



*Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups, outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be restricted only in so far as is necessary and shall only be such as are provided for

## **CIVIL SOCIETY REPORT**

on the Implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

## **UNITED NATIONS CONVENTION AGAINST CORRUPTION**

## **IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

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by Centre de Recherche sur l'Anti-Corruption

## Acknowledgements

With the aim of contributing to the national UNCAC review in the Democratic Republic of Congo in its second cycle, this parallel report was written by the Anti-Corruption Research Centre (Centre de Recherche sur l'Anti-Corruption or CERC), using guidance materials and report template designed by the UNCAC Coalition and Transparency International.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of November 20, 2021; therefore, actions and events subsequent to this date are not reflected in this document.

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**Centre de Recherche sur l'Anti-Corruption (CERC EUP)** is an independent, non-profit organization working with citizens to build integrity and good governance in the Democratic Republic of Congo. It was founded in 2017 to advance knowledge on the causes and consequences of corruption and support the development of new anti-corruption policies and initiatives in the Democratic Republic of the Congo.

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## Abbreviations

While the abbreviations are provided in both French and English in the following table, they are used in their original French version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

<b>Abbreviation</b>	<b>French</b>	<b>English</b>
ACAJ	Association Congolaise pour l'accès à la justice	Congolese Association for Access to Justice
ACB	Association Congolaise de Banques	Congolese Banks Association
APLC	Agence pour la Prévention et la Lutte contre la Corruption	Agency for the Prevention and Fight against Corruption
AML/TF	Anti-Money Laundering and Terrorism Financing	
AMLO	Anti-Money Laundering Office	
ANAPI	Agence Nationale pour la Promotion des Investissements	National Agency for Investment Promotion
ANIF	Agence Nationale d'Investigation Financière	National Agency of Financial Investigation
ANR	Agence Nationale des Renseignements	National Intelligence Agency
APNAC	African Parliamentarians Network Against Corruption	
ARCA	Agence de Régulation et de Contrôle des Assurances	Insurance Regulation and Control Agency
ARMP	Autorité de régulation des marchés publics	Public Procurement Regulatory Authority
ASADHO	Association Africaine de défense des droits de l'homme	African Association for the Defense of Human Rights
ASBL	Association Sans but Lucratif	Non-Profit Association
BCC	Banque centrale du Congo	Central Bank of Congo
BCN-INTERPOL	Bureau central national d'Interpol	Interpol National Central Bureau
BUNEP	Bureau National de l'Éthique Professionnelle	National Office of Professional Ethics
CC	Cour des Comptes	Court of Auditors
CCM	Coordination pour le Changement de Mentalité	Coordination for Change of Minds



CENAREF	Cellule Nationale des Renseignements Financiers	National Financial Intelligence Unit
CENI	Commission Électorale Nationale Indépendante	Independent National Electoral Commission
CERC	Centre de Recherche sur l'Anti-Corruption	Anti-Corruption Research Center
CGPMP	Cellules de Gestion des Projets et des Marchés Publics	Project Management and Public Procurement Units
CIPRAP	Commission interministérielle de pilotage de la Réforme de l'administration publique	Interministerial Commission for the Management of Public Administration Reform
CIRGL	Conférence Internationale sur la Région des Grands Lacs	International Conference on the Great Lakes Region
CNCLT	Comité National de Coordination de Lutte Contre le Terrorisme	National Coordination Committee for the Fight against Terrorism
COCOLUCO	Coalition Congolaise des Organisations de lutte contre la Corruption	Congolese Coalition of Anti-Corruption Organizations
COLUB	Comité consultatif de Lutte contre le Blanchiment de capitaux et le	Advisory Committee to Combat Money Laundering and
COMESA	Common Market for Eastern and Southern Africa	
CTIF	Cellule de Traitement de l'Information Financière	Financial Information Processing Unit
DGCMP	Direction Générale de Contrôle des Marchés Publics	General Directorate of Public Procurement Control
DGDA	Direction Générale des Douanes et Accises	General Directorate of Customs and Excise
DGM	Direction Générale des Migrations	General Directorate of Migration
DNFBP	Designated Non-Financial Businesses and Professions	
DRC	Democratic Republic of the Congo	Democratic Republic of the Congo
DSRPI	Document de stratégie de réduction de la pauvreté intérimaire	Interim Poverty Reduction Strategy Paper
ECCAS	Economic Community of Central African States	

ENA	École nationale de l'administration	National School of Administration
ETS	Établissement ou Entreprise Privée	Institution or Private Company
EUP	Établissement d'Utilité Public	Public Utility Establishment
FEC	Fédération des Entreprise du Congo	Federation of Enterprises of Congo
FIU	Financial Intelligence Unit	
FOLUCCO	Fonds de Lutte Contre le Crime Organisé	Organized Crime Control Fund
FONALC	Forum national sur la lutte contre la corruption	National Forum on Anti-Corruption
GoDRC	Government of the DRC	
GUCE	Guichet Unique de Création d'Entreprise	Single Window/'One-stop shop' for Business Creation
IGF	Inspection Générale des Finances	General Inspectorate of Finance
INTOSAI	Organisation internationale des institutions supérieures de contrôle des	International Organization of Supreme Audit Institutions
KPCS	Kimberley Process Certification Scheme	
LICOCO	Ligue congolaise de lutte contre la Corruption	Congolese Anti-Corruption League
LRMP	Loi Relative aux Marchés Publiques	Law on Public Procurement
MASAK	Comité d'enquête sur la criminalité financière en Turquie	Investigation Committee on Financial Crime in Turkey
ML	Money Laundering	
ML/TF	Money Laundering and Terrorist Financing	
MP	Marchés publiques	Public markets
NRA	National Risk Assessment	
OBNL	Organisation à But Non-Lucratif	Non-Profit Organization
ODEP	Observatoire pour la dépense publique	Observatory for public expenditure
OECD	Organization for Economic Cooperation and Development	
ONODC	United Nations Office on Drugs and Crime	
OSCEP	Observatoire pour la Surveillance de la Corruption et de l'Éthique Professionnelle	Observatory for the Monitoring of Corruption and Professional Ethics

PPP	Public-Private Partnership	Public-Private Partnership
PV	Procès-verbal	Minutes
RCCM	Registre de Commerce et du Crédit Mobilier	Trade and Movable Property Credit Register
SA	Société Anonyme	Limited company
SADC	South African Development and Cooperation	South African Development and Cooperation
SARL	Société Anonyme à Responsabilité Limitée	Limited Liability Company
SARLU	Société à Responsabilité Limitée Unipersonnelle	Single Person Limited Liability Company
SCA	Sous-commission d'analyse des offres	Sub-committee for the analysis of the offers
SIC	Special Investigation Commission	
STR	Suspicious Transaction Reporting	
TF	Terrorism Financing	
TFP	Technical and financial Partners	
TRACFIN	Traitement du renseignement et action contre les circuits financiers	Intelligence processing and action against clandestine financial circuits
UTRF	Unité de Traitement du Renseignement Financier du Maroc	Financial Intelligence Processing Unit of Morocco
WCO	World Customs Organization	

## List of Persons Consulted

Name of the Institution	Name of Person Consulted	Position	Date of the interview
Ministry of Justice	Fidel Maweta	UNCAC Focal Point	June 21, 2021
Agency for the Prevention and Fight Against Corruption	Mrs. Chouna Lomponda,	Communications and Public Relations Officer	June 26, 2021
	Thierry Mbulamoko	Coordinator	October 20, 2021 (exchange on the margins of the multi-stakeholder forum on the fight against corruption in Kinshasa)
Observatory for Corruption and Professional Ethics Monitoring	Mutambay Kalonji B. Emile	Administrative and Financial Director	July 5, 2021
	St. Augustin Mwendambali	Coordinator	October 20, 2021 (exchange on the margins of the multi-stakeholder forum on the fight against corruption in Kinshasa)
Court of Auditors	Christian Leboyer	Judge	June 28, 2021
Court of Cassation	(Anonymous)	Judge	June 28, 2021
General Finance Inspectorate	(Anonymous)	Inspector General	June 21, 2021
National Financial Intelligence Unit	Paulin Kanda Mawa	Head of Financial Analysis	July 9, 2021
General Secretariat for Political Party Relations	Mr. Longanga Onawala Raphael	Coordinator	June 28, 2021
Public Procurement Regulatory Authority	Claudian Mulimilwa Byankubi	Managing Director, ARMP	July 5, 2021
The Public Procurement Control Branch	Mrs. Matilde Ahune	Public Relations Officer	June 26, 2021
The Independent National Electoral Commission	Christmas Lulu	Public Relations Officer	July 14, 2021

Observatory for the Monitoring of Public Expenditure	Florimond Muteba	President	June 29, 2021 July 10, 2021
Congolese Anti-Corruption League	Ernest Mpararo	President	October 19, 2021
African Parliamentarians Network Against Corruption (APNAC)	Honorable Jean Pierre Pasi Zapamba Buka	President	October 20, 2021
	Paulin Katsuva Kibendelwa	Permanent Executive Secretary	June 24, 2021

## **I. Introduction**

The United Nations Convention against Corruption is an international treaty established by the United Nations, adopted by UN General Assembly Resolution 58/4 of 31 October 2003. On 9 December 2003, 114 countries signed the Convention in Merida, Mexico. As of 6 May 2020, 140 countries had signed it, and 187 countries had ratified it. The Democratic Republic of the Congo signed and ratified the United Nations Convention against Corruption (UNCAC) on 23 September 2010.

This report reviews the Democratic Republic of the Congo's implementation of selected articles of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters.

The Democratic Republic of the Congo was selected by the UNCAC Implementation Review Group by a drawing of lots for review in the second year of the first cycle. The Democratic Republic of Congo was nominated as the reviewing country of Seychelles, Costa Rica, Ivory Coast and was evaluated for this first cycle by the Mauritius and Vietnam. No information has been provided or published to determine the level of implementation by the Democratic Republic of the Congo in the first cycle of the UNCAC. The first cycle reviewed Chapter 3 (Criminalization, Law Enforcement) and Chapter 4 (International Cooperation) of the UNCAC.

For the second cycle: 2015-2024, Libya and Zambia are evaluating the Democratic Republic of the Congo concerning Chapters II (Preventive measures) and V (Asset recovery). However, little information is provided, making it difficult for reviewers to take stock of the Congolese government's review process.

A draft of this parallel report will be provided to the government of the Democratic Republic of Congo through the Agency for the Prevention of Corruption (APLC).

### **1.1 Scope**

The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Art. 5), preventive anti-corruption bodies (Art. 6), public sector employment (Art. 7.1), codes of conduct, conflicts of interest and assets declarations (Art. 7, 8 and 12), reporting mechanisms and whistleblower protection (Art. 8.1 and 8.4 and 13.2), political financing (Art. 7.3), public procurement (Art. 9.1), the management of public finances (Art. 9.2), judiciary and prosecution services (Art. 11), private sector transparency (Art. 12), access to information and the participation of society (Art. 10 and 13.1), and measures to prevent money laundering (Art. 14).

Under Chapter V, the UNCAC articles and topics that receive particular attention in this report are those covering anti-money-laundering (Articles 52 and 58), measures for direct recovery of property (Art. 53 and 56), confiscation tools (Art. 54), international cooperation for the purpose of confiscation (Art. 51, 54, 55, 56 and 59) and the return and disposal of confiscated property (Art. 57).

## **1.2 Structure**

The report begins with an executive summary, including condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in the Democratic Republic of the Congo as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed, and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

## **1.3 Methodology**

The report was prepared by the Anti-Corruption Research Centre (CERC) with technical and financial support from the UNCAC Coalition. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was made available to them.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in the UNCAC Chapter II on prevention and Chapter V on asset recovery.

In preparing this report, CERC relied primarily on active transparency and formal requests for public information. In this regard, it should be noted that teleworking due to the COVID-19 pandemic have led to delays, for example, in receiving responses to requests. The research team sought to obtain information from government institutions and engage in a dialogue with civil society organizations. This report was prepared at the same time as the official review of the country.

## II. Executive Summary

The Democratic Republic of the Congo has been ratifying the United Nations Convention against Corruption since 23 September 2010,<sup>1</sup> committing with the rest of the world to promote and strengthen measures to prevent and combat corruption more effectively, given that corruption threatens the stability and security of societies by undermining institutions, democratic values, ethical values, and justice.

The UNCAC second cycle civil society parallel review process by the civil society organization, the Anti-Corruption Research Centre, highlighted the efforts of the Democratic Republic of the Congo (DRC), evidence of good practice and gaps in the implementation of preventive and punitive measures to combat corruption and asset recovery since the ratification of the UNCAC by the DRC.

Following the UNCAC's provisions, anti-corruption measures and means have only increased in the DRC since President Felix Antoine Tshisekedi Tshilombo assumed power in 2019. Since 2019, several bodies have been actively involved in the prevention and fight against corruption, including the General Inspectorate of Finance (IGF), the Court of Auditors (CC), the National Financial Intelligence Unit (CENAREF) and the Observatory for the Corruption and Professional Ethics Monitoring (OSCEP). Although members of parliament adopted a law on the organization and operation of a National Anti-Corruption Agency, which is at a standstill,<sup>2</sup> the Presidency of the DRC created in 2020 a specialized body to fight against corruption: the Agency for Prevention and Fight Against Corruption (APLC).

Despite the efforts of the DRC, its institutions and the authorities are still struggling to reverse the trend of corruption. Therefore, it is curious to know why, despite all these institutions' presence, the DRC is still not spared this scourge to the point of losing an average of \$15 billion due to fraud, corruption, and mismanagement.<sup>3</sup>

The main challenges in the DRC's implementation of UNCAC Chapter II include the lack of political will, political interference and the politicization of justice, which prevent the prosecution of alleged perpetrators, the ineffectiveness of institutions and bodies to combat corruption due to the lack of independence or resources, the legal barrier

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<sup>1</sup> Law No. 06/014 of June 12, 2006 authorizing the ratification by the Democratic Republic of the Congo of the United Nations Convention against Corruption, [https://www.droitcongolais.info/files/0.3.65.3.-Loi-du-12-juin-2006\\_Ratification-de-la-convention-des-NU\\_corruption.pdf](https://www.droitcongolais.info/files/0.3.65.3.-Loi-du-12-juin-2006_Ratification-de-la-convention-des-NU_corruption.pdf), accessed on July 10, 2021.

<sup>2</sup> Draft law on the fight against corruption in the Democratic Republic of Congo: reflections on the competencies and chances of success of a national anti-corruption agency, accessed on 28 September 2021.

<sup>3</sup> Emmanuel Luzolo Bambi, Presidential Adviser on Anti-Corruption and Money Laundering, available on [DRC would lose 15 billion dollars a year in corruption \(voaafrique.com\)](https://voaafrique.com), accessed on 28 September 2021.



for persons enjoying diplomatic or parliamentary privileges and immunities and the lack of an effective and coordinated approach in preventing and combating corruption.

Concerning Chapter V, the lack of judicial cooperation with other signatory countries makes it difficult to recover assets. Nevertheless, despite the international and regional legal instruments to combat corruption to which the DRC has acceded, no results have been achieved to date.

## **2.1 Description of Process**

At the time of writing, the official review process of the DRC is in the self-assessment stage. It should be noted that the Anti-Corruption Research Centre has repeatedly appealed to the Presidency of the Republic, through the Ministry of Justice, as the focal point for this review, to sign the Coalition's Transparency Pledge without success. We have also expressed to these entities our willingness to work together to promote an open and collaborative review process. The State has not published information about the review process or involved civil society organizations but still has the opportunity to do so. On the other hand, the visit of peer reviewers remains uncertain due to the COVID-19 pandemic.

## **2.2 Availability of Information**

Access to information in the preparation of this report was a significant challenge. Institutions publish little information on public policies, reports, statistics, and programmes to prevent and combat corruption proactively. On the other hand, 75% of the public information requests submitted were not answered by the institutions or the information was refused. To fill these gaps, discussions were conducted with state and non-state actors. In the case of public institutions, of the 15 interview requests, 7 received a positive response. It should also be noted that the State did not publish information about the review process. Finally, the measures adopted in the context of the COVID-19 pandemic represented an obstacle to accessing information and approaching stakeholders.

Nevertheless, the participation of the Anti-Corruption Research Centre in the Anti-Corruption General in October 2021<sup>4</sup> allowed sufficient information and documentation to be collected from state and non-state actors on the state of anti-corruption efforts in the DRC.

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<sup>4</sup> The Ministry in charge of Justice and Guard of Seals organizes “the general state of the fight against corruption in the Democratic Republic of Congo”, under the high patronage of the President of the Republic and Head of State, Felix Antoine Tshisekedi Tshilombo, <https://acpcongo.com/index.php/2021/10/17/les-travaux-des-etats-generaux-de-la-lutte-contre-la-corruption-en-rdc-demarrant-mardi-a-kinshasa/>, accessed on October 26, 2021.

## 2.3 Implementation in Law and in Practice

The implementation of the UNCAC is reflected not only in the establishment of anti-corruption structures and bodies but rather in the effective implementation of the measures provided for in national and international legal instruments. Therefore, in the following table, we present the summary of the implementation in law and in practice of the UNCAC in the DRC.

