

Strategic Pressure

A Blueprint for Addressing New Threats
and Supporting Democratic Change in the DRC

By Sasha Lezhnev and John Prendergast
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Cover: Pro-democracy Lucha activist Luc Nkulula and others are placed under arrest after a peaceful protest in Goma, December 2016. Photo: Fred Bauma.

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Nearly nine months after signing a political deal aimed at ushering in a landmark democratic transition in the Democratic Republic of Congo, President Joseph Kabila's subversion of the accord places Congo at risk of much greater violence. It is also now creating the potential for regional instability and the possible disruption in the supply of minerals strategically important to U.S. national security and to U.S. and other global manufacturers.

Kabila's attempt to stay in power at all costs is moving Congo from a fragile democracy to a dictatorship. It has already sparked significant repression, caused armed conflict in the Kasai region where 1.4 million people have been displaced, and all major U.S. companies with direct investments have fled Congo. Unrest that is rising in several areas of the country could also spread to mineral-rich Katanga, where 50 to 60 percent of the world's cobalt reserves lie,¹ creating a threat to U.S. defense, auto, and electronics industries.

A much more robust strategy is needed to prevent a far costlier disaster with U.S. national security and regional instability implications, and to help Congo move toward a democratic transition. Over the past year, the international community as well as Congo's opposition and civil society have deployed some elements of a necessary strategy of pressure and negotiation to support a transition. However, those measures have not nearly been applied at the level needed to change the calculations of Kabila and his inner circle sufficiently to motivate them to move forward with credible elections. There is international pressure, but it is too individualized, ad hoc, and not focused enough on squeezing the regime at its most vulnerable point: the global financial system that Kabila and his associates heavily rely on to move money.

A mediation effort led by Congo's Catholic bishops succeeded in getting the Dec. 31, 2016, accord signed, but it failed afterward because of a lack of subsequent pressure on the Kabila regime for implementation,

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and because the process did not include civil society. A new, inclusive, African-led mediation initiative is needed once more pressure has been applied.

This power grab by President Kabila and his Congolese and international collaborators is driven by their desire to not cede the immunity and control over the estimated \$24 trillion in natural resource wealth² that state authority gives them. They want to continue profiting from the violent kleptocracy they inherited and have refined over the past 16 years, through a system in which the ruling networks and their commercial partners hijack the state for their own benefit and use violence to profit and maintain power.³ The situation has become increasingly dangerous, as Kabila has attempted to repress and divide the opposition and civil society, and the government and opposition are no longer in dialogue. Neighboring Angola and Uganda are very concerned about Kabila's lack of control of the situation, and the son-in-law of Angolan president José Eduardo dos Santos, Sindika Dokolo, has launched a campaign for Congolese people to stand up for democracy, supporting a Congolese civil society-opposition manifesto published in August calling for a "return of constitutional order."⁴ In a country awash in arms, escalating local conflicts, angry politicians, youth, and with neighboring countries growing increasingly concerned, the risks of wider violence are high unless an inclusive transition occurs.

Significantly increased financial and diplomatic pressures on the Kabila regime and its partners are needed.

An effective strategy to bring Congo back from the brink should focus on achieving a democratic transition to begin to break the cycle of the corrupt, violent state while also pushing for key structural reforms and immediate conflict mitigation steps in the Kasai region and the east. It is not yet in the regime's interest to pursue a transition given the immense profits reaped by the Kabila family and their commercial partners despite the economic crisis,⁵ Kabila's control over the security services, and the opposition's current weakness. Significantly increased financial and diplomatic pressures on the regime and its partners are needed first, or else talks will be fruitless. The international community, regional states, and the private sector should work on four tracks to support Congolese efforts:

1. **Use financial pressure to change the Kabila regime's cost-benefit calculations to hold a democratic transition.** The United States and European states should enact a series of escalated anti-money laundering measures and targeted sanctions against networks of senior members of the regime and companies they control. U.S. and E.U. sanctions helped lead to the signing of the Dec. 31 deal, but the pressure needs to shift to more senior targets that would affect Kabila's thinking: financial advisors, Kabila family members, their companies, and key banking transactions. Their reliance on the U.S. dollar, euro, and international banks creates major leverage for the United States and Europe. The aim of the pressure should be to lead to a breakthrough on the transition.
2. **As more pressure is applied, support negotiations to create a path to credible, timely elections and Kabila's exit from the Presidency.** Negotiations will eventually be necessary to prevent wider violence and for the government, opposition, and civil society to work out a plan for elections and a political transition in line with the Dec. 31 accord and/or the civil society manifesto, and to ensure that Kabila leaves office before elections. An independent African mediator trusted by all sides should be appointed to help broker a time-bound transition plan that is supported by Angola

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and neighboring states. Civil society groups must be included in talks, and the United States and United Nations should increase legal services and physical protection for civil society. Credible elections should occur as soon as possible.

3. **Enact targeted measures to help resolve conflict in Kasai and eastern Congo.** This should include work to cut off the conflict gold trade through targeted sanctions on conflict gold smuggling networks in Congo and neighboring countries as well as support for accountability measures and investigations in Kasai.
4. **Combat corruption by pushing for transparency reforms of state-owned mining companies.** The United States and European Union should use financial pressure until independent audits of the state-owned mining company Gécamines are conducted and those audits are published. Technology and mining firms should also press the regime because they indirectly work with Gécamines. This is directly tied to the electoral quagmire, as these companies are at the heart of how Kabila's inner circle generates illicit wealth and why it wants to stay in power.

This strategy would strongly support Congolese civil society's courageous advocacy for a democratic transition: e.g., 195 Congolese human rights and other civil society groups recently called for increased sanctions on the regime.⁶ As a leading Congolese female civil society activist told Enough, "With all the evidence in [recent reports and news articles] that we learn about, why aren't the E.U. and the U.S. targeting Zoe Kabila or Jaynet Kabila to send a strong signal to Joseph Kabila that he must get his act together and abide for once in his tenure to an agreement like the December 2016 one?"⁷

The private sector also has a major role to play. This includes U.S. and other global electronics, jewelry, and automotive companies that use Congo's minerals, as well as multinational banks that provide financing for projects in Congo or act as correspondent banks for U.S. dollar transactions related to Congo. It is in the interest of these corporations to avoid potential money laundering and sourcing of



Demonstrators march peacefully on July 31, 2017 in the DRC. Photo: Lucha

of conflict minerals and to help prevent a violent crisis that would make doing business in Congo much more difficult. The private sector can and should cut off corrupt correspondent bank accounts, create demand for Congo's conflict-free gold, and press the Congolese government to make state-owned mining companies more transparent. The U.S. government and European Union should engage companies on these issues.

Four key developments in Congo make the deployment of this strategy timely: 1) The Dec. 31 deal signed by the government and opposition offers a clear roadmap and benchmarks for a democratic transition; 2) There is now a near consensus in the international community and Congolese civil society that the Kabila regime is thwarting democracy and stability, and Angola plus several African former heads of state have joined that consensus; 3) Significant further financial leverage is available to influence the process which has not yet been utilized, and the regime's leaders and business partners could lose access to the global banking system if that

financial pressure is applied by governments and banks; 4) The powerful Catholic Church in Congo, which helped negotiate the Dec. 31 accord, is now telling the population to stand up to the regime,⁸ combined with increasing activism by Congolese pro-democracy civil society. This means that there is new space for democratic resistance to the regime, as many Congolese were previously waiting while the bishops negotiated, providing further internal pressure on the government.

