical records.

Priority #2: Women's Rights

The DRC has been labelled "the rape capital of the world" by Margot Wallstrom, the UN's special representative on sexual violence in conflict.³³⁷ Sexual violence towards women and children has been used as a weapon of war and control. The UN estimates that 14 women are raped daily in the eastern DRC and more than 3000 women were raped during the fighting in 2009.³³⁸ One of the main reasons soldiers, including those in the DRC's national army, partake in sexual violence is because of the lack of pay. Soldiers spend most of their time in isolation and feel as though they are often neglected by higher authorities.³³⁹ For this reason, sexual violence against women can be attributed to weak governance and security, and the failure of the DRC government to provide for the needs of its army and soldiers. Since 2002, there have been many attempts at eradicating sexual violence in the DRC. In 2003, the UNFPA (United Nations Population Fund) set up the "Joint Initiative against Sexual Violence toward Women and Children," a project aimed at addressing the needs of victims through coordination efforts between different organizations.³⁴⁰ NGOs have also played an important role. The American Bar Association has taken different steps to address women's rights and rape situations with its Rule of Law Initiative (ROLI) to create several programs to combat sexual and gender-based violence. This includes working to increase the number of rape prosecutions, providing legal assistance

³³² "DRC: Ailing health system needs cure," *IRIN News*, 2006, accessed March 11, 2011, <http://www.irinnews.org/report.aspx?reportid=59521>.

³³³ *IRIN News, Ailing Health*.

³³⁴ *IRIN News, Ailing Health*.

³³⁵ *IRIN News, Ailing Health*.

³³⁶ *IRIN News, Ailing Health*.

³³⁷ "UN official calls DR Congo 'rape capital of the world'," *BBC News*, April 28, 2010, accessed March 11, 2011, <http://news.bbc.co.uk/2/hi/africa/8650112.stm>.

³³⁸ *BBC News, Rape Capital*.

³³⁹ Gaëlle Breton-Le Goff, "Ending Sexual Violence in the Democratic Republic of the Congo," *The Global Forum of World Affairs* 34, no.1 (2010): 19.

³⁴⁰ Breton-Le Goff, 21.

and filing cases with polices.³⁴¹ The American Bar Associations Rule of Law has also partnered with other non-governmental organizations and United Nations agencies to develop and implement training seminars and interactive workshops for lawyers, police, prosecutors, and judges.³⁴² A landmark law that was passed in 2006 explicitly recognized the crimes of “sexual slavery, harassment, pedophilia, and forced pregnancy” within the penal code while increasing criminal penalties and protections afforded to victims.³⁴³

Opportunities for women in the workforce are limited. They are underrepresented in the formal workforce and earn less than their male counterparts when working in the same jobs.³⁴⁴ They also cannot sign legal contracts independently from their husbands.³⁴⁵ Traditional attitudes and customs that discriminate against women persist, even though by international and domestic law, women are granted equal right to men. Since 2002, numerous attempts have been made to improve the situation of gender inequality. A breakthrough in women’s participation in decision-making has been Article 14 of the 2006 Constitution which provides for the principle of parity between women and men.³⁴⁶ Currently women hold important portfolios including the Ministry of Gender, Ministry of Family Affairs and Children; the Ministry of Public Enterprises; the Ministry of Transportation, and the Ministry of Arts and Culture.³⁴⁷

Policy Recommendations

2.1 Recognize, Support and Protect Local Women’s NGOs

NGOs play a fundamental role in empowering women in the DRC. They educate them about their rights, their role as a woman in society, the effects of rape, and the different roles that certain actors in society play.. The international community needs to value NGOs and recognize their efforts in capacity building as well as their determination to include local women in decision-making processes related to the battle against sexual violence.³⁴⁸ The protection of NGOs is important to ensuring their efforts continue in the DRC.

2.2 Battle the culture of impunity and penalize the perpetrators of violent sexual crimes against women and girls

Both the government of the DRC and the international community need to play a significant role in order for this policy recommendation to be fulfilled. The European Union

³⁴¹ “Democratic Republic of Congo,” *American Bar Association: Rule of Law Initiative*, accessed March 20, 2011 http://apps.americanbar.org/rol/africa/democratic_republic_congo.html.

³⁴² American Bar Association, *Dem. Republic fo Congo*.

³⁴³ Breton-Le Goff, *Ending Sexual Violence*, 23.

³⁴⁴ Breton-Le Goff, 23.

³⁴⁵ Breton-Le Goff, 23.

³⁴⁶ “Security Council Resolution 1325: Civil Society Monitoring Report,” *Global Network of Women Peacemakers*, <http://www.gnwp.org/wp-content/uploads/2010/02/DRC.pdf>, 2.

³⁴⁷ Global Network, *Security Council*, 2.

³⁴⁸ Global Network, 2.

needs to ensure that the issue of sexual violence is on the agenda of local-level political dialogue, in application of article 8 of the Cotonou Agreement, the most comprehensive partnership agreement between developing countries and the EU since 2000.³⁴⁹ The International Criminal Court and State Parties to the ICC also have their own roles. The Office of the Prosecutor (OTP) of the ICC needs to increase prosecution of crimes of sexual violence where there is sufficient evidence of such crimes.³⁵⁰ The Optional Protocol on Elimination and Discrimination Against Women needs to hold regular, direct consultations between the OTP and victims of crimes of sexual violence.³⁵¹ State parties need to allocate sufficient resources to enable the court to implement the recommendations listed above and contribute to the Trust Fund for Victims, in particular to enable the Fund to implement assistance programmes for victims of crimes of sexual violence.³⁵²

2.3 Educate the population on rape and its effects on communities and families

Education can teach the population about rape, its causes, and its consequences. To achieve this goal, many internal developments need to occur. Broad based education needs to be properly implemented in all regions of the DRC. The government of the DRC needs to take an active role in promoting these educational facilities, training, and programs required for the education of sexual violence for both men and women. The international community and NGOs should focus on implementing these educational facilities and training.

2.4 Reform the Family Code

The Family Code gives women limited protection. To reform the Family Code, those articles that are discriminatory against women need to be removed to comply with international and regional human rights treaties. The government needs to take action to make changes to this code if the situation of women is to be improved.

Priority #3: Children's Rights

In a country where approximately 50% of the population is under the age of eighteen, long-term development is invariably related to the development of its youth.³⁵³ The ongoing violence continues to be one of the most severe threats to the rights of the child, while the failure

³⁴⁹ "Breaking the Cycle of Impunity," *Federation internationale des ligues des droits de l'homme*, accessed March 10, 2011, <http://www.fidh.org/IMG/pdf/press-kit-drc-eng-final.pdf>, 2.

³⁵⁰ *Federation InternationaleInternaitonal*, 2.

³⁵¹ *Federation Internaitonal*, 2.

³⁵² *Federation Internaitonal*, 2.

³⁵³ Elettra Pauletto and Preeti Patel, "Challenging Child Soldier DDR Processes and Policies in the Eastern Democratic Republic of Congo," *Journal of Peace, Conflict and Development* 16 (2010): 46.

of the state ensures that the situation of children generally remains precarious.³⁵⁴ The conflict disrupts the social networks and primary relationships that are crucial to the physical, emotional, cognitive, moral and social development of the child.³⁵⁵ The lack of educational infrastructure prevents many children from reaching their full potential.

The ongoing conflict within the DRC has contributed to the displacement of approximately 1.9 million people, of which roughly fifty percent are children.³⁵⁶ UNICEF has identified four regions that have been characterized as humanitarian crises where children are particularly vulnerable: North and South Kivu, Province Orientale's Haut and Bas-Uélé and Ituri districts and Equateur Province.³⁵⁷ Perpetrators include leaders from irregular armed forces including the Mai-Mai, CNDP, PARECO, the FDLR as well as from the FARDC. In Orientale Province, the Lord's Resistance Army is predominantly responsible for the recruitment of child soldiers. Following the 2002 peace accords, rebel forces within the DRC were supposed to undergo a process of *Mixage*, thereby integrating the irregular forces into the national army.³⁵⁸ Since this integration often occurs spontaneously, it is difficult for the state to protect children and monitor their recruitment. This limits the capacity of organizations to screen sites, and commanders are often reluctant to release their children.³⁵⁹ The United Nations also implemented a DDR program which targeted Congolese and foreign combatants generally; the specific needs of child soldiers were not within the mandate of this DDR program but fell instead under the purview of UNICEF and other specialized partners within the DRC.³⁶⁰

The failure of the state in the DRC has contributed to the inefficiency of educational policy in the DRC.³⁶¹ While the 2006 constitution stipulates that primary school is compulsory and free, this is not the case as fifty percent of the education system is funded by parents.³⁶² The inability of parents to pay for school fees and school supplies of has contributed to the exclusion of approximately 4.2 million children from school, of which 2.5 million are girls.³⁶³

Policy Recommendations

3.1 End impunity with regards to the violations of children's rights

In addition to the international legal standards outlined in treaties, conventions and protocols, international statutes and UN Security Council (UNSC) Resolutions, there is also the expanding legal framework of international criminal jurisprudence. The DRC is a signatory to

³⁵⁴ UNICEF DRC, *UNICEF Humanitarian Action Update: Democratic Republic of the Congo*, (Geneva: UNICEF Geneva, 2010), 1.

³⁵⁵ Graça Machel, *The Impact of Armed Conflict on Children*, (New York: United Nations, 1996): 10.

³⁵⁶ UNICEF DRC, *UNICEF*, 1.

³⁵⁷ UNICEF DRC, 2.

³⁵⁸ Claude Rakistits, "Child Soldiers in the East of the Democratic Republic of the Congo," *Refugee Survey Quarterly* 27, no. 4 (2009): 112.

³⁵⁹ Secretary General of the United Nations, "Report of the Secretary General on Children and Armed Conflict in the Democratic Republic of the Congo," (New York: United Nations, 2010), 6.

