

Overall Score:

44 - Very Weak

Legal Framework Score:

67 - Weak

Actual Implementation Score:

24 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁴⁰Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

The right to partnership is constitutionally guaranteed. Therefore, each citizen is free to create civil society organizations (CSOs) focused on anti-corruption or good governance.

References:

Points 16 and 40 of transitional constitution and point 37 of the DRC constitution in force since June 30, 2006.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

Due to the autonomy granted to anti-corruption/good governance CSOs by the law, they are free to accept the funds coming from any external and domestic sources.

References:

Points 41 – 45 of Law 004/2001 supporting general dispositions applying to non-profit organizations and state-approved institutions.

A conversation held with an administrative assistant of planning ministry, Kinshasa, August 11, 2006.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

The law does not require anti-corruption or good governance CSOs to reveal their financing sources. The latter send in a yearly report of activities to the planning ministry, as they encourage transparency.

References:

Points 7 (paragraph 8) and 45 of the Law 004/2001 supporting general dispositions applying to non-profit organization and state-approved institutions.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

58

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

The government barely allows the functioning of new anti-corruption/good governance CSOs.

References:

Conversation with the Congolese League Against Corruption (LICOCO) managers, and an activist in the corruption struggle. CNONGD, NGOs of the DRC index, Kinshasa, 2006.

Also see the Annual Report of JED, in La prospérité, December 12th, 2006 (summary available on the site of Africatime http://www.africatime.com/rdc/nouvelle.asp?no_nouvelle=297437&no_categorie=).

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

In practice, anti-corruption/good governance CSOs are actively involved in the political and policymaking process. More than 50 representatives of transitional institutions (gouvernement, Parlement, Sénat, and other institutions in support of democracy) of the last three years came from the civil society organizations. Often, this engagement is criticized because the CSOs actors are closely linked to the rulers and political parties.

References:

Point V.4.c. of the Global and Inclusive Agreement on the transition in the DRC signed at Pretoria on December 17, 2002 and adopted at Sun City in South Africa in April 1, 2003.

Points 154 – 160 of transitional constitution of the DRC and Point 41 and Point 42 of the Law 004/2001 of July 20, 2001 supporting general dispositions applicables to the non-profit organizations and state-approved institutions.

On the critique, read A. B. Mwaka, La société civile Congolaise dans le miroir de la transition de la démocratisation et de la guerre actuelle, in Mouvements et enjeux sociaux, n° 10, mars 2003, pp. 121 – 134.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

The inactivity of most governance or corruption-focused CSOs results from the lack of dynamism of social actors in general. No specific incidents of the government shutting down individual corruption-focused CSOs were found.

References:

Absence of media reports.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

33

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

See the cases of José Wakadila, a journalist for the independent daily, "Ma Référence Plus," who was taken to court for having reported about corruption in August 2005 and Freddy Monsa Ivaka Duku, the publications director of the daily "Le Potentiel" who got in trouble after the paper published an article denouncing a Vice President of the Republic for abuse of power in September 2005.

References:

Reporters Sans Frontières, DRC annual Report 2005. Available on http://www.rsf.org/article.php3?id_article=13325

YES: A YES score is earned if there were no CSO activists imprisoned related to work covering corruption.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the p

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

See the case of MM. Jean Claude Katende of Asadho and Jean-Pierre Mutemba of the "Nouvelle Dynamique Syndicale" who were threatened to be killed by people surrounding the President after a debate wich took place in Lubumbashi in April 2006 where they denounced corruption associated with mining contracts in Katanga.

References:

http://www.fidh.org/article.php3?id_article=3293

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

A journalist and a human rights activist were killed in mysterious conditions. Their murders (Mr. Kayilu Mutombo of Canal Congo TV (on March 29th 2006 in Lubumbashi in Katanga) and Mr Pascal Kabungulu Kibambi (Executive secretary of "Héritiers de la Justice" in the night of 30th to 31st July 2005 in Bukavu)) have never been followed up with serious investigations. Their work focused generally on human rights and governance issues.

References:

Annual Report of JED, in La prospérité, December 12th, 2006 (summury available on the site of Africatime http://www.africatime.com/rdc/nouvelle.asp?no_nouvelle=297437&no_categorie=

http://www.fidh.org/article.php3?id_article=2618 et <http://fr.allafrica.com/stories/200612120945.html>

YES: A YES score is earned if there were no documented cases of CSO activists being killed related to a corruption case in the specific study period.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Citizens have the right to create non-profit organizations dealing with culture, social, education or economics. They have the right to create a professional association.

References:

Points 16, 40 and 41 of the DRC transitional constitution.
Article 37 of the DRC constitution in force since June 30, 2006.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are free and able to organize themselves in trade unions. There are more than 100 trade unions legally recognized throughout the Republic.

References:

Points 16, 40 and 41 of transitional constitution of DRC. Point 37 of the constitution of DRC in force since June 30, 2006.
Conversation with an administrative assistant at Secretariat General of Ministry of Interior, Kinshasa, August 23, 2006.

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

The freedom of media is constitutionally guaranteed. A law organized the practical mode of enforcement.

References:

Points 28 and 29 of the constitutional of the transition of the DRC.

Point 24 of the DRC in force since June 30, 2006.

The law 96/002 of June 22, 1996 lays down the practical mode of enforcement of the freedom of the press.

YES: A YES score is earned if freedom of the press is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

The freedom of expression is constitutionally guaranteed.

References:

Point 28 of the transitional constitution of the DRC.

Point 23 of the DRC constitution in force since June 30, 2006.

Point 8 of the Law 96 – 22 of June 22, 1996 laying down the practical mode of enforcement of the freedom of the press.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form media entities?

31

6a. In practice, the government does not create barriers to form a media entity.

100 | 75 | **50** | 25 | 0

Comments:

In practice, the government never puts barriers in the creation of a media entity. The extreme slowness in the treatment of requests and the prohibitory charges are exhausting but these are not true barriers.

References:

Conversation with Doudou Kabeya, Journalist at Radio Top Congo and Donat Mbaya, Manager of the NGO Journalist in Danger” (JED), on August 1, 2006.

100: Media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

75:

50: Formation of media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. Division of broadcast bandwidth is widely viewed to be used as a political tool.

6b. In law, where a media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The law laying down the method of press freedom enforcement does not suggest any way of changing the decision in the event of refusal or withdrawal of the media permit. However, as a general rule this legal framework does not specify the right of appeal. The actions of the press ministry are contestable in the administrative chamber of the Court of Appeal relevant to the injured applicant.

References:

Law 96-22 of June 22, 2000 lay down the mode of enforcement of the freedom of the press.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied media license. A YES score is also earned if no license is necessary.

NO: A NO score is earned if there is no appeal process for media licenses.

6c. In practice, where necessary, citizens can obtain a media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The media licence can not be obtained before three months. However according to the law, if there is no opinion put forward by the press minister within six months, the permit petitioner can start operating.