**Table 1: Implementation and enforcement summary**

<b>UNCAC Articles</b>	<b>Status of the implementation in law</b>	<b>Status of implementation and enforcement in practice</b>
<b>Art. 5</b> – Preventive anti-corruption policies and practices	Partially implemented	Moderate
<b>Art. 6</b> – Preventive anti-corruption body or bodies	Fully implemented	Moderate
<b>Art. 7.1</b> – Public Sector employment	Partially implemented	Poor
<b>Art. 7.3</b> – Political Financing	Not implemented	Poor
<b>Art. 7, 8 and 12</b> – Codes of conduct, conflicts of interest and asset declarations	Partially implemented	Poor
<b>Articles 8.4 and 13.2</b> – Reporting mechanism and whistleblower protection	Not implemented	Poor
<b>Art. 9.1</b> – Public procurement	Partially implemented	Moderate
<b>Art. 9.2</b> – Management of public finances	Fully implemented	Moderate
<b>Art. 10 and 13.1</b> – Access to information and the participation of society	Partially implemented	Poor
<b>Art. 11</b> — Judiciary and prosecution services	Partially implemented	Poor
<b>Art. 12</b> – Private sector transparency	Partially implemented	Moderate
<b>Art. 14</b> – Measures to prevent money-laundering	Partially implemented	Moderate
<b>Articles 52 and 58</b> – Anti-money laundering	Partially implemented	Moderate
<b>Art. 53</b> - Measures for direct recovery of property	Partially implemented	Poor

<b>Art. 54, 55, 56</b> – Confiscation tools and international cooperation for the purpose of confiscation	Partially implemented	Poor
<b>Art. 57</b> – The return and disposal of confiscated property	Partially implemented	Poor

**Table 2: Performance of selected key institutions**

<b>Name of institution</b>	<b>Performance in relation to responsibilities covered by the report</b>	<b>Brief comment on performance (e.g., inadequate resources, lack of independence, strong expertise)</b>
<b>The Agency for the Prevention and Fight Against Corruption (APLC)</b>	<b>Moderate</b>	<ul style="list-style-type: none"> <li>• The independence of the APLC under the Presidency of the Republic is limited.</li> <li>• Lack of resources and technical expertise available to investigate and deal with complaints and corruption cases.</li> <li>• Poor establishment of APLC at the national and regional levels.</li> <li>• Lack of adequate infrastructure.</li> </ul>
<b>National Financial Intelligence Unit (CENAREF)</b>	<b>Moderate</b>	<ul style="list-style-type: none"> <li>• Weak international cooperation</li> <li>• Limited resources, logistics and personnel.</li> <li>• Limited independence.</li> <li>• Weak investigative competences.</li> <li>• Poor establishment of financial intelligence units at the regional level.</li> </ul>
<b>National Office for Professional Ethics (BUNEP)</b>	<b>Low</b>	<ul style="list-style-type: none"> <li>• Limited resources.</li> <li>• Limited and unqualified staff.</li> </ul>
<b>Observatory for the Surveillance of Corruption and Professional Ethics (OSCEP)</b>	<b>Moderate</b>	<ul style="list-style-type: none"> <li>• Limited independence.</li> <li>• Limited resources.</li> <li>• Poor collaboration with other anti-corruption bodies.</li> <li>• Limited number of staff.</li> <li>• Poor establishment of OSCEP sub-offices at the regional level.</li> </ul>
<b>Court of Auditors</b>	<b>Low</b>	<ul style="list-style-type: none"> <li>• Lack of independence.</li> <li>• Limited resources.</li> </ul>

		<ul style="list-style-type: none"> <li>• The judges of the Court have never been sworn in.</li> </ul>
<b>Directorate-General for Public Procurement</b>	<b>Moderate</b>	<ul style="list-style-type: none"> <li>• Lack of transparency in public procurement.</li> <li>• Poor establishment of public procurement bodies at the regional level.</li> <li>• Lack of independence.</li> <li>• Limited number of staff.</li> <li>• Lack of transparency.</li> </ul>
<b>Public Procurement Regulatory Authority</b>	<b>Moderate</b>	<ul style="list-style-type: none"> <li>• Lack of independence.</li> <li>• Limited number of and unqualified staff.</li> <li>• Insufficient resources.</li> <li>• Poor establishment of public procurement bodies at the regional level.</li> <li>• Lack of adequate infrastructure.</li> </ul>
<b>General Inspectorate of Finances</b>	<b>High</b>	<ul style="list-style-type: none"> <li>• Lack of independence.</li> <li>• Limited number of staff.</li> <li>• Poor establishment of financial inspection units at the regional level.</li> </ul>
<b>Observatory for Corruption and Professional Ethics Monitoring</b>	<b>Moderate</b>	<ul style="list-style-type: none"> <li>• Limited independence.</li> <li>• Limited resources.</li> <li>• Weak collaboration with other anti-corruption bodies.</li> <li>• Poor establishment of sub-offices at the regional level.</li> </ul>

#### **2.4 Recommendations for Priority Actions:**

1. Ensure the full independence of preventive anti-corruption bodies by avoiding using these bodies for political purposes.
2. Ensure the country review process and the final report on UNCAC implementation are made publicly available.
3. Establish an independent body to monitor the effectiveness of asset declarations of public officials, with the possibility of completing the declaration online.
4. Adopt the Access to Information Act, the Whistleblower Protection Law, and the Anti-Corruption Law.
5. Adopt the Assets Protection Act.
6. Implement the recommendations of the Court of Auditors on the control of public finances.
7. Criminalize the illicit enrichment of civil servants, public officials, and judges.

8. Strengthen sanctions for corruption and breaches of the asset's declaration.
9. Improve and centralize the collection and processing of claims, whistleblowing, and complaints.
10. Strengthen the capacity of anti-corruption and anti-money laundering investigation bodies.

### III. Assessment of Review Process for the Democratic Republic of the Congo

#### 3.1 Report on the Review Process

This report was produced at the same time as the official review of the country, delayed for a variety of reasons, including a lack of political will to support the review process and the COVID-19 pandemic. The research team could not find published information on the review process, so this section is based on interviews conducted by our researchers. It should be noted that the Anti-Corruption Research Centre has repeatedly appealed to the Presidency of the Republic, through the Ministry of Justice, the focal point of this review, to sign the Transparency Pledge promoted by the Coalition, without success.

Therefore, the government's self-assessment report is currently produced with limited civil society organizations' (CSOs) participation. For example, it was only in June 2021 that CERC was informed of the ongoing country review process.

**Table 3: Transparency of government and CSO participation in the UNCAC review process**

Did the government disclose information about the country focal point?	Yes	Information is available on the UNODC website. <sup>4</sup>
Was the review schedule published somewhere/publicly known?	No	No information on the review schedule is available online.
Was civil society consulted in the preparation of the self-assessment checklist?	Yes	Some civil society organizations were consulted. The Congolese League for the Fight Against Corruption (LICOCO) and the Assistance Against Drugs (ACDRO) claim to be partially involved in the UNCAC review process.
Was the self-assessment checklist published online or provided to civil society?	No	No self-assessment checklist is available online or provided to civil society.
Did the government agree to a country visit?	Details not disclosed	
Was a country visit undertaken?	Details not disclosed	

<sup>4</sup> DRC - Governmental Expert List, [https://www.unodc.org/documents/treaties/UNCAC/IRG-Experts/English/SecondCycle/Democratic\\_Republic\\_of\\_Congo\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/IRG-Experts/English/SecondCycle/Democratic_Republic_of_Congo_E.pdf), accessed on July 21, 2021.

Was civil society invited to provide input to the official reviewers?	Details not disclosed	
Has the government committed to publishing the full country report?	No	The first cycle county report was never published because of the DRC's reluctance to make the process transparent.

### 3.2 Access to Information

The right to information is one of the fundamental civil rights of an individual. Without information, citizens are deprived of the right to know how the country is governed. The right to information is guaranteed by the 2006 Constitution of the Democratic Republic of the Congo in Article 24.

For several years, the law setting out the procedures for exercising these freedoms has been pending. The Access to Information Act was never passed. For years, civil society organizations have continued to advocate for adopting the access to information law. The government seem to ignore the right of access to information and consciously equate it with freedom of the press. High-level advocacy and lobbying are essential to ensure that Congolese parliamentarians can pass such a law. A law that is much awaited by civil society and media organizations to enable them to obtain good information easily from the necessary sources.

The Anti-Corruption Research Centre has corresponded with several state institutions holding the information needed to prepare this parallel report, but some requests have never been granted, other institutions provide the information in a simplistic and minimal way, without statistical data, especially relating to the judiciary and the National Financial Intelligence Unit. Accountability requires authorities to inform people about the management of public finances and provide access to public information to private and legal persons seeking information from public and private bodies performing a public function.

In gathering information to develop this report, we encountered several cases of denial of access to information. There was a need to vehemently insist on having good information at times, without which it is challenging to develop this parallel civil society report on the implementation of the UNCAC. Gathering statistical data and details of prosecutions and judgments from Financial Intelligence and justice bodies was also an obstacle. That is why we make an effort to work with credible secondary sources and reliable media articles.

We sent several requests to access public information to prepare our civil society parallel report, which were unaddressed. During a multi-stakeholder forum on the fight

against corruption, we met with the majority of the authorities and obtained the information we were looking for.



## **IV. Assessment of the Implementation of Chapter II and Chapter V Provisions**

This chapter will analyze the legal framework and implementation of the provisions of UNCAC Chapter II (Preventive Measures) and Chapter V (Asset Recovery) articles.

### **A. Chapter II**

#### **Art. 5: Preventive Anti-Corruption Policies and Practices**

To stem corruption in the Democratic Republic of Congo, several attempts have been made, including the implementation of the National Anti-Corruption Strategy in 2002,<sup>5</sup> developed by an inter-ministerial committee with the technical assistance of the World Bank to solve the economic and social problems of the country within the framework of the Interim Poverty Reduction Strategy Paper (PRSP). This strategy has not produced any expected results given the resistance to changing attitudes and, above all, the lack of involvement of the entire nation.

To fulfil his commitments and to fight corruption firmly, former President of the Democratic Republic of Congo Joseph Kabila concluded with his counterpart of the Republic of South Africa Thabo Mbeki on 14 January 2004 a General Framework Agreement for Cooperation,<sup>6</sup> with a particular emphasis on the promotion of ethical values and a cultural declaration of heritage.

To implement the Memorandum of Understanding on Cooperation in the Field of Anti-Corruption signed in Kinshasa between the RDC-RSA-UNODC (United Nations Office on Drugs and Crime) in 2008, the DRC organized, under the coordination of the Observatory for Monitoring Corruption and Professional Ethics (OSCEP), a National Anti-Corruption Forum (FONALC).<sup>7</sup> The meeting, held in December 2009, was attended by more than 450 delegates from public institutions, civil society, businesses, and national and international anti-corruption experts.

The forum's mission was to define the main features of the National Anti-Corruption Strategy and to pass an anti-corruption law in the DRC. The 104 resolutions that emerged from this forum have been cast into the National Anti-Corruption Strategy,

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<sup>5</sup> Anti-Corruption Initiatives during the transition <https://issafrica.org/chapitre-6-les-initiatives-anti-corruption-durant-la-transition>, accessed on November 30, 2021.

<sup>6</sup> General Framework Cooperation Agreement between the DRC and South Africa, [https://peacemaker.un.org/sites/peacemaker.un.org/files/DRC\\_130224\\_FrameworkAgreementDRCRegion.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/DRC_130224_FrameworkAgreementDRCRegion.pdf), accessed on 08 November 2021.

<sup>7</sup> Opening since Wednesday 16 December 2009 at the People's Palace of the National Forum on the Fight against Corruption, <https://www.radiookapi.net/emissions-2/dialogue-entre-congolais/2009/12/17/ouverture-depuis-mercredi-16-decembre-2009-au-palais-du-peuple-du-forum-national-sur-la-lutte-contre-la-corruption>, accessed on 05 October 2021.

and three law proposals, in particular, were drafted: the Prevention and Fight Against Corruption Law; the Declaration of Assets Law; and the Protection of Witnesses, Whistleblowers and Victims of Corruption Law.

In 2010, the National Anti-Corruption Strategy Paper and the draft Anti-Corruption Laws were submitted to the government for approval yet were met with political resistance. However, a few forum resolutions were implemented, including the creation of the Public Procurement Regulation Authority (ARMP), the payment of public official's salaries through formalized banks, the public media coverage of corruption trials, the creation of the 'One-stop shop' to establish enterprises (GUCE), and the enactment of the new Public Finance Act.

Therefore, the absence of specialized anti-corruption laws means that the fight against corruption in the DRC continues to be impeded by an outdated legal framework that lacks the political anchoring imperative to any anti-corruption efforts.

The Tshisekedi Administration has demonstrated a political commitment to preventing corruption and achieved higher integrity, transparency, and accountability in managing public finances.<sup>8</sup> With this in mind, the Coordination for Change of Minds (CCM) and the Agency for Prevention and Fight Against Corruption (APLC) were established. Its mission is to contribute to the development and effective implementation of anti-corruption strategies at different levels to determine which mechanisms can best be applied in the DRC (Article. 2.7 of Presidential Ordinance No. 20/013 bis as of 17 March 2020).

Accordingly, to address the above shortcomings, the APLC and OSCEP organized a retreat in November 2021, gathering state and non-state experts to update the 2010 National Anti-Corruption Strategy. From 29 November to 1 December 2021, a workshop to support the new Anti-Corruption Strategy was held in Kinshasa with the participation of civil society organizations, including the Anti-Corruption Research Centre (CERC), the Congolese League against Corruption (LICOCO), the Congolese Coalition of Anti-Corruption Organizations (COCOLUCO) and the Congolese Association for Access to Justice (ACAJ) among others.

On 9 December 2013, representatives of the public sector, private sector and civil society signed the National Anti-Corruption Pact. Through this tripartite agreement, the signatories committed themselves to renounce corruption, instill ethical values into their organization, and adhere to integrity, good governance, respect, and transparency. It urged parties to establish an anti-corruption forum to serve as a platform for communication and coordination among stakeholders and to launch a

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<sup>8</sup> Félix Tshisekedi declares war on corruption, before Congolese parliamentarians, <https://www.ouest-france.fr/monde/republique-democratique-du-congo/felix-tshisekedi-declare-la-querre-la-corruption-devant-les-parlementaires-congolais-6653346>, accessed on November 30, 2021.

national anti-corruption campaign. Finally, the Covenant mandated punishing parties who violate it and established an independent monitoring system.

In addition, the projects and programs implemented by civil society organizations such as the Anti-Corruption Research Centre (CERC), the Congolese Association for Access to Justice (ACAJ), the Congolese League of Fight Against Corruption (LICOCO), the Congolese Coalition of Anti-Corruption Organizations (COCOLUCO) and the African Parliamentarians Against Corruption Network (APNAC) support the anti-corruption agenda in the DRC. Since 2017, CERC has been implementing a corruption prevention project to introduce school-age children to integrity values to build a new generation of ethical leaders. Between 2017 and 2020, CERC trained 810 students, 160 teachers and 80 principals on integrity and anti-corruption measures.<sup>9</sup>

### **Good Practices**

At the legislative level:

- Ratification of the UNCAC on 13 September 2010;
- Organization of the State-General on Anti-Corruption in October 2021, bringing together 150 experts, including civil society organizations;
- Implementation by Presidential Ordinance no. 20/013 bis of 17 March 2020 of the Agency for the Prevention and Fight Against Corruption (APLC);
- The adoption of Act No. 04/016 of 19 July 2004 on combating money laundering and the financing of terrorism;
- The Congolese Penal Code (Articles 17 and 147-150);
- The Decree-Law 017-2002 of 3 October 2002 on the Code of Conduct of Public Officials;
- The existence of the Code of Business Ethics;
- The National Anti-Corruption Pact was signed between the public and private sector, as well as civil society;<sup>10</sup>
- Law no. 05/006 of 29 March 2005 amending and supplementing the Decree of 30 January 1940 on the Congolese Penal Code;
- The ratification of the SADC Protocol against Corruption in August 2001 (SADC 2001);
- The ratification of the African Union Convention on the Prevention and Combating of Corruption (AUCPCC);
- The ratification of the African Charter on Democracy, Elections and Governance in 2008;

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<sup>9</sup> EPSP: 35 school heads and 97 students in training on strategies to combat corruption in education, <https://www.eduquepsp.education/v1/epsp-35-chefs-detablissements-et-97-eleves-en-formation-sur-les-strategies-de-lutte-contre-la-corruption-dans-leducation/>, accessed on June 27, 2021.

<sup>10</sup> The National Anti-Corruption Pact signed between the public and private sector, as well as civil society, <https://www.gov.uk/government/news/signing-of-the-national-anti-corruption-pact-in-drc.fr>, accessed on July 05, 2021.

- The ratification of the African Charter on Values and Principles of Public Service and Administration; and
- The implementation of the Extractive Industries Transparency Initiative (EITI) by the DRC;
- The organization of the Anti-Corruption multi-stakeholder forum by the government brought together 150 experts to make a comprehensive assessment of anti-corruption efforts in the DRC; create a consensus on priority actions to be carried out and the reforms to be undertaken to achieve a significant and long-lasting reduction of corruption in the DRC; and to define the appropriate implementation methods and mechanisms for monitoring those policies;
- The passing on of certain corruption files<sup>11</sup> to the judiciary by the Agency for the Prevention and Fight Against Corruption. Unfortunately, the politicization of justice and parliamentary immunities enjoyed by some government officials prevent the justice system from prosecuting some suspected embezzlers of public funds;
- The conviction of Vital Kamerhe and his co-defendant, Lebanese entrepreneur Samih Jammal, for nearly \$50 million embezzled through the financing of prefabricated homes in a 100-day emergency scheme launched by the President Tshisekedi after his inauguration on January 24, 2019.<sup>12</sup>

#### **Deficiencies:**

- Lack of resources for the implementation of anti-corruption policies and strategies;
- Lack of anti-corruption coordination mechanisms and anti-corruption plans;
- Poor collaboration with other foreign bodies for the prevention and fight against corruption;
- Lack of political will to implement the 2010 National Anti-Corruption Strategy recommendations;
- Lack of involvement of all stakeholders in implementing, coordinating, and monitoring the 2010 National Anti-Corruption Strategy;
- Partial involvement of civil society organizations in developing and implementing anti-corruption policies and strategies;

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<sup>11</sup> Including 26 cases of misappropriation of public funds, 7 public revenue pouring files, 3 cases of misappropriation of state-owned buildings, 1 money laundering and terrorist financing case, 10 cases of suspicion of corruption in the head of magistrates and clerks, 1 case of suspicion of corruption of national MP, 1 case of suspicion of corruption in the head of public officials, 1 tax evasion file, 1 application file for intervention in a conflict of interest between an economic operator and a decentralized administrative entity, 12 applications for intervention in parcel conflicts and conflicts succession, 2 applications for intervention in ongoing civil trials, 2 applications for intervention of a social nature, 9 files of customs fraud, 1 file of denunciation of opaque management of a regulator.