³⁶⁰ United Nations, "Democratic Republic of the Congo," *United Nations DDR Resource Center*, accessed March 24, 2011, <http://www.unddr.org/countryprogrammes.php?c=25>.

³⁶¹ UNICEF, "Supplies and Logistics: Girl's Education in the DRC: Kits for Kids," *UNICEF*, accessed March 24, 2011, http://www.unicef.org/supply/index_25944.html.

³⁶² Babacar Fall, "ICT in Education in the DRC," *Survey of ICT and Education in Africa* (2007): 3.

³⁶³ UNICEF, *Supplies and Logistics*.

and has ratified all the treaties listed under the Laws of Armed Conflict and International Human rights law categories.³⁶⁴

3.2 Implement and support comprehensive DDR programs which address the specific needs of children

The disarmament and demobilization of child soldiers is the primary short-term policy required to remove children from violent conflict, while rehabilitation and reintegration are crucial for their long-term development and reincorporation into their families, communities and society. Holistic policies are necessary to address the problems of voluntary and re-recruitment of children and to ensure the capacity of the child to reintegrate fully into society. Community-based reconciliation programs are a useful tool in ensuring the successful reintegration of the child into his or her community.³⁶⁵

One of the benefits of incorporating education initiatives into DDR programs is the correlation between literacy and preventing re-recruitment. It allows children to see themselves as something other than victims and soldiers.³⁶⁶ DDR programs include accelerated educational incentives specifically for former child soldiers and vocational training programs for older children less likely to complete regular schooling.³⁶⁷ One of the major challenges to the DDR process in the DRC is the ongoing nature of the conflict, which results in a significantly higher chance of recruitment following demobilization.³⁶⁸

Priority #4: Civil and Political Rights

Currently, the DRC is failing to uphold the civil and political rights guaranteed under the International Convention on Civil and Political Rights (ICCPR). The DRC, as an early signatory (November 1, 1976) of the ICCPR has promised to uphold the core provisions of this treaty, including the right to self-determination, equality and the right to life. In addition, the DRC hosts a Civil Code which pertains to the private law that governs the relationships between private persons. The civil code has three parts: the law of persons (*droit civil des personnes*), property law (*droit civil des biens*), and the law of obligations (*droit civil des obligations*). The Civil Code addresses the Congolese values of life and family.

Policy Recommendations

4.1 Reform political society to ensure the formation of opposition parties

Due to the nature of political and civil rights, as individual rights that are granted by the state, the only way to legitimize civil and political rights is if they derive from the government.

³⁶⁴ Rakistits, *Child Soldiers*, 109-110.

³⁶⁵ Rakistits, 109-110.

³⁶⁶ Rakistits, 569-570.

³⁶⁷ Rakistits, 568.

³⁶⁸ Pauletto and Patel, *Challenging Child Soldier*, 37.

This inherently affects the judicial system as well as the citizenship problems of the DRC, as an independent judiciary is necessary to ensure fair trial and redress, while clear citizenship delineations are necessary to determine who should receive civil and political rights within the DRC.³⁶⁹ The most critical element as outlined by Department for International Development (DRIF) is that donor support continues.³⁷⁰ Agencies like DFID, UNDP, USAID and the Soros Foundation that all play an active role in promoting peace and human rights in the DRC, as well as providing financial support, need to continue doing so for the upcoming years. The financial support provided by these agencies is important to the process of building a viable political opposition and civil society. As outlined by DFID, the loss of this platform for discussion will minimize the DRC's political space and capacity, further reducing the role of civil society.³⁷¹ Additionally, foreseeable barriers that will need to be overcome include popular impatience with elected officials, the corruption of public offices, the shrinking democratic space and widespread lack of service delivery, including the most pressing issue of political freedom.³⁷² Declining public trust in democratic institutions has resulted in the absence of democratic dividends.

³⁶⁹ Kristi Samuels "Rule of Law Reform in Post Conflict Countries, Operational Initiatives and Lessons Learnt," *Social Development Papers* 37 (2006): 19.

³⁷⁰ Department for International Development, "Elections in the Democratic Republic of Congo 2006," *UK Aid* (2010), 4.

³⁷¹ Department for International Development, 4.

³⁷² Department for International Development, 4.

Conclusion

The current political circumstances of the DRC are in many ways a product of international intervention. The boundaries and structure of the state, its socioeconomic hierarchy, and even the constitution have been inherited from a broad variety of external sources in the post-colonial era. However, this report has sought to give agency to the Congolese. The diagnoses of state failure, as well as the strategies for reform have focused on the role of the government, civil society, and domestic actors more generally. This methodology was largely informed by an internationalist philosophy that emphasizes grassroots reform and ‘bottom-up’ approaches. While the structure of governance is drawn from an external conception of state functions and legitimacy, policy changes must be accomplished internally in order to build a cogent sense of nationhood and overcome ethnic, racial and political divisiveness. To this end, the recommendations in this report have attempted to address weakness in the capacity and accountability of the Congolese state in five major areas: governance, security, economy, the judiciary, and human rights. By identifying prioritized reforms in these fields, it is hoped that a greater understanding of the systemic issues blocking development in the DRC can be achieved.

2011 is a crucial juncture for the DRC: the five-year term limits for National Assembly seats, the Senate, and the Presidency expire in November, and Congolese people will vote in the second free election in the nation's history. This represents a chance for the citizens of the DRC to demand change. In terms of governance reform, the primary and immediate recommendation proposed in this report is the consolidation of democracy. This was not decided as the first priority by coincidence; each subsequent proposal is predicated on building the legitimacy of the state through democratization. The DRC has already demonstrated the capacity for some degree of open political discourse, and the potential to hold its leadership accountable through popular elections. The recommendations that followed in the course of this report are aimed at ensuring that the citizens of the DRC will be allowed to exercise and build upon this potential.

Security reforms will create domestic stability, enabling the state to protect its borders from the external aggression that has plagued the DRC's relations with neighbouring states. They will allow the government to guarantee the relative human security of its citizens and therein provide the conditions for peaceful dialogue between civil society, the central government, and regional actors. Economic reforms will similarly nurture or fortify the capacity of the state to fund further development while limiting the negative external influences discussed in the history and diagnosis. If the rich natural resources of the Congolese territory are channeled into constructive, redistributive programs to build the state and provide social services, many of the obstacles limiting growth may be more easily overcome. Changes to the judicial system will bring the institutions of government closer to the Congolese people and generate a greater degree of popular accountability. The ability to ensure human rights, meanwhile, is the essential characteristic of free and democratic states throughout the world and will facilitate the acceptance of the DRC as a legitimate entity both domestically and on a global stage.

Each aspect of this report, and the order of priorities therein, has been carefully considered in the context of the DRC's tumultuous development and history. From the colonial era through the 'Great African War,' successful democratic development in the DRC region has been consistently undermined by a seemingly fated confluence of insurmountable challenges. It is hoped that this report will shed light upon an often overlooked human tragedy, and by speaking to both international actors and the citizens and leadership of the DRC provide a blueprint for positive change moving towards and beyond the 2011 elections.

Appendices

Appendix 1: List of Abbreviations

ABA	American Bar Association
ABAKO	Alliance des Bakongo
AMP	Alliance of the Presidential Majority
ANAPI	National Investment Promotion Agency
ANC	Armée Nationale Congolaise
AND	Agence National de documentation
ANI	Agence Nationale d'Immigration
ASM	Artisanal and Small-Scale Mining
AU	African Union
BKD	Bunda Dia Kongo
CEI	Independent Electoral Commission
CEMAC	Central African Economic and Monetary Community
CEPGL	Economic Community of Great Lakes Countries
CFS	Congo Free State
CIAT	Comite International D'accompagnement de la Transition
CIDA	Canadian International Development Agency
CNRI	Centre National de Researches et Investigations
CNDP	Congrès national pour la défense du people
COMESA	Common Market for Eastern and Southern Africa
CONADER	Commission Nationale de Désarmement, Démobilisation et Réinsertion
CRC	Convention on the Rights of the Child
CRM	Companion Recovery Model
CTC	Certified Trading Chain
CVR	Commission Vérité et Réconciliation
DDR	Disarmament Demobilization Reintegration
DDR (RR)	Disarmament Demobilization Reintegration (Rehabilitation Resettlement)
DFID	Department for International Development
DGM	Direction Générale de Migration
DRC	Democratic Republic of Congo
ECCAS	Economic Community of Central African States
EITI	Extractive Industries Transparency Initiative
EU	European Union
EUFOR	European Union Force
EUPOL	European Union Police Mission
EUSCC	European Safe Community Certifying Centre
EUSEC	European Union advisory and assistance mission for security sector reform in DRC
FAC	Force Armée Congolaise
FARDC	Forces Armées de la République Démocratique du Congo
FAZ	Forces Armées Zaïroises
FDLR	Forces Démocratique pour la libération du Rwanda
FP	Force Publique

GC	Garde Civile
GDP	Gross Domestic Product
GN	Gendarmerie Nationale
GP	Garde Présidentielle
ICC	International Criminal Court
ICCPR	International Convention on Civil and Political Rights
IDP	Internally Displaced Persons
IEMF	International Emergency Force
IGO	Intergovernmental Organization
IMF	International Monetary Fund
LRA	Lord's Resistance Army
LSM	Large-Scale Industrial Mining
MLC	Mouvement de Libération du Congo
MNC	Mouvement National Congolais
MONUC	United Nations Mission in the Democratic Republic of Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of Congo
NGO	Non Governmental Organization
ODA	Official Development Assistance
OEDC	Organization for Economic Development and Cooperation
OP	Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women
OTP	Office of the Prosecutor
PACE	Project in Support of the Electoral Cycle
PNC	Police Nationale Congolaise
PNUD	United Nations Development Program
PSO	Peace Support Operations
REC	Regional Economic Commission
RCD	Rassemblement congolais pour la démocratie
ROLI	Rule of Law Initiative
RPA	Rwanda Patriotic Army
SADC	The Southern African Development Community
SHG	Self-help groups
SNI	Service Nationale d'Information
SNIP	Service Nationale d'Intelligence et Protection
SSR	Security Sector Reform
UN	United Nations
UNDR	Universal Declaration of Human Rights
UNFPA	United Nations Population Fund
UNHCR	United Nations Human Rights Committee
UNITA	União Nacional para a Independência Total de Angola
UNSC	United Nations Security Council
USAID	United States Agency for International Development
WSS	Water Supply and Sanitation