References:

A conversation with an administrative assistant at the secretariat of the Division of general services of Press Ministry, Kinshasa, August 1, 2006.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of a licence for the media is prohibitory. Apart from the paying taxes every year, media outlets must pay between US\$5,200 and US\$10,200 depending on TV or radio, and whether the station is commercial or associative. This authorization can only be obtained at the Press Ministry at Kinshasa, the capital city. This power has not yet been delegated in the provinces although the law laying down the mode of enforcement of the freedom of the press has established this for more than 10 years.

References:

A conversation with an administrative assistant at the Secretariat division of the general services of the Press Ministry, Kinshasa, August 1, 2006.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are the media able to report on corruption?

67

7a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

The law does prohibit the reporting of news that is damaging to a public figure's reputation. What is important is not to fall into slander, which the Congolese laws punish.

References:

Law 96-22 of June 22, 2006 laying down the mode of enforcement of the freedom of the press.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

7b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Besides the fact that the great majority of the media do not have facilities to investigate corruption, self censorship is common within the private press organs whether their owners are close to or opposed to the government. Most of them refuse to publish the reports or NGOs communiqués regarding the fight against corruption in order to avoid retaliations or other consequences.

For the public media, they are under the censorship of their designated mandates by the rulers in power that cannot be denounced.

References:

The Congolese League against Corruption (LICOCO), Difficulties encountered. <http://www.licoco.org/article.php3?id_article=7>.

Read R.L. Munkeni, "The cutting practice" in the congolese press.

Analysis of the contractual process of a negotiated practice, in the Stakes of The Information and Communication. <http://w3.u-grenoble3.fr/les_les_enjeux/2006>.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

7c. In practice, there is no prior government restraint on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The government limits the publication of stories linked to corruption mainly through threats of retaliation.

Mr Franck Kangundu, known under the name of Ngyke, was killed during the night of August 3, 2005 after he had denounced a corruption affair. At the same time, another journalist Patrice Booto of the newspaper Pool Malebo was arrested by the special services of the police. The NGO Journalist in Danger believes that there are connections between the two events.

References:

JED, Franck Ngyke, The mystery, Kinshasa, January 31, 2006.

http://www.jed-congo.org/rapport.php?id_rapport=14>

http://www.fidh.org/article.php3?id_article=3293

http://www.rsfs.org/article.php3?id_article=13325

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. In countries where illiteracy is higher, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material.

8. Are the media credible sources of information?

13

8a. In law, media companies are required to disclose their ownership.

YES | **NO**

Comments:

The press organs are not legally obliged to disclose their funding sources.

References:

Law 96-22 of June 22, 1996 laying down the mode of enforcement of the freedom of press.

YES: A YES score is earned if media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

8b. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

Most of journalists and editors don't strictly adhere to professional practices in their reports. The phenomenon "cutting" (meaning the embellishment of public actors for payment) heavily affects the Congolese media.

References:

R.L. Munkeni, The cutting practice in the congolese press. Analysis of the contractual process of a negotiated practice, in the Stakes of The information and communication. <http://w3.u-grenoble3.fr/les_les_enjeux/2006>.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

8c. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

During the recent elections, no independent and political parties candidates got fair media coverage. The responsibilities of the press organs as those who are close to the press have been exclusively or widely favored. For example the case of Digital Congo with the outgoing head of State Joseph Kabila, Molière TV with Nemba Lemba, CCTV and Canal Kin TV with Jean-Pierre Bemba and its lieutenants, Africa TV with Azarias Rubarwa and its partisans. Some TV programs policed by The Media High Authority (a media regulatory organ) were unsuccessfully organised in order to correct the drifts.

References:

Cojeski, a half course global observation of the electoral campaign in DRC, Kinshasa, July 20, 2006, [on line], .

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

8d. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

The state-owned media in DRC are taken as hostages by the head of State. Most of the government members don't even have easy and equal access. The opposition is widely excluded. The opposition exploits mainly the costly private medias which is sometimes subject to reprisals.

References:

<http://www.radiokapi.net/diffusion.php?type=dec&id=11151>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

9. Are journalists safe when investigating corruption?

0

9a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

Many Congolese or foreign journalists investigating corruption (taken in its wide sense) have been either arrested or expelled during this year. That was the case with Patrice Booto of the newspaper Pool Malebo, who was arrested on November 2, 2005. Arthur Tshimanga Kapuku was arrested on April 18, 2006 after denouncing the embezzlement of funds at the Protestant University of Congo (UPC), etc. Ghislaine Dupont, a journalist for Radio France Internationale (RFI) was expelled from the country while she was reporting on the June 2006 elections, which were strongly criticized.

References:

JED, Franck Ngyke, The mystery, Kinshasa, January 31, 2006, [on line], http://www.jed-congo.org/rapport.php?id_rapport=14.
JED, A weekly newspaper director released 72 hours after being arrested in Kinshasa, http://www.jed-congo.org/communiqué.php?id_communique=192

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

Some journalists during this period have been physically beaten such as Anselme Masua (42 years old) of the U.N. radio in Congo named Radio Okapi.

References:

B. Amba Wetshi, "The Kabila body guards beats a journalist", available on the web site: <http://liondjo.afrikblog.com/archives/2006/04/25/1762606.html>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | **NO**

Comments:

Without being explicitly linked to a corruption investigation, the assassination of Franck Kangundu Ngyke (with his wife) of the daily newspaper La Référence Plus can be taken in this case of a journalist killed while investigating corruption as defined in this report. Thru this inquiry, JED thinks that there would be a linkage between the Patrice Booto arrest on November 2, 2005 by special services of the police and the death of Franck Kangundu Ngyke one night later (November 3, 2005).

References:

JED, Franck Ngyke, "The mystery", Kinshasa, January 31, 2006, [on line], <http://www.jed-congo.org/rapport.php?id_rapport=14>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

10. Do citizens have a legal right of access to information?

33

10a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The law recognizes the right to address a petition to the public authority by Congolese citizens, individually or collectively, in order to get access to the governmental files or to explanations on one to another issue of the public life.

References:

Point 27 of the DRC constitution in force since June 30, 2006.

YES: A YES score is earned if there is a formal right to access any government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request. There should be a formal process for requesting this information.

NO: A NO score is earned if there is no such right.

10b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

The Congolese law does not grant to Congolese citizens the right of appeal if the access to the governmental files is not granted. It only gives a three month deadline to a public authority to respond to a request.

References:

Point 27 of the DRC constitution in force since June 30, 2006.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests.

NO: A NO score is earned if there is no such formal process.

10c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

The Congolese law does not provide any particular institutional mechanism thru which a Congolese citizen can access government files. Only a petition is recognized.

References:

Point 27 of the DRC constitution in force since June 30, 2006.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

11. Is the right of access to information effective?

0

11a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Often, citizens wait hopelessly for the responses to their information request. These answers are rare. More often, the citizens have recourse to the ministerial cabinet members, press attaché or they use electronic official addresses, which are less used.