Policy strategy

Throughout 2017, the Kabila regime has ignored the most important elements of the Dec. 31 accord and has sought to divide and weaken the opposition. Also, new conflict in the Kasai region has left 1.4 million people displaced. And the Congolese population is suffering severe economic hardships due to inflation now at 50 percent.⁹ Four main policy tracks are needed now to help prevent a wider crisis and start to transform Congo from a hijacked state to one moving toward rule of law and democracy. While the national crisis and the conflicts are critical to focus on, underlying structural reforms will also be key for changing incentives toward rule of law and away from criminality.

Track 1. Use financial pressure to help achieve a democratic transition

In the absence of significant pressure, it is highly unlikely that elections will occur in 2017 as written in the Dec. 31 accord, and there is now a risk that they could be delayed indefinitely. At this point, some technical experts believe that it is impossible to hold a credible election in 2017, given that voter registration is not close to concluding in the Kasai region or Kinshasa, and at least four months are needed after registration's completion.¹⁰ It is important to recognize that the Kabila government has been the chief cause of the delays, not the lack of funding or technical issues.

Three negative election scenarios seem possible at present. The first would be a hastily organized and heavily rigged Putin-style election in which Kabila handpicks a temporary successor but stays in de facto control and returns later. The fact that voter registration has proceeded quickly in most areas but has not been independently monitored would support this theory. Senate president Aubin Minaku is rumored to be one candidate, as is Kabila's twin sister, Jaynet. As one Congolese female civil society leader told the Enough Project, "Kabila might agree to leave power, but my big concern is that it would be at the expense of fake elections, robbing Peter to pay Paul. When I see how Kabila and his family have been going after Congo's assets to enrich themselves, I'm not sure why he would put his fate and that of his family in the hands of a stranger."¹¹

A second scenario is that the government organizes a referendum to change the constitution and have Kabila stand in the presidential election, which is a major fear of Congolese civil society groups. Third, the regime could continue the strategy of "glissement" with delay upon delay, and postpone elections indefinitely, citing the "emergency" of conflict in Kasai and the east. As another Congolese civil society leader told Enough, "With the big Kasai unregistered and the [registration] process slowing down in Kinshasa, we're clearly headed to the postponement or cancellation of the elections ... They're not in Kabila's interest."¹²

These scenarios would mean significant interference in the democratic process and would likely spur increased insecurity and new armed groups or movements along the lines of Kamuina Nsapu and Bundu dia Kongo.¹³ It would also likely require ramped up crackdowns on inevitable dissent and organized

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protests, and would ultimately allow for the violent kleptocratic system to continue. On the other hand, a positive scenario would entail the government, opposition, and civil society agreeing on a strict timeline for elections to be held as soon as technically possible and other key benchmarks from the Dec. 31 agreement. The Congolese people have a right to a timely democratic transition, and that scenario would help fulfill that right.

To avoid the negative scenarios and instead create a path toward a credible election, the chief goal of international and regional policies should be to facilitate a peaceful, transparent, and fair democratic transition to help shift the country away from violent kleptocracy. The United States, European Union, U.N. Security Council, African Union, and states in the region should hold the government and opposition to the main benchmarks in the Dec. 31 accord and escalate targeted financial pressure against those actors most responsible for not following through on the democratic transition. These should include the following from the Dec. 31 accord, i.e., that the Congolese government should take the following actions:



Pro-democracy Lucha activist Luc Nkulula and others are placed under arrest after a peaceful protest in Goma, December 2016. Photo: Fred Bauma

1. Select a date for presidential and parliamentary elections in the near future in which Kabila is not a candidate, publish a realistic electoral calendar, and hold free and fair elections. The first step in this process should be to announce a deadline for electoral candidates to register.
2. Drop the charges against political prisoners and activists in exile, including clearing the charges of the persons it agreed to.
3. Restore the media outlets that were shut down. The government should immediately unblock the five media outlets that were shut down in 2016.

Two other benchmarks not in the agreement, but that remain important, are the following:

4. Improve the transparency of the electoral process, e.g. agreement on and respect for campaign rules.
5. Require key state-owned mining companies, such as Gécamines, which have been at the center of major corrupt natural resource deals¹⁴ to become more transparent, particularly through requiring independent audits with publicly accessible reports. The opacity of these companies and their strong connections to the Kabila regime are critical reasons why the regime wants to stay in power,¹⁵ and why policymakers should zero in on them.

In order to increase the likelihood that the Congolese government would adhere to the benchmarks, the United States, European Union, U.N. Security Council, and African Union should escalate a series of financial pressures on key officials and their networks. This would be a logical and necessary next step

The United States and European Union have important leverage over the Kabila regime due to its reliance on the dollar and euro.

following the initial sanctions imposed in late 2016 and early 2017,¹⁶ which were helpful but must go further to touch the heart of Kabila's regime. If the government meets the benchmarks, appropriate incentives should be deployed. But if it does not, or real progress is not sustained, pressure should also be escalated. The objective would be to change the Kabila regime's calculations by freezing out of the global financial system the elite political and business networks that spur violence, corruption, and the undermining of democracy. The United States and European Union have important leverage over the Kabila regime due to its reliance on the dollar and euro, and therefore, U.S. and European banks for financial transactions, including the laundering of corrupt funds.¹⁷ The U.S. dollar is still the

dominant trade currency in Africa and is growing as such, and the majority of wire transfers out of Congo are denominated in U.S. dollars or euros and thus must pass through correspondent banks in New York, London, or other European capitals.¹⁸ The United States and Europe use this financial leverage regularly in countering terrorism and nuclear proliferation. Specific financial pressure tools that could be applied in Congo to create leverage include:

- **Anti-money laundering measures (AML).** As soon as proceeds from corruption begin to flow through the international banking system, they become money laundering. In some cases, conflict financing and other forms of illegal business dealings may also be predicates for money laundering. Laundering of the proceeds of corruption occurs frequently in Congo, for example, with companies belonging to government officials receiving government contracts, actual bribery by middlemen or corporations to gain mining concessions, or banks breaking rules for lending. Several recent investigative reports and federal indictments revealed a number of such money laundering transactions in Congo.¹⁹ They also highlighted the Kabila regime's reliance on the banking system and the U.S. dollar, as many of the transactions highlighted in these stories were denominated in U.S. dollars.

It is critically important for policymakers to focus on that vulnerability and use policy tools to combat money laundering in Congo that are frequently used to combat terrorism, the spread of nuclear weapons, and drug trafficking. If AML tools were used extensively and ratcheted up as necessary, it would affect the regime's calculations significantly. First, the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) and European financial intelligence units (FIUs) should counter money laundering connected to the regime by demanding enhanced vigilance by financial institutions that leads to more vigorous reporting of suspicious activity such as illicit payments to offshore companies, government contracts to Kabila family-owned companies and revenues generated from them, bank loans to blacklisted entities, etc.²⁰ This would pave the way for further steps by banks and FIUs, such as setting in motion requirements for enhanced due diligence by banks, which could lead to action against specific clients and accounts, and possible cutoffs of correspondent relationships with suspect banks. FinCEN could also take more public action through the issuance of an Advisory that highlights patterns of money laundering in Congo. Likewise, the FIU in Belgium could also issue warnings to Belgium-based banks known to hold accounts of Congolese politically exposed persons (PEPs) or state-owned companies. These measures must also be comprehensively implemented and enforced. For example, as revealed in a recent Reuters investigation, European banks asked a company run by Kabila's daughter for justifications about transfers to politically exposed persons

but were easily satisfied with fake loan and rental agreements for properties that did not exist, with little to no verification.²¹