Appendix 2: Constitutional References

PREAMBLE

We, the Congolese People,

United by destiny and history around the noble ideas of liberty, fraternity, solidarity, justice, peace and work;

Driven by our common will to build in the heart of Africa a State under the rule of law and a powerful and prosperous Nation based on a real political, economic, social and cultural democracy;

Considering that injustice and its corollaries, impunity, nepotism, regionalism, tribalism, clan rule and patronage are, due to their manifold vices, at the origin of the general decline of values and the ruin of the country;

Affirming our determination to safeguard and consolidate national independence and unity by respecting our positive diversities and particularities;

Reaffirming our adherence and attachment to the *Universal Declaration of Human Rights*, the *African Charter on Human and Peoples' Rights*, the United Nations Conventions on the Rights of the Child and the Rights of Women, particularly to the goal of equal representation of men and women in the institutions of the country, as well as to the international instruments relating to the protection and promotion of human rights;

Driven by the will to see all African States united and working together with a view to promoting and consolidating African unity through the continental, regional and sub-regional organizations in order to offer better perspectives for development and socio-economic progress to the peoples of Africa;

Committed to the promotion of mutually beneficial international cooperation and the rapprochement of the peoples of the world, while at the same time respecting their respective identities and the principles of sovereignty and territorial integrity of each State;

Reaffirming our inalienable and immutable right to organize ourselves freely and to develop our political, economic, social and cultural life in accordance with our own genius;

Conscious of our responsibilities before God, the Nation, Africa and the World;

Declare to solemnly adopt this Constitution.

Title 1: General Provisions

Chapter 1: The State and Sovereignty

Section 1: The State

Article 2

The Democratic Republic of the Congo consists of the city of Kinshasa and 25 provinces which possess legal personality.

These provinces are: Bas-Uele, Equateur, Haut-Lomami, Haut-Katanga, Haut-Uele, Ituri, Kasai, Kasai Oriental, Kongo central, Kwango, Kwilu, Lomami, Lualaba, Lulua, Mai-Ndombe, Maniema, Mongala, Nord-Kivu, Nord-Ubangi, Sankuru, Sud Kivu, Sud Ubangi, Tanganyika, Tshopo, Tshuapa.

Kinshasa is the capital of the country and the seat of the national institutions. It has the status of a Province. The capital may not be transferred to another place in the country except by referendum.

The distribution of powers between the State and the provinces takes place in accordance with the provisions of Title IV of this Constitution.

The boundaries of the provinces and those of Kinshasa are determined by organic law.

Article 3

The provinces and the decentralized territorial entities of the Democratic Republic of the

Congo possess legal personality and are managed by local authorities.
These decentralized territorial entities are the city, the commune, the sector and the chiefdom (*la chefferie*).

They enjoy administrative freedom and managerial autonomy with regard to their economic, human, financial and technical resources.

The composition, organization and functioning of these decentralized territorial entities as well as their relations with the State and the provinces are determined by organic law.

Title II: Human Rights, Fundamental Liberties and the Duties of the Citizen and the State

Section 2 Sovereignty

Chapter 1: Civil and Political Rights

Article 14

The public authorities see to the elimination of all forms of discrimination against women and ensure the protection and promotion of their rights.

They take in all areas, and most notably in the civil, political, economic, social and cultural areas, all appropriate measures in order to ensure the full realization of the potential of women and their full participation in the development of the nation.

They take measures in order to fight all forms of violence against women in their public and private life.

Women are entitled to equitable representation in national, provincial and local institutions.

The State guarantees the achievement of parity between men and women in said institutions.

The law determines the conditions for the application of these rights.

Chapter 3

Collective Rights

Article 50

The State protects the rights and legitimate interests of Congolese nationals inside as well as outside the country.

Subject to reciprocity, foreign nationals who are legally present in the national territory enjoy the same rights and liberties as the Congolese, with the exception of the political rights.

They enjoy the protection granted to persons and their goods under the conditions prescribed by the treaties and the laws.

They are obliged to follow the laws and regulations of the Republic.

Article 51

The State has the duty to ensure and promote the peaceful and harmonious coexistence of all ethnic groups of the country.

It also ensures the protection and promotion of vulnerable groups and of all minorities.

It ensures their development.

Article 52

All Congolese have the right to peace and security on the national as well as on the international level.

No individual or group of individuals may use part of the national territory as a basis for subversive or terrorist activities against the Congolese State or any other State.

Article 53

All persons have the right to a healthy environment that is favorable to their development.

They have the duty to defend it.

The State ensures the protection of the environment and the health of the population.

Article 54

The conditions for the construction of industrial plants, the storage, the manipulation, the burning and the removal of toxic, polluting or radioactive waste produced by industrial units or workshops established in the national territory are regulated by law.

Any pollution or destruction resulting from an economic activity gives rise to compensation and/or reparation.

The law defines the nature of the compensatory and reparatory measures as well as the conditions for their implementation.

Article 55

The transfer, importation, storage, spilling and disposal of toxic, polluting or radioactive waste or of any other dangerous product in the internal waters or maritime spaces under national jurisdiction, or their release into the airspace, whether they hail from abroad or not, constitute a crime punishable by law.

Article 56

Any action, agreement, convention, arrangement or other act which has the consequence of depriving the nation, individuals or corporations of all or part of their means of subsistence drawn from their natural resources or wealth, is qualified, without prejudice to the international provisions on economic crimes, as the crime of looting punishable by law.

Article 57

The acts referred to in the preceding article as well as the attempt thereof, whatever their conditions, are punishable as offenses of high treason if they are committed by a person invested with public authority.

Article 58

All the Congolese have the right to enjoy national wealth.

The State has the duty to redistribute the wealth equitably and to safeguard the right to development.

Article 59

All Congolese have the right to enjoy the common heritage of mankind. The State has the duty to facilitate enjoyment thereof.

Article 60

The respect of human rights and fundamental liberties guaranteed by the Constitution is incumbent on the public authorities and all persons.

Article 61

In no case, not even when the state of siege or the state of emergency has been proclaimed in accordance with Articles 87 and 88 of this Constitution, is a derogation admissible from the following rights and fundamental principles:

- The right to life;
- The prohibition of torture and of cruel, inhumane or degrading punishment or treatment;
- The prohibition of slavery and servitude;
- The principle of legality of offenses and penalties;
- The right to defense and the right to a remedy;
- The prohibition of imprisonment for debt;
- The freedom of thought, of conscience and religion.

Title III: The Organization and the Exercise of Power

Chapter 1: The Institutions of the Republic

Section 4: Judicial Power

Subsection 1: General Provisions

Article 149

The judicial power is independent from the Legislative Power and the Executive Power.

It is entrusted to the following courts and tribunals: the Constitutional Court (*Cour Constitutionnelle*), the Court of Cassation (*Cour de Cassation*), the Council of State (*Conseil d'Etat*), the Military High Court (*Haute Cour Militaire*), the civil and military courts and tribunals as well as the prosecutor offices attached to these jurisdictions.

Justice is administered on the whole of the national territory in the name of the people.

The sentences and judgments as well as the ordinances of the courts and tribunals are executed in the name of the President of the Republic.

No extraordinary or special tribunals may be created, no matter what the name is.

The law may establish specialized jurisdictions.

The judiciary has a budget drafted by the High Council of the Judiciary and transmitted to the Government in order to be included in the general budget of the State. The First President of the Court of Cassation is its manager. He is assisted by the permanent Secretariat of the High Council of the Judiciary (*Conseil Supérieur de la Magistrature*).

Subsection 5: The Constitutional Court

Article 157

A Constitutional Court (*Cour Constitutionnelle*) is established.

Title III: The Organization and the Exercise of Power

Section 7 The National Police and the Armed Forces

Chapter 1: The Institutions of the Republic

Subsection 1: The National Police

Article 182

The National Police is charged with public security, the security of persons and goods, the maintenance and restoration of public order as well as the special protection of the high authorities.

Subsection 2: The Armed Forces

Article 187

The Armed Forces consist of the land forces, air forces, naval forces and their assistance services.

They have the mission to defend the integrity of the national territory and the borders. Under the conditions prescribed by law, they take part, in times of peace, in the economic, social and cultural development as well as the protection of persons and their goods.

Article 189

The numbers of personnel at all levels [and] the commanding functions at all times in all circumstances must take into account objective criteria linked to physical aptitude, sufficient training and tested integrity as well as an equitable representation of the provinces.

Title IV: The Provinces

Section 8 Public Administrations

Chapter 1: The Provincial Institutions

Article 197

The Provincial Assembly is the deliberative body of the province. It deliberates in the areas of competences reserved to the province and controls the Provincial Government as well as the provincial and local public services.

Its members are called Provincial Deputies.

They are elected by universal, direct and secret suffrage or co-opted for a renewable term of five years.

The number of the co-opted Provincial Deputies may not exceed a tenth of the members of the Provincial Assembly.

Without prejudice to the other provisions of this Constitution, the provisions of Articles 100, 101, 102, 103, 108 and 109 are applicable *mutatis mutandis* to the Provincial Assemblies.