<sup>12</sup> DRC: Vital Kamerhe sentenced to 20 years in prison following an unprecedented trial, [https://www.lemonde.fr/afrique/article/2020/06/20/rdc-vital-kamerhe-condamne-a-20-ans-de-prison-au-terme-d-un-proces-sans-precedent\\_6043596\\_3212.html](https://www.lemonde.fr/afrique/article/2020/06/20/rdc-vital-kamerhe-condamne-a-20-ans-de-prison-au-terme-d-un-proces-sans-precedent_6043596_3212.html), accessed on 16 June 2021.

- Lack of transparency in processing and tracking corruption and funds misappropriation cases;
- The politicization of the justice system and the parliamentary immunities enjoyed by some authorities prevent the judiciary from prosecuting suspected embezzlers of public funds;<sup>13</sup>
- Lack of a Whistleblower Protection Law.

## **Art. 6: Preventive Anti-Corruption Body or Bodies**

The Democratic Republic of Congo actively prevents and combats corruption through several established bodies. In 2020, the Presidency of the DRC was created by Presidential Ordinance (No. 20/013 bis of 17 March 2020), a specialized anti-corruption agency: the Agency for the Prevention and Fight Against Corruption (APLC).

The APLC supports other existing structures such as the National Financial Intelligence Unit (CENAREF) established by Law No. 04/016 as of 19 July 2004 on combating money laundering and the financing of terrorism, the Observatory for the Monitoring of Corruption and Professional Ethics, established by Decree N°075/2003 as of 03 April 2003, then transformed into a public establishment by Decree N°16/020 as of 16 July 2016, thus rendering the OSCEP a government body in preventing, monitoring and fighting corruption. The General Inspectorate of Finance (IGF) has existed under the leadership of the Ministry of Finance since 1968, created by the Ordinance Law No. 68-015 as of 06 January 1968, with the mission of auditing all revenues and expenditures for the DRC's budget.

The colonial charter also created the Court of Auditors on 18 October 1908. It is a Higher Audit Institution of Public Finance in the DRC. Its mission is to carry out an independent external audit of public finances. It also makes a judgment on the regularity of public accountants' financial statements and accounts following generally accepted standards.

In the following paragraphs, we will review each institution involved in the fight against corruption in the DRC to highlight their strengths and weaknesses to propose priority recommendations to the Government of DRC (GoDRC).

### **1. The Observatory for the Monitoring of Corruption and Professional Ethics (OSCEP)**

The Observatory for Monitoring of Corruption and Professional Ethics (OSCEP) was created by Decree N°. 017/2002 and transformed in 2013 into a public institution with

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<sup>13</sup> DRC: Even bad managers are covered with immunity to parliament, <https://deskeco.com/rdc-meme-of-bad-managements-are-cover-dimmunite-in-parliament>, accessed on September 30, 2021.

a legal personality by Decree No. 16/020 as of 16 July 2003. The OSCEP is the technical and advisory body of the GoDRC responsible for promoting ethical values, improving ethical standards in the management of public affairs, and combating anti-values in socio-professional circles.<sup>14</sup>

Its existence since 2002 adequately demonstrates the commitment of the Congolese government in the fight against corruption for two decades. In addition, the organization of a National Forum on Combating Corruption in 2009,<sup>15</sup> which brought together more than 450 delegates from all regions of the DRC, aroused the hope of the Congolese people through its 104 resolutions, which were cast into a national strategy to combat corruption,<sup>16</sup> dependent on several bills: the Prevention and Fight Against Corruption; the Declaration of Assets; and the Protection of Witnesses, Whistleblowers and Victims of Corruption. Although they have been submitted to the government in 2010, none of these bills have been passed.

In 2018, the OSCEP also launched a three-year Anti-Corruption Strategy, which needs approximately €5.3 million in order to be implemented. Although the OSCEP is directly dependent on the Ministry of Civil Service, no budget has been allocated to implement this broad plan. Interviews with the management and staff in July 2021 indicate that this body lacks institutional resources. Hence, it is essential to support OSCEP by providing it with sufficient means to carry out its mission of preventing corruption in the public sector and mainstreaming the code of ethics for public officials.

## **2. National Bureau of Professional Ethics (BUNEP)**

The National Bureau of Professional Ethics was established by the Ministry of Labor and Social Welfare under Ministerial Order No. 12/CAB.MIN/TPS/KF/010/2001 as of 13 October 2001. It is a specialized department responsible for the National Campaign for Ethics in businesses in both the formal and the informal sectors.

BUNEP's mission is to identify the absence of professional ethics and counter it among employers and employees; to promote universal professional values in the workplace; to foster patriotism good performance to achieve greater productivity; to educate people on the importance of respect for the common good and instill a sense of responsibility; to change the mentality within professional circles and to contribute to

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<sup>14</sup> Decree-Law No. 17/2002 of 3 October 2002 on the Code of Conduct for Public Officials of the State, available on: [1.14.09. Decree-Law of October 3, 2002 Conduct of the public official of the state \(droitcongolais.info\)](http://droitcongolais.info), accessed on September 28, 2021.

<sup>15</sup> DRC: the National Anti-Corruption Strategy document submitted to the government, <https://www.fmprc.gov.cn/zflt/fra/fzsz/t764479.htm>, accessed on 23 November 2021.

<sup>16</sup> Radio Okapi, The fight against corruption in the DRC, <https://www.radiookapi.net/emissions-2/parole-aux-auditeurs/2010/09/30/la-fight-against-corruption-en-rdc>, accessed on 23 November 2021.



national awareness for productivity and increased profitability within organizations, associations, and the public service.<sup>17</sup>

Despite its creation 20 years ago, we are witnessing the erosion of ethical values in the private sector, resulting in corrupt activities in businesses and organizations, a lack of business integrity and embezzlement of funds by non-governmental organizations (NGOs), and money laundering practices by some banks, to cite just a few examples.

Although companies and NGOs can no longer evade the fight against corruption due to the tightening of criminal provisions last year, preventing and combating corruption remains a significant concern in the private sector. Namely, large companies need to ensure compliance standards are implemented throughout their organization, including their subsidiaries, agents, and business partners. As for small and medium-sized enterprises, they are unfortunately still not sufficiently aware of the risks of corruption and the applicable criminal provisions. This is due to the lack of resources available to BUNEP to carry out its mission of monitoring professional ethics in the private sector.

Corrupt activities in the private sector can be prevented, exposed, and addressed effectively through effective corporate governance practices that underpin a framework of accountability and transparency. The proper functioning of BUNEP is essential in establishing a regulatory framework to combat corruption in the private sector. It is also necessary for BUNEP to inform companies and support national regulatory provisions so that they can comply with the legislation, which is in line with the country's international commitments.

### **3. Agency for the Prevention and Fight Against Corruption**

After several requests made by NGOs to the President of the DRC<sup>18</sup> regarding his stated promises made at the first edition of the African Anti-Corruption Day on 28 March 2020, the Agency for the Prevention and Fight Against Corruption (APLC) was established by the Presidential Ordinance, substituting the office of the former Special Adviser to the Head of State on Combating Corruption, Terrorism and Money Laundering.

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<sup>17</sup> MINISTERIAL DECREE 12/CAB.MIN/TPS/KF/010/2001 13 October 2001 establishing a National Office for Professional Ethics (BUNEP) (*Ministry of Labour*), <https://www.leganet.cd/Legislation/DroitSocial/AM.12.10.01.13.10.2001.htm>, accessed on July 25, 2021.

<sup>18</sup> Corruption in the DRC: NGOs remind Thisekedi of his campaign promises, <https://www.rfi.fr/fr/afrique/20191209-rdc-corruption-lutte-tshisekedi-ong-promesse-campagne>, accessed on 26 September 2021.

The APLC is a public institution to prevent and combat corruption in the Democratic Republic of the Congo.<sup>19</sup> The APLC has, among other objectives:

- Devise, develop, and propose to the Head of State strategies and policies to be implemented by public institutions to promote good governance and effectively combat corruption, money laundering and the financing of terrorism;
- Conduct all investigations to identify, challenge, and punish any person or group of persons, organizations, agencies, undertakings, or other services involved in acts of corruption, money laundering and terrorist financing;
- Collaborate with the General Inspectorate of Finance, the National Financial Intelligence Unit, and other supervisory services to initiate preparatory and preliminary investigations for the referral to the judicial bodies of cases of corruption, embezzlement, misappropriation of public funds, fraud, money laundering and financing of terrorism submitted to it by the Head of State or whistleblowers;
- Monitor acts of corruption, misappropriation of public funds, money laundering and terrorist financing;
- Propose to the Head of State possible guidelines and sanctions to be applied in each case or circumstance in accordance with the Constitution and the laws of the DRC to facilitate possible collaboration with traditional investigative services.

Some members of the APLC's services have the status of judicial police officers with general jurisdiction in the DRC. The APLC has access to the services of the competent prosecutor's office and, where appropriate, the Minister of Justice for any act within its competence relating to the repression and condemnation of acts of corruption.<sup>20</sup>

#### **4. The Court of Auditors**

The Court of Auditors was established by the Law Order of 6 February 1987, laying down its composition, organization, and functioning.

The Court of Auditors permanently oversees the management of public finances and assets, as well as those of all public institutions defined in Article 3 of the said Ordinance Law. In this respect, it is responsible for examining the general accounts of the Treasury, reviewing the statements of public accountants, and overseeing and

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<sup>19</sup> Ordinance No. 20/013 bis of 17 March 2020 establishing, organizing and operating a specialized service called "Agency for Prevention and Fight Against Corruption" (APLC), <https://presidence.cd/uploads/files/ORD%20N%C2%B020-013%20bis%20DU%2017%20MARS%202020%20PORTANT%20CREATION,%20D%27ORGANISATION%20ET%20FONCTIONNEMENT%20D%27UN%20SERVICE%20SPECIALISE%20DENOMME%20AGENCE%20DE%20PREVENTION%20ET%20DE%20LUTTE%20CONTRE%20LA%20CORRUP>, accessed on 30 August 2021.

<sup>20</sup> The APLC strengthens its action with six new OPJ, <https://zoom-eco.net/developpement/rdc-laplc-renforce-son-action-avec-six-nouveaux-opj/>, accessed on November 26, 2021.



auditing the management and accounts of public institutions. The Court of Auditors shall judge the accounts of persons whom it has declared to be accountable.<sup>21</sup>

In June 2021, the Court of Auditors adopted a five-year plan<sup>22</sup> with five strategic components:

**1<sup>st</sup> Component:** Develop and update the judicial and extra-jurisdictional review tools;

**2<sup>nd</sup> Component:** Train Magistrates and Audit Staff to enhance the quality of the institution's work and productivity;

**3<sup>rd</sup> Component:** Organize pilot missions of judicial and non-judicial review capable of increasing the impact of the Court of Auditors' work on citizens;

**4<sup>th</sup> Component:** Improving the internal governance of the Court of Auditors by adopting modern management and organizational methods;

**5<sup>th</sup> Component:** Strengthen the capacity of the Court of Auditors in immovable property, movable property and IT infrastructure.

The practical implementation of all these components can significantly enhance the effectiveness of this public finance supervisory body.

## 5. The Extractive Industries Transparency Initiative (EITI)

Concerning the extractive industry, there has been a mechanism in place since 2007 called the Extractive Industries Transparency Initiative (EITI). The Congolese authorities published an annual report on implementing this mechanism.<sup>23</sup> The EITI report serves to make publicly available, in a transparent manner, payments received by the GoDRC from mining companies. According to the EITI, the DRC has made significant efforts since 2014.<sup>24</sup> In 2016, the DRC received the EITI Award for progress in this field.<sup>25</sup>

## 6. The General Inspectorate of Finance

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<sup>21</sup> Order No. 001 of 30 September 2020 laying down the Rules of Procedure of the Court of Auditors, <http://www.leganet.cd/Legislation/Droit%20Public/compta/A.30.09.2020.html>, accessed on 6 July 2021.

<sup>22</sup> Court of Auditors, Strategic Plan SAI DRC 2021-2025, <https://courdescomptes.cd/the-sermons/plan-strategique-isc-rdc-2021-2025/>, accessed on September 21, 2021.

<sup>23</sup> EIT-DRC Reports, [https://www.itierdc.net/rapport-itie\\_2018/](https://www.itierdc.net/rapport-itie_2018/), accessed on November 23, 2021.

<sup>24</sup> Chêne Marie, "Overview of corruption and anti-corruption: Democratic Republic of Congo (DRC)", Transparency International, 20/08/2015, <https://www.u4.no/publications/overview-of-corruption-and-anti-corruption-in-the-drc.pdf>, accessed on November 23, 2021.

<sup>25</sup> Radio Okapi, "The EITI awards a prize to the DRC for its transparency efforts", 10/03/2016, accessed on 26 September 2021.

By the Ordinance-Law N° 68-015, as of January 06, 1968, the Special Corps of Finance Inspectors was established within the Ministry of Finance to verify and control all revenues and expenses affecting the State budget.<sup>26</sup>

With the coming to power of President Félix-Antoine Tshisekedi Tshilombo, the General Inspectorate of Finance (IGF) was endowed with the financial resources for its operation to launch investigations into some of the most scandalous cases of embezzlement and financial misappropriation. Following these investigations,<sup>27</sup> the IGF unveils revelations of financial misappropriation, money laundering and corruption in major government projects and programs, including the misuse of funds allocated to primary, secondary and vocational education (which will lead to imprisonment of the Minister of Education, the General Inspector of Education and at least 17 other persons, of the Directorate-General of the Education Service Monitoring and Teachers Payment (SECOPE)); several undue tax exemptions; the mismanagement of the Bukanga Lonzo Agro-Industrial Park which caused the Congolese state to lose about €181 million. The IGF also discovered the existence of false backdated ministerial orders for the recruitment of public agents and the establishment of fictitious schools. Vital Kamerhe, the former Chief of Staff of the President's Office, was convicted of embezzling (\$51 million) funds allocated to the 100-day program of President Tshisekedi.

### Good Practices

- The political will to reverse the current corruption trend that hampers the country's development;
- Collaboration among anti-corruption bodies;
- Publication of progress reports and corruption files by anti-corruption bodies;<sup>28</sup>
- The 2020-2030 National Strategy of the Agency for Prevention and Fight Against Corruption incorporates integrity education in primary and secondary schools with the support of UNESCO.<sup>29</sup>

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<sup>26</sup> Ordinance No. 87-323 establishing the Inspectorate General of Finance (IGF), <https://www.leganet.cd/Legislation/Droit%20Public/compta/O.15.09.1987.htm..> accessed on November 23, 2021.

<sup>27</sup> DRC: The Inspectorate General of Finance reveals the results of 5 investigations, <https://www.rfi.fr/fr/afrique/20201119-rdc-l-inspection-q%C3%A9n%C3%A9rale-des-finances-d%C3%A9voile-le-r%C3%A9sultat-de-5-enqu%C3%AAtes>, accessed on 26 September 2021.

<sup>28</sup> DRC: "USD 43 million left the BCC account at BGFIBANK for an unknown destination" (IGF), <https://www.politico.cd/la-rdc-a-la-une/2021/11/22/rdc-43-millions-usd-sont-sortis-du-compte-de-la-bcc-a-la-bgfibank-pour-une-destination-inconnue-igf.html/98033/>, accessed on 24 November 2021; DRC: meager balance sheet of the APLC after 6 months of anti-corruption, no rounds returned to the Treasury account, <https://deskeco.com/2021/03/03/rdc-maigre-bilan-de-laplc-apres-6-mois-de-lutte-contre-la-corruption-aucun-rond-reverse-dans-le>, accessed on 24 November, 2021; Corruption rates in the public sector in DRC, <https://www.oscep.net/wp-content/uploads/2020/12/Corruption-penetration-rates-in-the-public-sector-in-Democratic-Republic-of-Congo.pdf>, accessed on July 25, 2021.

<sup>29</sup> The APLC has launched its National Strategic Plan to "Significantly" Reduce Corruption by 2030, <https://laprosperiteonline.net/2020/12/11/nation/LAPLC-to-launch-its-national-strategic-plan-for->

## Deficiencies

- Despite its central importance in applying specific provisions of the UNCAC, the Court of Auditors is not endowed with sufficient resources to carry out its mission,<sup>30</sup> despite having magistrates appointed in 2018<sup>31</sup> by the President of the Republic. Unfortunately, to date, the magistrates of this court have never taken an oath;<sup>32</sup>
- The lack of legal safeguards to enable anti-corruption bodies to carry out their functions effectively and independently and to protect them from undue influence;
- The lack of integrity of some anti-corruption bodies' officials. The arrest of the coordinator of the APLC, Mr Ghislain Kikangala,<sup>33</sup> and the suspension of two directors of operations of this agency<sup>34</sup> for "extortion of funds and arbitrary arrest" of the Managing Director of the Nigerian "Access Bank".
- Lack of procedures to ensure the allocation of resources necessary for anti-corruption agencies' operation and operational development;
- The Court of Auditors, the Observatory for Monitoring Corruption and Professional Ethics, and the National Financial Intelligence Unit face operational challenges. For this reason, some observers believe that the IGF is an instrument of power "to silence" the opposition. According to them, those who are condemned are from the opposition parties;
- Although the code of ethics is available online, several million public officials do not comply with it because they are not sanctioned. Hence it is also essential for the OSCEP to promote and make this code accessible in all public institutions;

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[reduced-of-significative-fact-corruption-to-horizon-2030/#:~:text=to%20Terms%20of%20Objective%20Global,the%20Objective%20Terms%20R%C3%A9duction%20of%20Poverty%C3%A9, accessed on November 24, 2021.](#)

<sup>30</sup> "I believe that from the outset the Court of Auditors has not been provided with sufficient instruments to prosecute or punish the abuse of public funds. It merely reports to its supervisory authority, which is the Parliament. And yet, everyone can see, there is no serious violation, no serious crime in a state, which can go unpunished", <https://www.radiokapi.net/2021/06/25/emissions/linvite-du-jour/professor-nyabirungu-la-rdc-need-a-other-jurisdiction>, accessed on November 24, 2021.

