

The Global Observatory of Transnational Criminal Networks

Background on Traffic of Gold and Coltan in the Democratic Republic of the Congo

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Disclaimer

The facts and the analysis presented herein are sustained in documents and interviews exposed in mass media and judicial records related to the criminal networks analyzed. No primary information uncovering facts has been gathered, which means that only secondary sources were consulted, from legal to media documents. In the case of the names mentioned, quoted or referenced on indictments —with the exception of those specifically mentioned, quoted or referenced in the text as definitively condemned-, the presumption of innocence, in observance of individual rights is always preserved.

The judicial truth is the jurisdiction of the courts, which by law will decide whether the defendants are innocent or guilty.¹ It is stated that belonging to, participating in, being connected to, or appearing on a network, as analyzed herein, does not imply having committed a criminal act or being engaged in a criminal enterprise. It is always possible to belong, participate, be connected, or appear on a network as an agent promoting interests that are socially and institutionally beneficial, or as a result of coercion, among other reasons unrelated to criminal acts committed by the agent.

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Introduction

Following a dictatorship that lasted for 30 years, in May 1997, the late MOBUTU SESE SEKO was pushed out of power by Laurent Desire' KABILA, with the support of The Alliance of Democratic Forces for the Liberation of Congo-Zaire ("AFDL")¹ rebels and neighboring countries following a war that caused several hundred thousand deaths. Zaire became the "Democratic Republic of the Congo" (DRC), beginning a long period of instability dominated by armed conflicts from various rival groups, which profoundly affected the economy. It is unanimously agreed that economic motives, directly related to exploitation and traffic of mineral in East of the country, have been a substantial cause of those conflicts.

The purpose of this short descriptive document is to present relevant background information about the Democratic Republic of the Congo ("DRC" or "DR Congo") and the criminal or illegal exploitation of coltan and gold. The document consists of eight parts: The introductory first part is followed by a second part that includes a background on the DR Congo; the third part is a description of the socio-political and economic situation of the country; the fourth part includes relevant information regarding crimes and human rights violations in DRC; the fifth part is a description of trafficking in Kivu; the sixth part describes the situation of law enforcement around the exploitation; the seventh covers current and active mechanism for regulating the extraction and production of minerals and the eighth section presents some conclusions.

1. Background on the Democratic Republic of the Congo

The Democratic Republic of Congo is a huge country covering 2.344.860 Km² with a population of just over 72 million. Considered a potential emerging economic power, DRC is the second biggest country on the African continent after Algeria and occupies the center of the continent. The country shares borders with: (i) Angola with 2511 km of common border, (ii) Zambia with 1930 km of common border, (iii) Tanzania in the East with 459 km boarders, (iv) Burundi with 233 km, (v) Rwanda with 217 km, (vi) Uganda with 765 km, (vii) South-Sudan with 628 km, (viii) Central African Republic with 1577 km, and (ix) the Republic of Congo with 2410 km. The country is administratively subdivided into 11 provinces, some of them as large as some European countries.

¹ Alliance of Democratic Forces for the Liberation of Congo-Zaire, in French: *Alliance des Forces Democratiques pour la Liberation du Congo*.

Figure 1. Political division, DRC.



The Maniema, North and South Kivu provinces, located in the East have been particularly affected by ongoing-armed conflicts for a long period. The DR Congo has encountered more than a decade of socio-politic instability that reached its apex between 1994 and 2012. Currently, the country is negotiating a new modification to its democracy. To optimize governance, the DRC's Constitution of 2006 fragmented the 11 provinces into 26. At the same time, this could be abused for selfish political ends, negatively impacting on electoral democracy and the exploitation of mineral resources.

In 1994, instability in Rwanda and Burundi prompted the migration of hundred thousand displaced people into the East of DR Congo, which exacerbated the exploitation of natural resources. In

1996 the war known as “*Guerre de Liberation*” erupted and MOBUTU’s regime ceased to exist on May 17th, 1997, with Laurent KABILA taking over power.²

In opposite to the political crisis in Rwanda and Burundi, the war in DRC involved its eastern neighbors, which sought to access natural resources, mainly from South and North Kivu.

Apart from the “*Guerre de liberation*” the DRC encountered a second war, which was known as the “*Guerre de rectification*”. Both involved neighboring countries that directly occupied portions of Congolese territory and controlled areas endowed with natural resources, specifically metals and minerals.