- **Network sanctions against senior Kabila financial advisors and their businesses.** The United States, European Union, and African Union should designate a short list of senior financial advisors to President Kabila and the corporate networks they control. For example, if a senior Kabila advisor owns two or three companies, those companies should also be designated as his or her “network.” If a family member of a Kabila advisor controls the companies in name but not in reality, those relatives and other company directors and any major shareholders should also be designated.²² The U.N. Group of Experts on Congo has already recognized this and incorporated it into their recommendations, but the political will to enforce this recommendation has been lacking to date.²³ The June 2017 U.S. sanctions against Gen. François Olenga and his company, Safari Beach Club, are a positive example. Targets should include Kabila financial advisors, leaders of state-owned companies, and possibly external financial commercial partners. Additionally, the European Union should include corruption as criteria for sanctions designations.
- **Targeted sanctions against businesses and individuals for bribery payments.** Sanctions designations should not exclusively focus on those at the receiving end but also target those paying bribes. For example, in a recent U.S. Department of Justice plea agreement, the U.S. hedge fund Och-Ziff pled guilty to having paid \$100 million in bribes to Congolese officials in order to receive mineral concessions at very low prices through Israeli businessman Dan Gertler, according to several sources.²⁴ While the case was settled, the company or responsible individuals could still be targeted for sanctions in the United States under the Global Magnitsky Human Rights Accountability Act since it also applies to those providing financing in support of “acts of significant corruption.”²⁵
- **Direct engagement with correspondent banks.** Officials from the U.S. Departments of Treasury and State, the European Union’s European Commission, External Action Service, and relevant agencies from key E.U. member states should meet with U.S. and European banks that provide correspondent services to certain banks in Congo that are believed to facilitate money laundering. Raising concerns about money laundering with these global banks could make business difficult for the most corrupt banks in Congo and ultimately lead to them being cut out of the global financial system.

Banks themselves have a key role to play as well. Regional and multinational banks provide financing for major mining projects and other business activities in the country. In addition, given that many of these projects and transactions occur in U.S. dollars, funds from these transactions will also move through the correspondent banking system, in which banks located in the region use banks in New York to conduct business in dollars. Banks active in the region, and correspondent banks with relationships with banks in Congo, must conduct enhanced due diligence to ensure they are not moving money that is the proceeds of corruption or other illicit activity. This would also include due diligence on any direct accounts they hold or transactions they conduct on behalf of Kabila regime politically exposed persons and their corporate networks.

- **Visa bans.** The designations should be coupled with robust use of visa ban authorities. Presidential Proclamation 7750, Section 7031(c) of the 2012 Consolidated Appropriations Act,²⁶ and the Global Magnitsky Act provide legal authority to deny visas to enter the United States to corrupt officials and benefitting family members.

If the Congolese government fails to make progress on the benchmarks, the European Union, United States, African Union, and U.N. Security Council should escalate pressure:

- **Implement network sanctions on senior advisors and Kabila family members.** Kabila's family members and senior politicians have been reportedly involved in repression and grand corruption, as alleged in several recent public reports.²⁷ The U.S. government should issue sanctions under its executive order on Congo,²⁸ and use its authority under the Global Magnitsky Act to issue corruption-related designations against such persons, and the European Union should do the equivalent under its laws, both in 2017 and 2018. Designating such individuals, including senior members of the electoral commission, and highlighting the network-like nature of their corruption would demonstrate seriousness of U.S. and E.U. pressure and could trigger a real change in policy.
- **Escalate anti-money laundering measures: Section 311.** The USA Patriot Act's Section 311 allows FinCEN to declare that a jurisdiction, financial institution, class of transactions, or specific account is a "primary money laundering concern" and require one of five "special measures," such as requiring information collection about the beneficial owners of accounts and prohibiting or imposing conditions on correspondent accounts. FinCEN recently proposed use of this authority against a Chinese bank for its business dealings with North Korea that involved illicit financing and various types of money laundering.²⁹ FinCEN has used this authority focusing on jurisdictions and institutions, but has only ever invoked the most aggressive of the five special measures. The agency could break new ground by declaring certain types of accounts or transactions in Congo, such as those involving senior PEPs, as a primary money laundering concern and invoking a special measure requiring enhanced due diligence.
- **Implement sectoral sanctions.** The U.S. Treasury Department can also place sanctions on certain sectors of an economy to hold accountable entities that have operated in a nefarious manner in the past and to impede new business ventures in that sector from accessing U.S. capital markets to the extent needed. The United States took this step with Russia's banking sector after the annexation of Crimea in 2015. In Congo, the United States could place such a measure on the mining sector or oil sector (or perhaps more narrowly, the copper and cobalt sectors), given the multiple controversies of missing money associated with these sectors. These sanctions would enable the most corrupt actors to be targeted specifically. Such sanctions would not stop these sectors from operating, but it would make it challenging for new deals to go ahead with needed financing in U.S. dollars and would send key signals to international banks not to deal further with the Congolese government and associated state-owned companies. To minimize impact and ensure that blanket business bans are not enacted, responsible investment reporting requirements can also be added, such as those used in Burma.³⁰ This would help ensure that the economy benefits from responsible companies and actors willing to conduct necessary due diligence and avoid complicity with illicit activity.

- **Withdrawal of formal recognition of Kabila.** U.S. authorities could tell the Congolese government that if there is no progress toward a political transition by year's end, on Jan. 1, 2018, the United States would state that it no longer views the Kabila regime as the legitimate representative of the Congolese people.

Track 2: Brokering the transition: a negotiations track and support to civil society

The objective of pressure and negotiations should be to get the government to the negotiating table, where its representatives, the opposition, and civil society can agree on details of a democratic transition, i.e., to set a date to hold credible elections that Kabila does not stand in as soon as possible and implement other parts of a democratic transition. As a leading Congolese pro-democracy activist told Enough, “Only a proactive but serious engagement with the Kabila regime can really make an impact.”³¹ And so, talks are key to achieving that outcome, once more pressure is applied. Without negotiations, there is a real risk of escalation of repression, violence, and hardening of positions on multiple sides. There are already signs of such an escalation at the national level. Tensions and conflict are already escalating at several local levels, the most prominent being Kasai but also Beni, South Kivu, the Petit Nord of North Kivu, Tanganyika, and other areas.³² At present, there is no outlet for negotiations after the Catholic Church's Conference of Episcopal Catholic Bishops in Congo (CENCO) pulled out from the government-opposition dialogue in the spring.

- **Maintain international pressure and trust during negotiations.** A successful mediation effort must incorporate the lessons of recent failure and success from the senior political dialogue in Congo. Most prominently, that the negotiations must be buttressed by significant pressure and have the trust of all sides. Talks failed in early- to mid-2016 when the Congolese government had little interest to make concessions and A.U. envoy Edem Kodjo was perceived as having a pro-government bias, according to opposition and civil society groups. They also failed in early 2017 when CENCO tried to broker agreement on implementation of the Dec. 31 deal, but Congo's government did not face international pressure, and its repression of Congolese civil society groups was high. Meanwhile, CENCO's mediation initiative was successful in December 2016 when a series of international sanctions, indictments, investigations, and Congolese protests were high.³³ While CENCO was instrumental in brokering the Dec. 31 deal, it became extremely frustrated with the government's lack of progress following the accord's signing. So, the bishops' conference also should be on guard against future government cooptation. Nonetheless, CENCO did have the general acceptance of all sides, even if Kabila strongly disliked its role but eventually went along with it, and so there will inevitably be some role for the bishops to play.
- **Once more pressure is applied, an independent African mediator for talks should be selected and supported by Angola and the region.** At this point, regional influence has become increasingly relevant, with the spillover of the Kasai crisis into Angola through refugees and the senior regional leaders' calls for a democratic transition. Angola is increasingly concerned about Kabila's lack of control over the political and security situation in Congo, as he appears to represent more instability than stability at present to the Angolan government.³⁴ Senior Angolan military officials are also upset at the Congolese expulsions of Angolan refugees in Bas-Congo (which have occurred on both sides), as some of the Angolan top brass hails from that border region.³⁵ Most recently, President José Eduardo dos Santos' son-in-law, Sindika Dokolo, has

started campaign “Congolais Debout” for Congolese people to stand up to the regime, and he has promoted the civil society-opposition manifesto created in August, in which civil society, the opposition, and church leaders call for a “return of constitutional order” and lay out a transition plan that does not include Kabila. Furthermore, Uganda has reportedly also become increasingly concerned about Kabila’s lack of control and a plan for Congo’s political future.³⁶