References:

Josué Kabika Bashige testimony, he is an independent journalist in Kinshasa and an initiator of many petitions and open letters to the members of the government. Interview held in Kinshasa, August 8, 2006.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

11b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Simple emails or letters are sufficient. But the poor performance of the post services in the DRC is an easy excuse for the public authorities. The citizens are thus obliged to go every time to the administrative offices of the public authorities to see if they have been answered or not. The cost of a such discouraging operation is not reasonable and requires many sacrifices. In other respects, the governmental websites are not updated and don't supply reliable elements. The websites are a source of revenue for civil servants and other colleagues of authorities who are often badly paid.

References:

Josué Kabika Bashige testimony, he is an independent journalist in Kinshasa and an initiator of many petitions and open letters to the members of the government. Interview held in Kinshasa, August 8, 2006.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

11c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law does not provide it.

References:

<http://www.article19.org/pdfs/press/rdcongo-recommendations-before-elections.pdf>

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

11d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Seeing that the law does not specially provide any clear appeal procedure, the appeal cost is naturally heavy. It requires intervention by lawyers, media and human rights activists.

References:

<http://www.article19.org/pdfs/press/rdcongo-recommendations-before-elections.pdf>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

11e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

Most often, the government gives no reasons for a denial of an information request.

References:

Josué Kabika Bashige testimony, he is an independent journalist in Kinshasa and an initiator of many petitions and open letters to the members of the government. Interview held in Kinshasa, August 8, 2006.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁵⁷Voting & Citizen Participation

12. Is there a legal framework guaranteeing the right to vote?

100

12a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

The universal and equal adult suffrage is constitutionally guaranteed to all citizens and organized by an electoral law.

References:

Point 5 of the DRC constitution in force since June 30, 2006.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of that country. A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

12b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

The constitution guarantees elections at regular intervals. An independent national electoral commission is in charge of them.

References:

Point 5, 7 and 211 of the DRC constitution in force since June 30, 2006.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

13. Can all citizens exercise their right to vote?

67

13a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

The vote is free in DRC and any 18-year-old Congolese can exercise his right to vote regardless to his race, ethnic group, religion and his language or mother tongue.

References:

Asadho, Niza and professionals of media, Stament on July 30, 2006 legislative and presidential elections observation, Lubumbashi, August 4, 2006.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

13b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ballots are secret in DRC even though some irregularities have been pointed out during the last election of July 31, 2006. Sometimes the ballot papers were either lost or the extreme case they were burned between the polling stations and the compilation centers. There are also abuses by some polling stations agents who were directing the vote of some illeterate or handicapped persons.

References:

J.-A. Kabongo, "With the loss of the electoral kits in Kinshasa, the recourse is compromised", in *Le Phare*, August 10, 2006.
European Union Electoral Observation Mission (MOEVE), Press communiqué, August 9, 2006.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

13c. In practice, elections are held according to a regular schedule.

100 | 75 | **50** | 25 | 0

Comments:

The DRC has recently renewed democratic election traditions in July 2006 after nearly 30 years. The law plans the organization of the elections at all levels every five years.

References:

DRC constitution in force since June 30, 2006.
Law 06/006 of March 9, 2006 supporting local, municipal, urban, provincial, legislative and presidential elections.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

14. Are citizens able to participate equally in the political process?

80

14a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Any Congolese citizen who is at least 25 years old is free to create a political party. This is guaranteed by the Congolese constitution and by an enforcement law.

References:

Point 11 of the Law 04/002 of March 15, 2004 supporting the functioning and the organization of the political parties.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

14b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

In principal, all Congolese citizens at least 18 years old in Congo have the right to apply to political office. However, all the aliens leaving in Congo (even born in Congo) and the civil servants, the representatives of public firms, the members of the police and armed forces, Independent Electoral Commission members, the persons condemned for war crimes and magistrates are excluded.

References:

Title III, section 2, paragraph 3 (Points 107 and 108) of the DRC constitution in force since June 30, 2006

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

14c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

According to the Constitution, all the Congolese citizens at least 25 years old are able to create political parties.

References:

List of political parties recognized by the Ministry of interior at www.cei-rdc.org.cd or www.cei-rdc.org.

See also:

www.udps.net/congo.php?article_id=108-43k

André Kabanda Kana, RDCongo: processus politique de tous les risques, L'Harmattan, Paris, 2006.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

14d. In practice, all citizens can run for political office.

100 | 75 | **50** | 25 | 0

Comments:

Congolese (at least 18 years old) can apply for any political functions. But the electoral code of the last elections has fixed financial barriers to prevent those who intend to be candidates to the electoral elections. It requires a guarantee of US\$50,000 for candidates to the presidential elections and US\$250 per list for national deputies candidates or per person for independent candidates.

References:

Points 9 and 10 of the Law 06/006 of March 9, 2006 supporting local, municipal, urban, provincial, legislative and presidential elections.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

14e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

During the three years of the transition in DRC, the opposition has been represented in all the institutions of the republic and participated in the management of public affairs. The current constitution provides its legality.

References:

Inclusive and global agreement on the DRC transition signed at Pretoria on December 17, 2002 and adopted at Sun City on April 1, 2003 in South Africa.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

There is an Independent electoral legally instituted to regulate the elections.

References:

Points 155 - 160 of the constitution of transition of DRC. Points 211 of the DRC constitution in force since June 30, 2006.

YES: A YES score is earned if there is an agency or set of agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no agency or set of agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police.

16. Is the election monitoring agency effective?

55

16a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The Independent Electoral Commission is legally protected from the political involvement. In its functioning, this commission has a financial and administrative autonomy and it is independent in its action.

References:

Point 1 of the law 04/009 of June 5, 2004 supporting organization, attributions and functioning of the Independent Electoral Commission.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies being contested in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no election monitoring agency.

16b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Even through the nomination of the Electoral Commission members had been based on personal competence, membership in a social or political movement was a sine qua non condition. The members of the actual electoral commission have been designated on an equal basis between different entities and components formed during the Congolese talks in 2002 and 2003. This equal formation has henceforth consecrated its independence.

References:

www.laconscience.com/article.php?id_article=4853 – 49k

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

16c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The Independent Electoral Commission has a full-time staff but they are not always qualified. From its directing board, it is obvious that few members have experience and therefore give the impression that the president of the Independent Electoral Commission, Abbey Appolinaire Malu Malu must do the real work for the organization. That is why the international community permanently provides its technical and logistic support.

References:

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

16d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | **50** | 25 | 0

Comments:

From the last elections in DRC, the Electoral Commission has immediately proceeded to count the votes in the polling stations and

posted the results at each step. This process has taken more or less one month for the presidential elections and more than one month for the legislature elections.

References:

Website of electoral commission : www.cei-rdc.org or www.cei-rdc.cd

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

16e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

If the Independent Commission has brought actions to justice against some guilty persons, systematic and firm sanctions were not applied against these persons. For example, more than 50,000 persons who got enrolled many times have been brought to courts by IEC but nothing is done. It is the same for those who ransacked the polling stations or attacked electoral kits convoys in the province of Kasai Oriental or falsified the results. Candidates have rarely been sanctioned while they did not respect the deadline of electoral campaign.