<sup>31</sup> The number of judges of the Court of Auditors has just been expanded with the appointment of 40 Councilors to the Court and 11 Advocates General to the Court of Auditors. <https://courdescomptes.cd/2018/03/30/leffectif-des-magistrats-de-la-cour-des-comptes-vient-detre-etoffe-avec-la-nomination-de-40-conseillers-a-la-cour-et-11-avocats-generaux-pres-la-cour-des-comptes/>, accessed on November 16, 2021.

<sup>32</sup> DRC: towards the swearing of the judges of the Court of Auditors, <https://actualite.cd/2021/09/17/rdc-vers-la-prestation-de-serment-des-juges-de-la-cour-des-comptes>.

<sup>33</sup> DRC: The head of the Anti-Corruption Agency in police custody, <https://www.aa.com.tr/fr/afrique/rdc-le-chef-de-l-agence-anti-corruption-plac%C3%A9-en-garde-%C3%A0-vue/2082151>, accessed on 26 September 2021.

<sup>34</sup> DRC: the coordinator of the APLC and two directors of operations convened to the Public Prosecutor's Office this Friday, <https://actualite.cd/2020/12/18/rdc-le-coordonnateur-de-laplac-et-deux-directeurs-des-operations-convoques-au-parquet-ce>, accessed on 23 July 2021.

- Political interference in judicial <sup>35</sup> affairs, related to corruption and embezzlement;<sup>36,37</sup>
- The ineffective capacity of anti-corruption bodies to detect grand corruption and money laundering;
- The lack of resources prevents BUNEP from monitoring professional ethics in the private sector.

## **Art. 7.1: Public Sector Employment**

The National School of Administration (ENA-DRC) is a public body created by the Prime Minister's Decree N°13/013 as of 16 April 2013, with the status of a public institution of an administrative nature, intending to train public sector officials.<sup>38</sup> The ENA-DRC was set up to contribute to the emergence of an efficient, honest, transparent, and citizen-friendly public official, in line with current requirements and management standards. Despite its existence and the importance of its mission, employment in the public sector does not have a good reputation, and the public administration is unable to carry out its public service tasks effectively.

Recruitment is currently based on political, tribal, and family affiliation rather than using an open and transparent process that includes the publication and dissemination of vacancy announcements, documentation and recording of interviews, scoring of candidates, administration of written tests, and use of interview panels. The practice of hiring fraudulent public officials and granting registration numbers without a formal and transparent recruitment process demonstrates how corruption affects employment in the public sector, leading to a deterioration in the quality of services.

### **Good Practices**

- Decree No. 03/035, as of 13 November 2003 on the creation, organization, and operation of the Inter-ministerial Commission for the Management of Public Administration Reform (CIPRAP). According to the Decree, the mission of CIPRAP is to lead and guide the reform of public administration, decide on the objectives, action plan and budget, ensure the preparation and monitoring of activities, evaluate the results, and seek the necessary funding;

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<sup>35</sup> DRC: Government called to refrain from interference in judicial matters (recommendations of the general states of anti-corruption), <https://actualite.cd/2021/10/26/rdc-le-gouvernement-appelle-sabstenir-de-toute-interference-dans-les-affaires-judiciaires>, accessed on July 12, 2021.

<sup>36</sup> Temporary Liberty of Eteni Longondo: a Justice with Variable Geometry?, <https://habarirdc.net/liberte-provisoire-eteni-longondo-justice-deux-vitesse-geometrie-variable/>, accessed on July 13, 2021.

<sup>37</sup> DRC: Justice grants provisional release to former Minister of Health, <https://www.aa.com.tr/fr/afrique/rdc-la-justice-accorde-une-libert%C3%A9-provisoire-%C3%A0-l-ancien-ministre-de-la-sant%C3%A9/2364941>, accessed on July 12, 2021.

<sup>38</sup> The History of the National School of Administration (ENDA), <http://ena.cd/a-propos/histoire-de-lena/>, accessed on November 24, 2021.

- Existence of a National School of Administration;<sup>39</sup>
- The freezing of around 5,000 “fictitious” public servants' accounts by the government in 2019;<sup>40</sup>
- Launch of an investigation on the misappropriation of €223 million from public officials' payroll;<sup>41</sup>
- Dissemination of the Code of Conduct of Public Officials by the OSCEP;
- The media coverage of corruption trials, including the 100-day trial involving President Félix Tshisekedi's former Chief of Staff,<sup>42</sup> and Bukangalonzo's trial involving former Prime Minister Matata Ponyo.<sup>43</sup>

## Deficiencies

- The procedures for the appointment and dismissal of senior public officials and the procedures for the recruitment and selection of specialized public officials are not adequately defined in the legal framework. They do not follow a process which ensures apoliticism, neutrality, and impartiality in recruitment;
- At the end of 2020, a preliminary investigation by the Judicial Prosecutor's Office revealed that more than 130,000 fictitious public officials and some 43,000 duplicates receive undue state salaries;<sup>44</sup>
- Existence of 50,000 fictitious public officials on the official payroll;<sup>45</sup>
- Organizational management is outdated, issues with overstaffing and older workers whose profile is no longer suited to the tasks;
- The salary of public officials is very low (€89.50 per month), even if some manage to obtain large hidden additional income;
- The DRC has not had a digital database of its public officials since its independence in 1960;
- Employment of unqualified public officials in the public administration;
- Lack of training programs for public officials, particularly on new technologies;

<sup>39</sup> The History of the National School of Administration (ENDA), <http://ena.cd/a-propos/histoire-de-lena/>, accessed on December 05, 2021.

<sup>40</sup> DRC: 5000 accounts of “fictitious” officials were frozen, <https://www.rfi.fr/fr/afrique/20190915-rdc-5000-comptes-fonctionnaires-fictifs-bloques-reseaux-mafieux>, accessed on August 22, 2021.

<sup>41</sup> DRC: Investigation into the misappropriation of \$250 million from public servants' pay, <https://www.rfi.fr/fr/afrique/20200917-rdc-enqu%C3%AAte-le-d%C3%A9tourne-250-millions-dollars-la-paie-fonctionnaires>, accessed on October 26, 2021.

<sup>42</sup> Final trial verdict 100 days: Start of the live broadcast by the RTNC, <https://www.7sur7.cd/2020/06/20/verdict-final-du-proces-100-jours-debut-de-la-retransmission-en-direct-par-la-rtnc>, accessed on November 25, 2021.

<sup>43</sup> Resumption Matata trial: “the place of thieves is in prison and not in the Senate”, protesters say before the Constitutional Court, <https://www.politico.cd/la-rdc-a-la-une/2021/11/08/reprise-proces-matata-la-place-des-voleurs-cest-en-prison-et-non-au-senat-scandent-des-manifestants-devant-la-cour-constitutionnelle.html/96900/>, accessed on November 25, 2021.

<sup>44</sup> The DRC lists its civil servants to combat dumplings and fictitious jobs, <https://www.rfi.fr/fr/afrique/20210324-la-rdc-recense-ses-fonctionnaires-pour-lutter-contre-les-cumulards-et-emplois-fictifs>, accessed on November 24, 2021.

<sup>45</sup> 50,000 fictitious civil servants on the official payroll, <https://www.rfi.fr/fr/afrique/20211107-rdc-50-000-fonctionnaires-fictifs-figurent-dans-le-fichier-officiel-de-paie>, accessed on November 24, 2021.

- One of the fundamental weaknesses in the reform process is the use of the Congolese administrative structure. In the context of the crisis affecting the state, Congolese administrations are unable and often unwilling to work towards reform. Instead of facilitating reform, they undermine it. While many reform policies are theoretically relevant, their proper implementation has not materialized, mainly due to the lack of a reliable and motivated administration.

### **Art. 7.3: Political Financing**

The Democratic Republic of Congo has a legal framework governing the functioning and financing of political parties.

In view of the above, and to comply with the provisions of the Constitution, two laws have been enacted to strengthen political parties' legal capacity and promote the exercise of their civic function as a vehicle for education purposes:

1. The Law 04/002 of 15 March 2004 on the organization and functioning of political parties;
2. The Law 08/005 of 10 June 2008 on the public financing of political parties. This law instructs that political parties may receive public funds from the state to finance their electoral campaigns, activities, operations, capacity building and civic education campaigns, in particular under the provisions laid down by the law. These two laws form the basis of a political party's activities, in accordance with their political aims and their constituents' needs.

Concerning donations and bequests, Article 23 of Law 04/002 instructs that political parties must make a declaration to the Ministry of the Interior stating their origin, nature, and value. They must come from identified persons of non-criminal origin. Articles 24 and 25 of the law, respectively, state that political parties are prohibited, under penalty of dissolution, from receiving direct or indirect financial or material support from a foreign state and that only the registered political parties can receive state subsidies.<sup>46</sup>

Article 21 (B) of the aforementioned law provides that: "where a political party fails to comply with the requirements of this article, the minister responsible for Internal Affairs shall call it to order. If the political party fails to comply, it shall be suspended until it complies with the provisions of this article." The practical implementation of this provision shall enable the State to ascertain, with certainty, that the source of funds of political parties is not of illicit or prohibited origin. It also has the advantage of providing

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<sup>46</sup> Law No. 04/002 of March 15, 2004, on the Organization and Functioning of Political Parties [https://www.droitcongolais.info/files/11511\\_loi\\_du\\_15\\_mars\\_2004\\_partis\\_politiques.pdf](https://www.droitcongolais.info/files/11511_loi_du_15_mars_2004_partis_politiques.pdf), accessed on July 24, 2021.



a certain degree of clarity on the way in which political parties' finances have been managed over the past year.

### **Good Practices**

- The obligation of political parties to declare their annual financial statements per Law No. 08/005 of 10 June 2008.<sup>47</sup>

### **Deficiencies**

- Lack of a mandated authority to oversee and enforce the regulation of political financing;
- The non-declaration of the annual financial statements by political parties per Article 26 of Law No. 04/002 of 15 March 2004 on the organization and operation of political parties<sup>48</sup> instructing that “every political party shall maintain accounting and inventory of its movable and immovable property with the legislation in force. It shall submit its annual accounts to the competent authority and shall, where appropriate, justify the source of its financial resources;”<sup>49</sup>
- Absence of sanctions for political parties that do not comply with the obligation to file each year the financial account of the past year, in accordance with the provisions of the law.

### **Art. 7, 8 and 12: Codes of Conduct, Conflicts of Interest and Assets Declarations**

The Democratic Republic of the Congo has a legislative arsenal that defines the conditions for the ineligibility of candidates for an elective public term and the regime of incompatibilities. Indeed, according to the provisions of the Constitution in Article 72 and the Electoral Code in its Article 9, which stipulate those candidates for election are subject to the conditions, among other things, of enjoying full civil and political rights and not being one of the cases of exclusion provided for by the electoral law.

The electoral code also stipulates that the following are ineligible: persons deprived of their civil and political rights; persons convicted of war crimes, crimes of genocide and crimes against humanity by an international criminal court; persons convicted of bankruptcy and bankrupts; persons affected by a medically proven mental disability in

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<sup>47</sup> DRC: More than 600 political parties face the obligation to report their annual financial statements, <https://zoom-eco.net/a-la-une/rdc-plus-de-600-partis-politiques-face-a-lobligation-de-declarer-leurs-etats-financiers-annuels/>, accessed on November 25, 2021.

<sup>48</sup> Article 26 of Law No. 04/002 of 15 March 2004 on the organization and functioning of political parties, [https://zoom-eco.net/wp-content/uploads/2020/07/11511\\_loi\\_du\\_15\\_mars\\_2004\\_partis\\_politiques.pdf](https://zoom-eco.net/wp-content/uploads/2020/07/11511_loi_du_15_mars_2004_partis_politiques.pdf), accessed on 30 July 2021.

<sup>49</sup> DRC: DGRAD invites political parties to report their financial statements, <https://www.financetimes.cd/impot-douane/2020-07-30/rdc-la-dgrad-invite-les-partis-politiques-declarer-leurs-etats-financiers>, accessed on September 30, 2021.

the last five years preceding the elections; public officials who do not justify, by the deadline for submission of applications, their application for lay-off; active agents of public or joint enterprises who do not justify, by the deadline of the filing of applications, filing their letter of resignation; magistrates who have not given proof, by the deadline for submission of applications, for the filing of their letter of resignation; members of the Congolese Armed Forces and National Police who have not given proof, by the deadline for submission of applications, of their retirement or letter of resignation; and members of the Independent Electoral Commission at all levels, including staff.

Article 99 of the Constitution requires<sup>50</sup> the President of the Republic and members of the Government to file to the Constitutional Court a written declaration of their family assets, listing their movable property, including shares, bonds, other securities, bank accounts, their immovable property, including unbuilt land, forests, plantations and agricultural land, mines, and any other buildings, with the relevant titles. Family patrimony includes the spouse's property under the matrimonial regime, of minor children and even those of age, dependent on the couple. The Constitutional Court communicates this declaration to the tax authorities. In the absence of this declaration, within 30 days, the person concerned shall be deemed to have resigned. Within 30 days after the end of the office, in the absence of such a declaration, in the event of a fraudulent statement or suspicion of enrichment without cause, the Constitutional Court or the Court of Cassation shall be seized depending on the case.

Decree-Law 017-2002 as of 3 October 2002 on the Code of Conduct for Public Officials is one of the subjects that each public official, including the staff of the Provincial Assemblies, must know and master to pursue a successful career in public administration. Admittedly, this Code complements other legal and regulatory instruments such as Law No. 81-003 as of 1 August 1981, on the status of public officials and the provisions on its implementation measures. However, it has the advantage of being more current and fits into the government's agenda.

All public officials are bound by the code of conduct for public officials.<sup>51</sup> However, there is no mechanism in place for reporting violations of this code.

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<sup>50</sup> The Constitution of the Democratic Republic of Congo, <https://www.cour-constitutionnelle.cd/textes-fondamentaux/la-constitution/>, accessed on November 25, 2021.

<sup>51</sup> The President of the Republic, Head of State, Members of Parliament, Members of the Government, Magistrates of Courts and Courts, Authorities responsible for the Administration of Territorial Districts and Members of Assemblies of Decentralized Administrative Entities, Political and Administrative Staff of services of the Presidency of the Republic, political and administrative staff of the administration of the Parliament, political and administrative staff of ministerial offices, officials of the administration of all ministries, personnel of the administration of the security services, civilian and military personnel working within the forces Congolese armed forces, agents of the Congolese National Police, agents active and non-active in institutions governed by public law, public enterprises and bodies as well as enterprises of mixed economy, staff of public law institutions, public enterprises and personalized public bodies and employees of private or mixed economy enterprises engaged in public activity on behalf of the State.



## Good Practices

- Decree-Law of 3 October-2002 on the code of conduct for public officials;
- Declaration of assets by government members within the legal deadline (Government of Sylvestre Ilunkamba and the government of Sama Lukonde).<sup>52,53</sup>

## Deficiencies

- Lack of a specific legal framework for asset declarations;
- Candidates for elected office are not required to file a declaration of assets before an election;
- Sanctions are provided for in the code of ethics for public officials. Still, they are rarely applied according to the code, statute, administrative regulations or collective agreement to which they are subject, independently of the penalties provided for in the Congolese Penal Code.

## Articles 8.4 and 13.2: Reporting Mechanisms and Whistleblower Protection

The mechanism for the reporting and protection of whistleblowers is governed in the Democratic Republic of the Congo by Law No. 05/006 of 29 March 2005, amending and supplementing the Decree of 30 January 1940, establishing the Congolese Penal Code. This code provides whistleblowers, witnesses, experts, and victims with protection from possible acts of reprisal, intimidation, or prosecution for disclosing information on corruption. Despite this legal guarantee, whistleblowers are prosecuted, threatened, and even sentenced to heavy penalties.<sup>54</sup>

## Good Practices

- Article 149d of the Penal Code stipulates that, “no prosecution may be instituted against a witness, expert or victim who in good faith has passed on information about acts of corruption or influence peddling”.

## Deficiencies

- Lack of a special organic law on whistleblower reporting and protection mechanism.

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<sup>52</sup> DRC: Ilunga Ilunkamba declared its heritage, <https://actualite.cd/2019/09/30/rdc-ilunga-ilunkamba-declare-son-patrimoine>, accessed on 30 September 2021.

<sup>53</sup> DRC: Sama Lukonde makes the written declaration of her heritage to the Constitutional Court, <https://actualite.cd/2021/05/22/rdc-sama-lukonde-fait-la-declaration-ecrite-de-son-patrimoine-la-cour-constitutionnelle>, accessed on 30 September 2021.

<sup>54</sup> Two whistleblowers were sentenced to death in absentia in [the Democratic Republic of the Congo \(DRC\)](#) for denouncing a bank that accuses them in return of theft of documents, causing indignation of anti-corruption organizations, [https://www.lemonde.fr/afrique/article/2021/03/05/en-rdc-la-condamnation-a-mort-de-deux-lanceurs-d-alerte-suscite-l-indignation\\_6072049\\_3212.html](https://www.lemonde.fr/afrique/article/2021/03/05/en-rdc-la-condamnation-a-mort-de-deux-lanceurs-d-alerte-suscite-l-indignation_6072049_3212.html), accessed on 25 November 2021; Intimidation and threats against a Congolese whistleblower, <https://www.hrw.org/fr/news/2021/08/03/intimidations-et-menaces-contre-un-lanceur-dalerte-congolais>, accessed on November 25, 2021.

## **Art. 9.1: Public Procurement**

The legal and regulatory framework for procurement in the DRC includes (i) the Law Relating to Public Procurement (LRMP) and (ii) the decrees on the creation, organization, and functioning of the ARMP, the DGCMP, and the Public Procurement and Project Management Cells (CGPMP) complete the institutional framework. The operational framework is defined by the Decree 10/22 as of 2 June 2010 on the Public Procurement (MP) of the LRMP. The provisions of the MP are consistent with the LRMP.