This regional interest can help bolster a mediation effort. An independent African mediator trusted by all sides should be appointed to help broker a time-bound transition plan, supported by Angola and neighboring states. Whoever is chosen *must* have the trust of all sides. A new mediator can more properly represent regional interests and channel international leverage into use during negotiations. Talks need to focus on the holding of free and fair elections, particularly a timetable, and guarantees of access to media and all provinces for all major candidates.³⁷ It is likely technically impossible to hold elections in 2017 at this point, but negotiations should focus on holding them as soon as possible, particularly presidential and parliamentary elections, as well as adhering to the other key accord benchmarks listed above.

- **Increase aid for civil society groups and guarantee their inclusion in negotiations.** It is critical for any talks to include civil society, which includes women leaders and gender issues. Both were excluded from the 2016 talks in large part. Civil society can help prevent the cycle of corruption and violence in Congo’s politics from repeating once again and ensure that key issues are put on the table that politicians may not have initially wanted to address, from anti-corruption to freedom of assembly. This remains true despite long-standing practices of attempted political manipulation of civil society and religious leaders. For example, civil society watchdog groups have been instrumental in keeping the Extractive Industries Transparency Initiative (EITI) process moving, civil society was also a key part of the Inter-Congolese Dialogue, and pro-democracy groups have kept key reform issues on the table over the past three years.

Before and during negotiations, it is also critical to improve the space for independent civil society to raise issues with the parties. Civil society bears the brunt of much of Congo’s hijacked state. Pro-democracy activist groups, such as Lucha, Filimbi, and others, have been arrested and re-arrested over the past two years, and the state has not dropped the trumped-up charges it placed against them. Church leaders have



Congolese pro-democracy activists from Lucha demonstrate in Goma, August 2017. Photo: Lucha.

been prevented from meeting to discuss election issues and state security forces have used violence to break up rallies. Despite this, courageous groups continue to persevere, for example, signing the recent joint statement on sanctions. But civil society and independent media need further support to continue.

Donor governments and multilateral agencies, such as the U.N. Development Programme (UNDP), should increase legal aid and protection support to pro-

democracy civil society, including faith-based, women's and other groups, to enable them to function as a more effective watchdog for democracy and against corruption. Public statements in support of pro-democracy groups would also help. In addition, the U.N. Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and international donors should increase their protection of human rights defenders, for example, with MONUSCO providing physical protection against crackdowns, intimidation, and restrictions on freedom of assembly during pro-democracy protests.

Track 3: Targeted measures to help resolve conflict in the Kasai region and eastern Congo

The overall system of the criminal state's grand corruption and incentivized violence³⁸ is the critical root cause of Congo's conflict, but more targeted measures can and should be taken to help end armed violence where it is most active: in the Kivu provinces and the Kasai region.

The Kasai conflict is in large part linked to the overall political crisis in Congo, as many have noted, as is conflict in eastern Congo. The Kasai region is an opposition stronghold where dissatisfaction with the Kabila regime's extended stay in power runs very high, and the new Kamuina Nsapu militia gained numerous recruits after widespread popular anger at the government's brutal responses to the presence of a new militia.³⁹ As T.K. Hoffman writes, "The conflict consistently becomes worse with the projection of national politics on the local scene."⁴⁰ It is also both convenient and threatening for the government that conflict continues in Kasai. On the one hand, Kasai being an opposition area makes it difficult for opposition voters to register, and continued insecurity plays into the government argument that it is too unsafe to conduct elections. On the other hand, violence has spun out of control displacing 1.4 million people and causing new international pressure from U.S. Ambassador to the United Nations Nikki Haley and others.⁴¹ Since the governance crisis is one of the key roots of the Kasai conflict, a central part of the strategy to end mass violence in Kasai must be to resolve the national political crisis and achieve a successful democratic transition—i.e., the strategy outlined above, including full voter registration in the Kasais and Kinshasa. Indeed, many of the Congolese civil society groups who signed on to the statement calling for increased sanctions to foster a democratic transition were from Kasai.⁴²



Nikki Haley, U.S. Ambassador to the UN: "We expect the Democratic Republic of the Congo (DRC) to... announce a timeline for its overdue elections. The United States will... pursue additional Security Council sanctions designations if progress is not made in establishing peace and stability for the Congolese people." Photo: UN Photo/Evan Schneider

Nonetheless, there are three areas where work more specific to the Kasai and Kivu regions can help concretely address and mitigate conflict: accountability; cutting off conflict financing; and disarmament, demobilization, and reintegration, otherwise known as DDR.

- **Increase accountability in Kasai.** Without accountability for grave human rights and financial crimes, there will be little incentive for commanders or officials to abide by the law, and serious abuses will continue. Regarding Kasai, a full independent investigation into the violence there and the murders of U.N. experts Zaida Catalan and Michael Sharp is needed. U.N. and U.S. support for such measures have been strong and welcomed, but more is needed to follow through on concrete action. Donor governments and the U.N. Security Council should continue pressing the Congolese government to cooperate fully with the new, independent U.N. Kasais investigations team and grant them full access to areas and records to carry out their work. The investigation can uncover evidence that could and should lead to prosecution of perpetrators of violence. This is critical in Kasai, since 52 mass graves have been found by U.N. personnel. Congolese armed forces have shot, killed, and videotaped the killing of persons, and the Congolese government has reportedly supported the Bana Mura militia which has reportedly killed toddlers and engaged in other multiple atrocities.⁴³ Kamuina Nsapu has also allegedly committed several atrocities and must be held accountable.⁴⁴ The pressure should be connected to the financial pressures above.
- **Accountability in the Kivus and nationally: investigating and prosecuting natural resource crimes.** Accountability steps will also be critically important for the Kivus, and natural resource crimes must form a key area of focus. While some key steps for justice have been taken to date, e.g. the conviction of warlord Thomas Lubanga by the International Criminal Court (ICC), the current trial of Gen. Bosco Ntaganda at the ICC, and the several convictions of the mobile courts in eastern Congo, serious gaps remain that must be addressed.⁴⁵ The ICC should pursue financial investigations of Ntaganda, as well as an overall improved strategy to investigate supply chains and prosecute natural resource crimes related to atrocity crimes, in particular the theft of gold in the context of armed conflict in the DRC.

At the national level, MONUSCO, the U.S. Institute of Peace, along with activists and prosecutors in Congo have developed targeted strategies for investigating and prosecuting economic and natural resource crimes in the Kivus, based on the Congolese legal code. Investigations are gaining ground and have led to select arrests. MONUSCO should take strong steps to protect national witnesses and prosecutors who are leading and managing cases given the high risk of political interference. Additionally, international donors should maintain support for these collaborative justice initiatives.