Chapter 2: The Distribution of Competences Between the Central Authority and the Provinces

Article 201

The distribution of competences between the Central Authority and the Provinces is determined by this Constitution.

The matters are either of the exclusive competence of the Central Authority or of the concurring competence of the Central Authority and the Provinces or of the exclusive competence of the Provinces.

Article 202

Without prejudice to the other provisions of the Constitution, the following matters are subject to the exclusive competence of the Central Authority:

1. foreign affairs including diplomatic relations as well as international treaties and agreements;
 2. the regulation of foreign trade;
 3. nationality, status and the supervision of foreigners;
 4. extradition, immigration, emigration and the issuance of passports and visa;
 5. external security;
 6. national defense;
 7. the national police;
 8. the national civil service;
 9. the public finances of the Republic;
 10. the establishment of income taxes, company taxes and personal taxes in conformity with Article 174;
 11. the public debt of the Republic;
 12. foreign loans for the needs of the Republic or the Provinces;
 13. domestic loans for the needs of the Republic;
 14. the currency, the issuance of currency and the debt extinguishing character of the currency;
 15. weights, measures and computer science;
 16. customs duties and importation and exportation licenses;
 17. the regulation concerning bank and bank and stock exchange transactions;
 18. exchange regulation;
 19. literary, artistic and industrial property and patents;
 20. mail and telecommunications, including telephones and telegraphs, broadcasting, television and satellites;
 21. maritime and internal navigation, air routes, railways, roads and other ways of communication, natural and artificial, which connect two or more provinces or the territory of the Republic to a foreign territory or which a national law has declared to be of national interest although they are entirely situated on the territory of a province;
 22. universities and other establishments of higher scientific, technical or professional education created or subsidized by the Central Government or the Provincial Governments and which a national law has declared to be of national interest;
 23. the establishment of rules on education applicable to all territories of the Republic;
 24. the acquisition of goods for the needs of the Republic, without prejudice to Article 34;
 25. the elaboration of agricultural, forestry and energy programs of national interest and the coordination of provincial programs;
- the offices of agricultural products and the assimilated bodies as well as the distribution of the management staff in accordance with the statute of the career civil servants of the public services of the State;
- the energy, agricultural and forestry regimes with regard to hunting and fishing, the conservation of nature (flora and fauna), catching of animals, livestock breeding, food from animals and veterinary medicine;

26. the protection against dangers caused by energy or by radiation and the elimination of radioactive substances;
27. the prevention of abuses by the economic powers;
28. the historical heritage, the public monuments and the parks of national interest;
29. the meteorology services and the technical coordination of the services of land surveying, cartography and hydrography;
30. the appointment and assignment of the provincial inspectors of primary, secondary, professional and special education;
31. statistics and census measures of national interest;
32. national planning;
33. scientific and technological research;
34. the national target plans concerning the development of basic infrastructure, in particular of ports, airports and railway stations;
35. support of war veterans and people with disabilities resulting from war;
36. legislation concerning in particular:
 - a) the code of commerce, including insurance business, the formation and admission of companies;
 - b) the penal code and the prison regime;
 - c) the code on the organization and competences of the judiciary and the judicial code;
 - d) legislation on the professions;
 - e) labor legislation including namely the laws governing the relations between employers and workers, the safety of workers, the rules relating to social security and, in particular, the rules relating to social insurance and involuntary unemployment;
 - f) economic legislation including the laws on mines, minerals and mineral oil, industry, energy sources and the conservation of natural resources;
 - g) legislation on the arts and trades;
 - h) medical legislation and the art of healing, preventive medicine, in particular private and public hygiene, protection of mother and child, legislation on the profession of pharmacist and trade in pharmaceutical products, on immigration and transit, international and bilateral sanitary regimes, legislation on hygiene in the workplace, the technical coordination of medical laboratories and the distribution of doctors;
 - i) the electoral law;
 - j) legislation on the production, rectification, importation, exportation and the selling of alcohol obtained by distillation;
 - k) legislation on the production, importation and exportation, and the selling of drinks with and without alcohol;
 - l) legislation on the production, importation and exportation and the transit of war equipment;
 - m) legislation on artificial insemination of human beings, the manipulation of genetic information and the transplantation of human organs and tissues;
 - n) legislation on refugees, expellees and displaced persons;
 - o) legislation on the admission to the medical professions and the other professions and activities.

Article 203

Without prejudice to the other provisions of this Constitution, the following matters are subject to the concurring competence of the Central Authority and the Provinces:

1. the implementation of mechanisms for the promotion and protection of the human rights and fundamental liberties guaranteed in this Constitution;
2. civil and customary rights;
3. statistics and census;
4. domestic security;

5. the administration of courts and tribunals, custody and correction centers and prisons;
1. culture and sports life;
- 2.7. the establishment of taxes, including consumption duties (*droits d'accise et de consommation*), with the exception of the taxes referred to in Article 174;
8. the execution of measures relating to the supervision of foreigners;
9. scientific and technological research as well as scholarships for studying, perfecting education or encouraging research;
10. medical and philanthropic institutions, the employment of members of the medical and agricultural personnel with leadership functions;
11. the implementation of meteorology, geology, cartography and hydrology programs;
12. natural disasters;
13. press, radio, television, cinema industry;
14. civil protection;
15. tourism;
16. land and mining rights, environmental planning, regimes for waters and forests;
17. prevention of epidemics affecting human beings and animals of humans which threaten the community;
18. protection of the environment, of natural sites, landscapes and the conservation of sites;
19. the regulation concerning the energy, agriculture and forest sectors, livestock breeding, food from animals or plants;
20. the creation of establishments of primary, secondary, higher and university education;
21. road traffic, car circulation, the construction and maintenance of roads of national interest, the collection and distribution of tolls for the use of roads built by the Central Authority and/or the Province;
22. medical and philanthropic institutions;
23. the initiative of international economic, cultural, scientific and social cooperation projects, programs and agreements;
24. the production, transport, use and exploitation of energy;
25. the protection of vulnerable groups.

Article 204

Without prejudice to the other provisions of this Constitution, the following matters are subject to the exclusive competence of the Provinces:

1. environmental planning with regard to the Province;
2. interprovincial cooperation;
3. the provincial and local civil service;
4. the application of the rules on civil status;
5. the public finances of the Province;
6. the public debt of the Province;
7. domestic loans for the needs of the Provinces;
8. the issuance and keeping of titles to immovable property in observance of the national legislation;
9. the organization of the small border trade;
10. the organization and operation of provincial public services, establishments and public companies in observance of the national legislation;
11. public works and contracts of provincial and local interest;
12. the acquisition of goods for the needs of the Province;
13. maternal, primary, secondary, professional and special education as well as programs to fight the illiteracy of citizens in conformity with the rules established by the Central Authority;

14. the establishment of fines and prison penalties in order to ensure the respect for locally enacted rules in conformity with national legislation;
15. internal communications in the Provinces;
16. provincial and local taxes and duties, in particular property tax, local income and motor vehicle tax;
17. the establishment of provincial minimum wages in accordance with national legislation;
18. the assignment of the medical personnel in accordance with the statute on the career civil servants of the State public services, the elaboration of programs for sanitation and the fight against epidemic and endemic diseases in conformity with the national plan: the organization of the services for provincial hygiene and prophylaxis, the application and control of the national medical and pharmaceutical legislation as well as the organization of the services of curative medicine, philanthropic and missionary services, medical laboratories and pharmaceutical services, the organization and promotion of primary health care measures;
19. the elaboration of mining, mineralogy, industry and energy programs of provincial interest and their execution in accordance with the general national planning rules;
20. the elaboration of agricultural and forestry programs and their execution in accordance with national planning rules, the assignment of agricultural personnel and management staff in conformity with the statute on the career civil servants of the State public services, the application of the national legislation on agriculture, forests, hunting and fishing as well as the environment, the conservation of nature and the catching of wild animals, the organization and the control of agricultural campaigns, the fixing of prices for agricultural products;
21. the assignment in the Province of veterinary personnel in accordance with the statute on the career civil servants of State public services; the elaboration of programs of campaigns for animal health and the application of measures of veterinary policing measures in particular with regard to border posts and quarantine centers;
22. the organization of vaccination campaigns against animal diseases, the organization of laboratories, clinics and [animal health care] providers as well as the application of national legislation on veterinary, the organization of basic health promotion;
23. tourism, the historical heritage, the public monuments and parks of provincial and local interest;
24. urban and rural housing, road administration and the provincial and local collective equipment;
25. the inspection of provincial cultural and sports activities;
26. the exploitation of non-nuclear energy sources and the production of water for the needs of the Province;
27. the execution of measures concerning the rights of foreigners to residence and establishment, in accordance with the law;
28. the execution of customary law;
29. provincial planning.

Article 205

A Provincial Assembly may not legislate on matters which fall within the exclusive competence of the Central Authority. Conversely, the National Assembly or the Senate may not legislate on matters which fall within the exclusive competence of a Province. However, the National Assembly or the Senate may by statute authorize a Provincial Assembly to legislate on matters falling within the exclusive competence of the Central Authority. When the National Assembly or the Senate terminates the delegation of powers thus granted to the Provincial Assembly, the provisions of the provincial laws promulgated on matters falling within the exclusive competence of the Central Authority by virtue of the delegation remain nevertheless in force in the Province concerned until a national law has regulated these matters.

Similarly, a Provincial Assembly may by statute authorize the National Assembly or the Senate to legislate on matters which fall within the exclusive competence of the Province. When the Provincial Assembly terminates the delegation of powers thus granted to the National Assembly or the Senate, the provisions of the national laws promulgated on matters falling within the exclusive competence of the Province by virtue of the delegation remain nevertheless in force in the Province concerned until a provincial law has regulated them. On the matters falling within the concurring competence of the Central Authority and the Provinces, any provincial law which is incompatible with the national laws or decrees of implementation is automatically void or abolished, to the extent that an incompatibility exists. National legislation takes precedence over provincial legislation.