The absence of a public procurement information system constitutes a substantial gap, indeed one of the most serious affecting the system as a whole, according to the ARMP report<sup>55</sup> consulted by CERC in this study. The lack of an effective market information system is a serious problem with adverse consequences for the system. This (i) prevents the collection of all relevant information, (ii) does not allow for the consultation of all procurement documents that would be necessary for transparency of operations, (iii) limits the evaluation of the effectiveness and efficiency of contracting, and (iv) does not allow for the necessary analysis to be conducted in the drawing up of development strategies.

According to the same report, civil society is not involved, even as an observer, in the evaluation of bids which is conducted by a subcommittee on the analysis of tenders (SCA), whose members are fixed by the CGPMP Decree (Art. 17), namely 1 member of the CGPMP of AC who did not participate in the preparation of the project and 2 members of the administrative entity concerned. Civil society is scarcely involved in the awarding of contracts. The recent introduction of civil society organizations such as CERC, LICOCO and ODEP could eventually strengthen integrity in public procurement. At the moment, the role of civil society is in an embryonic state due to the lack of a genuine partnership with the administration that would promote consultation, capacity building and direct participation of civil society at all stages of the process.

Article 80 of the LRMP requires procuring entities to report allegations of fraud, corruption, or other prohibited practices to law enforcement authorities. Still, there is no straightforward procedure in place that governs this arrangement. The process followed is provided for in Articles 53 and 54 of the ARMP decree. In practice, it is observed that the provisions are applied, perhaps not systematically, since the CRD makes decisions on published reports. There is a system of suspension/exclusion that guarantees due process and is applied systematically. In sentencing persons responsible for the management of a public works, supplies or services undertaking or the delegates of public service for an offence committed in connection with the

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<sup>55</sup> Evaluation of the Government Procurement System of the Democratic Republic of the Congo, [https://www.arpmp-rdc.org/index.php/fr/rapport-d-audit-4/item/download/1626\\_3d067f5d9c626770dfde54a22586408c](https://www.arpmp-rdc.org/index.php/fr/rapport-d-audit-4/item/download/1626_3d067f5d9c626770dfde54a22586408c), accessed on July 11, 2021.

award of public procurement, the court will also order the confiscation of the guarantees established by the undertaking and the exclusion of such warranties for a period not exceeding five years. The exclusion of the public order will be final in the event of recidivism (Article 79, LRMP). There is no evidence that laws on corruption, fraud, and other prohibited practices are enforced in the DRC through implementing the stated sanctions. There were no companies or individuals convicted of fraud and corruption. Two companies were found guilty of forgery. No public officials have been found guilty of fraud and corruption.

### Good Practices

- Procurement information is easily accessible on the ARMP website;<sup>56</sup>
- At the legislative level, the Law on Public Procurement;<sup>57</sup> the Law on Public Finance;<sup>58</sup> the decree on the creation, organization, and operation of the Public Procurement Management Unit;<sup>59</sup> and decrees on the creation, operation, and organization of the DGCMP;<sup>60</sup>
- Since 2002, there has been a code of conduct or ethics for public officials with special provisions for those involved in the management of public finances, including contracting. Decree-Law No. 017/2002 on the Code of Conduct for Public Officials applies 100% to public officials, including those involved in procurement;
- Article 41, para. 4 of the DGCMP Decree provides that the directors and heads of division of the DGCMP must, at the end of their duties and each year, make a written declaration of all their assets to the President of the Court of Auditors. In practice, this declaration is not yet effective.

### Deficiencies

- The absence of a public procurement management system has been identified as one of the most significant threats to the development and functioning of the system from the first assessments (2010). Limited financial resources and a lack of genuine interest in an integrated, transparent, and open system have led to the lack of progress in this area;
- Failure to comply with the Public Procurement Act in procurement with a high OTC rate;<sup>61</sup>
- Non-compliance with national procurement procedures of the World Bank-funded projects;

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<sup>56</sup> [www.arpmp-rdc.org](http://www.arpmp-rdc.org), accessed on July 13, 2021.

<sup>57</sup> <https://www.dgcmp.cd/download/loi-relative-aux-marches-publics/>, accessed on July 12, 2021.

<sup>58</sup> <https://www.dgcmp.cd/download/lois-relatives-aux-finances-publiques/>, accessed on July 13, 2021.

<sup>59</sup> <https://www.dgcmp.cd/download/decret-portant-creation-organisation-et-fonctionnement-de-la-cellule-de-gestion-des-marches-publics/>, accessed on July 12, 2021.

<sup>60</sup> <https://www.dgcmp.cd/download/decrets-portant-sur-la-creation-fonctionnement-et-organisation-de-la-dgcmp/>, accessed on July 12, 2021.

<sup>61</sup> DRC: more than 80% of OTC public contracts, <https://www.lefigaro.fr/flash-eco/rdc-plus-de-80-de-marches-publics-effectues-de-gre-a-gre-20200108>, accessed on 25 November 2021.

- There are no secure, accessible, and confidential channels for reporting cases of fraud, corruption and other prohibited practices or unethical behavior;
- Poor establishment of public procurement bodies at both the national and regional levels;
- Instability of the headquarters of the ARMP and DGCMP bodies;
- Delivery of non-system contracts by BCECO and ministries' offices;
- Lack of an information system in the procurement process;
- Lack of ongoing mechanisms for discussions between the ARMP, DGCMP, the private sector, civil society and the Technical and Financial Partners (TFP);
- Existence of unpaid contracts;
- Audits are carried out according to the wishes of the donors;
- Absence of the charter and code of ethics in the awarding of public contracts;
- Lack of implementation legislation under the PPP and ARMP, and DGCMP;
- Poor planning for certain long-term projects.

## **Art. 9.2: Management of Public Finances**

Public finance management reforms in the DRC are implemented by Law No. 11/011 of 13 July 2011 on public finances to improve the existing legal and institutional framework, which was ill-suited to the Constitution of 18 February 2006, advocating, in particular, the independent administration of provinces and decentralization. Underpinned by the provisions of Financial Law No. 83-003 of 23 February 1983, as amended and supplemented by the Ordinance - Law No. 87-004 of 10 January 1987, this management system is no longer in line with the said Financial Law even though taking into account certain innovations brought about by the reforms implemented since 2002 by the Government, mainly with regard to the participants in the expenditure chain, the carry-over of credits from year to the next and budgetary classification of expenditures and revenues. Hence it was necessary to modernize public finance legislation to reflect the requirements of the constitution, formalize the reforms that have begun, and envisage all the prospects for modern public financial management.

The Ministers of Finance and Budget each have a specific role in the framework for managing public finances. The role of the former is treasury management, and the organization of treasury departments, which are responsible for issuing expenditure orders to ministries and institutions. The role of the latter relates to planning, expenditure commitment and budgetary control.

Law No. 11/011 of 13 July 2011 on public finances is characterized by the following significant innovations:

- The organization of financial legislation, regional budgets, and decentralized territorial entities in a single text;
- Results-based budgeting through program budget;

- The multi-annual budgetary approach;
- Consideration of the principles of independent regional administration and decentralization;
- The redefinition of the ancillary budgets and the introduction of special accounts;
- The cash unit and the treasury unit.

In a single text, this law organizes the financial acts, the budgets of the provinces and the decentralized territorial entities by defining the rules for the administration of public finances and fiscal policy. It advocated a results-oriented practice for achieving development goals, including growth and poverty reduction. Thus, since the search for better performance in terms of effectiveness and efficiency is central to state action, it is necessary to review budget management methods through program budgets in which the allocation of budgetary credits is made for actions to be carried out within the framework of public policies. This leads to increased accountability of actors.

### Good Practices

- In recent years, the DRC has initiated reforms in public finance management. First of all, in its effort to modernize the legislative framework for economic and social life, important laws relating to public finances have been revised: revision of the tax legislation applicable to SMEs, the Public Procurement Law, the draft Customs Code, law introducing Value Added Tax (VAT), law on public finances;
- The computerization of the expenditure chain since 2003 makes it possible, at all times, to consult the evolution of spending in the circuit and the monitoring of commitments against the authorized credits, as well as disbursements against obligations;
- Production and online publication,<sup>62</sup> including at the end of the month of budget monitoring statements and their communication to recipient ministries and agencies, has enhanced financial management as a valuable tool for credit managers and, in general, those responsible for government action;
- The conviction in 2020 of several public officials for embezzlement of public funds.<sup>63</sup>

### Deficiencies

- No tax reform has been envisaged since 2019;

<sup>62</sup> Financial texts and laws, <https://budget.gouv.cd/budget-2021/>, accessed on November 25, 2021.

<sup>63</sup> In DRC, an unpublished anti-corruption judgment, but outstanding issues, <https://www.ledevoir.com/societe/581230/rdc-un-jugement-anticorruption-inedit-mais-des-questions-en-suspens>, accessed on 23 September 2021; DRC: new verdict in the “100 days” trial in the “Public Works” component, <https://www.rfi.fr/en/afrique/20200624-RDC-new-verdict-proc%C3%A8s-100-days-volet-public-works-OVD-Foner>, accessed on 23 September 2021; DRC: Wenga and Bamaros sentenced to 3 years of forced labor, Modest Makabuza to 12 months, <https://www.politico.cd/encontinu/2020/06/23/rdc-wenga-et-bamaros-condamnes-a-3-ans-des-travaux-forces-modeste-makabuza-a-12-mois.html/63408/>, accessed on September 24, 2021.

- Failure to comply with financial laws results in exceeding the budgetary allocations by ministries and public enterprises to the detriment of pro-poor spending and leading to significant discrepancies between the credits voted and the budget implemented by the Government;<sup>64</sup>
- The Senate's overspending of 78% of its planned budget for 2021<sup>65</sup> and the Presidency of the Republic's overspending of 116.6% of the planned budget for the fiscal year 2021;<sup>66</sup>
- Lack of transparency in the management of public investment and the weak regulatory framework for PPP (Public-Private Partnership contracts) since the institutional framework for monitoring PPP remains to be finalized;
- The accumulation of budgetary arrears is initially masked by the possibility of carrying over an expenditure that has not been executed at the end of a fiscal year, but which ultimately increases domestic debt;
- The absence of a general state account leads to the absence of a declaration of compliance by the Court of Auditors;
- The government's late submission of documents for the financial statements for the past year;
- The considerable and poorly assessed revenue received and expenditure incurred outside the budget. Independent agencies do not report on their budget management, and the accounting statements do not show the use of resources supplying particular accounts;
- Excessive use of exceptional expenditure chain procedures, caused in part by the lack of fluidity of practices when processing expenditure files and redundancy of controls;
- The budget often deviates from the priorities of the development strategy.<sup>67</sup>

## **Art. 10: Access to Information**

Access to public information is the right of all-natural and legal persons to seek, access and receive information from public and private bodies exercising public office and the duty of the State to provide such information. Even though Article 24 of the Constitution of 18 February 2006 enshrines the right of access to information, the Organic Law on Access to Information remains in the Parliament's backlog.

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<sup>64</sup> Budget overrun at the Presidency: the ODEP accuses the IGF of advocating mismanagement and covering the financial gaps, <https://www.politico.cd/encontinu/2021/10/25/depassement-budgetaire-a-la-presidence-lodep-accuse-ligf-de-faire-lapologie-de-la-megestion-et-de-couvrir-la-gabegie-financiere.html/95846/>, accessed on November 25, 2021.

<sup>65</sup> DRC: budgetary monitoring, the Senate records a budget overrun of 33.2% at the end of October 2021, <https://actualite.cd/index.php/2021/11/17/rdc-52-millions-usd-depenses-dans-les-frais-de-fonctionnement-du-senat-fin-octobre-2021>, accessed on 22 November 2021.

<sup>66</sup> DRC: In 9 months, the expenditure of the Presidency of the Republic amounted to CDF 507.5 billion (report), <https://zoom-eco.net/finance/rdc-en-9-mois-les-depenses-de-la-presidence-de-la-republique-se-sont-chiffrees-a-5075-milliards-de-cdf-rapport/>, accessed 25 November 2021.

<sup>67</sup> Accelerated Presidential Program to Fight Poverty and Inequality, [https://www.presidence.cd/services/2/programme\\_presidentiel\\_accelere\\_de\\_lutte\\_contre\\_la\\_pauvrete\\_et\\_les\\_inegalites](https://www.presidence.cd/services/2/programme_presidentiel_accelere_de_lutte_contre_la_pauvrete_et_les_inegalites), accessed on November 25, 2021.

According to this, the absence of this law prevents civil society, the Congolese media, and citizens from obtaining correct information easily from the necessary sources. We quote the ODEP report on the Tshisekedi 100-days program, which lasted almost 6 months, due to the difficulty in accessing information;<sup>68</sup> the death sentence of Navy Malela, a former audit officer of the Afriland First Bank CD, for denouncing the laundering operations of a tycoon in the mining sector; and the Dan Gertler case, accused of corruption.<sup>69</sup>

### Good Practices

- A hotline number to report cases of corruption exists within the Observatory for Monitoring Corruption and Professional Ethics. However, it is not known to the general public due to a lack of media awareness.

### Deficiencies

- The lack of an access to information law prevents civil society, the Congolese media, and citizens from obtaining the correct information easily from the necessary sources;
- Civil society participation is another challenge in the DRC. In the budget process as well, civil society's interests and wishes are not considered.

### Art. 11: Judiciary and Prosecution Services

Organic Law No. 06/020 as of 10 October 2006, establishing the status of judges under title three in the first chapter, provides a framework for the disciplinary regime of judges.<sup>70</sup>

The 2006 Constitution, as revised to date, provides for a restructuring of the entire judicial system through:

- The establishment of two courts (judicial and administrative) and a Constitutional Court (Articles 149, 153, 154, 155, 157 and 158);
- The inclusion of military courts in the judicial order, under the supervision of the Court of Cassation (Article 153).<sup>71</sup>

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<sup>68</sup> DRC: "Access to Information Act delays due to lack of interest and bad faith of MPs" (Florimond Muteba), <https://deskeco.com/index.php/2020/09/10/rdc-la-loi-sur-lacces-linformation-tarde-cause-de-manque-dinteret-et-la-mauvaise-foi-des#:~:text=L'acc%C3%A8s%20%C3%A0%20l'information%20publique%20est%20le%20droit%20d e.de%20for%20of%20such%20information%20>, accessed on November 24, 2021.

<sup>69</sup> In the DRC, the death sentence of two whistleblowers arouses indignation, [https://www.lemonde.fr/afrique/article/2021/03/05/en-rdc-la-condamnation-a-mort-de-deux-lanceurs-d-alerte-suscite-l-indignation\\_6072049\\_3212.html](https://www.lemonde.fr/afrique/article/2021/03/05/en-rdc-la-condamnation-a-mort-de-deux-lanceurs-d-alerte-suscite-l-indignation_6072049_3212.html), accessed on 25 November 2021.

<sup>70</sup> Organic Law on the Status of Magistrates, <http://www.leganet.cd/Legislation/JO/2006/JO.25.10.2006.pdf>, accessed on 25 October 2021.

<sup>71</sup> The National Justice Reform Policy 2017 — 2026. [https://bice.org/app/uploads/2020/05/RDC\\_PNRJ\\_2017-2026.pdf](https://bice.org/app/uploads/2020/05/RDC_PNRJ_2017-2026.pdf), accessed on October 25, 2021.



From April 27 to May 2, 2015, the State General of Justice was held and organized, at the initiative of the Ministry of Justice and Human Rights, in close collaboration with the Superior Council of the Judiciary and with the support of the Financial Technical Partners. Their aims were mainly to formulate an objective assessment of the justice sector, to identify and evaluate the measures taken for its recovery and to reach a consensus on the priority actions to be carried out for its comprehensive reform.

In his address at the opening of the forum, former President Joseph Kabila insisted that “access to justice remains a major imperative so that every citizen, wherever he is, has access to a natural judge to assert his claims”.<sup>72</sup> He also called for “a change in the mindset of all actors in the justice sector who must, in all circumstances, have exemplary behavior that inspires the trust of citizens”. After five days of discussion, the participants, divided into eight thematic groups, adopted nearly 350 recommendations in the short, medium, and long term, including the establishment of a specialized hub of investigators, prosecutors and magistrates specialized in the prosecution of the most severe crimes, the adoption of a law on the protection of victims and witnesses.

In 2017, the Ministry of Justice established an action plan (2017-2026) for justice reform.<sup>73</sup>

### **Good Practices**

- Dismissal of 200 magistrates accused of corruption or incompetence.<sup>74</sup>

### **Deficiencies**

The policies and programs of the Congolese State have never been coherent in preventing and combating corruption. Yet this vision based on repression has shown its limits in the DRC. Especially since this approach gives considerable leeway to the judicial system, which is already broken and does not function effectively, paralyzed by the same corruption. The whole problem lies there – the judicial services are designed to judge; they do not detect. In addition, according to specialists, this crime remains a challenge to detect because of its underhand character; it does not leave traces that are easy to highlight and increasingly tends to evolve into networks, sometimes in apparent compliance with the law.

- The low budget allocated to the judiciary, the alleged or actual interference by the executive in the administration of justice, the organizational weaknesses of

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<sup>72</sup> DRC: Joseph Kabila invites justice actors to change their mindset, <https://www.radiokapi.net/actualite/2015/04/27/rdc-joseph-kabila-invite-les-acteurs-de-la-justice-au-changement-de-mentalite>, accessed on 25 November 2021.

<sup>73</sup> Action Plan (2017 -2026) for Justice Reform, [https://bice.org/app/uploads/2020/05/RDC\\_PNRJ\\_2017-2026.pdf](https://bice.org/app/uploads/2020/05/RDC_PNRJ_2017-2026.pdf), accessed on 21 November 2021.