- **Implement credible DDR.** Importantly as well, the failure, mainly by the Congolese government, to implement effective disarmament, demobilization, and reintegration (DDR) in eastern Congo in recent years has led to a perverse incentive structure for fighters in armed groups such that it is often worse for them to defect from armed groups than remain in them. Defectors from one rebel group starved to death in government DDR camps,⁴⁶ and many others have faced increased poverty upon returning to DDR sites. This is a major obstacle to achieving an end to the approximately 70 armed groups in the Kivus, as many fighters do not want to leave their rebellions.⁴⁷ Donor governments, MONUSCO, and the Congolese government need to agree on a strategy to improve DDR such that it provides a proper incentive to end conflict, not foster it. This should include the removal of the current Congolese armed forces (FARDC) commander in charge of DDR, Gen. Delphin

Kahimbi, and the United Nations taking on a much greater part of the DDR work, which has to date been the primary responsibility of the Congolese government.

- **Help cut off conflict financing in eastern Congo, particularly gold.** In the Kivus, important progress has been made in resolving some of the conflict's structural issues in recent years. For one, Rwanda was for years a major driver of armed conflict, but following several policy measures such as Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the international pushback against the M23 rebellion, there is no longer a major Rwandan-backed armed group in eastern Congo, according to the U.N. Group of Experts.⁴⁸ Also, 3T minerals are no longer a major driver of conflict overall, as only 21 percent of 3T miners surveyed in eastern Congo now work under threat of violence by armed groups or the army, a major change.⁴⁹

A policy strategy for eastern Congo must help consolidate those gains but more squarely address the main remaining source of conflict financing: the artisanal and small-scale gold trade. Conflict gold and other minerals are a key part of the overall violent kleptocratic state in Congo, as army commanders are incentivized by the regime to "help themselves" to the lucrative minerals trade through extortion and violence and thus not threaten the regime.⁵⁰

- **Cut off conflict gold traffickers through sanctions, tax reform, and other measures.** Importantly, conflict gold remains a critical lifeline for illegal armed groups and Congolese army commanders who are as, or more, abusive toward civilian populations than the rebels. Some 64 percent of gold miners work under the influence of armed actors, according to IPIS,⁵¹ and the U.N. Group of Experts on Congo found in 2016 that gold "provides the most significant financial benefit to armed groups."⁵²

A strategy to address the conflict gold trade should be four-pronged:⁵³ 1) To enact consequences for major conflict gold smuggling networks, from armed commanders to refiners, in particular for the U.N. Security Council to place targeted sanctions on major conflict gold smugglers, and for banks and refiners to do additional due diligence on red-flag gold transactions from the Great Lakes region; 2) To change the incentives for traders from smuggling to a legal, conflict-

free gold trade, mainly through tax reform and regional harmonization. In particular, electronics and jewelry companies, the U.S. government, the World Bank, and the Public-Private Alliance on Responsible Minerals Trade (PPA) should work with the DRC Ministry of Mines and governors in eastern Congo to overhaul the tax regime for gold, such that it does not incentivize pillage.⁵⁴ U.N. Special Envoy Said Djinnit should continue working with the International Conference on the Great Lakes Region (ICGLR) and regional finance ministers to harmonize taxes on gold in the region in



The UN Security Council should place sanctions on the biggest conflict gold smuggling networks, as gold is the biggest source of income for armed groups. Photo: Sasha Lezhnev/Enough Project

order to facilitate an increased legal, conflict-free gold trade; 3) To reform the “hand carry” system on airlines that allows significant gold smuggling to take place from the Great Lakes region to Dubai; 4) To create a supply and demand for conflict-free artisanal gold through pilot projects and responsible jewelry. Jewelers in the United States and Europe should spur such demand accepting conflict-free artisanal gold from Congo in their responsible jewelry lines. There are governmental and private sector roles in each of these areas.⁵⁵

- **Protect Dodd-Frank law’s conflict minerals provision in order to maintain progress on other conflict minerals.** A policy strategy for Congo must also help consolidate those gains and ensure that Section 1502 of the Dodd-Frank law and the corresponding Securities and Exchange Commission’s Conflict Minerals Rule are not repealed, suspended, or significantly weakened. The law should also be accompanied by livelihood projects for miners.⁵⁶ Congress should maintain the progress made in fighting conflict minerals in Congo, and in particular, the U.S. Senate Banking Committee should ensure a repeal of Section 1502 is not included in any new Senate version of the Financial CHOICE Act. Congress should ensure that any other repeal of 1502 is not added to other major or “must-pass” bills as well as work to ensure appropriations bills do not include a prohibition of funds being used to enforce 1502. Many groups among Congolese civil society have recognized the incremental progress made to date and have become strong supporters of Dodd-Frank 1502 as a result. More than 100 Congolese civil society groups wrote to the U.S. Securities and Exchange Commission in April 2017 warning that removal of 1502 could reignite conflict in Congo and erode the rule of law.⁵⁷ As one of the letters from the groups stated, “Any step to suspend Section 1502 would undoubtedly remove barriers against conflict minerals infiltrating the supply chain with devastating effects. Namely, the reactivation of armed groups and the feeding of terrorist and mafia networks.”⁵⁸ In practice, this would likely occur by minerals smelters relaxing requirements on minerals exporters in Congo and the Great Lakes region to fully prove whether their minerals were conflict-free or not, and the Great Lakes certification process becoming corrupted without a U.S. law backing it up.

Track 4: Good Governance and Transparency: Preventing the theft of public funds

While the urgent issues of a democratic transition and resolving conflict are paramount, the international community must simultaneously address underlying governance reforms that are critical to change incentives toward rule of law and away from criminality. The overall objective of policymakers should be a reformed, functional state that is responsive to Congolese citizens’ needs. The incentives for good governance are key to transforming the overall system, such that the cycles of corruption and violence are not repeated by future governments. Good governance reform in Congo should focus on anti-corruption and transparency, particularly of state-owned companies, given the enormous amounts of money from the natural resource and public sectors that go missing. The opacity of those companies and the resulting money that goes unaccounted for is a key incentive for the regime to stay in power: to maintain the illicit money flows.

Up to \$4 billion goes missing from Congo every year, and Congo generates \$11 to \$12 billion in natural resource revenues annually,⁵⁹ while annual per capita income is still \$444.⁶⁰ Anti-corruption and transparency reforms are thus critical to moving Congo forward on the path to inclusive development. While

not in the Dec. 31 accord, the transparency of state-owned companies must form a key part of this. In 2014, for example, 28 percent of all mining revenue, \$580 million, never made it to the Treasury, but rather, disappeared through state-owned companies or other avenues.⁶¹ A December 2016 *New York Times* story revealed that \$95.7 million went missing from Gécamines, whose directors were appointed by President Kabila, and multiple international NGOs and news outlets have reported on serious corruption in the copper and cobalt sector in Congo, particularly relating to deals with state-owned companies.⁶² According to Bloomberg correspondent Michael Kavanagh, Gécamines is “the biggest black box in all of Congo.”⁶³

- **Push for public audits of state-owned mining companies and full compliance with EITI.** The United States, European states, the ICGLR, and mining companies in Congo should urge the Congolese government to make state-owned mining companies more transparent. In particular, these companies should publish annual financial reports and independent third parties should audit them, and the audit results should be made public. That way, the public would know what money is coming in and out of them, and it would be more difficult to hide theft. The United States, the African Development Bank, European states, and the World Bank should also strengthen EITI implementation in Congo by pressing for EITI reports to disclose the expenditures of state-owned companies, as required by EITI, pushing for full beneficial ownership disclosure, particularly for partners of state-owned companies, and following up on contract transparency.