Article 206

Subject to contrary provisions of the national legislation, the Provincial Governments execute through their services the national statutes and decrees.

Chapter 3: Customary Authority

Article 207

The customary authority is recognized.

It is transferred in conformity with local custom, provided that the latter is not contrary to the Constitution, the law, public order and morality.

Each customary Chief who desires to exercise an elective public function must submit himself to an election, unless the provisions of Article 198, paragraph 3 of this Constitution are applicable.

The customary authority has the duty to promote national unity and cohesion.

A law establishes the status of the customary Chiefs.

Title VIII The Revision of the Constitution

Article 220

The republican form of the State, the principle of universal suffrage, the representative form of government, the number and length of the terms of office of the President of the Republic, the independence of the Judicial Power, the pluralism of political parties and trade unions may not form the object of a Constitutional amendment.

Any constitutional amendment having as its objective or consequence the reduction of individuals rights and liberties or the reductions of the prerogatives of the provinces and decentralized territorial entities is formally prohibited.

Appendix 3: Children’s Rights Legal Framework

Laws of Armed Conflict

- The Four Geneva Conventions (1949)
- Additional Protocols to the Geneva Conventions (1977)
- Rome Statute of the International Criminal Court (1998)
- Customary international humanitarian law

These establish a general legal framework regarding the “Laws of Armed Conflict;” in addition to making general references to the treatment of civilians during armed conflicts, which include children, there are also specific references which prohibit the recruitment of children under the age of 15.³⁷³

International Human Rights Law

- Convention on the Rights of the Child (CRC) (1989) and its Additional Protocols (200)
- UN Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Regional Human Rights Instruments

These international conventions and declarations have strengthened the laws surrounding the recruitment of children by raising the minimum age of recruitment to 18.³⁷⁴ Many of these documents are also more comprehensive and address a wide variety of children’s rights and include aspects of social, economic and cultural development as well as specific rights pertaining to children. The Additional Protocols of the CRC also address the worse forms of child exploitation, namely the use of children in armed conflicts and sexual exploitation of children.³⁷⁵

International Jurisprudence

- Case-law of the International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone
- The Rome Statute and case-law of the International Criminal Court
- Case-law of the International Court of Justice

These bodies comprise of various international legal institutions which have and continue to prosecute perpetrators of violations of international law; these courts symbolize international attempts to end impunity against actors that have historically been granted immunity for many acts during armed conflict. Many current cases within these courts and tribunals also specifically address the issue of the recruitment and exploitation of children under the age of 15.³⁷⁶

³⁷³ Office of the Special Representative of the Secretary General for Children and Armed Conflict “Working Report 1: Six Grave Violations Against Children During Armed Conflict: The Legal Foundation,” United Nations, October 2009, 4, 7. http://www.un.org/children/conflict/_documents/SixGraveViolationspaper.pdf.

³⁷⁴ *Ibid.*, 7.

³⁷⁵ UNICEF, “Convention on the Rights of the Child: Optional Protocols to the CRC,” http://www.unicef.org/crc/index_protocols.html.

³⁷⁶ *Ibid.*, 7.

Appendix 4: African RECs

The Southern African Development Community (SADC):

This organization's aims incorporates development and cooperative plans (Regional Indicative Strategic Development Plan, Strategic Indicative Plan of the Organ). The aim of the organization has been coordination of national activities as well as policies.³⁷⁷ SADC, however, is a weak institution and sovereignty as well as inability to adhere to commitments by member states. As mentioned previously, in 2008, the organization joined with COMESA and EAC to create the African Free Trade Zone in order to allow greater access to markets within the area.³⁷⁸

Common Market for Eastern and Southern Africa (COMESA):

In 2008, the organization sought to expand free-trade zones to members of East African Community (EAC) as well as the Southern African Development Community (SADC).³⁷⁹

Central African Economic and Monetary Community/ Economic Community of Central African States (CEMAC/ECCAS)

Congo is also a member of the Central African Economic and Monetary Community (CEMAC), with six members, also belonging to ECCAS (Economic Community of Central African States).³⁸⁰ The goal of ECCAS is to ultimately create a Central African Common Market. In 2003, the European Union drew a financial agreement with the institution with the condition being that CEMAC and ECCAS merge into one institution.³⁸¹

Economic Community of Great Lakes Countries (CEPGL)

The Economic Community of Great Lake Countries (CEPGL) is composed of four members: Burundi, DRC, Belgium as well as Rwanda.³⁸² All three members are also a part of ECCAS. The purpose of this organization is to encourage regional economic cooperation as well as integration. Although the institution was established in 1976, it was revived in 2007 with both Belgium and the European Union's efforts. The EU provided a US\$67.96 grant to support the revival of the organization.

³⁷⁷ "SADC Africa's Most Successful Regional Community," *New African* 500, no. 1 (2010): 51, www.scholarsportal.info/ (accessed March 24, 2011).

³⁷⁸ Ibid.

³⁷⁹ Tsangyao Chang, Tang De-piao, Wen-chi Liu and Chia-hao Lee, "Purchasing power parity for 15 Comesa and SADC countries: evidence based on panel SURADF tests," *Applied Economics Letters* 17, no. 17 (2010): 1723, www.scholarsportal.info/ (accessed March 24, 2011).

³⁸⁰ Jacob Wanjala Muslia, "The Intensity of Trade Creation and Trade Diversification in COMESA, ECCAS and ECOWAS: A Comparative Analysis," *Journal of African Economies* 14, no. 1 (2005): 117.

³⁸¹ Ibid.

³⁸² "CEPGL: Relaunch," *African Research Buletin: Economic, Financial and Technical Series* 44, no. 3 (2007): 3, www.scholarsportal.info/ (accessed March 25, 2011).

Bibliography

- Acemoglu, Daron, James A. Robinson and Thierry Verdier. "Kleptocracy and Divide-And-Rule: A Model of Personal Rule." *Journal of the European Economic Association* 2, no. 2 (2004): 548-54.
- Alan P. Merriam. *Congo: Background to Conflict*. Evanston: The Northwestern University Press, 1961.
- An Audit of Police Oversight in Africa: the DRC*. Cape Town: African Policing Civilian Oversight Forum, 2008.
- Andrieu, Kora. "Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm." *Security Dialogue* 41, no. 5 (2010): 537-58.
- Anten, Louise. *Strengthening Governance in a Post-Conflict District of the Democratic Republic of Congo: A Study of Ituri*. The Hague: Clingendael Institute, 2010.
- Autesserre, Séverine. "The Trouble with the Congo: How Local Disputes Fuel Regional Conflict." *Foreign Affairs* 87, no. 3 (2008): 94-110.
- Autesserre, Séverine. "Hobbes and the Congo: Frames, Local Violence, and International Intervention." *International Organisation* 63 (2009): 249-80.
- Autesserre, Séverine. *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding*. Cambridge: Cambridge University Press, 2010.
- Baker, Bruce. "Protection from Crime: What is on offer for Africans." *Journal of Contemporary African Studies* 22, no. 2 (2004): 165-88.
- Bakweegha, Christopher J. "Ethnic Conflict and the Colonial Legacy." In *Facing Ethnic Conflicts*, edited by Andreas Wimmer et al. (Toronto: Rowman & Littlefield, 2004).
- Ball, Nicole, and Dylan Hendrickson. "Trends in Security Sector Reform (SSR): Policy, Practice and Research." Prepared for Workshop on "New Directions in Security Sector Reform" Peace, Conflict and Development Program Initiative for the International Development Research Centre (IDRC) Ottawa, Canada, 3-4 November 2005.
- Bartlett, David M. C. "Civil Society and Democracy: A Zambian Case Study." *Journal of Southern African Studies* 26, no. 3 (2000): 429-446.
- Birchard, Ralph E. "Copper in the Katanga Region of the Belgian Congo." *Economic Geography* 16, no. 4 (1940): 429-436.
- BIT 2010- Congo, Democratic Republic Country Report*. Gütersloh: Bertelsmann Stiftung, 2009.
- Bøås, Morten. "Returning to Realities: A Building-block Approach to State and Statecraft in Eastern Congo and Somalia." *Conflict, Security & Development* 10 (2010): 443-464.
- Booth, David. "Aid, Institutions and Governance: What Have We Learned?" *Development Policy Review*, no. 29 (2011): S5-S26.
- Boshoff, Henri. Summary Overview of Security Sector Reform Processes in the Democratic Republic of Congo. *ISS Situation Report*, 2005.
- Brancati, Dawn. *Peace By Design: Managing Intrastate Conflict through Decentralization*. Oxford: Oxford University Press, 2008.
- Bratton, Michael and Eric C.C. Chang. "State Building and Democratization in Sub-Saharan Africa: Forwards, Backwards or Together?" *Comparative Political Studies* 39, no. 9 (2006): 1059-1083.