In the framework of negotiations, a signed agreement known as “*Accord Global et Inclusif*” of Sun City,³ allowed the reunification of the country and different administrations, the repatriation of foreign armed groups, the implementation of the democratic process and the integration in national institutions of all formerly active forces and armed groups.

Despite the official end of the war, the country has undergone a cycle of tension and instability centered on the exploitation of natural resources, mainly coltan and gold in both Kivus and the Maniema provinces, which feed the actions of internal and external armed groups like:

- The Democratic Forces for the Liberation of Rwanda (“FDLR”).
- The National Congress for the Defence of the People (“CNDP”).
- Community based militias known as “MAI_MAI”.
- The Nduma Defense of Congo (“NDC”).
- The Hutu Militia known as “NYATURA”.
- The armed group against Rwandan rebels known as “RAHIYA MUTOMBOKI”.
- The March 23 movement (“M23”).
- The Front for Patriotic Resistance in Ituri (“FRPI”), among others.

The activity of all these groups has produced an escalation of constant conflict and instability. At the same time, the United Nations and various sectors of the international community were of

² The second Republic began on November 24th, 1965, with the MOBUTU SESE SEKO’s revolt against the first premier elected president, Mr. Joseph KASAVUBU.

³ The “Rectification war” was carried out by different rebellion groups against the government of Laurent Desire KABILA (from 1998 à 2003). Some of those rebellion groups were: The Rally for Congolese Democracy–Goma, the faction “RCD-Goma”), The Congolese Rally for Democracy–National (“RCD-N”) and The Mouvement de Liberation Congolais (“MLC”).

prime importance to promote and improve mining governance, an instauration and consolidation factor of peace in the Great Lakes sub-region.

2. The Prevailing socio-political and economic situation

Socio-political situation

Since January 2015, the socio-political situation in DR Congo has worsened. According to the constitution, Joseph Kabila, current president since 2001, is not entitled to run for a third presidential term in 2016. But The People's Party for Reconstruction and Democracy ("PPRD"), the ruling party, using its legislative majority, tried unsuccessfully to change the constitution emulating an earlier example in Burkina Faso. This has exacerbated political instability in the country. To stop the blatant violation of the article 220 that stipulates limits to presidential terms to two, tensions and spontaneous demonstrations erupted throughout the DR Congo on January 19th, 2015.

Fully engaged in this scheme, the PPRD still plan other options to maintain the President in power after 2016, in defiance of the Constitution, the international community and against the opinion of even of some political cadres of the same ruling party. This is being laboriously planned to block the preparation and organization of elections in time; separating the said elections and also through the territorial subdivision, taking 11 provinces to 26, as previously mentioned.

Economic Situation

Economic management under MOBUTU was catastrophic to the country. By 1996, the external debt was roughly USD\$ 10 billion, while by the time of his departure the country's debt increased by 200%⁴.

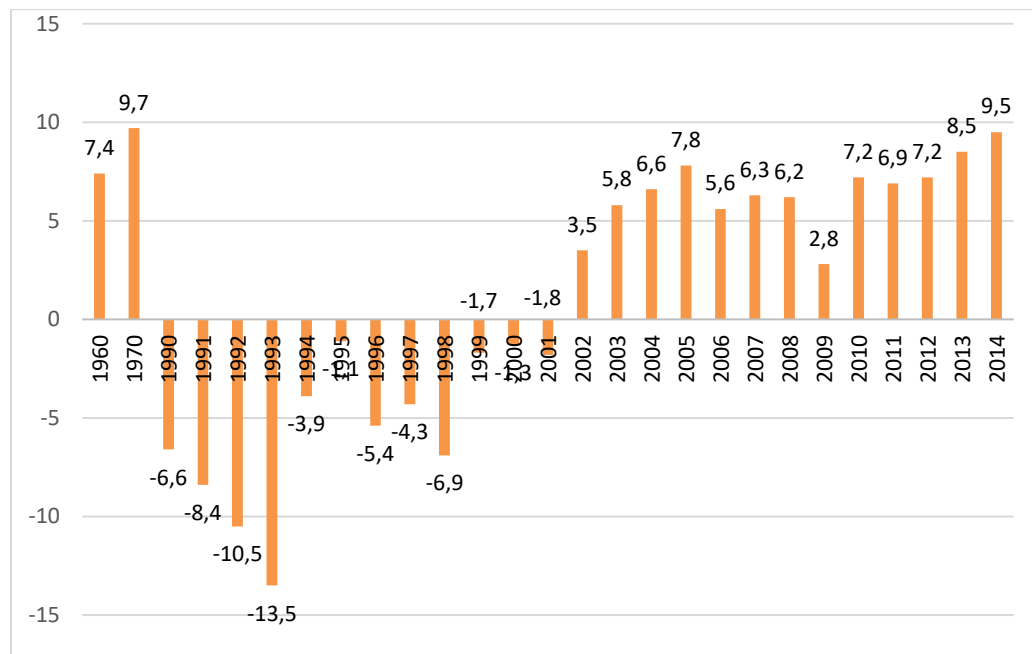
Current socio-economic data denotes an extremely fragile country that lacks a path for developing by using its capacities and huge resources available. This makes DR Congo a country of paradoxes:

- Around 4% of cultivated and productive land (80000 km²) cannot feed the entire population, with 30% to 50% of women and children still suffering chronic malnutrition.

⁴ Socio-economic wagers in the Democratic Republic of the Congo, published by new dynamic on 27 November 2011.

- In 2014 the unemployment rate affected 90% the population although the registered economic growth rate was 9%⁵, compared to the sub-Saharan average of 5,3. On the other hand, the registered inflation was 1,6% in 2013, compared to an average of 7,1% for sub-Saharan African countries. In 2015, the economic growth rate is estimated at 9,3% but the minimum wage is a paltry USD \$100 per month.

Figure 2. Economic growth in Congo (%)



- Around 50% of women and 20% of men lack any income to survive with their families, with the majority of people living in the informal economy.⁶
- Agriculture and breeding also remain unexploited. For instance, wheat or corn, coco, coffee, sugar cane, cotton, maize, millet, cassava, rice, canary seed could be cultivated, but tens of thousands of Congolese currently survive on international food aid from several humanitarian organizations from the European Union, the United States and United Nations agencies.

⁵ According to the World Bank data: <http://www.worldbank.org/en/country/drc>

⁶ Socio-economic wagers in the Democratic Republic of the Congo, published by new dynamic on 27 November 2011.

- The mining potential is spectacular but unregulated and illicitly exploited. With the previous configuration of provinces, high concentrations of minerals can be found with the following distribution:
 - Diamond (2nd largest producer in world) in 5 provinces.
 - Gold in 7 provinces.
 - Tin in 4 provinces.
 - Brass in Katanga province.
 - Coltan or *Colombo Tantalite*⁹ in 4 provinces.
 - Bauxite in Bas-Congo.
 - Iron in 4 provinces.
 - Manganese in Katanga and Bas-Congo.
 - Coal in Katanga.
 - Oil in 4 provinces.
 - Gas in Kivu.
 - Cobalt in Katanga.
 - Schist in Bas-Congo.
 - Silvery, Uranium and Zinc in Chikolobwe, Haut – Katanga.
- With the mentioned diversity of minerals, DR Congo is one of the few countries in the world with the highest amount of mining resources, which should transform the country into an industrial power worldwide. However, the country has a poor mining industry. As the country exports its precious resources without properly benefitting, it imports expensive manufactured products.

3. Crimes in the mining sector Violations of Human Rights around the exploitation of gold and coltan

The Eastern region of DR Congo remains unstable and subject to various epicenters of instability. The occupation of some mining zones by gunmen and their frequent movement from one zone to another illustrate how various criminal groups depend on mining activity.

Despite the fact that the effectiveness of some armed groups has been reduced, as a result of joint operations by The Armed Forces of the Democratic Republic of Congo (“FARDC”)⁷ and The

⁷ The Armed Forces of the Democratic Republic of Congo (French: *Forces Armées de la République Démocratique du Congo* or FARDC).

United Nations Organization Stabilization Mission in the DR Congo (“MONUSCO”)⁸, militant activities by some foreign and internal armed groups persist. The following are some active armed groups that are still operational, mainly in the East region of DRC, directly controlling the extraction of minerals:

- The Nduma Défense of Congo (“NDC- CHEKA”), in Walikale Zone, North Kivu Province. These groups collect illegal tax at mining sites.
- The Democratic Forces for the Liberation of Rwanda (“FDLR”) and Mai -Mai Simba group in Walikale.
- The Allied Democratic Forces - National Army for the Liberation of Uganda (“ADF-NALU”)⁹ in Beni territory, North Kivu Province.
- FDLR, NYATURA and RAHIYA MUTOMBOKI in Masisi territory, North Kivu Province.
- Mai –Mai and other RAHIYA MUTOMBOKI group in a region of Kalehe, South Kivu province.
- Mai-Mai ALLELUIA in the territory of Fizi and Shabunda.
- The FRPI in Ituri.
- The rebel group of MORGAN in the triangle of Ituri and Lubero.