Conclusion

Looking ahead, if elections and a democratic transition are indeed successful, which is a very major ‘if,’ the international community must be ready with a serious reform package to provide a “democracy dividend” to Congo. This should include security sector reform focused on getting rid of the old top brass and changing military payment and incentive structures; prosecuting economic crimes in politics and the military; making transparent key state-owned companies, such as Gécamines; reviewing the mining code; and making major new investments in infrastructure and health. But for now, it is critically important to focus on getting to that successful democratic transition. The international community must focus on changing the cost-benefit calculations for the Kabila government and support Congolese civil society in its quest for the beginnings of a true change in the system of violent kleptocracy.

¹ U.S. Geological Survey, “Cobalt,” January 2017, available at <https://minerals.usgs.gov/minerals/pubs/commodity/cobalt/mcs-2017-cobal.pdf> (last accessed August 2017).

² UN News, “DR Congo: UN advises prudent use of abundant resources to spur development,” October 10, 2011, available at <http://www.un.org/apps/news/story.asp?NewsID=39986> (last accessed August 2017).

³ For a more detailed analysis of this system, see Sasha Lezhnev, “A Criminal State: Understanding and Countering Institutionalized Corruption and Violence in the Democratic Republic of Congo,” (Washington: The Enough Project, October 2016), available at <https://enoughproject.org/reports/criminal-state-understanding-and-countering-institutionalized-corruption-and-violence-democr>.

⁴ The opposition and civil society, including CENCO, co-launched the Manifesto of Congolese Citizens on August 13, 2017. See, Les Congolais Debout! “Read the Congolese Manifesto,” August 2017, available at <https://lescongolaisdebout.com/lire-le-manifeste-du-citoyen-congolais> (last accessed August 2017); and Ida Sawyer, “‘Manifest of the Congolese Citizen’ Calls for a Transition without Kabila,” Human Rights Watch blog “Democratic Republic of Congo in Crisis,” August 18, 2017, available at <https://www.hrw.org/blog-feed/democratic-republic-congo-crisis>.

⁵ The Kabila family alone controls more than 80 companies in mining, construction, agriculture, and other sectors across Congo and the region. See, Congo Research Group, “All the President’s Wealth: The Kabila Family Business,” July 2017, available at <http://congoresearchgroup.org/all-the-presidents-wealth/>.

⁶ Sauti Ya Congo, “DRC: 195 Congolese civil society organisations welcome the individual sanctions imposed by the European Union and the United States,” June 8, 2017, available at <http://www.sautiyacongo.org/drc-195-congolese-civil-society-organisations-welcome-the-individual-sanctions-imposed-by-the-european-union-and-the-united-states/>.

⁷ Interview with Congolese civil society leader, DRC, August 1, 2017.

⁸ Forty-nine bishops from Congo’s important national Episcopal conference CENCO said that Congo is in a “very bad state” and called on Congolese to “stand up” and “take [their] destiny into [their] own hands.” See, Ida Sawyer, “Catholic Bishops call on Congolese to ‘Stand Up,’” Human Rights Watch blog, June 26, 2017, available at <https://www.hrw.org/blog-feed/democratic-republic-congo-crisis#blog-305775>.

⁹ Reuters, “As Congo finances collapse, government left with few options,” August 19, 2017, available at <https://www.iol.co.za/business-report/as-congo-finances-collapse-government-left-with-few-options-10835550>.

¹⁰ For example, the National Assembly must still certify the voter roll after registration is completed. Interview with two international election experts on the DRC, August 1, 2017.

¹¹ Interview with female Congolese civil society activist, DRC, August 2, 2017.¹² Interview with Congolese civil society activist, DRC, August 2, 2017.

¹³ Kamuina Nsapu, otherwise known as Kamwina Nsapu, meaning ‘black ant,’ is the main armed group involved in conflict in the Kasai region. Bundu dia Kongo is a religious group based in Kongo Central (Bas-Congo), which led a jailbreak of Kinshasa’s largest prison, Makala, in May 2017, and clashed with police.

¹⁴ See, Global Witness, “Regime Cash Machine,” (July 2017), available at <https://www.globalwitness.org/en/campaigns/democratic-republic-congo/regime-cash-machine/>.

¹⁵ Ibid.

¹⁶ The United States and European Union placed sanctions on ten security and government officials in 2016 and seven new officials and one entity in Congo in May 2017 (six officials and one company by the United States and 15 officials by the European Union, with some overlap between the two). For more detail, see Human Rights Watch, “DR Congo: EU, US Sanction Top Officials,” June 1, 2017, available at <https://www.hrw.org/news/2017/06/01/dr-congo-eu-us-sanction-top-officials>.

¹⁷ Brad Brooks-Rubin, Holly Dranginis, and Sasha Lezhnev, “Targeted Sanctions and Beyond: Financial and Judicial Tools for the U.S. and Europe to Help Enable Timely Elections in the Democratic Republic of the Congo,” (Washington: The Enough Project, September 2016), available at <https://enoughproject.org/reports/targeted-sanctions-and-beyond-financial-and-judicial-tools-us-and-europe-help-enable-timely->.

¹⁸ Thierry Chilos, Damien Dugauquier, Geraldine Lambe, Michimaru Onizuka, “Africa Payments: Insights into African transaction flows,” SWIFT, September 10, 2013, available at <https://www.swift.com/node/14411>.

¹⁹ See, Congo Research Group, “All the President’s Wealth: The Kabila Family Business,” July 2017; Xavier Counasse and Colette Braeckman, “Corruption au Congo: les preuves qui accablent le régime Kabila,” *Le Soir*, October 29, 2016, available at <http://plus.lesoir.be/66290/article/2016-10-29/corruption-au-congo-les-preuves-qui-accablent-le-regime-kabila>; Jeffrey Gettleman, “As President Joseph Kabila Digs In, Tensions Rise in Congo,” *New York Times*, December 27, 2016, available at <https://www.nytimes.com/2016/12/17/world/africa/congo-joseph-kabila-corruption.html>; According to the plea agreement between the U.S. Department of Justice and OZ Africa Management GP, LLC, a company called “DRC Partner, together with others, paid more than one hundred million U.S. dollars in bribes to DRC officials to obtain special access to and preferential prices for opportunities in the government-controlled mining sector in the DRC.” According to a published report by *Bloomberg*, DRC Partner is Dan Gertler. In the plea agreement, DRC Partner is described as “an Israeli businessman... [who] had significant interests in the diamond and mineral mining industries in the Democratic Republic of Congo (the DRC).” Plea Agreement Cr. No.

16-515 (NGG), *United States vs. OZ Africa Management GP, LLC*, U.S. District Court, Eastern District of New York, September 29, 2016, available at <https://www.justice.gov/opa/file/899316/download>; Franz Wild and Keri Geiger, "Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions," *Bloomberg*, September 30, 2016, available at <http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions>; Global Witness, "Out of Africa: British tax havens and Congo's missing \$1.5 billion," May 4, 2016, available at https://www.globalwitness.org/documents/18357/Out_Of_Africa_final_EN.pdf; Michael Kavanagh, Franz Wild, and Jonathan Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest Country" *Bloomberg Markets*, December 5, 2012 available at <http://www.bloomberg.com/news/articles/2012-12-05/gertler-earns-billions-as-mine-deals-leave-congo-poorest>. In response to one Global Witness report, Gertler's spokesman, the UK's Lord Mancroft, said that any suggestion "that Glencore offered Mr Gertler preferential treatment is wholly misconceived" and that "there are legitimate commercial reasons for every transaction we are involved in." Found in Global Witness, "Glencore unfazed by muddy deals," May 20, 2014, blog, available at <https://globalwitness.org/en/blog/glencore-unfazed-muddy-congo-deals/>.