<sup>74</sup> Radio France International, DRC: large household within the judiciary, <https://www.rfi.fr/fr/afrique/20180416-rdc-grand-menage-magistrature-250-magistrats-revoques-alexis-thambe-mwamba-ministre>, accessed on 25 October 2021.



the CSM, the impunity of some corrupt magistrates, the lack of accountability of some judicial actors and inadequate working conditions are all constraints on the independence of the judiciary in the DRC;

- The judicial system is poorly equipped and underfunded;
- Very few judges are prosecuted and sentenced for corruption-related offences;
- Lack of routine monitoring to assess strict compliance to judicial ethics;
- The politicization of justice system, ineffectiveness of legal remedies, influence peddling, denial of justice and weak commitment of the judiciary to the fight against corruption.<sup>75</sup>

## **Art. 12: Private Sector**

The Decree-Law No 14/ 014 as of 08 May 2014 on the creation, organization and operation of the single window for business creation establishes the legal regime applicable to businesses in the Democratic Republic of the Congo and the Law No. 18/016 as of July 09, 2018, on public-private partnership provide a framework for the legal regime applicable to public-private partnership contracts and lays down the rules and procedures relating to their conclusion, execution, monitoring and control, the settlement of disputes, the legal regime for the resources necessary for their implementation, the applicable tax, customs and parafiscal regimes as well the obligations of the parties.

In practice, basic information on legal persons is accessible to the public on the website of the 'One-stop shop'/Single Window<sup>76</sup> created by Decree No. 14/014 of May 08, 2014. However, verification and updating of this information is not ensured. There is no obligation to identify beneficial owners, either when legal entities are created or when a legal entity has a relationship with a financial institution because the latter does not have an obligation to identify beneficial owners. Also, no sanctions regime is provided for.

The DRC's accession to OHADA became effective in 2012. However, the deployment of OHADA's Trade and Movable Credit Register (RCCM) software is not yet effective. Although based on uniform acts of OHADA, the creation of legal entities does not provide a clear picture of the ownership and beneficial ownership of companies.

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<sup>75</sup> Report on Access to Justice in the DRC: 12,800 cases of ineffectiveness of remedies, trafficking in influence, denial of justice and impunity for the enumerated acts of corruption (G. Kapiamba), <https://www.politico.cd/encontinu/2021/06/14/rapport-sur-laces-a-la-justice-en-rdc-12-800-cas-dineffectivite-des-voies-de-recours-traffic-dinflunce-deni-de-la-justice-et-dimpunite-des-faits-de-corruption-denombres-g-kapiamba.html/86317/>, accessed on 17 October 2021; DRC: ACAJ has 12,800 cases of ineffectiveness of the justice system, <https://www.radiookapi.net/2021/06/13/actualite/justice/rdc-acaj-denombre-12800-cas-dineffectivite-de-la-justice>, accessed on October 17, 2021.

<sup>76</sup> Single Window for Business Creation (GUCE) created by decree n°14/014 of 08 May 2014 <https://www.leganet.cd/legislation/Droit%20Public/EPUB/Decret.14.14.08.08.2014.htm>, accessed on October 26, 2021.

The transparency of the extractive sector is regulated by Decree No. 05/160 as of 18 November 2005<sup>77</sup> on the creation, organization, and operation of the National Committee of the Initiative for Transparency in the Management of Extractive Industries in the DRC. According to this decree, “extractive industry” refers to any business that exploits one of the non-renewable natural resources such as minerals, oil, natural gas and, by extension, timber.

Article 2 of the Decree states that EITI/DRC is responsible for:

- Collecting statistics on production, marketing and payments made to the state by extractive industries, in accordance with mining, oil, gas and forestry contracts concluded with it (i.e., the state);
- Auditing the accounts of the extractive industries and those of the state and then reconciling the collected data to ensure transparency and traceability of revenues;
- Disclose and disseminate payments made by extractive industries and revenues collected by specialized government services in an accessible, comprehensive, and understandable manner to the general public;
- Make all contracts publicly available, denounce unconscionable contracts, and reveal the loss of revenue to the state.

Extractive industries and civil society organizations working in the DRC collaborate with the EITI/DRC to fulfil this mission.

### **Good Practices**

The DRC has a satisfactory legal framework for private sector regulation, including:

- Law No. 004/2021 on Public Utility Establishments and Non-Profit Associations;<sup>78</sup>
- Decree No. 14/014 of May 08, 2014, on the Single Window for Business Creation;<sup>79</sup>
- Decree No. 05/160, as of 18 November 2005<sup>80</sup> on the creation, organization, and operation of the National Committee of the Initiative for Transparency in the Management of Extractive Industries in the DRC;

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<sup>77</sup> Decree No. 05/160 of November 18, 2005 on the creation, organization, and operation of the National Committee of the Initiative for Transparency in the Management of Extractive Industries in the Democratic Republic of Congo, <http://extwprlegs1.fao.org/docs/pdf/cng85754.pdf>, accessed on November 25, 2021.

<sup>78</sup> Law No. 004/2021 on Public Utility Establishments and Non-Profit Associations, <http://www.leganet.cd/Legislation/Droit%20Public/loi0042001.20.07.2001.asbl.htm>, accessed on 25 November 2021.

<sup>79</sup> Decree No. 14/014 of May 08, 2014, on the Single Window for Business Creation, <https://www.leganet.cd/Legislation/Droit%20Public/EPub/decret.14.14.08.08.2014.htm>.

<sup>80</sup> Decree No. 05/160 of 18 November 2005 on the creation, organization, and operation of the National Committee of the Initiative for Transparency in the Management of Extractive Industries in the Democratic Republic of Congo, <http://extwprlegs1.fao.org/docs/pdf/cng85754.pdf>, accessed on November 25, 2021.

- Law No 18/016 of 09 July 2018 on Public-Private Partnership frames the legal regime applicable to public-private partnership contracts;<sup>81</sup>
- The Single Window for Business Creation (GUCE), created by Decree No. 14 /014 of 08 May 2014,<sup>82</sup> is the center for the rapid completion of all formalities of business creation; it facilitates the process of installing subsidiaries, representations or branches of companies and the deregistration of companies as well as other operations relating to the life of enterprises;
- Signing by the private sector of the National Anti-Corruption Pact;<sup>83</sup>
- The obligations to identify clients, whether natural persons, legal entities, or other legal structures, are clearly set out in Law No. 04/016 and the Directive 15 regarding credit institutions, microfinance institutions, financial courier companies, and currency exchange offices.

## Deficiencies

- Lack of a code of conduct for private sector officials;
- Bribery cases involving businesses in the private sector are common;<sup>84,85,86</sup>
- The leak of millions of documents and banking transactions from BGFIBank reveals the dark side of one of the biggest financial scandals in the DRC: \$43 million in public funds paid to Société Egal, a meat and fish import company linked to former President Joseph Kabila;<sup>87</sup>
- The exchange of information on beneficial owners is a significant challenge due to the unavailability of such information both at the Single Window for Business Creation level and from reporting entities that do not have a legal obligation to identify the beneficial owner within the scope of the FATF definition;

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<sup>81</sup> Law No 18/016 of 09 July 2018 on Public Private Partnership provides for the legal regime applicable to public-private partnership contracts, <http://extwprlegs1.fao.org/docs/pdf/Cng187505.pdf> , accessed on 21 July 2021.

<sup>82</sup> Single Window for Business Creation (GUCE) created by decree n°14/014 of 08 May 2014 <https://www.leganet.cd/legislation/Droit%20Public/EPUB/Decret.14.14.08.08.2014.htm>, accessed on October 26, 2021.

<sup>83</sup> National Anti-Corruption Pact, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/267163/Pacte\\_Nationale\\_Anti\\_Corruption\\_-\\_Sec\\_Pblq\\_-\\_Sec\\_Pr\\_Soc\\_Civ\\_9\\_d\\_c\\_2013-1.doc](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/267163/Pacte_Nationale_Anti_Corruption_-_Sec_Pblq_-_Sec_Pr_Soc_Civ_9_d_c_2013-1.doc), accessed on October 25, 2021.

<sup>84</sup> DRC: Vital Kamerhe and Samibo's \$50 million, <https://www.rfi.fr/fr/afrique/20200430-rdc-vital-kamerhe-et-les-50-millions-dollars-samibo>, accessed on July 30, 2021.

<sup>85</sup> DRC: "EGAL Sarl does not pay its taxes properly and benefits from the financing of the BCC", revelations by Jean-Jacques Lumumba, <https://actualite.cd/index.php/2020/12/30/rdc-la-societe-egal-sarl-ne-paye-pas-correctement-ses-impots-et-beneficie-du-financement>, accessed on November 25, 2021.

<sup>86</sup> Congo Hold-up: how are the most beautiful tours of Kinshasa financed? , <https://www.rfi.fr/fr/afrique/20211125-congo-hold-up-comment-sont-financ%C3%A9es-les-plus-belles-tours-de-kinshasa>, accessed on November 25, 2021.

<sup>87</sup> Congo Hold-up: Equal, the autopsy of a scandal, <https://www.rfi.fr/fr/afrique/20211122-congo-hold-up-egal-l-autopsie-d-un-scandale>, accessed on November 25, 2021.

- The inadequacies of the monitoring system leave specific non-profit organizations, charities and non-financial enterprises and professions (EPNFs) outside the scope of all AML/TF preventive measures;
- The competent authorities have a limited understanding of the risks associated with the abuse of legal persons for the ML/TF, and no sectoral risk analysis has been conducted;
- The DRC has not yet undertaken the formal identification and census of private entities (ASBL, EUP, SARL, SA, SARLU, ETS) to determine those that correspond to the definition in Law 004/2001 and those which, because of their activities or characteristics, are likely to be exploited for terrorist financing purposes;
- No identification of the nature of threats posed by terrorist entities to private entities that are at risk or the manner in which terrorist actors exploit these entities has been carried out by the authorities of the DRC.

### **Art. 13.1: Participation of Society**

The DRC ratified the International Convention on Civil and Political Rights in 1976. Article 19 of the Convention stipulates that “no one shall be discriminated against on the basis of their opinions. Everyone has the right to freedom of expression.” Article 21 states that “the right of peaceful assembly shall be recognized”, while Article 22 stipulates that “everyone has the right to freedom of association with others.”<sup>88</sup>

Freedoms of expression and assembly are also enshrined in Articles 23 and 26 of the Congolese Constitution. Article 23 states that “everyone has the right to freedom of expression. This right implies the freedom to express one’s opinions or beliefs, including through speech, writing and images, subject to respect for the law, public order, and public morality.” Article 26 states that “freedom of demonstration shall be guaranteed.”

Article 11 of the African Charter on Human and Peoples' Rights, ratified by the Congolese Government in 1987, specifies that “everyone has the right to assemble freely with others. This right shall be exercised solely subject to necessary restrictions that may be required by laws and regulations, particularly in the interests of national security, the safety of others, health, public morality or the rights and freedoms of individuals.”<sup>89</sup>

The establishment of non-profit organizations in the DRC is subject to administrative formalities governed by Law No. 004 of 20 July 2001, laying down provisions

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<sup>88</sup> The National Anti-Corruption Pact signed between the public and private sectors, as well as civil society, <https://www.gov.uk/government/news/signing-of-the-national-anti-corruption-pact-in-drc.fr>, accessed on 21 July 2021.

<sup>89</sup> African Charter on Human and Peoples' Rights, <https://au.int/sites/default/files/treaties/36390-treaty-0011 - african charter on human and peoples rights f.pdf>, accessed on 21 July 2021.

applicable to non-profit associations and public utility institutions. The law sets out specific obligations that help promote transparency, integrity and public confidence in the management and operation of non-profit organizations.<sup>90</sup>

In general, it is necessary to mention in the by-laws, in particular:

- The name, headquarters, purpose, the place of activity;
- The various categories of members, conditions for joining, leaving or suspending members;
- The organization of the administration or the management;
- The method of appointment and dismissal of the persons in the administration, the duration of their mandate, the scope of their powers, and the manner in which the association is represented with respect to third parties;
- The method of drawing up annual accounts;
- The rules to be followed for the amendment of the by-laws and the allocation of assets in the event of dissolution.

All this information must be made available to the public by including it in the Official Journal. The by-laws shall be enforceable against third parties only from the time of their publication in the Official Journal. Furthermore, these by-laws may not contain any provision contrary to the law, public morality, or public order. Non-profit organizations established in the DRC are required by law and encouraged to carry out their operations through regulated financial channels.

### **Good Practices**

- Civil society organizations exist in the DRC through registered associations under Law No. 004/2001 on Non-Profit Associations and Public Utility Establishments. Anti-corruption organizations include, among others, the Anti-Corruption Research Centre (CERC), the Congolese League Against Corruption (LICOCO), the Congolese Coalition of Anti-Corruption organizations (COCOLUCO), Observatory for Public Expenditure (ODEP), and the Congolese Association for Access to Justice (ACAJ) among others;
- Civil society participation in the organization of the multi-stakeholder forum on the fight against corruption in October 2021<sup>91</sup> and its forthcoming participation in developing anti-corruption strategies or policies are a significant step forward in civil society involvement in governance.

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<sup>90</sup> Law No. 004/2001 of 20 July 2001 on General Provisions Applicable to Non-Profit Associations and Public Utility Establishments  
<http://www.leganet.cd/legislation/droit%20public/loi0042001.20.07.2001.asbl.htm>, accessed on September 6, 2021.

<sup>91</sup> Congolese Press Agency, The work of the United States General of the fight against corruption in the DRC begins Tuesday in Kinshasa, <https://acpcongo.com/index.php/2021/10/17/les-travaux-des-etats-generaux-de-la-lutte-contre-la-corruption-en-rdc-demarrent-mardi-a-kinshasa>, accessed on 25 October 2021.

## Deficiencies

- Lack of a whistleblower protection law;
- The civic environment is limited, both for individuals and associations. As an illustration, in 2019, the president of the Congolese League against Corruption, Mr. Ernest Mpararo, was summoned to the prosecutor of the Kinshasa/Matete Court of Appeal for denouncing corruption and opacity in the 13 projects of President Félix Tshisekedi's emergency program funded by the Fund for the Promotion of Industry (FPI).<sup>92</sup> The case was abandoned as a result of pressure from civil society.
- While anti-corruption NGOs may receive foreign funds to support the government in its fight against corruption, they are often delegitimized and considered adversaries rather than partners. In the specific case, the boss of the General Careers and Mines (Gécamines), Albert Yuma, threatened in November 2018 to attack anti-corruption NGOs that regularly denounce embezzlement in the DRC;<sup>93</sup>
- Inadequate legislative and regulatory framework for non-profit organizations and Public Utility Companies;
- To date, the DRC has not undertaken any awareness-raising and education campaigns to encourage and deepen knowledge within non-profit organizations and the donor community on the potential vulnerabilities of non-profit organizations to corruption and exploitation for TF and the risks of terrorist financing and on measures that non-profit organizations can take to protect themselves from such exploitation.

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<sup>92</sup> Media Congo, President of Licoco summoned to the Public Prosecutor <https://www.mediacongo.net/article-actualite-55307-le-president-de-la-licoco-convoque-au-parquet.html>, accessed on October 25, 2021.

<sup>93</sup> Gécamines attacks anti-corruption NGOs, <https://www.voafrique.com/a/rdc-le-pca-de-la-g%C3%A9camines-s-en-prend-aux-ong-anti-corruption/4678606.html>, accessed on November 25, 2021.

## **B. Chapter V**

Regarding UNCAC Chapter V, the following points were discussed and analyzed:

### **Art. 14 (Chapter II) and 52 and 58 (Chapter V): Measures to Prevent Money-Laundering and Anti-Money Laundering**

The DRC presents enormous risks for Money Laundering and Terrorism Financing (ML/TF). A national risk assessment (NRA) was conducted in 2013, but the report was not validated, so risk identification is not a formal process. Another NRA exercise was underway at the time of the site visit; however, some competent authorities understand some ML/TF risks facing the country, including those related to corruption affecting all areas of activity and public administration, illegal exploitation of natural resources used to finance armed groups and gangs.

The DRC faces a range of factors that expose it to ML/TF criminal activities. The structuring of its economy with a preponderance for the informal sector, extensive use of cash due to low level financial inclusion, strong dollarization of the economy due to weak operational exchange controls, lack of a reliable identification system, and widespread corruption create a criminogenic environment conducive to money-laundering activities. These risks are exacerbated by the perpetration of economic and environmental crimes that generate proceeds likely to be integrated into the money laundering process, such as embezzlement of public funds, customs and tax fraud, illegal exploitation of natural resources, wildlife, and timber crime.

The main legal instrument of AML/TF in the DRC is Law No. 04/016 of 19 July 2004 on combating money laundering and the financing of terrorism. This law defines the scope of the AML/TF standards to all categories of taxable persons within the scope of the FATF. It contains AML/TF due diligence obligations, including provisions on customer knowledge, reporting suspicious transactions, and record keeping. Nevertheless, it does not include any provisions for ML/TF risk assessments.

The DRC does not have a comprehensive AML/TF strategy. However, the country has adopted a sectoral anti-corruption policy and has created strategic bodies for this purpose: the Observatory for Monitoring of Corruption and Professional Ethics (OSCEP) and the Agency for the Prevention and Fight Against Corruption (APLC).

In terms of coordination, the DRC has created the Consultative Committee on Combating Money Laundering and Terrorist Financing (COLUB), a platform bringing together various competent administrations that can establish a synergy of actions in the context of the development of appropriate national policies.



The National Coordinating Committee for Combating International Terrorism (CNCLT) provides the coordination framework for combating terrorism. The Committee meets regularly to exchange and review intelligence and information on terrorist threats.

CENAREF is an administrative financial intelligence unit established by Article 17 of Law No. 04/016 of 19 July 2004 on combating money laundering and the financing of terrorism. It analyzes and forwards information to the competent judicial authorities that may lead to prosecution for money laundering and terrorist financing. It is composed of the Board and the Executive Secretariat. The members of the Board work part-time. CENAREF has limited operational capacity as it does not have a reliable information security system. The protection of information submitted to this body is often questioned by some taxable persons who explain the low number of STR transferred despite the environment characterized by corruption, embezzlement of public funds, customs and tax fraud, poaching, and trafficking in wildlife and protected species, and mineral trafficking.

Under a Memorandum of Understanding signed on September 9, 2010, between CENAREF and the Congolese Banks Association, banks are exempted from making automatic declarations to CENAREF concerning politically exposed persons, except in case of suspicion of ML/TF or specific requests from CENAREF, thereby reducing the use of financial intelligence and is not consistent with the country's risk profile.