A number of national and international structures of defense of Human Rights like Le Observatoire de la Société Civile Congolaise pour les minerais de Paix (“OSCMP”), The Centre for Research and Investigation into the Environment, Democracy and Human Rights (“CREDDHO”), The Association for the Development of Peasant Initiatives (“ASSODIP”)¹⁰ and the *Centre de recherché sur l’Environnement, la Démocratie et le Droits de l’homme* among others, have informed about the implication of these groups in the mining traffic and their connection with political and security actors at the national, regional and local level. Additional to the armed groups involved in mining exploitation, it is important to bear in mind the participation of some sectors of Armed Forces of DRC (“FARDC”). Historically, military officers from Zaire to DR Congo have been involved in coltan traffic since its last boom in East of the Country, in 2001. For instance, during the height of the Burundi crisis, Gulamali, an European businessperson related to the mining sector, was suspected of arms and gold smuggling for the Burundian FDD rebels of Leonard

⁸ The United Nations Organization Stabilization Mission in the DR Congo.

⁹ Mueller, T. (2014). Understanding Eastern Congo's ADF-NALU Rebels. Available in: <http://goo.gl/ZTX6oa>

¹⁰ In French: *Association pour le Développement des initiatives Paysannes* (“ASSODIP”).

Nyangoma, with the complicity of Zairian generals Baramoto and Nzimbi.¹¹ In the past week, in the local Media, the FARDC General, commanding officer of the 34th Military region pointed out the involvement of some high FARDC of Goma in coltan and gold traffic with Rwandan businessmen.¹²

Mining activity occurs simultaneously with other lawful and unlawful activities, but usually accompanied by grave violations of human rights. To access cheap workforce, unacceptable and inadequate practices are used in mining procedures. Also, the weakness of the socio-economic context, the growth of poverty and persistence of corruption and impunity of some mining operators, facilitate the situation of human rights violations.

Hundreds of children are victims of hard work that exceeds their physical capacities, for miserable payment or sometimes without pay. Deaths in tunnels or underground passages are common, caused by frequent landslides that are often unpublicized by both the operators and authorities. The violence and brutality against women who are sometimes condemned to sexual slavery and other SGBV are also part of grave human violations pointed.

4. The Commerce of metals: fraud and smuggling

For many years the illegal exploitation of mining in the East of DR Congo has been an unsolved problem. Reports by the United Nations attested to the financing or support of the activities of belligerents through illicit gold commerce. Various armed groups support their activities through illegal trafficking of coltan, gold, *cassiterite* and *wolframite* mineral, mostly used by electronic industries throughout the world. This points out the real problem of the trans-frontier mining commerce.

Brief overview of illegal Commerce of gold and coltan in Eastern DR Congo

From North Katanga to the Oriental provinces, DRC disposes at least 850 auriferous sites, located on a stretch of more than 1000 km without roads or any infrastructure. Those sites occupy at least 176,000 handicraftsman diggers, with a minimal production of 8.5 tons per year.

The scattering of mining sites, in the proximity of the borders with 5 neighboring countries (Tanzania, Burundi, Rwanda, Uganda and South-Soudan), does not facilitate adequate control of

¹¹ Pole Institute, *Institut Interculturel dans la Region des Grands Lacs, Coltan phenomenon in Kivu.*

¹² MONUSCO-Okapi-radio and Radio Kivu one, operating local media in Goma.

mining traffic. The mining activity of mainly coltan, mostly executed by handicraftsmen, with a strong and big concentration of diggers, is not devoid of structural frameworks. In fact, mining cooperatives or mining epicenters lack real capacity for their members, with legal structures that usually exist only on paper.

Several agents intervene in the gold supply chain. The loss of control over small negotiators with foreign connections and the persistence of barter or exchange, weaken chances of establishing a sane supply chain. Also, the persistence of informal selling points where minerals are sold at a different price than the international market price, confirms suspicions of money laundering, which is corroborated by the increased circulation of money in the local spots.