References:

Cojeski, A half course global observation of electoral campaign in DR Congo, Kinshasa, July 20, 2006, [on line], www.cojeski.org

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

17. Are elections systems transparent and effective?

17a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | **50** | 25 | 0

Comments:

There is a clear system of electors enrollment, but it has some problems. Many political parties have denounced this system since the country does not hold a reliable and updated census. That is why many persons leaving in abroad or some rural areas were excluded from the list.

References:

www.cei-rdc.org

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost⁷ voting by non-existent voters is common.

17b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

The electoral code grants to the individual candidates or political parties the opportunity to protest the provisional results of the elections through the Judiciary for three days after their proclamation by the Independent Electoral Commission.

References:

Points 73 – 76 of the Law 04/009 of June 5, 2004 supporting the organization, attributions and functioning of the Independent Electoral Commission.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

17c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

17d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

The militaries and security forces like the police are supposed to be neutral but in the DRC post-conflict context, some militaries have been put in the private service of some candidates. For example, in July 2006, the body guards of Joseph Kabila allegedly fired on those of Azarias Ruberwa. Other incidents of the same nature occurred during the provisional results proclamation during three days from 20 to 22 August 2006. We can also quote the devastation and the burning of some churches and houses close to some candidates on July 27, 2006, allegedly under the supervision of some armed elements of the opposing candidate.

References:

The daily newspaper *Alerte-Plus*, n° 1050 of Saturday July 29, 2006, p.8.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

17e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

The electoral code provides the participation of international and domestic observers in the electoral process.

References:

Points 42 – 45 of the law 04/009 of June 5, 2004 supporting the organization, attributions and the functioning of the Independent Electoral Commission.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

17f. In practice, election observers are able to effectively monitor elections.

100 | **75** | 50 | 25 | 0

Comments:

The electoral observers have enjoyed freedom of action during the last elections.

References:

M. Fernandez Murolo, Report on the half course global observation of the electoral campaign in the DRC, Cojeski-DRC, Kinshasa, July 20, 2006, [on line], .
Asadho-Katanga and others, Statement on the July 30, 2006 legislative and presidential elections observation, Lubumbashi, August 4, 2006.
Carter Center, Congo-Kinshasa: preliminary statement on the July 30, elections, Atlanta, August 1st, 2006.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

71
II-3. Political Financing

18. Are there regulations governing political financing?

50

18a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The law supporting the organization and the functioning of the political parties sets forth principles for regulating private contributions to political parties. A blueprint law announced for political party financing has not yet been adopted by the parliament.

References:

Points 22 – 27 of the Law 04/002 of March 15, 2004 supporting organization and the functioning of the political parties.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

18b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

The law limits the resources of political parties to grants from the state, contributions, gifts, legacy donations from sympathizers and adherents, property operations and other revenues gotten from the publications. Donations from foreign states are specially prohibited.

References:

Points 21 (b) and 24 of the law 04/002 of March 15, 2004 supporting organization and the functioning of the political parties.

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18c. In law, there are limits on corporate donations to candidates and political parties.

YES | **NO**

Comments:

Only foreign states' donations are specially forbidden by the law. The law allows other means of getting contributions and gifts to candidates and political parties. Only a statement of a political party to the Ministry of Interior is required. This statement must mention the provenance, the nature and the value of donations. They must come from indentified persons whose origin is not criminal.

References:

Points 20 and 23 of the law 04/002 of March 15, 2004 supporting the organization and the functioning of the political parties.

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18d. In law, there are limits on total political party expenditures.

YES | **NO**

Comments:

The law does not provide it.

References:

The law 04/002 of March 15, 2004 supporting the organization and the functioning of the political parties.
The DRC constitution in force since June 30, 2006.

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

18e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

The law require to political parties to file a statement on the financial accounts of the previous year to the Ministry of Interior each year before March 31. Therefore, the political parties are called to reveal their revenues and expenses.

References:

Point 21 (b) of the law 04/002 of March 15, 2004 supporting the organization and the functioning of the political parties.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

18f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

The law does not provide it.

References:

Law 04/002 of March 15, 2004 supporting the orgazation and functioning of the political parties.
The DRC constitution in force since June 30, 2006.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

19. Are the regulations governing political financing effective?

0

19a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

The law concerning the financing of candidates and political parties is not respected. The state doesn't give grants, and there are very few militants who are able to contribute or give gifts to political parties. Nor do any political parties own properties or estates giving revenues for their functioning. The chiefs of political parties finance them from the networks they only master themselves. The political parties in power use state funds with impunity in their political activities.

References:

Interview held with three civil servants directing the political parties of the Ministry of interior in Kinshasa, August 12, 2005.
Interviews held with the permanents of political parties PALU, UDPS, MLC, PPRD, RCD-K-ML and DCF/N.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

There is no real control on the contributions of the candidates and the political parties.

References:

Kibanda and Alii, "The monster called corruption," ISDD, Kinshasa, 2005.
Mabiala M.N., "Financement des parties politiques", in Mabiala M. N., Organisation et fonctionnement des partis politiques en RDC, Konrad Adenauer, Kinshasa, 2004, pp.39-54.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support

candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Since there are no limits provided, the collection of gifts is in practice unlimited and uncontrolled.

References:

Mabiala M.N., "Financement des parties politiques", in Mabiala M. N., Organisation et fonctionnement des partis politiques en RDC, Konrad Adenauer, Kinshasa, 2004, pp.39-54.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

19d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Interior that is in charge of it has not yet initiated an independent investigation.

References:

Conversation with an administrative assistant at Secretariat General of Ministry of Interior, Kinshasa, August 23, 2006.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

19e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

This has not occurred during this year.

References:

Interview held with three civil servants of Direction in charge of political parties of the Ministry of interior, Kinshasa, August 12, 2005.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

19f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

The political parties have never been audited.

References:

Interview held with three civil servants of Direction in charge of political parties of the Ministry of interior, Kinshasa, August 12, 2005.

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

20. Can citizens access records related to political financing?

0

20a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Congolese political parties and the Congolese don't reveal their financial situation to the public nor to the Ministry of Interior or even to the party activists. Nor is any official or public report done.

References:

Tdjani-Serpos I., "Gestion quotidienne d'un parti politique", in Mabilia M. N., Organisation et fonctionnement des partis politiques en RDC, Konrad Adenauer, Kinshasa, 2004, pp.68-80.

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

20b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The citizens don't have access to any financial report from the political parties even when they organized contributions to the party.

References:

Interviews held with the Palu militants in the Commune of Lemba at the headquarter of Mbanza-Lemba market, August 18, 2006.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

20c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Let's note that getting access to the political parties and candidates financial reports required roundabout ways that are costly. The question is: how can one get access to this information by buying them from colleagues of the President or the treasurer of the party or those who are close to the candidate.