The DRC banking sector generally has a basic understanding of ML/TF risks and implements customer due diligence and ongoing operations monitoring measures, albeit in an unsatisfactory manner. However, the microfinance, credit unions, manual foreign exchange, transfer of funds and securities, electronic money and insurance sectors have no understanding of the ML/TF risks posed by their customers, products, or services, resulting in the weak implementation of preventive measures by actors in these sectors, some of which face high ML/TF risks. Generally speaking, the satisfactory implementation of vigilance is confronted with the lack of secure identification documents in the DRC, making it difficult to know the customer.

Criminal prosecution authorities have a wide variety of measures at their disposal for their investigations to obtain all relevant information to seize assets and identify the perpetrators of the offences with the aim to bring them before the courts. However, they do not make optimal use of all available data. At the operational level, the existence of an anti-corruption agency is a significant and high-level strategic response to these issues. However, most cases referred to the judicial authorities have unfortunately not been prosecuted.

Judges and judicial police officers focus their actions on the underlying offences, albeit generating profits. There is no concurrent or parallel prosecution of money laundering,



as this offence is still perceived as falling within the exclusive jurisdiction of CENAREF, which raises a real need for training.

The number of Suspicious Transaction Reports (STR) issued by Designated Non-Financial Businesses and Professions (DNFBP) is insignificant in view of the vulnerability of sectors such as real estate, natural resource exploitation or foreign exchange. Action is still concentrated on credit institutions in a country with very few banks.

### **Good Practices**

- The authorities affirm a political will to combat the ML/TF, as evidenced by the adoption of a legal and institutional framework based on international standards;
- The instruction of the Central Bank of Congo to banks on strict compliance with the provisions of Articles 5, 6 and 11 of Law No. 04/016 of 19 July 2004 on combating money laundering and the financing of terrorism, prohibiting any payment in cash or by the bearer of a sum in Congolese francs or other or greater than approximately €9,000;
- The DRC conducted its National Risk Assessment between February 2013 to June 2014, under the general coordination of CENAREF and with the assistance and support of World Bank Experts,<sup>94</sup> to identify, assess and understand the all ML/TF risks to which the country is exposed. This assessment was carried out using a qualitative methodological approach with quantitative elements based on the World Bank's NRA tool;
- An investigation resulted in a conviction for money laundering of President Tshisekedi's former Chief of Staff, Vital Kamerhe.<sup>95</sup>

### **Deficiencies**

- The country is also exposed to the threats of terrorism and its financing due to the presence of armed groups and gangs capable of exploiting various illicit trafficking and because of its immediate geographical and security environment, including the instability of some neighboring countries accentuated by the porosity of borders;
- The DRC has put in place a system of AML/TF that is still relatively ineffective, despite the unequivocal commitment of the political authorities to combat these issues. There are notable shortcomings in implementing key mechanisms such as national coordination, developing a control policy highlighting the risk-based approach and monitoring financial institutions and DNFBPs;

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<sup>94</sup> Measures to combat money laundering and terrorist financing <http://spgabac.org/site/wp-content/uploads/2021/05/REM-RDC.pdf>, accessed on 25 October 2021.

<sup>95</sup> DRC: Here are the 8 properties of Kamerhe and his relatives that will be seized, <https://www.politico.cd/la-rdc-a-la-une/2020/06/20/rdc-voici-les-8-biens-immobiliers-de-kamerhe-et-ses-proches-qui-vont-etre-saisis.html/63249/>, accessed on July 25, 2021.

- Concerning technical compliance, the legal framework developed in 2004 has not been updated to align with developments in international standards, including the 2012 FATF Recommendations;
- Lack of effective implementation of training received in the fight against financial crimes;
- Lack of effective enforcement of sanctions against financial criminals;
- Failure of “Know Your Customer” system: weakness in customer identification, lack of database update, lack of precise regulations on the applicable sanctions lists;
- COLUB’s lack of resources is a weakness that does not allow it to organize meetings and adopt measures to refine a coherent national AML/TF strategy;
- The limited staff and the number of STRs received by the Congolese National Financial Intelligence Unit provide sufficient evidence that the Congolese authorities have little understanding of the risks of money laundering and terrorist financing to which the country is exposed;
- The anti-money laundering and terrorist financing mechanism is also undermined by investigators' and magistrates' integrity and their limited capacity in prosecuting money laundering and terrorist financing;<sup>96</sup>
- The lack of statistics on corruption cases prevents an assessment of the consistency between investigation and prosecution activities and the country's risk profile;
- The criminal prosecution authorities of the police and the judiciary do not have the necessary AML/TF training or special powers to investigate and prosecute ML cases successfully.

### **Art. 53 and 56: Measures for Direct Recovery of Property and Art. 54: Confiscation Tools**

Article 44 of Act No. 04/016 as of 19 July 2004 on combating money laundering and the financing of terrorism provides that the person guilty of money-laundering and the financing of terrorism is also subject to confiscation of property, which is the instrument or product of the offence.

In addition, Article 47 of the law stipulates that “in the case of conviction for the offence of money-laundering committed or attempted, the following shall be confiscated:

- Property that is the subject of the offence, including income and other benefits derived from it, to whomever it belongs, unless the owner establishes that they acquired it by paying the fair price or in exchange for benefits corresponding to its value or any other lawful manner and was unaware of its illicit origin;

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<sup>96</sup> Measures to combat money laundering and terrorist financing <http://spgabac.org/site/wp-content/uploads/2021/05/REM-RDC.pdf>, accessed on 25 October 2021.

- Property belonging, directly or indirectly, to a person convicted of laundering. Furthermore, in the event of an offence determined by the court, where a conviction cannot be executed against its perpetrator(s), the court may nevertheless order the confiscation of the property to which the offence has been committed. In addition, the confiscation of the convicted person's property in the amount of the enrichment carried out by him or her since the date of the earliest of the facts justifying his or her conviction may be pronounced, unless he or she establishes that there is no link between the enrichment and the offence. Where there is confusion about assets derived directly or indirectly from the crime and legitimately acquired property, the confiscation of the property shall be ordered only up to the value estimated by the court, of the resources and property referred to above. The decision ordering confiscation refers to the property and gives the details necessary for their identification and location. Where the property to be confiscated cannot be represented, confiscation may be ordered in value.”

The DRC does not have competent national authorities responsible for the implementation and enforcement of targeted financial sanctions for the purpose of:

- 1) Requiring all natural or legal persons in the country to freeze funds and other property of designated persons and entities without delay and prior notice;
- 2) Extending the freezing obligation to all funds or other property owned or controlled by the designated entity or person, and to the assets generated by those funds, and to assets held on behalf of the sanctioned persons;
- 3) Prohibiting the provision of funds and other goods, economic resources or financial services and other related services for the persons or entities concerned;
- 4) Having mechanisms for communicating designations to financial institutions and DNFBPs and providing clear instructions on their obligations under the freezing mechanisms;
- 5) Requiring financial institutions and DNFBPs to report to the appropriate authorities all frozen assets and actions taken pursuant to the relevant UNSCR prohibitions, including attempted transactions;
- 6) Adopting measures to protect the rights of third parties in good faith.

The DRC has not taken measures to confiscate assets related to the financing of terrorism, nor has it taken legislative measures to identify, trace and value assets subject to confiscation, nor has it taken measures to prevent or reverse actions that undermine the country's ability to freeze, seize or recover assets subject to confiscation.

The DRC does not yet have defined procedures and mechanisms for dealing with lists established under Resolutions 1267 concerning Al-Qaida, the Taliban and associated individuals and entities, and the fight against terrorism, hence the difficulty of

implementing targeted financial sanctions against listed individuals. The procedures for freezing and confiscating assets and other property of terrorists are neither defined nor implemented.

### Good Practices

- The confiscation and freezing of the assets of defendants Vital Kamerhe and Samih Jammal in connection to the embezzlement of funds from President Tshisekedi's 100-day program;
- The DRC froze all the assets of Saleh Assi, boss of Pain Victoire, in accordance with US sanctions.<sup>97</sup>

### Deficiencies

- The procedures for freezing and confiscating assets and other property of terrorists are not defined nor implemented;
- The authority in charge of the management of seized and frozen assets is not operational. However, there is a specialized body to manage these assets, FOLUCCO,<sup>98</sup> which is the recipient of confiscated resources and assets vested in the state. Still, prosecution authorities do not incorporate this component (diverted resource destinations) into their investigations;<sup>99</sup>
- The failure to implement the legal provisions providing for dissuasive sanctions by criminal prosecution authorities substantially weakens the scheme's effectiveness. The prosecution of legal persons is well foreseen in the legislation, and only one of them<sup>100</sup> has been subject to sanctions. Convictions, however, are virtually non-existent, which contrasts with the identified risks;
- The country's authorities have firmly committed themselves to addressing the terrorist threat arising from the actions of armed groups and gangs operating in the country through the establishment of the CNCLT. Still, they remain behind in tackling the issue of terrorist financing as no risk analysis in this area has yet been conducted;
- The DRC has not yet conducted a study to identify non-profit organizations (NPOs) that are vulnerable to exploitation for terrorist financing purposes due to their nature and activities. There is no mechanism or oversight for monitoring NPOs to prevent terrorist groups from using such entities for criminal purposes in general and terrorist financing in particular. There are no regulations in place to give immediate effect to United Nations' financial sanctions;

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<sup>97</sup> The DRC freezes all the assets of Saleh ASSI, boss of Pain Victoire, pursuant to the US sanctions, <https://deskeco.com/2019/12/17/la-rdc-gele-tous-les-avoirs-de-saleh-assi-patron-de-pain-victoire-en-application-des-sanctions>, accessed on 23 November 2021.

<sup>98</sup> <https://www.droitcongolais.info/files/6.2.36.-Decret-du-24-septembre-2008-Fonds-de-lutte-contre-le-crime-organise.pdf>, accessed on November 21, 2021.

<sup>99</sup> Measures to Combat Money Laundering and Terrorist Financing, <http://spgabc.org/site/wp-content/uploads/2021/05/REM-RDC.pdf>, accessed on 23 July 2021.

<sup>100</sup> 100-day trial: Samih Jammal sentenced to 20 years of forced labor, <https://actualite.cd/2020/06/20/proces-100-jours-samih-jammal-condamne-20-ans-des-travaux-forces>, accessed on November 25, 2021.

- Political interference in judicial cases related to corruption renders the courts ineffective in asset-related convictions and confiscations;
- Competent authorities have not prioritized confiscating proceeds and instruments of crime and property of equivalent value. Prosecution authorities do not include this in their investigations and therefore do not systematically seek the existence of assets associated with crimes;
- No statistical data was provided to the evaluators on the confiscation of cross-border transactions to assess the implementation of the relevant legislation;
- The authorities established an Organized Crime Fund (FOLUCCO) to manage confiscated property and instruments of crime. However, FOLUCCO is not yet operational;
- The DRC does not have mechanisms or procedures in place to allow access to frozen funds and other assets deemed necessary to cover basic expenses, payment of certain types of charges, fees and remuneration for services, or extraordinary expenses, in accordance with the procedures of UNSCR 1452 and any subsequent Resolution. The same applies to a designation made pursuant to UNSCR 1373.

**Art. 51, 54, 55, 56 and 59: International Cooperation for the Purpose of Confiscation and Art. 57: The Return and Disposal of Assets**

The DRC is exposed to money laundering risks arising from underlying crimes committed abroad because it shares borders with nine countries and attracts foreign investors to its mining, forestry, and wildlife operations. In addition, as the corruption index is very high in the country, capital generated by this activity can be found in international financial channels. International cooperation is therefore of great importance. Furthermore, armed groups in certain parts of the country, including North Kivu, bordering unstable neighboring countries, pose a risk of terrorist financing, which also calls for international cooperation to combat.

The DRC is also a member of several subregional organizations, namely the Economic Community of Central African States (ECCAS), COMESA and South African Development and Cooperation (SADC). In the latter framework, the DRC has signed protocols, including: The Protocol on Legal Affairs, which establishes a tripartite structure to facilitate the adoption of appropriate policies for cooperation in criminal matters between the member states; The Protocol against Corruption was adopted on 14 August 2001, which criminalizes specific acts of corruption and provides for criminal judicial cooperation to end it; The Protocol on Extradition adopted on 3 October 2002, which constitutes the general treaty on extradition between the member states; and the Protocol on Mutual Assistance in Criminal Matters adopted on the same day. Within the framework of ECCAS, the Protocol to the Peace and Security Council of Central Africa was adopted on 24 February 2000, which seeks to strengthen cooperation in combating cross-border crimes, international terrorism, illicit arms

trafficking, and all related matters. However, the statistics provided<sup>101</sup> do not reflect the magnitude of the phenomenon identified and question the effectiveness of such international cooperation. From 2015 to 2018, CENAREF sent only 23 requests for information. Given the threats facing the country, CENAREF's international cooperation is limited.

To a lesser extent, international cooperation is active within the Congolese Customs, member of the World Customs Organization; the Directorate-General for Migration; the Court of Auditors, member of INTOSAI; the National Police, member of Interpol. Similarly, CENAREF cooperates with other FIUs. However, it is not yet a member of the Egmont Group.

Money laundering and the financing of terrorism are both transnational phenomena requiring close cooperation among states. Without detracting from existing cooperation agreements, Title 5 of Law No 04/016 of 19 July 2004 responds to this concern by addressing issues relating to:

1. Mutual legal assistance between the competent departments of different states;
2. Extradition of offenders suspected to be guilty or convicted, in order to investigate, prosecute, or enforce sentences imposed on them, according to the circumstances.

Article 51 stipulates that “without prejudice to specific judicial cooperation agreements, requests for mutual legal assistance shall be addressed to the Minister of Justice who has them executed under the supervision of the Attorney General of the Republic. In case of emergency, they shall be sent directly, and subject to reciprocity, to the Financial Intelligence Unit, which shall follow them up, with the authorities referred to in the first paragraph duly informed.” According to this provision, mutual legal assistance shall include:

1. The collection of testimonies;
2. Assistance for the handing over of detainees or other persons to the judicial authorities of the requesting state for testimony or assistance in the conduct of the investigation;
3. The delivery of court documents;
4. Searches and seizures;
5. Examination of objects and places;
6. Provision of information and exhibits;
7. Provision of originals or certified copies of relevant records and documents, including bank statements, accounting records, and records showing the operation of a business or its commercial activities.

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<sup>101</sup> Measures to Combat Money Laundering and Terrorist Financing, <http://spgabac.org/site/wp-content/uploads/2021/05/REM-RDC.pdf>, pages 106-107, accessed on July 21, 2021.

This demonstrates that the DRC has a satisfactory legal framework for mutual legal assistance and extradition. However, the effectiveness of its implementation remains very limited in the area of AML/TF due to the lack of requests received and issued. Cooperation between competent authorities on AML/TF is relatively active at the CENAREF level. Although not a member of the Egmont Group, it shares information with foreign counterparts with whom it has signed a memorandum of understanding. Despite this, it is less noticeable at the level of regulatory and supervisory authorities of the FIs, customs and police, although they have the legal and regulatory powers to conclude cooperation agreements giving them the general capacity to share information with foreign counterparts in the context of their missions. In addition, the Congolese Customs is a member of the WCO, and the police is a member of ICPO-Interpol (International Criminal Police Organization). These two international organizations offer platforms for the exchange of information.

Enquiries made by CENAREF, between 2015 and 2018, to its foreign counterparts relate to suspicious financial transactions in the DRC. For example, during the on-site visit, CENAREF said that responses from its peers are often slow to arrive, which sometimes blocks the various investigations. Faced with this situation, CENAREF states that it does not know the reasons for the delays caused by its counterparts. Also, from 2015 to 2018, CENAREF sent only 23 inquiries. Given the threats facing the country, CENAREF's international cooperation is limited.

CENAREF received inquiries from other FIUs between 2016 and 2018, as shown in the table below. It stated that the average duration of responses is two weeks, in line with international standards, which set it at one month. The mission was unable to review any files to confirm this assertion.

**Table 4: Applications received by Foreign FIUs in 2015, 2016, 2017 and 2018<sup>102</sup>**

Foreign FIU	Number of applications received			
	2015	2016	2017	2018
Financial Information Processing Unit (CTIF), Belgium	1	5	5	4
Intelligence Processing and Action against clandestine financial circuits (TRACFIN), France	3	0	0	1
National Agency for Financial Investigation (ANIF), Congo Brazzaville	0	1	0	0

<sup>102</sup> Measures to Combat Money Laundering and Terrorist Financing, <http://spgabac.org/site/wp-content/uploads/2021/05/REM-RDC.pdf>, pages 106-107, accessed on July 21, 2021.

Anti-Money Laundering Office (AMLO), Thailand	0	1	0	0
Special Investigation Commission (SIC), Lebanon	0	0	1	0
Committee of Inquiry into Financial Crime in Turkey (MASAK), Turkey	0	0	0	1
<b>TOTAL</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>6</b>

The legal framework for mutual assistance and extradition is based on the Anti-Money Laundering Law in Title V entitled “International Cooperation” and Articles 51 to 62. The legal criteria for mutual legal assistance are primarily defined, except for extradition. In the latter case, while stating peremptorily in Article 60 (7) that extradition may be refused when the subject is a national of the DRC, the law allows for local prosecution (Article 61). The DRC did not provide statistics on extradition cases.

The DRC may grant mutual legal assistance and extradition in AML/TF matters, but no request has yet been made in this area. Between 2016 and 2018, the Congolese authorities received 42 requests for judicial cooperation. They relate to ordinary offences that are not related to financial matters.