²⁰ For more such activities, see Counasse and Braeckman, "Corruption au Congo."

²¹ David Lewis, "Congo's pricey passport scheme sends millions of dollars offshore," *Reuters*, April 13, 2017, available at <http://www.reuters.com/investigates/special-report/congo-passports/>.

²² The standard is generally 50 percent shareholder or higher, but this should probably be lowered in the Congo context, as Kabila family members often own significant shares in companies but less than 50 percent.

²³ The UN Group of Experts on Congo in 2012 recommended that, "Should the Committee consider sanctioning any entities on the basis of information provided by the Group, it should also designate the responsible individuals, e.g., company directors;" found at U.N. Security Council, "Final report of the Group of Experts on the DRC submitted in accordance with paragraph 4 of Security Council resolution 2012 (2011)," S/2012/843, November 15, 2012, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/843.

²⁴ Lezhnev, "A Criminal State."

²⁵ This includes bribery or corruption connected to contracts or natural resource extraction. See, *Global Magnitsky Human Rights Accountability Act*, S.284, 114th Congress, available at <https://www.congress.gov/bill/114th-congress/senate-bill/284/all-info#latestSummary-content>.

²⁶ U.S. President (George W. Bush), Proclamation 7750, "To Suspend Entry as Immigrants or nonimmigrants of Persons Engaged in or Benefitting from Corruption," sec. 1, January 12, 2004, available at <https://www.gpo.gov/fdsys/pkg/FR-2004-01-14/pdf/04-957.pdf>; U.S. Government Printing Office, 112th Congress, "2012 Consolidated Appropriations Act," Pub. L. 112-74, sec. 7031(c), available at <https://www.gpo.gov/fdsys/pkg/PLAW-112publ74/html/PLAW-112publ74.htm>.

²⁷ See, Congo Research Group, "All the President's Wealth: The Kabila Family Business," July 2017; Xavier Counasse and Colette Braeckman, « Corruption au Congo: les preuves qui accablent le régime Kabila," *Le Soir*, October 29, 2016, available at <http://plus.lesoir.be/66290/article/2016-10-29/corruption-au-congo-les-preuves-qui-accablent-le-regime-kabila>; Jeffrey Gettleman, "As President Joseph Kabila Digs In, Tensions Rise in Congo," *New York Times*, December 27, 2016, available at <https://www.nytimes.com/2016/12/17/world/africa/congo-joseph-kabila-corruption.html>; According to the plea agreement between the U.S. Department of Justice and OZ Africa Management GP, LLC, a company called "DRC Partner, together with others, paid more than one hundred million U.S. dollars in bribes to DRC officials to obtain special access to and preferential prices for opportunities in the government-controlled mining sector in the DRC." According to a published report by *Bloomberg*, DRC Partner is Dan Gertler. In the plea agreement, DRC Partner is described as "an Israeli businessman... [who] had significant interests in the diamond and mineral mining industries in the Democratic Republic of Congo (the DRC)." Plea Agreement Cr. No. 16-515 (NGG), *United States vs. OZ Africa Management GP, LLC*, U.S. District Court, Eastern District of New York, September 29, 2016, available at <https://www.justice.gov/opa/file/899316/download>; Franz Wild and Keri Geiger, "Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions," *Bloomberg*, September 30, 2016, available at <http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions>; Global Witness, "Out of Africa: British tax havens and Congo's missing \$1.5 billion," May 4, 2016, available at https://www.globalwitness.org/documents/18357/Out_Of_Africa_final_EN.pdf; Michael Kavanagh, Franz Wild, and Jonathan Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest Country" *Bloomberg Markets*, December 5, 2012 available at <http://www.bloomberg.com/news/articles/2012-12-05/gertler-earns-billions-as-mine-deals-leave-congo-poorest>. In response to one Global Witness report, Gertler's spokesman, the UK's Lord Mancroft, said that any suggestion "that Glencore offered Mr Gertler preferential treatment is wholly misconceived" and that "there are legitimate commercial reasons for every transaction we are involved in." Global Witness, "Glencore unfazed by muddy deals," May 20, 2014, available at <https://globalwitness.org/en/blog/glencore-unfazed-muddy-congo-deals/>.

²⁸ U.S. President (Barack Obama), Executive Order 13671, "Taking Additional Steps to Address the National Emergency with Respect to the Conflict in the Democratic Republic of the Congo," sec. (1-6) July 10, 2014, available at <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13671.pdf>.

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- ²⁹ Josh Schectman and David Brunnstorm, “U.S. targets Chinese bank, company, two individuals over North Korea,” *Reuters*, June 30, 2017, available at <https://www.reuters.com/article/us-usa-northkorea-china-sanctions-idUSKBN19K2OB>.
- ³⁰ Responsible Investment and Reporting Requirements, available at <http://www.humanrights.gov/wp-content/uploads/2013/05/responsible-investmentreporting-requirements-final.pdf> (last accessed April 2017).
- ³¹ Interview with Congolese pro-democracy activist, DRC, Aug. 1, 2017.
- ³² Interview with Search for Common Ground representative, August 2, 2017.
- ³³ Sasha Lezhnev, “Six reasons why Kabila should sign a democratic deal now. It will get worse for him if he doesn’t,” Enough Project blog, December 23, 2016, available at <https://enoughproject.org/blog/six-reasons-why-kabila-should-sign-democratic-deal-now-it-will-get-worse-him-if-he-doesnt>.
- ³⁴ Interviews with Angola experts, August 14, 2017, and August 28, 2017.
- ³⁵ Interview with Angola expert, August 14, 2017.
- ³⁶ Interview with western diplomat, August 22, 2017.
- ³⁷ For example, these guarantees were in place for the 2006 elections, guaranteed by International Committee Accompanying the Transition to Democracy (CIAT).
- ³⁸ See, Lezhnev, “A Criminal State.”
- ³⁹ T.K. Hoffman, “The Center does not hold,” Enough Project blog, April 10, 2017, available at <https://enoughproject.org/blog/center-does-not-hold-kasai>.
- ⁴⁰ Ibid.
- ⁴¹ Agence France Presse, “US wants ‘full investigation’ into DR Congo death of UN experts,” August 27, 2017, available at <http://www.digitaljournal.com/news/world/us-wants-full-investigation-into-drcongo-death-of-un-experts/article/500273>.
- ⁴² Sauti Ya Congo, “DRC: 195 Congolese civil society organisations.”
- ⁴³ Associated Press, “10 more mass graves uncovered in restive central Congo,” June 27, 2017, available at <http://www.chicagotribune.com/news/nationworld/ct-central-congo-mass-graves-20170627-story.html>; Tom Miles and Aaron Ross, “Milizia mutilates toddlers, burns villages in central Congo: U.N.,” *Reuters*, June 20, 2017, available at <http://www.reuters.com/article/us-congo-violence-un-idUSKBN19B1HL?il=0>.
- ⁴⁴ Human Rights Watch, “DR Congo: UN Should Investigate Kasai Violence,” June 1, 2017, available at <https://www.hrw.org/news/2017/06/01/dr-congo-un-should-investigate-kasai-violence>.
- ⁴⁵ See, for example, Human Rights Watch, “Accountability for Atrocities Committed in the Democratic Republic of Congo,” April 1, 2014, available at <https://www.hrw.org/news/2014/04/01/accountability-atrocities-committed-democratic-republic-congo>.
- ⁴⁶ Human Rights Watch, “DR Congo: Surrendered Fighters Starve in Camp; State Neglect Causes Over 100 Deaths of Combatants, Family Members,” October 1, 2014, available at <https://www.hrw.org/news/2014/10/01/dr-congo-surrendered-fighters-starve-camp>.
- ⁴⁷ The recent surrender of warlord Ntabo Ntaberi Sheka was an exception to this, as his force had badly split into two, and his deputy Guidon had taken most of the fighters Sheka previously controlled. Interview with Congolese civil society advocate, Goma, July 26, 2017.
- ⁴⁸ This includes strong international pushback against Rwanda’s support to the M23 rebellion in 2012-13; the taking away of Rwanda’s economic incentive to intervene, the smuggling of tin, tantalum, and tungsten minerals (the 3Ts) through implementation of Dodd-Frank 1502 and electronics company actions; the removal of Rwanda’s security incentive to intervene by the gradual whittling away of the FDLR rebellion; and Rwanda’s own economic strategy shift toward domestic mining and service provision.
- ⁴⁹ This is a significant change given that the U.N. Group of Experts stated as recently as 2010 that “in the Kivu provinces, almost every mining deposit [was] controlled by a military group.” IPIS surveyed 2,026 mines. However, 64 percent of gold miners still work at conflict mines. Furthermore, for the first time in Congo’s history, there is a certification process for minerals to assess whether mines and mineral exports are contributing to armed violence or not, and multi-stakeholder teams made up of U.N. officials and Congolese civil society, business, and government representatives make those assessments. As of April 2017, 420 mines in eastern Congo had been validated as conflict-free by these teams, as compared with zero mines just five years ago. See, “Resume Des Missions Conjointes De Qualification Et Validation/Inspection En RDC De Juin 2011 à Avril 2017,” Equipe Conjointe de Qualification et Validation and Federal Bureau of Geosciences and Natural Resources (BGR), June 2017, available at International Peace Information Service, “Analysis of the Interactive Map of artisanal mining areas in eastern DR Congo,” October 2016, available at <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-dr-congo-2/>, U.N. Security Council, “Interim report of the Group of Experts on the DRC,” S/2010/252, para. 77, p.17, May 24, 2010, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/252.
- ⁵⁰ This follows in the footsteps of Mobutu’s “débrouillez-vous” philosophy to his army commanders where he told them “You have guns, you don’t need a salary.” See Lezhnev, “Criminal State,” p. 22.
- ⁵¹ International Peace Information Service, “Analysis of the Interactive Map of artisanal mining areas in eastern DR Congo.”