Note also that the gold taxation is higher in DR Congo than in neighboring countries. This pushes gold producers to traffic and sell covertly in the said countries where the taxation rate is lower. In opposite to the auriferous sector, in the coltan sector it is observed the experimentation of some purifying and traceability mechanisms that should, apparently, improve the extraction while minimizing negative impacts. However, these mechanisms face obstacles and remain invisible without any direct impact on all the possession chain.

5. Law enforcement and bets in mining sector in Kivu

Normative regulation of the trans-frontier commerce and Challenges of the reasonable diligence Policy

Failing to reestablish the legal mining commerce in the East of DR Congo, many efforts have been accomplished by DR Congo, the International Community and the sub-region of great lakes as well.

In response to the issue of illicit commerce, two main strategies have guided the fight against the illegal mining exploitation in DR Congo. The first, upstream, intends to reestablish the legitimate control of mining exploitation sites and actors of the supplying chain to the source. The second, downstream, intends to regulate the commerce with aim to stop metals from conflict areas accessing the international market.

United Nations and the policy of punishment

In response of the escalation of metals commerce, the United Nations has applied measures to understand and target the interactions between negotiators, firms and armed groups. These measures resulted from reports by panels and group of experts of the United Nations.

Also, the Security Council of United Nations has voted various resolutions related to the illegal exploitation of natural resources in RD Congo since 2000: UNSCR 1493 (2003) and UNSCR 1596 (2005) establishing punishments of fines and prohibitions for traveling, to individuals violating the embargo imposed on the sale of weapons to armed groups in the East of DR Congo. Following the UNSCR 1533 (2004), a group of experts was created to support the committee of punishments¹³. After documenting relations between armed groups, local traders and foreigner firms, the UN security Council voted in 2008 the resolution 1856 ordering all the States to implement necessary measures to stop the illegal commerce of metals *in* and from DR Congo. This resolution obliges all member states, in particular those within the proximate region, to adopt measures to end illegal commerce in natural resources, including, if necessary, through judicial means and reporting back to the UN. In particular, the DR Congo Government was especially encouraged to work with specialized organizations, international finance institutions, MONUSC/MONUSCO and neighboring countries, to adopt effective and transparent controls on the exploitation of natural resources, specifying proceeding to an identification of main mining sites exploited illegally. As a result, in 2014, the DR Congo Government has identified in Walikale around 6 legal mining sites and more than ten illegal¹⁴.

However, the prevailing context allows confirming that the system for tracking the origin of minerals and the international punishments against people involved in illegal trade of metals, has failed. The political instability of the DRC and of the sub-region in general, as well as corruption, impunity and non-respect of the Human Rights remain important factors blocking the implementation of these tools.

It must be also noted that the restrictive character of the UN punishments affects only some selected players among all the agents involved in illegal traffic. As a result, the UN will to regulate international commerce stacks today due to the la lack of DR Congo cooperation. In this sense, it still required constraining judicial mechanisms against importing firms, as well as more

¹³ United Nations Missions for the Stabilization of the Democratic Republic of the Congo, UN Security Council Resolution on exploitation of metals in the East part of RD Congo.

¹⁴ Provincial Mining Division, Goma-North-Kivu.

cooperation by neighboring states and other states that are relevant players in the international negotiation.

The Congolese Government and its strategy to stabilize the mining traffic

The growing instability in East of DR Congo and its links with the mining exploitation has led the President to temporarily stop the exploitation and the commerce of metals in the provinces of Kivu and Maniema. This decision took effect on September 10th, 2010¹⁵. However, the decision was not enough to stop the contraband of gold or the involvement of militaries in this activity. After the failure to enforce the decision, on March 10th, 2011, new mechanisms to control and follow-up mining activities were adopted, focused on the stabilization of mining sites and the implementation of classifying systems.

Four years after the experimentation of the new mechanisms, only some artisanal sites have been qualified as proper mining site in North Kivu and validated by a minister decision, which means that almost all the artisanal extraction of gold in those provinces is beyond or out of the system of control. The unofficial character of the artisanal mining sector does not facilitate the control of extraction of gold and is one of the essential factors of fraud and smuggling.