References:

Tdjani-Serpos I., "Gestion quotidienne d'un parti politique", in Mabilia M. N., Organisation et fonctionnement des partis politiques en RDC, Konrad Adenauer, Kinshasa, 2004, pp.68-80.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ~~E~~³² Executive Accountability

21. In law, can citizens sue the government for infringement of their civil rights?

100

21. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

Since the Human Rights and the fundamental freedom have been guaranteed by the law, he who violates them can be pursued. That's why Congolese and foreigners living in the D.R.C are free to pursue the government into justice. This is done in the administrative chamber of the Court of Appeal located in each province of the DRC or the State Council. Otherwise, citizens can use the Courts and the administrative tribunal after the judicial appeal is in progress.

References:

Points 154,155 and 162 of the DRC constitution in use since June 30, 2006

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

22. Can the chief executive be held accountable for his/her actions?

50

22a. In practice, the chief executive gives reasons for his/her policy decisions.

Comments:

Sometimes, the Ministers and the Head of State give through the television and radio broadcasts the reasons of their decision-making policies. However, this practice is not up-to-date or consistent.

References:

media reporting

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

22b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The judiciary can quash all illegal governmental acts. The constitution sets the conditions for this power.

References:

Points 139, 157-169 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

22c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

There is no border between the Congolese judicial power and the executive power. The Judiciary has not opposed any executive action in all the times it has been submitted or referred to the court.

References:

ALUNGA MBUWA., "The Supreme Cour rejects the request in nullification of the Kabila candidature", in lessoftonline.net <http://www.lessoftonline.net/pages/phil.php?id=821>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

22d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The President of the Republic rarely uses executive orders for establishing new regulations, policies or government practices. There was no government decree that was put forth in the last year.

References:

The DRC official bulletin.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

23. Is the executive leadership subject to criminal proceedings?

0

23a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

Comments:

The head of state and government can be pursued only for crimes related to performance of his/her duties, such as the high betrayal⁷ political offence, an outrage to parliament, breach to honor and integrity and the abuse of the initiated and all the other common law offences carried out in the exercise of their functions. All pursuit for the other offences committed behind his responsibilities remains suspended during his mandate. Even so, the prescription is also suspended.

References:

Points 164 and 167b of the DRC Constitution in use since June 30, 2006.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

23b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | **NO**

Comments:

Ministerial-level officials can be pursued for crimes that have been committed as part of their official functions. The Prime Minister cannot be pursued in the presence of the constitutional court, only for the offences committed while being in service. That is the same for the members of the government who can be pursued in the presence of the Court of Cassation. Even so, during this time the prescription remains suspended.

References:

Points 153 (paragraph 3) and 167 (paragraph 2) of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

24. Are there regulations governing conflicts of interest by the executive branch?

25

24a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

The President of the Republic and the Prime Minister have to deposit a written statement of their familial patrimony listing their properties.

References:

Point 99 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

24b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

The law urges the ministers to depose in the presence of the constitutional court a written statement of their familial patrimony listing their properties.

References:

Point 99 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

24c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | **NO**

Comments:

There is no law regulating gifts and hospitality offered to executive branch members.

References:

The DRC official bulletin.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

24d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

Comments:

There is no any law requiring that. Only the fiscal administration receives a copy.

References:

Point 99 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

24e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

There are no restrictions for the heads of state/government or ministers entering the private sector after leaving the government.

References:

Constitution of the DRC in use since June 30, 2006.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

24f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no such restriction.

References:

Constitution of the DRC in use since June 30, 2006.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

24g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no such restriction.

References:

Constitution of the DRC in use since June 30, 2006. The DRC official bulletin

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

24h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

The country does not know such an experience.

References:

www.cadtm.org/article.php3?id_article=630

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

25. Can citizens access the asset disclosure records of the heads of state and government?

0

25a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The law expressly designates the asset disclosure records of the heads of state and government to be deposited at the constitutional court. There is no mention of access by citizens.

References:

Point 99 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

25b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This does not occur.

References:

Constitution of the DRC in use since June 30, 2006.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This does not occur.

References:

Constitution of the DRC in use since June 30, 2006.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. In practice, is the ruling party distinct from the state?

50

26. In practice, is the ruling party distinct from the state?

100 | 75 | **50** | 25 | 0

Comments:

As a rule, the coalition of the political parties in power is distinct from the state. Among these political parties, the one belonging to the head of state, PPRD (Party of Progress, the Reconstruction and the Development), uses the resources of the state in its functioning (such as official media, public enterprises and vehicles).

References:

See appendix II: letter of PPRD/katanga of the report: « The State against the people: the governance, the mining exploitation and the transitory regime in the Democratic Republic of Congo », Netherlands Institute for Southern Africa, 2006. Available on the website: http://www.laconscience.com/article.php?id_article=4391

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

27. Can members of the legislature be held accountable for their actions?

67

27a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The constitutional court can be petitioned as a recourse aiming to overturn a law adopted by the legislature that does not match with the constitution.

References:

Point 139 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

27b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

An unknown situation in this country.

References:

The DRC constitution in use since June 30, 2006.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

27c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

In case of a crime done by a member of the national legislative board, he can be pursued with the authorization of the National Assembly or the Senate or by the one of the bureau when out of the parliamentary session.

References:

Point 107 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

28. Are there regulations governing conflicts of interest by members of the national legislature?

0

28a. In law, members of the national legislature are required to file an asset disclosure form.

YES | **NO**

Comments:

The law does not recommend it.

References:

Title III, section 2 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

28b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There are no legal restrictions on this.

References:

Title III, section 2 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

28c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | **NO**

Comments:

There are no legal restrictions on this.

References:

The DRC constitution in use since June 30, 2006.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

28d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

There are no legal restrictions on this.

References:

The DRC constitution in use since June 30, 2006.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

28e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

As the law does not mention it, the members of the parliament are free until the end of their mandate.

References:

The DRC constitution in use since June 30, 2006.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

28f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Such regulations do not exist in the national legislation.

References:

The DRC constitution in use since June 30, 2006.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

28g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

An unknown practice in the country because the law doesn't mention it.

References:

The DRC constitution in use since June 30, 2006.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

29. Can citizens access the asset disclosure records of members of the national legislature?

0

29a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

An unknown practice in the country because the law doesn't mention it.

References:

The DRC constitution in use since June 30, 2006.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

29b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

An unknown practice in the country because the law doesn't mention it.

References:

The DRC constitution in use since June 30, 2006.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

29c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

An unknown practice in the country because the law doesn't mention it.

References:

The DRC constitution in use since June 30, 2006.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30. Can citizens access legislative processes and documents?

50

30a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

The law says that the meetings of the national assembly and the senate are public except for closed door sessions. The same is true of reports of the debates. Documents of these two chambers are published in the parliamentary annals.

References:

Point 118 of the DRC Constitution in use since June 30, 2006.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

30b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the reports and the other documents remain secret and can be only consulted under the authorization of the presidents of the two chambers.