- Breaking the Cycle of Impunity*. Federation internationale des ligues des droits de l'homme, 2011.
- Breton-Le Goff, Gaëlle. "Ending Sexual Violence in the Democratic Republic of the Congo." *The Global Forum of World Affairs* 34, no. 1 (2010): 13-40.
- Bujra, Abdalla. "African Civil Society, Democracy and Development." In *Breaking Barriers, Creating New Hopes: Democracy, Civil Society and Good Governance in Africa*, edited by Abdalla Bujra and Said Adejumobi (Addis Ababa: Development Policy Management Forum, 2003), 23-49.
- Cadre Permanent de Concertation de la Femme Congolaise "CAFECO". *Security Council Resolution 1325: Civil Society Monitoring Report*. Global Network of Women Peacemakers, 2010.
- Catherine Gegout. "The West, Realism and Intervention in the Democratic Republic of Congo (1996-2006)." *International Peacekeeping* 16, no. 2 (2009).
- Chabal, Patrick. "The Quest for Good Government and Development in Africa: Is NEPAD the Answer?" *International Affairs* 78, no. 3 (2002): 447-462.
- Clinton, Lindsay. "Indian Microfinance: Confusing Scale with Impact." *GOOD*, November 26, 2010. <http://www.good.is/post/indian-microfinance-confusing-scale-with-impact/>.
- Committee on the Elimination of Discrimination against Women, Thirty-Sixth Session. "United Nations: Convention on the Elimination of All Forms of Discrimination against Women." August 25, 2006. <http://www.un.org/womenwatch/daw/cedaw/cedaw36/cc/DRC/0647846E.pdf> (accessed March 10, 2011.)
- Congo: A Stalled Democratic Agenda*. Policy Briefing 73. International Crisis Group, 2010.
- "Congo, Democratic Republic Of." *World Food Programme*, 2010. <http://www.wfp.org/countries/Congo--Democratic-Republic-Of/Overview>.
- Congo*. World Health Organization. <http://www.who.int/hac/crises/cod/2pager.pdf>
- Constitution de la République Démocratique du Congo. Kinshasa, February 2006.
- Corruption Perceptions Index 2010*. Berlin: Transparency International, 2010.
- "Country Report: Democratic Republic of Congo." *Economist Intelligence Unit* (March 2011): 1-22.
- Crabb, John H. *The Legal Systems of Africa Series: Congo-Kinshasa*. Virginia: The Michie Company, 1970.
- Dahrendorf, Nicola. "MONUC and the Relevance of Coherent Mandates: The Case of the DRC." In *Security Sector Reform and UN Integrated Missions*, edited by Heiner Hanggi and Vinceza Scherrer, 67-112. Zurich: Deutsche Nationalbibliothek, 2008.
- Daley, Patricia. "Challenges to Peace: Conflict Resolution in the Great Lakes Region of Africa." *Third World Quarterly* 27 (2006): 303-319.
- Davis, Laura. "Justice-Sensitive Security System Reform in the Democratic Republic of Congo." In *IFP Security Cluster Country Case Study: DRC*, February 2009.
- DDR in the Democratic Republic of Congo*. World Bank: Multi-Country Demobilization and Reintegration Program, 2009.
- De Heredia, Marta Iñiguez. "The Space for Congolese Self-Determination Between Absences and Presences of the African Union and the United Nations." *African Journal of Political Science and International Relations* 3, no. 1 (2009): 1-14.
- "Democratic Republic of Congo: Disarmament, Demobilization and Reintegration (DDR) and the Reform of the Army. Amnesty International, 2007.

- Democratic Republic of Congo: The Authoritarian Drift of the Regime*. Paris: International Federation for Human Rights, 2009.
- Democratic Republic of the Congo: Water and Sanitation Profile*. US Agency for International Development.
- Diamond, Larry, Juan J. Linz and Seymour Lipset, eds. *Democracy in Developing Countries: Volume 2 Africa*. Boulder: Lynne Rienner Publishers, 1988.
- Dijkzeul, Dennis. "Developing Security in the Eastern DRC: MONUC as a Practical Example of (Failing) Collective Security." In *United Nations Reform and the New Collective Security*, edited by Peter Danchin and Horst Fischer. Cambridge: Cambridge University Press, 2010.
- Discussion Paper: A "mixed chamber" for Congo?* Human Rights Watch, 2009.
- "DRC: a country with immense electrical supply potential." *25 Degrees in Africa*. http://www.25degrees.net/index.php?option=com_zine&view=article&id=655:drc-a-country-with-immense-electrical-supply-potential&Itemid=81.
- "DRC: Ailing health system needs cure," *IRIN Humanitarian News and Analysis*, June 30, 2006.
- "DR Congo: Overview." *Refugees International*, March 24, 2011. <http://www.refugeesinternational.org/where-we-work/africa/dr-congo>.
- DRC Police News*. Institute of War and Peace Reporting, 2009.
- Dunning, Thad. "Resource Dependence, Economic Performance, and Political Stability." *Journal of Conflict Resolution* 49, no. 4 (2005): 451-82.
- Dunning, Thad. "Resource Dependence, Economic Performance, and Political Stability." *Journal of Conflict Resolution* 49, no. 4 (2005): 451-82.
- Earle, Anton and Daniel Malzbender. *Water – and the Peaceful, Sustainable Development of the SADC Region*. ACWR, 2007.
- "Economic Diversification in Africa: A Review: A Review of Selected Countries." *OECD and United Nations OSAA* (2011): 1-14.
- Edmonds, Martin. *African Security*. London: Routledge, 2009.
- Education in the Democratic Republic of the Congo: Priorities and Options for Reintegration*. Washington: The World Bank, 2005.
- "EITI Benefits." *Extractive Industries Transparency Initiative*, 2011. <http://eiti.org/eiti/benefits>.
- Elections in the Democratic Republic of Congo 2006*. UK Aid, Department of for International Development, 2010.
- Elettra, Pauletto and Preeti Patel. "Challenging Child Soldier DDR Processes and Policies in the Eastern Democratic Republic of Congo." *Journal of Peace, Conflict and Development* 16 (2010): 35-57.
- Englebert, Pierre. *Africa: Unity, Sovereignty and Sorrow*. Boulder, CO: Lynne Rienner Publishers, 2009.
- Enne, Erica, Giacomo Galanella and Eliana Marino. "Drivers of Change in the Democratic Republic of Congo: The Role of China in Re-Shaping the Country." *Transitional Studies Review* 17, no. 2 (2010): 297-310.
- Eriksen, Stein S. "The Liberal Peace Is Neither: Peacebuilding, State Building, and the Reproduction of Conflict in the Democratic Republic of Congo." *International Peacekeeping* 16, no. 5 (2009): 652-666.
- "EUPOL RD Congo." European Union External Action, March 27, 2010. <http://www.consilium.europa.eu/showPage.aspx?id=1303&lang=en>.

- “Failure To Protect: The Women of Eastern Congo Speak.” *Women for Women International*, March 19th, 2011. www.womenforwomen.org/.../DRC-Report-Policy-Recommendations.doc.
- “FAO Initiative on Soaring Food Prices: Democratic Republic of the Congo.” *Food and Agriculture Organization of the United Nations*, 2011. <http://www.fao.org/isfp/country-information/democratic-republic-of-the-congo/en/>.
- Faray-Kele, Marie, and Annie Matundu Mbambi. *Gender inequality and Social Institutions in the DR Congo*. Peace Women Organization, 2010. http://www.peacewomen.org/assets/file/Resources/NGO/hrinst_genderinequalityinthedrc_wilpf_december2010english.pdf.
- Fleck, Fiona. “The Democratic Republic of the Congo: quantifying the crisis.” *Bulletin of the World Health Organization* 87, no. 1 (2009): 6-7.
- Freedom in the World 2010 - Congo, Democratic Republic of (Kinshasa)*. Freedom House, May 3, 2010.
- Garrett, Nicholas and Harrison Mitchell. *Trading Conflict for Development: Utilizing the Trade in Minerals From Eastern DR Congo for Development*. Resource Consulting Services, 2009.
- Garrett, Nicholas and Marie Lintzer. “Can Katanga’s mining sector drive growth and development in the DRC?” *Journal of East African Studies* 4, no. 3 (2010): 400-24.
- Garrett, Nicholas. *The Extractive Industries Transparency Initiative (EITI) & Artisanal and Small-Scale Mining (ASM): Preliminary Observations from the Democratic Republic of the Congo (DRC)*. Extractive Industries Transparency Initiative, 2007.
- Gegout, Catherine. “The West, Realism and Intervention in the Democratic Republic of Congo (1996-2006).” *International Peace Keeping* 16, no. 2 (2009): 231-244.
- Ghani, Ashraf. *Fixing Failed States: A Framework for Rebuilding a Fractured World*. New York: Oxford University Press, 2008.
- Gleick, Peter H. “The Human Right to Water.” *Water Policy* 1 (1998): 487-503.
- Gregory, Jenifer and David G. Embrey. “Companion Recovery Model to Reduce the Effects of Profound Catastrophic Trauma for Former Child Soldiers in Ganta, Liberia.” *Traumatology* 15 (2008): 40-51.
- Gurr, Ted Robert. “The Etiology of Ethnopolitical Conflict.” In *People Versus States*, edited by Ted Robert Gurr, 65-95. Washington: The United States Institute of Peace, 2000.
- Hannum, Hurst. “Territorial Autonomy: Permanent Solution or Step Towards Secession.” In *Facing Ethnic Conflicts*, edited by Andreas Wimmer, Richard J. Goldstone, Donald L. Horowitz, Ulrike Joras, and Conrad Schetter. Toronto: Rowman & Littlefield, 2004.
- Hechter, Michael. “Containing Ethnonationalist Violence.” In *Facing Ethnic Conflicts*, edited by Andreas Wimmer, Richard J. Goldstone, Donald L. Horowitz, Ulrike Joras, and Conrad Schetter. Toronto: Rowman & Littlefield, 2004.
- Hochschild, Adam. *King Leopold’s Ghost: a story of greed, terror and heroism in Colonial Africa*. Boston: Houghton Mifflin, 1998.
- Hoebeker, Hans, Stephanie Carette, and Koen Vlassenroot. “European Union Support to the Democratic Republic of Congo.” *Centre d’Analyse Strategique, Republique Francais* (2007), 52-71.
- Horowitz, Donald L. “Some Realism about Constitutional Engineering.” In *Facing Ethnic Conflicts*, edited by Andreas Wimmer, Richard J. Goldstone, Donald L. Horowitz, Ulrike Joras, and Conrad Schetter. Toronto: Rowman & Littlefield, 2004.

