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## Leveraging Reform: Fighting Corruption in Post-Election DR Congo

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In the wake of the Democratic Republic of Congo's (hereafter Congo) flawed December 2018 elections, it is important for the international community to focus on key areas that can have a lasting impact in the country, in particular on addressing high-level corruption. Systemic corruption is at the core of a form of state capture in Congo that incentivizes certain elites inside and outside the country to derive personal profit via illicit financial activity while undermining government institutions and the rule of law in the deeply impoverished country.<sup>1</sup> Human rights abuses are also endemic to this system.

Concerns extend far beyond vote rigging and lack of transparency during the vote tabulation process, with leaked results from Congo's electoral commission and results compiled by the Catholic Church election observation mission showing that opposition coalition candidate Martin Fayulu had won by a landslide and not the candidate ultimately declared victorious, Félix Tshisekedi. Ultimately, this election rigging occurred in order to perpetuate a status quo of systemic corruption and violence. Achieving progress in other key areas hinges on meaningfully addressing grand corruption in Congo, or reform measures will be blocked by elites with a vested interest in perpetuating systemic state capture. Unless there is a major impact on grand corruption, endemic armed conflict – perpetuated in large part by corrupt elements in the Congolese army – will continue largely unabated alongside other human rights abuses and poverty. Moreover, efforts to improve Congo's investment climate as well as implement much-needed judicial, security sector, and other governance reforms will falter.

Despite the way in which the new government came to power, bolstered by a new parliamentary majority held by ex-president Joseph Kabila's political coalition, Congo's current political

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transition offers some new opportunities to begin to enact critical transparency and accountability reforms. The fact that the election was both largely peaceful and transferred power to an opposition candidate, albeit one far more closely aligned with Kabila than Fayulu, indicates that there is some window for reform.

This moment of opportunity requires a two-track approach: engaging with the new administration in support of anti-corruption, transparency and accountability reforms on the one hand; and more aggressive financial pressure targeted toward the heart of the system of violent kleptocracy. The latter will provide the new government the political space it needs to enact key reforms.

The United States, European Union, and African Union can play key roles in combating corruption by leveraging Congolese reform efforts to transform Congo's deeply embedded kleptocratic system. While closely engaging with Congolese civil society and the government on good governance, transparency, security and anti-corruption reforms, these actors should make strategic use of financial pressure against high-profile corrupt actors. Recent US sanctions against three senior electoral commission officials are an important step to hold accountable those responsible for election fraud.

However, much more significant financial pressure is needed on political leaders and their commercial partners inside and outside Congo in order to have a real impact leading to desperately needed transparency and good governance reforms. These actors have profited personally from a corrupt system that enables violence while the majority of the country has suffered from poor health services, education and infrastructure, as well as security services that are frequently predatory on the civilian population.<sup>2</sup> The use of financial pressure tools will be key to undermining the influence of former president Joseph Kabila and his inner circle, who were involved in extensive corruption during their time in office and yet continue to wield significant – perhaps even preponderant – influence in the new government, including in the military, the parliament, the judiciary, and the executive.

Anti-corruption reforms in Congo will only succeed if they are strongly supported by Congolese civil society and backed by international financial pressure, particularly through targeted network sanctions and anti-money laundering measures. The United States has a unique ability to exert financial pressure on corrupt actors because of Congo's reliance on US dollar transactions, which are overwhelmingly cleared by US banks and other financial institutions. The European Union, individual European governments and the African Union also have critical roles to play, as corrupt officials frequently travel to and own properties and bank accounts in Europe and elsewhere in Africa.

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Through this two-pronged approach, the United States, European Union and African Union can help create political space to allow President Tshisekedi to follow through on reforms to transform Congo's corrupt system into a more democratic, transparent state. Targeted network sanctions and anti-money laundering measures against officials, their companies and networks of associates involved in corruption would marginalize them from positions of power and therefore lessen their influence in the new government. For example, it will be difficult for Tshisekedi to name officials under sanctions as ministers for fear of sparking further sanctions and anti-money laundering measures. Similarly, financial measures targeting corrupt business deals over state contracts could also pressure the Tshisekedi government to investigate and potentially re-negotiate these deals.

**Policy reforms.** The United States, European Union and African Union should allocate diplomatic and technical resources to implement reforms in key areas highlighted by Congolese civil society:

- 1. Gécamines.** Require Gécamines, the state-owned mining company at the heart of numerous corruption scandals, to (i) publish its annual financial reports, (ii) undergo an independent audit and publicly release its results, and (iii) investigate and replace, as appropriate, senior management involved in grand corruption.
- 2. Asset declaration.** Enforce the existing law requiring public officials to declare their assets and do so publicly. This should include those assets held by President Tshisekedi and his predecessor Kabila. These declarations are rarely made despite being required under Congolese law. Tshisekedi declared his assets to parliament but has not yet done so publicly.
- 3. IMF.** Invite the International Monetary Fund to re-launch a program in Congo. Such a move would improve Congo's fiscal situation, enhance transparency and monitoring of the mining sector and the Central Bank of Congo -- a key institution involved in corruption scandals. When it had a Congo program in the 2000s, the IMF's transparency conditions and surveillance activities helped force the government to disclose key mining contracts. Although the program disclosed a growing number of contracts, it was halted mainly due to a lack of political will from the Congolese government.
- 4. Mining and oil contract transparency.** Issue a decree announcing that the government will now fully enforce the Congolese government requirement to disclose publicly all mining and oil contracts. President Tshisekedi should also investigate opaque deals made under the Kabila regime.
- 5. Security Sector Reform and Accountability.** Establish a robust accountability mechanism for grave international crimes and corruption with international participation. Congo's security services, armed groups and public officials have committed extensive human rights violations and acts of corruption. Justice for those crimes is critically important. Congolese and international civil society organizations called for a "specialized mixed