References:

A talk with a head of office at the Division of the documentation of the parliament. Kinshasa, September 29, 2006.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to these documents requires that one must be present in Kinshasa and can be only done in the office of the national assembly and of the senate. This procedure aggravates the cost of access to these documents and reports that are not published as the law recommends.

References:

A talk with a head of office at the Division of the documentation of the parliament. Kinshasa, September 29, 2006.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

29
III-3. Judicial Accountability

31. Are judges appointed fairly?

42

31a. In practice, there is a transparent procedure for selecting national-level judges.

YES | **NO**

Comments:

The national-level judges are not selected by a transparent procedure. The nomination by the executive chief is current even though at some levels of responsibility, the laws foresee transparent procedures. However a reform is underway in this sector.

References:

Title III, section 3 of the DRC constitution in use since June 30, 2006. A talk with a former member of the first President of the Supreme Court of Justice cabinet. Kinshasa, September 30, 2006.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight.

31b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | **25** | 0

Comments:

The law states that only the persons having 15 years of experience in the political and juridical fields can be nominated as a member of the constitutional court.

References:

Point 159 of the DRC Constitution in use since June 30, 2006.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

31c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

The law states that the national-level judges be designated in a collective procedure engaging the executive, legislative and judicial powers at the rate of three judges for the three powers.

References:

Point 157 of the DRC Constitution in use since June 30, 2006.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

32. Can members of the judiciary be held accountable for their actions?

33

32a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

The law recommends that the decisions of the members of the national-level judiciary be motivated by laws.

References:

Congolese judicial Code.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

32b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Members of the national-level judiciary give reasons for their decisions and must collect essential testimonies to make a judicial decision.

References:

Interview with Mr Florent Matambela, lawyer at the bar of Gombe; august 28, 2006

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

32c. In law, there is an ombudsman (or equivalent agency or mechanism) for the national-level judicial system.

YES | NO

Comments:

There is no ombudsman for the judiciary or a specific organ that plays this role.

References:

Congolese official bulletin.

YES: A YES score is earned if there is a ombudsman or equivalent mechanism for the judicial system. A judicial ombudsman is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a judicial ombudsman.

32d. In law, the judicial ombudsman (or equivalent agency or mechanism) is protected from political interference.

YES | **NO**

Comments:

This organ does not exist in the Congolese judicial system.

References:

Congolese official bulletin.

YES: A YES score is earned if there are formal rules establishing that the judicial ombudsman is operationally independent from political interference by the executive, legislative or judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial ombudsman. A NO score is given if the judicial ombudsman function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

32e. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) initiates investigations.

100 | 75 | 50 | 25 | **0**

Comments:

Such an organ doesn't exist in the Congolese judicial system.

References:

Congolese official bulletin.

100: The ombudsman aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The ombudsman is fair in its application of this power.

75:

50: The ombudsman will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The ombudsman, though limited in effectiveness, is still fair in its application of power.

25:

0: The ombudsman rarely investigates on its own or cooperates in other agencies' investigations, or the ombudsman is partisan in its application of this power.

32f. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Such an organ doesn't exist in the Congolese judicial system.

References:

Congolese official bulletin.

100: When rules violations are discovered, the ombudsman is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The ombudsman enforces rules, but is limited in its effectiveness. The ombudsman may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The ombudsman does not effectively penalize offenders. The ombudsman may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The ombudsman may be partisan in its application of power.

III-4. Budget Processes

33. Can the legislature provide input to the national budget?

58

33a. In law, the legislature can amend the budget.

YES | NO

Comments:

The two chambers can amend the budget.

References:

Point 126 of the DRCongo constitution in use since June 30, 2006.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can approve, but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

33b. In practice, significant public expenditures require legislative approval.

100 | 75 | **50** | 25 | 0

Comments:

Some of the public expenses contained in the budget are approved by the legislature. It sometimes happens that the government knows of unjustified actions on which the legislature did not have a control.

References:

Budgetary overtaking: le IMF request the accounts to Kinshasa », June 17, 2006, <http://www.radiookapi.net/article.php?id=4800>
« J. Kabila – J P Bemba: How do they use the money of the state », in L’Avenir, 2006-10-20, consulted on: <http://www.congotribune.com/news.php?article=1079>

« Special presidential elections 2006. JP Bemba accuses again a monstrous overtaking », in La Référence Plus, http://www.groupelevenir.net/article.php3?id_article=6869

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive’s personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

33c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | **25** | 0

Comments:

In practice, the government does not exercise sufficient control of the budgetary execution. Until the installation of new institutions coming from the elections (after July 2006), the parliament did not have the constitutional power to censure the government.

References:

Point 112 (paragraph 3) of the DR Congo constitution in use since June 30, 2006.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

34. Can citizens access the national budgetary process?

33

34a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | **50** | 25 | 0

Comments:

The parliamentary debates on the budget are open to the public but many budgetary posts are being negotiated out of the public sessions.

References:

Talk at Kinshasa with member of the court of the revenues who remains anonymous. September 12, 2006.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

34b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Formally, citizens nor CSOs contribute to the budgetary debate.

References:

Official bulletin of January 28th, June 21 and 24th, 2005 established observations of the execution of the state budget for the years 1987, 1988, 2001, 2002 and 2003.

See also: De Saint Moulin L., "Observations of the Court of the counts of the state for the years 1987, 1988, 2001, 2002 and 2003", in Congo-Afrique, XLVth year, n° 401, January 2006, pp.31-36.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

34c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The citizens, the journalists and the activist leaders of the CSOs can get access to itemized budget allocations. This access is not very easy and requires much effort.

References:

A talk with Noel Obotela, journalist at the newspaper « La référence plus ».

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

35. In law, is there a separate legislative committee which provides oversight of public funds?

0

35. In law, is there a separate legislative committee which provides oversight of public funds?

YES | **NO**

Comments:

The Revenue Court is the organ that provides oversight of public funds but is not part of the Parliament. It is autonomous and used to support Parliamentary investigations. It publishes each year a report given to the president, to Parliament and to the Government.

References:

Point 178-180 of the DRC Constitution in use since June 30, 2006.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists. A NO score is earned if there is a body executing this function but it is not under the direction of the legislature.

36. Is the legislative committee overseeing the expenditure of public funds effective?

0

36a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | **0**

Comments:

The department's heads don't submit regular reports to the court of revenues.

There is a difference between the court of accounts to which some department heads sometimes submit reports and this sort of legislative committee which did not exist during the period of study.

References:

Interview with a member of the court of revenues in Kinshasa, September 12, 2006.

www.licoco.org/article.php3?_id_article=45

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

36b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The court of revenues does not act in a non-partisan manner. It tends to protect the members of the party in power and to treat severely the members of the opposition.

References:

Interview with a member of the court of the revenues at Kinshasa, September 12, 2006.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

36c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the court of revenues is not outside of political influences. It works when the power want it to and directs the report according to the will of the rulers.