- Human Rights Council, Tenth Session. "United Nations: Annual Report of the United Nations High Commissioner For Human Rights." April 2, 2009.
<http://www.ohchr.org/EN/countries/AfricaRegion/Pages/ZRIndex.aspx> (accessed March 10, 2011.)
- Hutchful, Eboe. "The Civil Society Debate in Africa." *International Journal* 51, no. 1 (1995/1996): 54-77.
- Ikelegbe, Augustine. "Civil Society, Oil and Conflict in the Niger Delta Region of Nigeria: Ramifications of Civil Society for a Regional Resource Struggle." *The Journal of Modern African Studies* 39, no. 3 (2001): 437-69.
- Isturiz, Fernando. "Military Forces' training for Post-Conflict Peace Operations." In *Security Sector Reform and Post-Conflict Peacebuilding*, edited by Albrecht Schnabel and Hans-Georg Ehrhart. New York: United Nations University Press, 2010.
- ITRI Artisanal and Small Scale Mining Policy*. ITRI, 2008.
- Jean-Claude Willame. *L'automne d'un despotisme: pouvoir, argent et obéissance dans le Zaïre des années quatre-vingt*. Paris: Karthala Éditions, 1992.
- Jonathan Di John. "The Concept, Causes and Consequences of Failed States." *European Journal of Development Research* 22, no. 1 (2010): 10-30.
- Kamitatu, Oliver. "Il faut plus de pouvoir pour le chef de l'Etat." By M. Meunier and P. Perdrix. *Jeune Afrique*, no. 2564 (2010).
- Kamwimbi, Theodore K. "Between Peace and Justice: Informal Mechanisms in the DR Congo." In *Restoring Justice after Large-scale Violent Conflict: Kosovo, DR Congo and the Israeli-Palestinian Case*, edited by Ivo Aertsen, Jana Arsovska, Holger-C. Rohne, Marta Valinas, and Kris Vanspauwen, 359-91. Portland: Willan Publishing, 2008.
- Kay Nimmo. *Comments Relating to Dodd Frank Section 1502 Conflict Mineral Legislation*. ITRI, 2010.
- Keith, Linda Camp. "The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?" *Journal of Peace Research* 36, no. 1 (1999): 95-118.
- Kerr, Rachel and Eirin Mobekk. *Peace and Justice: Seeking Accountability After War*. Cambridge: Polity Press, 2007.
- Kibasomba, Roger. "A Failing State: The Democratic Republic of Congo." In *Governing Insecurity: Democratic Control of Military and Security Establishments in Transitional Democracies*, edited by Gavin Cawthra and Robin Luckham, 254-275. London: Zed Books Ltd., 2003.
- Kieh, George Klay. *Beyond State Failure and Collapse: Making the State Relevant in Africa*. Lanham: Lexington Books, 2007.
- Kraxberger, Brennan M. "Failed States: Temporary Obstacles to Democratic Diffusion or Fundamental holes in the World Political Map?" *Third World Quarterly* 28, no. 6 (2007): 1055-71.
- Kuditshini, Jacques T. "Global Governance and Local Government in the Congo: the Role of the IMF, World Bank, the Multinationals and the Political Elites." *International Review of Administrative Sciences* 74, no. 2 (2008): 195-216.
- Lemarchand, Rene. "Exclusion, Marginalization, and Political Mobilization: The Road to Hell in the Great Lakes." In edited by Andreas Wimmer, Richard J. Goldstone, Donald L. Horowitz, Ulrike Joras, and Conrad Schetter. Toronto: Rowman & Littlefield, 2004.

- Lemarchand, René. *The Democratic Republic of Congo: From Collapse to Potential Reconstruction*. Copenhagen: Centre of African Studies, University of Copenhagen, 2001.
- Leslie J. Winsome. *Zaire: Continuity and Political Change in an Oppressive State*. Boulder: Westview Press, 1993.
- Lessons Learnt." *Social Development Papers* 37 (2006): 1-64.
- Lewis, Peter M. "Moving Beyond the Resource Curse? Lessons From Indonesia and Nigeria." Paper presented at the annual meeting of the American Political Science Association, Chicago, September 4, 2004: 1-29.
- Louis, William Roger. "Roger Casement and the Congo." *Journal of African History* 5, no. 1 (1964): 99-120.
- Makumbe, John Mw. "Is There a Civil Society in Africa?" *International Affairs* 74, no. 2 (1998): 305-17.
- Maley, William. "Democratic Governance and Post-Conflict Transitions." *Chicago Journal of International Law* 6, no. 2 (2006): 683-701.
- Maquet, Jacques J. "The Modern Evolution of African Populations in the Belgian Congo." *Africa: Journal of the International African Institute* 19 (1949): 265-272.
- Mawathe, Anne. "Haunted by Congo rape dilemma." *BBC News*, 15 May, 2010. <http://news.bbc.co.uk/2/hi/africa/8677637.stm>.
- McGarry, John and Brendan O'Leary. "Introduction: The Macro-Political Regulation of Ethnic Conflict." In *The Politics of Ethnic Conflict Regulation*, edited by John McGarry and Brendan O'Leary (New York: Routledge, 1993).
- Millet, Caroline, and Jocelyne Nkongolo. *DRC Case Study for the Informal Development Partners Working Group on Decentralisation and Local Governance*. Washington: The World Bank, 2010.
- Mitchell, Harrison, et al. *Certified Trading Chains: Pilot Project Rwanda: Report on Developing the Record Management System Standard*. Resource Consulting Services, 2010.
- Mobekk, Eirin. *MONUC: DDRRR, DDR, Military and Rule of Law Reform- Reducing Violence Against Women: Recommendations for Change*. Action Aid, 2006. http://www.actionaid.org/docs/actionaid_monuc_report_2006_lowres.pdf.
- Muvumba-Ndinga, Angela. "Who Said it was Simple? Implementing 1325." *Policy and Practice Brief: Knowledge for Durable Peace*, no. 2 (2010): 1-6. http://www.accord.org.za/downloads/brief/policy_practice2.pdf.
- Myerson, Roger B. "Rethinking the Fundamentals of State-building," *Prism//Center for Complex Operations: National Defense University* (2011): 91-100.
- Noel, Zid. *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*. Montreal: McGill University Press, 2005.
- Ntalaja, Georges. *The Congo from Leopold to Kabila: A People's History*. London: Zed Books, 2002.
- Nwokedi, Emeka. *Politics of Democratization: Changing Authoritarian Regimes in Sub-Saharan Africa*. Munster: Lit Verlag, 1995.
- Nzongola-Ntalaja, Georges. "From Zaire to the Democratic Republic of the Congo." *Current African Issues*, no. 28 (2004).
- Nzongola-Ntalaja, Georges. *The Congo From Leopold to Kabila: A People's History*. London: Zed Books, 2002.
- Nzongola-Ntalaja, Georges. *The Congo from Leopold to Kabila*. London: Zed Books, 2002.

- Office of the High Commissioner for Human Rights. "Human Rights Violations in DRC from 1993 to 2003." August, 2010.
http://www.ohchr.org/Documents/Countries/ZR/DRC_MAPPING_REPORT_FINAL_EN.pdf (accessed.)
- Office of the Special Representative of the Secretary General for Children and Armed Conflict. "DDR Programs for Children."
<http://www.un.org/children/conflict/english/ddrforchildren.html> (accessed.)
- Office of the Special Representative of the Secretary General for Children and Armed Conflict. "International Tribunals."
<http://www.un.org/children/conflict/english/internationaltribunals.html> (accessed.)
- Office of the Special Representative of the Secretary General for Children and Armed Conflict. "Working to End Impunity."
<http://www.un.org/children/conflict/english/workingtoendimpunity.html> (accessed.)
- Office of the Special Representative of the Secretary General for Children and Armed Conflict. "Working Report 1: Six Grave Violations Against Children During Armed Conflict: The Legal Foundation." October 14, 2009.
http://www.un.org/children/conflict/_documents/SixGraveViolationspaper.pdf (accessed.)
- Offor, Francis. "The Quest for Good Governance in Africa: What Form of Democracy is most Suitable?" *The Journal of Social, Political and Economic Studies* 31, no. 3 (2006): 265-77.
- Policy Brief: Comprehensive Canadian Policy in the DRC.* Africa Canada Accountability Coalition, 2010
- "Price Monitoring and Analysis Country Brief: Democratic Republic of the Congo," *Food and Security Information for Decision Making*, 2011.
<http://www.foodsec.org/web/publications/briefs/countries/africa/dem-rep-of-the-congo>.
- Prunier, Gérard. *From Genocide to Continental War: The 'Congolese' Conflict and Crisis of Contemporary Africa.* London: Hurst, 2009.
- Pupavac, Vanessa. "Children's Human Rights Advocacy." In *Human Rights: Politics and Practice*, edited by Michael Goodhart, 219-38. New York: Oxford University Press, 2009.
- Rakistits, Claude. "Child Soldiers in the East of the Democratic Republic of the Congo." *Refugee Survey Quarterly* 27, no. 4 (2009): 108-22.
- Rebuilding Courts and Trust: An assessment of the needs of the justice system in the Democratic Republic of the Congo.* International Bar Association, 2009.
- Refugees in Eastern DRC: A Discussion Document. International Alert, 2010.
- Reno, William. "Congo: From State Collapse to 'Absolutism,' to State Failure." *Third World Quarterly* 27, no. 1 (2006): 43-56.
- Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against women by the Democratic Republic of the Congo.* Committee on the Elimination of Discrimination Against Women, 2006.
- Responding to Sexual and Gender-Based Violence in the Democratic Republic of the*
- Reyntjens, Filip. "Democratic Republic of Congo: Political Transition and Beyond." *African Affairs* 106, no. 423 (2007): 307-17.
- Reyntjens, Filip. *The Great African War: Congo and Regional Geopolitics, 1996-2006.* Cambridge: Cambridge University Press, 2009.