chambers” featuring both Congolese and international judges.<sup>3</sup> An updated mechanism of the sort should be established based on new consultations with civil society groups, with the backing of the United States, European Union and African Union. Furthermore, high-ranking security sector officials under sanctions for elections-related violence should be immediately removed from their positions and held accountable for their crimes.

**Financial leverage in support of systemic change.** The reforms outlined above will lack the political space necessary to succeed unless former president Kabila and his inner circle are marginalized from positions of power and influence. The United States, European Union and African Union should apply sustained financial pressure through network sanctions targeting former and current government officials, their financial facilitators and associates involved in significant corruption or human rights abuses, as well as enact anti-money laundering measures to disrupt illicit financial activity associated with corruption at a systemic level. We recommend that the following actions be taken:

- 1. Network sanctions against current and former corrupt Congolese officials, their associates and corporate networks.** The United States, European Union and African Union should sanction individuals and companies involved in high-level government corruption, including the misappropriation of state funds, and human rights abuses. The sanctions should include those acting for or on behalf of these individuals or providing them with support, and the companies that they own or control.
- 2. Anti-money laundering measures.** Robust application of anti-money laundering measures would disrupt the ability of Congolese Politically Exposed Persons (PEPs) to launder corrupt proceeds abroad, including through the US and European banking systems. PEPs in Congo are exploiting the international financial system to move their assets, including those obtained through corrupt practices and by misappropriating state assets under the Kabila presidency. Certain banks have been primary conduits for PEPs to access the international financial system, and the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) should issue a finding under Section 311 of the USA Patriot Act identifying those institutions as entities of primary money laundering concern. Furthermore, FinCEN should issue a public advisory about the money laundering risks associated with the banking and mining sectors in Congo. Regulators across Canada, Europe and elsewhere in Africa should issue similar alerts.
- 3. Diplomatic engagement to maintain impact of existing sanctions.** The African Union, European Union, United Nations and United States should coordinate to enforce existing sanctions. Through embassies abroad, the Department of State and European Union member countries should also monitor and report on the activities of currently-sanctioned persons in order to inform continued designations of their networks and support the application of these sanctions against spurious delisting requests.

- 4. Asset recovery.** The US Justice Department/FBI Kleptocracy Initiative should aggressively pursue the proceeds of corruption that were laundered from Congo during the Kabila era. The Justice Department should assign a Legal Attaché to the US Embassy in Kinshasa to support US law enforcement efforts to investigate and pursue criminal and civil actions against individuals involved in illicit financial activity. The United States, European Union, and African Union should also urge the World Bank to host a forum on asset recovery to invite representatives from countries where Congolese state funds have been laundered offshore or used to purchase real estate, aircraft and yachts.
  
- 5. Accountability for electoral fraud.** The European Union and African Union should issue targeted financial sanctions against individuals and their networks, including their financial partners, most responsible for fraud relating to the elections, following on the US sanctions issued in March 2019. The Independent National Election Commission, or CENI, failed to publish disaggregated polling station data, one of the most important components of transparency during the vote tabulation process. Instead, it issued results that strongly contradicted the Catholic observer mission and leaked CENI results, greatly undermining electoral credibility. It also committed apparent violations of Congolese law governing public contracts, facilitated significant election delays, and failed to investigate credible concerns raised by international technical experts regarding fraud indicators in the voter registration process. The results of the March 2019 Senate elections are currently under dispute amid widespread allegations of corruption and vote rigging. Failure to hold accountable those most directly responsible for electoral fraud sets a dangerous precedent for future elections in Congo and elsewhere on the continent whereby the international community blatantly accepts and condones fraudulent electoral processes. The African Union, European Union and United States should also support civil society-initiated dialogue regarding electoral reform in Congo, incorporating lessons learned from the 2018 electoral cycle.

## Endnotes

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<sup>1</sup> See Sasha Lezhnev, “A Criminal State: Understanding and countering institutionalized corruption and violence in the Democratic Republic of Congo,” Enough Project, October 2016, available at <https://enoughproject.org/reports/criminal-state-understanding-and-countering-institutionalized-corruption-and-violence-democr>

<sup>2</sup> Ibid.

<sup>3</sup> “Joint Declaration on Mixed Chambers and ICC Implementing Legislation,” 146 Congolese and international human rights organizations, April 1, 2014, available at <https://enoughproject.org/reports/human-rights-groups-call-accountability-atrocities-committed-drc>