References:

Talk with a member of the court of the revenues at Kinshasa, September 12, 2006.

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

36d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

When it is necessary, the court of revenues initiates independent investigations that can go right to the end if the interests of the power in place are not guaranteed. These investigations are often ended if the interests of the power in place are threatened.

References:

Talk at Kinshasa with member of the court of the revenues who remains anonymous. September 12, 2006.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

37. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

25

37a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The law recommends to the civil servants to exercise their work with impartiality and without discrimination.

References:

Chapter II, title II of the government decree n°017/2002 of October 3, 2002 supporting code of good practice of the the state public agent.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

37b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

The law punishes all negative practices concerning the nepotism, cronyism, and patronage in the civil service.

References:

Title V of the government decree n°017/2002 of October 3, 2002 supporting code of good practice of the state public agent.
Chapter IX of the law n°081-003 of July 17, 1981 supporting the statute of career personnel of the public services of the state.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

37c. In law, there is an independent redress mechanism for the civil service.

YES | **NO**

Comments:

Such a mechanism does not exist.

References:

Talk with Mboyo Engele, former assistant Staff at the Ministry of social affairs office. Kinshasa, September 29, 2006.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

37d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

Comments:

Such a regulation does not exist.

References:

Talk with Mboyo Engele, former assistant Staff at the Ministry of social affairs office. Kinshasa, September 29, 2006.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

38. Is the law governing the administration and civil service effective?

22

38a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

In practice, civil servants are not protected against the political interference. Their nominations, the promotions in grades and the management of their career depend on the politicians.

References:

Talk with a manager of old people's home at the commune of Kintambo. Kinshasa, September 15, 2006.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

38b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Their nomination and the promotions in grades of the civil servants depend on professional criteria.

This comes within the limits of the statutes of the public sector employee of the state. However, these nominations and acts depend on a great part to the politicians' allegiance.

References:

The law n°081-003 of July 17, 1981 supporting the statute of career personnel of the public services of the state.

G.A. PANDNJYLA, The consequences of the violation of the laws and the regulations in the territorial administration in the DRC" in M.M. MAKWALA, Public Administration. Tool of the development of the Congolese Nation, Kinshasa, IDLP, 2000, pp 148-157

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

38c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Nepotism, cronyism, or patronage are generally denounced in the speeches of the managers but remain present in civil service management actions.

References:

G.A. PANDNJYLA, The consequences of the violation of the laws and the regulations in the territorial administration in the DRC” in M.M. MAKWALA, Public Administration. Tool of the development of the Congolese Nation, Kinshasa, IDLP, 2000, pp 148-157

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

38d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

In general, the civil servants don't have clear job descriptions. Since the state is moribund on the social sector, the structuring and the modernization of the social centers constitute its last worry.

References:

Talk with a manager of old people's home at the commune of Kintambo. Kinshasa, September 15, 2006.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

38e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Since the salary given to civil servants of the state is not significant, the bonuses constitute more than 100% and sometimes special premium is deducted from aids offered to the needy.

References:

Talk at Kinshasa with a manager of old people's home who remains anonymous. September 12, 2006.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

38f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The government publishes nothing on the number of authorized civil service positions along with the number of positions actually filled. This system is absent.

References:

Talk with a manager of old people's home at the commune of Kintambo. Kinshasa, September 15, 2006.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

38g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The lowness or the absences of the ressources at the disposition of the social service in DRC alienate the independence of the civil service. They are obliged to fold up the unknown factors of the board of committee and of the political imperatives. They are almost without function.

References:

Talk with a social assistant who remains anonymous at the division of the social affairs of the Kinshasa. September 18, 2006.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

38h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Even low, the payment of the salary of the civil servants at Kinshasa (the capital city) was irregular the last year. That was not the same throughout the country. In some places, the delays accumulated went six months.

References:

Talk with a social assistant who remains anonymous at the division of the social affairs of the Kinshasa. September 18, 2006.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

38i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | **50** | 25 | 0

Comments:

The civil servants condemned for corruption can be forbidden to work in the future. In practice, this disposition is not applied literally.

References:

Point 63 of the law n°81-003 of July 17, 1981 supporting the personnel statute career of the public services of the State and the administration regulations as modified by the decree n°82-011 of March 19, 1982.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

39. Are there regulations addressing conflicts of interest for civil servants?

33

39a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

The statutes of agents of the public services of the state recommend in general manner impartiality in the management of affairs affecting civil servants own interests.

References:

Point 193 of the Democratic Republic of Congo constitution. Point 6 and chapter II of the by Decree-law n°017/2002 of October 3, 2002 supporting code of good practice of the public agent of the state.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

39b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

There is no restriction in this sense.

References:

Law n°81-003 of July 17, 1981 supporting the personnel statute career of the public services of the State and the administration regulations as modified by the decree n°82-011 of March 19, 1982. Decree-law n°017/2002 of October 3, 2002 supporting code of good practice of the public agent of the state

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

39c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

There are regulations governing gifts and hospitality to civil servants.

References:

Point 17, decree-law n°017/2002 of October 3, 2002 supporting code of good practice of the public agent of the state.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

39d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

These regulations don't exist.

References:

Law n°81-003 of July 17, 1981 supporting the personnel statute career of the public services of the State and the administration regulations as modified by the decree n°82-011 of March 19, 1982. Decree-law n°017/2002 of October 3, 2002 supporting code of good practice of the public agent of the state.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the regulations governing gifts and hospitality offered to civil servants are not effective.

References:

Media reporting.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

39f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is a carelessness that leaves agents much room for manipulation and a striking impunity.

References:

A.B. Mwaka, "The Congolese public administration: from the survival corruption to miniaturized corruption," unpublished paper, 16 pages

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

40. Can citizens access the asset disclosure records of senior civil servants?

0

40a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

This requirement does not exist in the practices of the management of senior civil servants.

References:

The DRC official bulletin

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

40b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This requirement does not exist in the practices of the management of senior civil servants.

References:

The DRC official bulletin

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

40c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This requirement does not exist in the practices of the management of senior civil servants.

References:

The DRC official bulletin

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

41. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

50

41a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES

NO

Comments:

Any person who commits reprisal acts or intimidation against witnesses or any person who has denounced these acts is liable to penal servitude or to a fine not exceeding 2,000 Congoles francs, or not more than US\$400.

References:

Point 149 of the law n°05/006 of March 29, 2005 modifying and completing the decree of January 30, 1940 supporting the Congolese penal code.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

41b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Comments:

In practice, civil servants who report on corruption, graft, abuse of power or abuse of resources are not protected against the recriminations and other negative consequences, such as loss of the work or harassment.

References:

« Embezzlement in Congo-Kinshasa: suspect use of the Ppte funds in 2005: the Licoco accuses the minister of the Health », in Le Potentiel, May 27,2006. http://www.laconscience.com/article.php?id_article=4109

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

41c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

All Congolese citizens are legally protected against reprisal acts or intimidation in case of denunciation of corruption. These acts are liable to penal servitude or to a fine not exceeding 2,000 Congoles francs, or not more than US\$400. The person who denounces the corruption is spared of pursuit for slanderous denunciation or the disclosure of the professional secret.