### Good Practices

- The DRC is an active member of the Kimberley Process Certification Scheme (KPCS).<sup>103</sup> This is international cooperation in the fight against blood diamonds. In 2010, the International Conference of the Great Lakes Regions (ICGLR) developed<sup>104</sup> a mineral certification mechanism for 3TG conflict minerals (Tin, Tantalum, Tungsten, Gold). The DRC was the first state to integrate this system in its legislation. The Ministry of Mines is responsible for issuing ICGLR certificates for 3GT;
- The legal framework for mutual assistance and extradition is provided for in national legislation, the various international conventions ratified by the DRC, and a limited number of bilateral agreements;
- The DRC has signed bilateral agreements with several countries and the Agreement on Cooperation and Mutual Legal Assistance between ECCAS countries of 18 March 2006. It has also acceded to several international conventions, including the Vienna Convention, signed on 20/12/1988, ratified on 28/10/2005; the United Nations Convention for the Suppression of the Financing of Terrorism, signed on 28 October 2005, entered into force on 27

<sup>103</sup> <https://www.kimberleyprocess.com/en/historique-et-foundations>, accessed on November 21, 2021.

<sup>104</sup> <https://www.cairn.info/revue-politique-etrangere-2013-2-page-99.htm>, accessed on July 23, 2021.



November 2005, the Palermo Convention, acceded to on 28/10/2005 and the Merida Convention, acceded to on 23/9/2010;

- CENAREF has concluded international agreements with three FIUs: ANIF of Congo, CTIF of Belgium, and UTRF of Morocco.

### **Deficiencies**

- Despite the transnational nature of crimes in the DRC, international cooperation in combating the ML/TF is limited. There have not been any requests made or received for judicial cooperation in AML/TF matters;
- The DRC does not have a centralized system for managing foreign cases. The result is a lack of follow-up that would have provided information on processing times;
- The DRC does not have a central department dedicated to international judicial cooperation in AML/TF matters at the Ministry of Justice. The requests are sent to Minister's Office, which forwards them to the courts for jurisdiction. Therefore, no priority is given to the processing of cases of international cooperation in the field of ML/TF. This is done ordinarily;
- Other forms of cooperation are used, but to a limited extent. CENAREF shares information with a limited number of foreign FIUs within a reasonable timeframe. Other competent authorities, such as Customs, the Court of Auditors, the Central Bank of Congo, and the Directorate-General for Migration cooperate with foreign authorities. Still, exchange on AML/TF is scant or non-existent. The use of international cooperation is not part of the practices of the competent authorities in the course of their activities as of yet;
- The DRC does not have a central department dedicated to processing mutual legal assistance and extradition requests. The requests received by the Ministry of Foreign Affairs are forwarded to the Ministry of Justice, which forwards them to the Attorney General at the Court of Cassation. The latter submits them to the Public Prosecutor's Office before the competent courts for enforcement. There is no follow-up process;<sup>105</sup>
- There is no formal mechanism for exchanging information to identify beneficial owners or AML/TF between Congolese supervisors and their foreign counterparts. The Congolese Central Bank uses only informal channels;
- The low rate of implementation and the absence of formal mechanisms and procedures do not allow for assessing the level of suitability of the AML/TF legal framework.

### **Statistics**

#### **Money Laundering**

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<sup>105</sup> Measures to Combat Money Laundering and Terrorist Financing, <http://spgabac.org/site/wp-content/uploads/2021/05/REM-RDC.pdf>, accessed on 18 July 2021.

<b>Reporting/Intelligence Phase</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Number of Suspicious Transaction Reports (STR) filed by each category of obliged entities: <ul style="list-style-type: none"> <li>Banks and financial institutions</li> <li>Non-financial businesses and professions (NFBPs)</li> </ul>	5 1	6 1	3 2
Number of postponement orders adopted on reported transactions	No information provided	No information provided	No information provided
Number of money-laundering investigations carried out independently by law enforcement agencies (without prior STR)	No information provided	No information provided	No information provided
Number of suspicious cash activities at the border reported to the FIU (including those based on declarations and smuggling)	No information provided	No information provided	No information provided
Number of STRs sent to law enforcement and on which further analysis was made	No information provided	No information provided	No information provided
Number of staff dedicated full-time (or full-time equivalent) to money laundering in the FIU	No information provided	No information provided	No information provided

<b>Investigation Phase</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Number of cases initiated by law enforcement agencies on the basis of STRs sent by the FIU	27	11	8	9
Number of staff dedicated full-time (or full-time equivalent) to money laundering in law enforcement agencies	No information provided	No information provided	No information provided	No information provided
Number of cases brought to prosecution: originating from STRs, CTRs and independent law enforcement investigations	No information provided	No information provided	No information provided	No information provided
Number of deferral orders adopted on reported transactions	No information provided	No information provided	No information provided	No information provided

## Brief Analysis

Public officials have a wide range of financial information that can be used in ML investigations, underlying crimes, and terrorist financing. They are available from various administrations, including the Directorate-General of Taxes, the General Directorate of Customs and Excise, and the Single Window for Business Creation.

From 2015 to 2018, CENAREF received 88 suspicious transaction reports, the majority (63%) from the banking sector. Other public administrations and individuals, sometimes anonymous, account for 15% of the STR received. Requests for information received from other financial intelligence units alone account for 30% of STRs. CENAREF does not receive automatic statements based on the threshold, The Central Bank of Congo (BCC) gets these. After analysis, the BCC can make a STR at CENAREF; from 2015 to 2018, four STRs were made. The STRs relate to suspected money laundering cases; no cases on terrorist financing were found.

The Anti-Money Laundering Law endows CENAREF with the role of central body responsible for receiving, analyzing, and transmitting suspicious transaction reports from subject companies and professions. It also gives CENAREF the competence to conduct strategic studies per FATF standards. CENAREF may also receive information from any other non-taxable natural or legal persons. It does not receive automatic statements based on the threshold. Instead, these are intended for the BCC, starting at approximately €9,000.

The low number of STR received by the FIU contrasts with the country's population density and its criminal risk. Indeed, as noted in the following table, no reports have been received concerning environmental crimes, tax evasion, corruption, and mining trafficking, even though the Congolese authorities identify them as common occurrences. As a result, the figure remains significant.

**Table 5: Source of Suspicious Transaction Reports (STRs) received by CENAREF (2015-2018)**

Types of Notifiers	2015	2016	2017	2018	Total
Financial Institutions	16	21	11	8	56
Designated Non-Financial Institutions and Professions	1	1	1	1	4
Partners and others	-	-	1	-	1
CRF peers	7	8	6	6	27
<b>Total</b>	<b>24</b>	<b>30</b>	<b>19</b>	<b>15</b>	<b>88</b>

Between 2014 and 2018, CENAREF forwarded 20 cases to the Public Prosecutor at the Court of Cassation concerning potential money laundering offences, the financial impact of which has not been assessed.

Criminal prosecution authorities have extensive power to obtain financial information on money laundering, terrorist financing and underlying crimes. They do not use it in the case of ML/TF because of insufficient training in this particular area. It was impossible to meet with criminal prosecution authorities to determine the extent to which they were seeking and exploiting financial intelligence in their investigations. Similarly, both the police and the judiciary do not have statistics dedicated solely to ML/TF.

CENAREF has the power to request any relevant information from any public or private administration. In the context of its analysis, it requests much more information from the credit institutions it meets than from certain public administrations such as the Single Window for Business Creation (GUCE) and the exchange offices. These requests relate to documents that may assist in analyzing the reported suspicious transaction. CENAREF does not have a computer system linked to the databases of other jurisdictions, which are mostly not computerized. Considering the vast size of the DRC, it is difficult to intervene in real-time on a ML/TF operation that occurs outside of the city of Kinshasa, where CENAREF's premises are located.

In addition, a Memorandum of Understanding<sup>106</sup> was signed on 6 September 2013 with the Directorate General of Customs and Excise to “exchange intelligence and information to enable the detection of suspicious cases to facilitate the accomplishment of their respective tasks and the coordination of their respective activities in the field, combating money-laundering resulting from customs fraud and combating the financing of terrorism”. However, examples of this collaboration have not been brought to the mission's attention. Reporting institutions and public administrations shall provide the additional information requested by CENAREF within a reasonable timeframe.

In conclusion, CENAREF and criminal prosecution authorities do not receive sufficient financial information to conduct their investigations into money laundering and underlying crimes. An awareness-raising campaign is essential to reassure those subject to the law and then to train them to detect atypical transactions which should result in systematic reporting.

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<sup>106</sup> DGDA and CENAREF signed the Collaborative Memorandum of Understanding, <https://www.lephareonline.net/la-dgda-et-la-cenaref-ont-signe-le-protocole-daccord-de-collaboration/>, accessed on November 25, 2021.

From 2017 to 2018, the Fighting Economic and Financial Crime Directorate of the Congolese National Police recorded the economic and financial offences listed in the table below.

**Table 6: Economic and Financial Offences Registered by the Directorate for Combating Economic and Financial Crime of the PNC<sup>107</sup>**

Offences	Complaints in 2017	Reports transmitted	Complaints in 2018	Reports Transmitted
Money laundering	2	0	1	0
Corruption	7	2	2	1
Embezzlement of public funds	130	32	49	18
Customs fraud	14	3	3	1
Tax fraud	29	6	10	1

Given the demographic context and risks identified in the country, this table demonstrates a low rate of prosecution and referrals to the Prosecutor's Office, without even indicating the judicial follow-up that has been reserved for them. Nevertheless, all the data collected and provided suggest that, in a way, prosecution authorities have proven knowledge of sectoral ML risks identified in the country as well as the underlying offences generating illicit profits likely to be integrated in the laundering process, including corruption, embezzlement of public funds, customs fraud, and illegal exploitation of natural resources.

Significant shortcomings in the judiciary undermine the efforts of investigators whose cases do not lead to trial. Instead, the prosecutors who we met in this regard cited, among other obstacles to prosecution:

- The privileges and immunities granted by law to several senior officials and officials of the state who are generally accused in investigations;
- The prohibition of ex officio seizure for the control of financial authorities;
- Difficulties in accessing sources of information;
- The independence displayed by some Judicial Police Officers with limited jurisdiction who prefer transactional fines at the cost of judicial proceedings.

<sup>107</sup> Measures to Combat Money Laundering and Terrorist Financing, <http://spgabac.org/site/wp-content/uploads/2021/05/REM-RDC.pdf>, accessed on 13 September 2021.

## V. Recent Developments

Since President Félix Tshisekedi came to power, some recent developments in the fight against corruption have been noted. Firstly, Ordinance No. 20/013 bis of 17 March 2020 on the creation, organization and operation of a specialized service called the Agency for the Prevention and Fight Against Corruption, dictated by the need to detect and discourage more effectively international transfers of illicitly acquired assets and to ensure respect for the principles of good governance of public affairs and property, equity, accountability and equality before the law. Secondly, in the government program presented and adopted on 26 April in the National Assembly, Prime Minister Sama Lukonde had identified the fight against corruption as one of his priorities. This is an issue that President Félix Tshisekedi himself has insisted on since he assumed power. The Prime Minister went a little further, proposing an effective anti-corruption mechanism by strengthening criminal legislation so that any embezzlement of public funds, particularly of civil servants' salaries, would be treated as high treason and severely punished.<sup>108</sup>

The Inspectorate General of Finance has also been equipped to carry out its monitoring mission since President Félix Tshisekedi came to power after several years of inaction. Today it is winning the respect of others with countless cases of embezzlement of public funds revealed in plain sight, and the perpetrators brought to justice. For the first time in the history of the DRC, serving ministers, the Director of the Cabinet of the Head of State, provincial governors, and several senior dignitaries were summoned by the courts to respond to serious embezzlement suspicions.<sup>109</sup>

Nevertheless, although some efforts have been made, the DRC seems to be far from reversing the trend. Moreover, the President of the Republic acknowledged in an interview with the magazine *Jeune Afrique* that there is still a lot of work to do in the fight against corruption to achieve the best results,<sup>110</sup> while insisting on the fact that corruption in the DRC has been almost a way of life or second nature for decades. Putting an end to such a deeply rooted issue cannot be done in two and a half years or even in a mandate.

Much remains to be done on institutional reforms and new legislation, notably on the immunities of the authorities accused and suspected of embezzlement, which today remains a significant obstacle and enshrines the impunity of the accused and alleged authorities. The refusal of both the Senate and the National Assembly to remove the

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<sup>108</sup> Fighting Corruption by the Sama Government, <https://www.radiookapi.net/2021/04/27/emissions/dialogue-entre-congolais/lutte-contre-la-corruption-par-le-gouvernement-sama>, accessed on August 15, 2021.

<sup>109</sup> DRC: Two provincial governors prosecuted for malfeasance, <https://www.rfi.fr/fr/afrique/20210829-rdc-deux-gouverneurs-de-province-poursuivis-pour-malversations>, accessed on 21 September 2021.

<sup>110</sup> Félix Tshisekedi on the fight against corruption in the DRC: "There is progress, but the path remains very long", <https://deskeco.com/2021/07/01/felix-tshisekedi-on-the-fight-against-corruption-in-rdc-il-y-of-progress-but-the-path-remains>, accessed on 23 August 2021.

immunities of the alleged embezzlers is sufficient proof that there is a lot of work to be done and suggests that there are several categories of citizens – those who must respond to justice and those who can escape it. Profound reforms within the justice system are crucial in stopping the road to corruption which has been institutionalized for years, and only seems to be getting worse. It is also essential to think about the formal education of future generations on the consequences of corruption in order to prevent it.

## **VI. Recommendations**

### **To the President of the Republic and his Government:**

1. Ensure the full independence of the bodies responsible for preventing and combating corruption by avoiding the instrumentalization of bodies and the justice system for political purposes;
2. Authorize the publication by UNODC of the full report of the review of UNCAC implementation by the DRC when it is completed;
3. Establish a structure to monitor the ineffectiveness of declarations of assets of public officials, with the possibility of completing the declaration online;
4. Establish a coordination structure for all bodies responsible for preventing and fighting corruption;
5. Ensure adequate financial, technical, logistical, and human resources are made available to preventive anti-corruption bodies;
6. Advocate prevention rather than punishment;
7. Foster an anti-corruption and anti-fraud culture through the immediate sanctioning of those engaged in corruption;
8. Involve civil society organizations in prevention through the popularization of the Code of Conduct for public officials;
9. Involve civil society organizations significantly in the review process;
10. Strengthen the capacity of competent authorities by providing the necessary resources and training to equip them to make better use of international cooperation;
11. Develop a manual of procedures for international cooperation to define processes, priorities, timelines, and confidentiality of requests;
12. Establish a department for monitoring international cooperation cases, particularly related to AML/TF, with the Attorney General at the Court of Cassation. A Directorate of Cooperation within the Ministry of Justice could be responsible for following up with this judicial authority, as well as training, statistics gathering, and maintaining external relations;
13. Conclude other bilateral agreements and formalize international cooperation with countries in which it has informal exchanges, prioritizing countries with a high risk of ML/TF;
14. Improve mechanisms for collaboration and exchange of information between Customs and the WCO and between the Court of Auditors and INTOSAI;
15. Make greater use of international mutual legal assistance and other forms of international cooperation to prosecute ML offences, the underlying offences and transnational FT;
16. Focus more on the preventive approach by establishing or strengthening existing structures for prevention as the Congolese government;
17. Make greater use of international cooperation as part of the Congolese government's mission, particularly in countries with which financial or commercial exchanges are most risky;



18. Establish mechanisms for the management of statistics on DRC's international trade;
19. Review the Anti-Money Laundering Act by adding the division of confiscated property with third states;
20. Ensure that information on beneficial owners of legal persons is made available to foreign competent authorities upon request and that competent authorities take the necessary measures to identify the beneficial owners of foreign legal persons in their AML/TF mission.

#### **To the Parliament of the DRC**

21. Adopt the Access to Information Act, the Whistleblower Protection Act, and the Anti-Corruption Act;
22. Adopt the Law on the Protection of Assets;
23. Implement the recommendations of the Court of Auditors on the control of public finances.

#### **To the Central Bank of the Congo:**

24. Revitalize existing anti-money-laundering bodies such as the Counter-Money Laundering and Terrorist Financing Advisory Committee (COLUB);
25. Improve national coordination by allocating the necessary resources to the COLUB to operationalize it to provide an effective platform for coordination and information exchange for the coherent implementation of AML/TF efforts and a mechanism for evaluating the implementation of national policies by all stakeholders;
26. Strengthening the technical, human, and financial capacities of existing bodies such as CENAREF.

#### **Other recommendations:**

27. Provide the ARMP with an integrated procurement and management system. This system should supervise procurement and produce the documents required for procurement, execution, monitoring, and evaluation of contracts. It should provide all the information that the ARMP needs to fulfil its mission, develop, and support the implementation of reforms, assess its performance, evaluate the results of the implementation of reform strategies, and implement corrective actions;
28. Improve processing times for corruption cases;
29. Criminalize the illicit enrichment of civil servants, public officials, and magistrates;
30. Strengthen sanctions for cases of corruption and failure to declare assets;
31. Improve and centralize the collection and processing of claims, whistleblowing, and complaints;
32. Strengthen the capacity of anti-corruption and anti-money laundering investigation bodies;

33. Establish a system for tracking corruption cases under investigation;
34. Improve transparency and performance of public procurement by identifying and narrowing down corruption risks, ensuring full traceability of processes and management information;
35. Improve the enforcement mechanism to restore citizens' confidence in the fairness and effectiveness of the judiciary;
36. Develop international judicial cooperation;
37. Ensure the system's efficiency for the recovery of assets derived from acts of embezzlement and corruption;
38. Implement the asset declaration system with better targeting;
39. Establish internal audit entities within public administrations;
40. Establish formal reporting and coverage of potential conflicts of interest for senior public officials and those in positions that are sensitive to decision-making;
41. Establish a human resources policy (recruitment, rotation, etc.) to reduce the risk of corruption and promote equal opportunities in access to and advancement in the civil service;
42. Make reports of cash or bearer securities to CENAREF to enable it to establish its data bank, even if a copy is sent concurrently to the BCC. The Attorney General's services at the Court of Cassation could take ML/TF-related issues more seriously and follow up with greater interest the reports and denunciations coming from both CENAREF and the prosecution authorities. The latter could work more closely with CENAREF to monitor the laundering component of their investigations. This is particularly relevant to Customs concerning cross-border cash declarations, environmental services and metals and precious stones.

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