- Robert I. Rotberg. "The Failure and Collapse of Nation-States: Breakdown, Prevention and Repair." In *When States Fail*, edited by Robert I. Rotberg. Princeton: Princeton University Press, 2004.
- Roger Kibasomba, "Post-War Defence Integration in the Democratic Republic of the Congo, ISS Paper 119" *Institute for Security Studies, South Africa* (2005).
- Ross, Michael L. "What Do We Know About Natural Resources and Civil War." *Journal of Peace Research* 41, no. 3 (2004): 337-56.
- Rotberg, Robert I. "The Failure and Collapse of Nation-States: Breakdown, Prevention and Repair." In *When States Fail*, edited by Robert I. Rotberg. Princeton: Princeton University Press, 2004.
- Rouw, Hans and Rens Willems. *Connecting Community Security ad DDR: Experiences from Eastern DRC*. Peace Security and Development Network, 2010.
- "Rule of Law Initiative: Democratic Republic of Congo." *American Bar Association*, March 20, 2011. http://apps.americanbar.org/rol/africa/democratic_republic_congo.html.
- Rugarabura, Namegabe, and Paul-Robain. *Traditional Chieftaincy and Decentralization in the Democratic Republic of Congo: Opportunities and Challenges*. Libera Università Internazionale Degli Studi Sociali, 2008.
- Samuels, Kristi. "Rule of Law Reform in Post Conflict Countries, Operational Initiatives and Santos, Arnila Hevena. "Civil Society and Peace Processes in Kivu." *Forced Migration Review* 36 (2010): 35-6.
- Santos, Arnila Hevena. "Understanding Kivutien Civil Society and its Roles in the Congolese Peace Process." MA diss., American University, 2010.
- Savage, Tyrone and Olivier Kambala wa Kambala. "Decayed, decimated, usurped and inadequate: the challenge of finding justice through informal mechanisms in the DR Congo." In *Restoring Justice after Large-scale Violent Conflict: Kosovo, DR Congo and the Israeli-Palestinian case*, edited by Ivo Aertsen, Jana Arsovska, Holger-C. Rohne, Marta Valinas, and Kris Vanspauwen, 336-58. Portland: Willan Publishing, 2008.
- Scaglione, Richard and Cyril Robinson. "Origin and Evolution of the Police Function." *Law and Society association* 21, no. 1 (1987): 109-54.
- Schnabel, Albrecht and Georg Ehrhart. "Post-Conflict Societies and the Military: Challenges and Problems to Security Sector Reform." In *Security Sector Reform and Post-Conflict Peacebuilding*, edited by Albrecht Schnabel and Georg Ehrhart. Tokyo: United Nations University Press, 2005.
- Schoepf, Brooke Grundfest. "Mobutu's Disease: A Social History of AIDS in Kinshasa." *Review of African Political Economy* 29 (1993/1994): 561-73.
- Secretary General of the United Nations. "Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo." New York: United Nations Security Council, 2008.
- Secretary General of the United Nations. "Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo." New York: United Nations Security Council, 2010.
- Security Sector Reform in the Congo*. International Crisis Group, 2006.
- Seizing This Moment of Hope: Towards a Secure Future in the Democratic Republic of the Congo*. Refugees International, 2006.
- Semonin, Paul. "Mobutu and the Congolese." *The World Today* 24, no. 1 (1968): 20-9.

- Shah, Anwar and Theresa Thompson. *Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures*. Washington: World Bank Policy Research, 2004.
- Shediac, Richard, Rabih Abouchakra, Chadi N. Moujaes, and Mazen Ramsay Najjar. *Economic Diversification: The Road to Sustainable Development*. Booz Allen Hamilton, 2008.
- Siddiqi, Moin. "Africa bruised, not battered." *African Business*, no. 360 (2010): 28-29.
- Spears, Ian S. "When Good Governments Go Bad: Leadership and the Limits of Intervention in Africa." *International Journal* 62, no. 2 (2007): 344-61.
- Spooner, Kevin. *Canada, the Congo Crisis and UN Peacekeeping, 1960-64*. Vancouver: University of British Columbia Press, 2009.
- Stein S. Eriksen. "The Liberal Is Neither: Peacebuilding, State Building and the Reproduction of Conflict in the Democratic Republic of Congo." *International Peacekeeping* 16, no. 5 (2009), 652-66.
- Susan Woodward. "'Do the Root Causes of Civil War Matter?' On Using Knowledge to Improve Peace Building Operations." *Journal of Intervention and Statebuilding* 1, no. 2 (2007): 143-70.
- The Hill Belongs To Them: The Need for International Action on Congo's Conflict Minerals Trade*. Global Witness, 2010.
- Trefon, Theodore, Sasia Van Hoyweghen and Stefaan Smis. "State Failure in the Congo: Perceptions and Realities." *Review of African Political Economy* 29, no. 93 (2002): 379-88.
- Trefon, Theodore. "Administrative Obstacles to Reform in the Democratic Republic of Congo." *International Review of Administrative Sciences* 76, no. 4 (2010): 702-22.
- Trevor Finday. *The Blue Helmets' First War? The Use of Force in UN Operations*. Clemensport, NS: Canadian Peacekeeping Press, 1999.
- Tull, Denis M. "Troubled State-Building in the DR Congo: The Challenge from the Margins." *Journal of Modern African Studies* 48, no. 4 (2010): 643-61.
- United Nations Children's Fund (UNICEF). "Convention on the Rights of the Child: Optional Protocols to the CRC." November, 2009. http://www.unicef.org/crc/index_protocols.html (accessed.)
- United Nations Children's Fund (UNICEF). "Supplies and Logistics: Girl's Education in the DRC: Kits for Kids." April 11, 2005. http://www.unicef.org/supply/index_25944.html (accessed.)
- United Nations Children's Fund (UNICEF). "UNICEF Humanitarian Action Update: Democratic Republic of the Congo." June 22, 2009. [http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/JBRN-7T9J75-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/JBRN-7T9J75-full_report.pdf/$File/full_report.pdf) (accessed.)
- United Nations Economic Commission for Africa. "Economic Report on Africa 2007: Accelerating Africa's Development Through Diversification." February, 2007. <http://www.uneca.org/era2007/ERA2007Full.pdf> (accessed.)
- United Nations High Commissioner for Refugees. "Number of Congolese Refugees in Republic of Congo Passes 100,000 Mark." January 12th, 2010. <http://www.unhcr.org/4b4ca3439.html> (accessed March 24th, 2011.)
- United Nations Organisation Mission in the Democratic Republic of the Congo. "MONUC: Why the DRC Matters." www.un.org/en/peacekeeping/missions/monuc/documents/drc.pdf (accessed.)

- United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo. "Police Mandate and Development."
<http://monusco.unmissions.org/Default.aspx?tabid=4151> (accessed March 11, 2011.)
- United Nations Security Council. "Resolution 1925." May 28, 2010.
[http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1925\(2010\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1925(2010)) (accessed March 3, 2011.)
- United Nations. "United Nations Information Centres." 2008. <http://unic.un.org/> (accessed March 18, 2011.)
- "UN official calls DR Congo 'rape capital of the world.'" *BBC News*, 28 April, 2010.
<http://news.bbc.co.uk/2/hi/africa/8650112.stm>.
- van Nieuwaal, Rouveroy and E.A.B. "Chieftaincy in Africa: Three Facets of a Hybrid Role." In *African Chieftaincy in a New Socio-Political Landscape*, edited by Rijk van Dijk, Rouveroy van Nieuwaal, and E.A.B. Leiden: African Studies Centre, 1999.
- Vautravers, Alexandre J. "Why Child Soldiers are Such a Complex Issue." *Refugee Survey Quarterly* 27, no. 4 (2009): 96-107.
- Vlassenroot, Koen and Timothy Raeymaekers. "Kivu's Intractable Security Conundrum." *African Affairs* 108 (July 2009): 475-484.
- Vlassenroot, Koen, and Chris Huggins. "Land Migration and Conflict in Eastern DRC." In *From the Ground Up. Land Rights, Conflict and Peace in Sub-Saharan Africa*, rev. ed., edited by Jenny Clover, Chris Huggins, Prisca Kamungi-Mulemi, Herman Musaraha, Benson M Ochieng, Johnstone S Oketch, Johan Pottier and Koen Vlassenroot, 115-94. Pretoria: Institute for Security Studies, 2005.
- Voorhoeve, Joris. *From War to the Rule of Law: Peace building After Violent Conflicts*. Den Haag: Amsterdam University Press, 2007.
- Waylen, Georgina. *Engendering Transitions: Women's Mobilization, Institutions and Gender Outcomes*. Oxford: Oxford University Press, 2007.
- Weinstein, Jeremy. "Africa's 'Scramble for Africa': Lessons of a Continental War." *World Policy Journal* 17, no. 2 (2000): 11-20.
- Weiss, Herbert F. and Georges Nzongola-Ntalaja. *Decentralization & the DRC – An Overview*. New York: Center on International Cooperation (New York University), 2009.
- Wolpe, Howard and Steve McDonald. "Democracy and Peace-Building: Re-Thinking the Conventional Wisdom." *The Round Table* 97, no. 394 (2008): 137-45.
- Young, Crawford M. "Post-Independence Politics in the Congo." *Transition* 26 (1966): 34-41.
- Young, Crawford, and Thomas Turner. *The Rise and Decline of the Zairean State*. Madison: University of Wisconsin Press, 1985.
- "Zaire: The Status of Women." *The Library of Congress*, March 10, 2011.
<http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field%28DOCID+zr0087%29>.
- Zongwe, Dunia, Francois Butedi and Clement Phebe. *The Legal System and Research of the Democratic Republic of the Congo (DRC): An Overview*. GlobalLex: 2010.