The second mechanism implemented after the revocation of the initial measure in 2010, is the installation of the dialogue framework and of the follow-up of the mining activities in those provinces. Those structures have been implemented by the ministerial decision and are applicable in the concerned provinces; however, without any real decisions their effectiveness remain submerged on political imperatives. This has imposed a midpoint evaluation and the redefinition of that mechanism for a new imposing orientation.

The United States and the regulation of the mining commerce

The United States, through section 1502 of the “Dodd Frank” legislation, compels firms to determine if *wolframite*, *coltan*, *gold* and *cassiterite* are part of their products. If this is the case, the firms must adopt and implement reasonable means to track the sources of their metals and to ensure that those metals were not extracted from conflicts zones of the DRC. At this stage, also a detailed report including the evaluation of an external auditor is enforced. At the end of this stage, concerned firms and enterprises have to publicly prove the origin of their supply.

¹⁵ Presidential Decree Democratic Republic of the Congo of 10th September 2010.

Being a foreign law applied only to American firms, the “Dodd Frank” Law has not achieved the expected results in the stabilization of the commercial sector of gold in DR Congo, due to the fact that a large part of DRC production follows other destinations. American firms are important but are not the only buyers of Gold from the DR Congo. This law has also been defined as a cause for increasing unemployment among Congolese local miners.¹⁶ Additionally, the lack of support to the DRC in the purpose of tracking minerals to their exact source, remains as the greatest weakness of the “Dodd Frank”.

6. Impact of the regional mechanisms

The Sub-regional Initiative of Fight Against Illegal Exploitation of Natural Resources of the International Conference on the Great Lakes Region (CIRGL)

Based on six tools¹⁷, the “Sub-regional Initiative of Fight Against Illegal Exploitation of Natural Resources of the International Conference on the Great Lakes Region” is fundamental for stabilizing the Great-Lakes region, but depends on the good will of states to adopt each tool; the lack of enforcement measures is its main weakness. In fact, these tools should be entirely adopted across the upstream and downstream levels of the metal supplying chain. If adopted, these tools would open a door for the sub-regional community to eradicate fraud, confront the trans-frontier smuggling of metals and annihilate the mafia systems that are currently observed in the supply chain.

The diligence obligation of OCDE

The reasonable principle of diligence in RD Congo, promoted by OCDE, orders all the actors operating in the mining activities to adopt OCDE principles; however, the principle lacks any judicial constraints. Therefore, accompaniment of DR Congo partners in the implementation of these principles has mainly focused on the implementation of the traceability and certification,

¹⁶ Raghavan, S. (2014). “How a well-intentioned U.S. law left Congolese miners jobless”, in The Washington Post: <http://goo.gl/34w6He>

¹⁷ The tools are: (i) The regional certification, (ii) the harmonization of domestic legislations, (iii) the initiative for the Transparency of Extractive Industries – in French: Transparence des Industries Extractives, ITIE-, (iv) measures for early warnings, (v) formalization of artisanal mining sector, and (vi) elaboration of reliable databases.

while not directly tackling the local problems associated with the unregulated extraction and trafficking of extracted minerals.

Conclusion

As a result of the large amounts of minerals and natural resources concentrated in The Democratic Republic of Congo, the country could play a critical role in the current period of globalized markets, especially by providing critical minerals demanded by manufacturers of tech devices. In fact, DRC could be one of the biggest economies on the continent, besides South Africa and Nigeria. However, DR Congo would require political stability, real and sustainable peace and the participation of Congolese and foreign stakeholders, in order regulate extraction and production of those minerals that are currently being exploited by several criminal groups.

The large amount of criminal groups operating in various regions of DRC imposes a critical obstacle for stabilizing the extraction, production and export of natural resources. Some of those criminal structures are small criminal networks usually defined as “rebellion” groups, while others are larger and stable criminal networks that have achieved local power, funded by the resources provided by the available minerals. The convergence of small and large criminal networks is also exacerbated by the institutional weakness and corruption that have characterized the country, which implies a lack of strong, effective and long-term policies at the social, judicial, economic and political levels. However, it is important to acknowledge international initiatives of stabilization and support, like MONUSCO, which have provided conditions for local advocacy against corruption, crime and human rights violations.

In any case, DRC still requires execution of structural and long-term policies like: (i) Administrative reforms for the efficient governance of the state and provinces, (ii) judicial reforms to build up efficient judicial institutions against corruption, impunity and criminality, and (iii) fiscal and social reforms to build up State institutions and supplying the numerous education and health needs, as well as the economic infrastructure of the country.