- ⁵² U.N. Security Council, “Final report of the Group of Experts (2016),” S/2016/466, p. 2, May 23, 2016, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/466.
- ⁵³ For more information on this topic that Enough has focused on in significantly more detail, see recent reports on this issue, “Breaking the Cycle Delinking Armed Actors from the Gold Supply Chain in Congo and the Great Lakes Region Through Fiscal Reform and Anti-Money Laundering (AML),” (Washington: The Enough Project, May 2017), available at <https://enoughproject.org/policy-briefs/breaking-the-cycle>; Fidel Bafilemba and Sasha Lezhnev, “Congo’s Conflict Gold Rush: Bringing gold into the legal trade in the Democratic Republic of Congo,” (Washington: The Enough Project, April 30, 2015), available at <https://enoughproject.org/blog/new-congo-report-congos-conflict-gold-rush-and-how-counter-it>.
- ⁵⁴ As well as smuggling, forgery, laundering, and trafficking.
- ⁵⁵ See, The Enough Project, “Breaking the Cycle,” and Bafilemba and Lezhnev, “Congo’s Conflict Gold Rush.”
- ⁵⁶ Donor governments, particularly the European Union and USAID, should also accompany 1502 with livelihood projects for miners, including alternative livelihood programs and support to formalize and improve the working conditions of artisanal miners, many of whom still work in terrible conditions. Projects should encompass microfinance, programs to increase women’s accessibility to mining and other livelihoods, transition projects for child miners, and should include aid for the formalization of artisanal mining—including the creation of artisanal mining zones, validation of more conflict-free mines, capacity building for mining cooperatives, and support for improved health and safety implementation for miners. For more detail, see Fidel Bafilemba and Sasha Lezhnev, “Congo’s Conflict Gold Rush: Bringing gold into the legal trade in the Democratic Republic of Congo,” pp. 15-17 (Washington: The Enough Project, April 2015), available at <http://www.enoughproject.org/reports/congo%E2%80%99s-conflict-gold-rush>; Holly Dranginis, “Doing Good, while Doing Well: Is There a Win-Win Formula for Investing Responsibly in Congo’s Minerals Sector?” pp. 5, 7 (Washington: The Enough Project, July 2014), available at <http://www.enoughproject.org/reports/doing-good-while-doing-well>.
- ⁵⁷ In April 2017, 31 Congolese civil society groups said that, “Section 1502... led to a positive change. In the east of the DRC, around 8,500 children left armed groups between 2009 and 2015.” Found at Enough Project blog, “11 Letters from Congolese Civil Society Groups in Support of the U.S. Conflict Minerals Law,” April 4, 2017, available at <https://enoughproject.org/blog/seven-letters-congolese-groups-support-us-conflict-minerals-law>
- ⁵⁸ Letter from South Kivu Thematic Group working on Minerals and Natural Resources to the Securities and Exchange Commission, February 24, 2017, available at <https://www.sec.gov/comments/statement-013117/cll2-1597728-132417.pdf>.
- ⁵⁹ The sources for this table are: Fédération des Entreprises du Congo, (FEC), Chambre des Mines, “Industrie Minière en RDC : Rapport Annuel 2015,” available at http://www.congomines.org/system/attachments/assets/000/001/086/original/CdM_annual_Report_2015_FR_-_0902_2016_-_web.pdf?1455110717; Banque Centrale du Congo, *Condensé statistique*, August 2015, available at http://www.bcc.cd/index.php?option=com_content&view=section&id=9&Itemid=58; Sara Geenen, *African Artisanal Mining from the Inside Out*, (Abington, UK: Routledge, 2015), pp. 5, 9; The annual average commodity prices are estimates from different sources and graphs published by FEC.
- ⁶⁰ World Bank, “Congo, Dem. Rep.” Data tables, 2016, available at <https://data.worldbank.org/country/congo-dem-rep> (last accessed August 2017).
- ⁶¹ Initiative pour la Transparence des Industries Extractives, “Rapport ITIE-RDC 2014” (Kinshasa: December 2015), p.12, available at https://eiti.org/sites/default/files/documents/2014_drc_eiti_report_fr.pdf.
- ⁶² For example, see Global Witness, “Out of Africa: British tax havens and Congo’s missing \$1.5 billion,” May 4, 2016, available at <https://www.globalwitness.org/en/campaigns/conflict-minerals/out-of-africa/>; Jason Stearns, “Interview with Michael Kavanagh on the Congolese Economy,” Congo Research Group blog, May 15, 2015, available at <http://congoresearchgroup.org/podcast-interview-with-michael-kavanagh/>; Michael J. Kavanagh, “Gecamines of Congo Studies Selling Stake in Glencore Mine,” *Bloomberg*, October 7, 2013, available at <http://www.bloomberg.com/news/articles/2013-10-06/Gecaminesgecamines-of-congo-studies-selling-stake-in-glencore-copper-mine>; David Manley and Webby Wake, “Copper Giants: Lessons from State-Owned Mining Companies in the DRC and Zambia,” Natural Resource Governance Institute, (April 2015), p. 20, available at http://www.resourcegovernance.org/sites/default/files/nrgi_NMC_English.pdf.
- ⁶³ Jason Stearns, “Interview with Michael Kavanagh,” Congo Research Group blog, May 2, 2016, available at <http://congoresearchgroup.org/interview-with-michael-kavanagh/>.