References:

Title II, chapter 2, section 2 of the law n°04/16 of July 19, 2004 supporting the fight against the capital laundering and the financing.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

41d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are not protected against recrimination or other negative consequences. They can lose their position, or be physically threatened and harassed.

References:

Talk with a social assistant who remains anonymous at the division of the social affairs of the Kinshasa. September 18, 2006.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

42. Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?

25

42a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is a Commission of Ethics and the fight against the corruption of which the human and material resources are widely limited to fulfil its task. This Commission covers all the sectors of the public life. There is an Observatory of the Professional Ethics Code (OCEP) that has a moral dimension.

References:

Law n°04/20 of July 30, 2004 supporting organization, attributions and the functioning of the Commission of Ethics and the fight against the corruption. Point 28 of the government decree n°017/2002 of October 3, 2002 supporting Code of behaviour of the public state agent.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

42b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | **50** | 25 | 0

Comments:

The funds are regularly given for the salaries and a minimum functioning.

References:

Talk with one of the reporters of the Commission of the Ethics and the fight against the corruption. Kinshasa, September 29, 2006.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

42c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Most of the corruption scandals are not due to investigation; actions are rare. The mining scandals denounced by the international ONGs did not trigger any form of investigation from this commission.

References:

Global Witness, « a profound corruption: fraud, abuse and exploitation in the copper and cobalt minings of Katanga », Report, 2006, available on the web site. http://www.laconscience.com/article.php?id_article=4522

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

42d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Commission of Ethics and Corruption does not make investigations. It has initiated some investigations about the public procurements passed between the General Direction of the Administrative Revenues (DGRAD) and the thirds, but they have been abandoned. There is much political influence.

References:

Intervention of the UNDP director in the DRC at the restricted meeting on the governance, Bruxelles, July 12, 2005, p. 5 (available on the web site www.undp.org.cd).

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

38
IV-3. Procurement

43. Is the public procurement process effective?

43

43a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

Point 12 of the government decree n°017/2002 of October 3, 2002 supporting Code of Behaviour of the public state agent. Point 54 paragraph 2 of the decree n°69-279 of December 5, 1969 relating the public procurements of the works, provisions, and transports and of the services. Point 6 of the decree-law n°69-054 of December 1969 relating to the public procurements.

References:

There are regulations linked to the conflicts of the interests for the public procurements (public procurement officials).

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private gain for public procurement officials.

NO: A NO score is earned if no such rules exist.

43b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

The law does not require mandatory professional training for public procurement officials. The trainings are sporadic and irregular.

References:

Point 54 paragraph 2 of the decree n°69-279 of December 5, 1969 relating the public procurements of the works, provisions, and transports and of the services. Point 6 of the decree-law n°69-054 of December 1969 relating to the public procurements.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, or voluntary.

43c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The conflicts of interest regulations for public procurement officials are sometimes activated but there is no real follow-up.

References:

BCCO report on the University Of Kinshasa Avenue and some critiques articles on the public procurements.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

43d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

Comments:

Such a mechanism does not exist.

References:

Point 54 paragraph 2 of the decree n°69-279 of December 5, 1969 relating the public procurements of the works, provisions, and transports and of the services. The decree-law n°69-054 of December 1969 relating to the public procurements.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

43e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The law requires that all major procurement must be made by competitive bidding. The law fixes the exceptions for which the mutual agreement does not apply.

References:

Points 2-4 of the decree-law n°69-054 of December 5, 1959 relating to the public procurements.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

43f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The law is enough detailed as regards the extent of sole sourcing.

References:

Points 2-4 of the decree-law n°69-054 of December 5, 1959 relating to the public procurements.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

43g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

No strict regulation in this field exists that could permit to unsuccessful bidders to seek a revision of procurement decisions.

References:

The DRC official bulletin

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

43h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | **NO**

Comments:

No strict regulation in this field exists that could permit to unsuccessful bidders to seek a revision of procurement decisions.

References:

The DRC official bulletin

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

43i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

The law can deny the right to bid for a 5 years for any company recognized as guilty of corruption.

References:

Point 149 bis of the Decree of June 30, 1940 supporting the Congolese penal code like modified by the law n°05/006 of March 29, 2005.

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

43j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | **0**

Comments:

This harshness is not generally applied in the practices of the handing over of the Congolese public procurements.

References:

Talk with a manager of a construction enterprise of the Congolese rights and the bidder of the public procurements since 2001, October 1, 2006.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

44. Can citizens access the public procurement process?

29

44a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Citizens are to access public procurement regulations at the time of offer by means of posting or a publication recommended by law.

References:

Point 37 of the decree n°69-279 of December 5, 1969 relative to procurement contracts, of provisions, transports and of the benefits.

YES: A YES score is earned if procurement rules are, by law, open to the public.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

44b. In law, the government is required to publicly announce the results of procurement decisions.

YES | **NO**

Comments:

The government has to announce the results of the procurement decisions by means of postal notification or by telegram.

References:

Point 37 of the decree n°69-279 of December 5, 1969 relative to procurement contracts, of provisions, transports and of the benefits.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

44c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The public access to procurement regulations is sometimes granted after the expiration of the time limit. The actual calls sometimes pass instead through mafia networks.

References:

Talk with a manager of a construction enterprise of the Congolese rights and the bidder of the public procurements since 2001, October 1, 2006.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The calls are generally published in some newspapers; the newspaper prices are prohibitive for the middle class citizens and of which the weak printing testifies the weak capacity carry the message too far from the capital city of Kinshasa. One must go to the headquarter of BCCO (a technical organ of the government for the public works) to access the information.

References:

Talk with a manager of a construction enterprise of the Congolese rights and the bidder of the public procurements since 2001, October 1, 2006.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44e. In practice, major public procurements are widely advertised.

100 | 75 | **50** | 25 | 0

Comments:

The advertising of the procurement contracts is often done as a formality. It often targets the urban milieu or at least of the great towns and sometimes it is done as a formality whereas the markets pass information by mutual agreements.

References:

Talk with a manager of a construction entreprise of the Congolese rights and the bidder of the public procurements since 2001, October 1, 2006.

100: There is a formal process of advertising public procurements. This may include a government Web site, newspaper advertising, or other official announcements. All major procurements are advertised in this way.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

44f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | **25** | 0

Comments:

The results of procurement contracts are legally known by the winning agent brokers thru a recommended postal letter. In this way, the greater public is excluded.

References:

Point 37 of the decree n°69-279 of December 5, 1969 relative to procurement contracts, of provisions, transports and of the benefits.

Talk with a manager of a construction enterprise of the Congolese rights and the bidder of the public procurements since 2001, October 1, 2006.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

45. Is the privatization process effective?

33

45a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

There is no law on privatization and nothing has been privatized during the period of the studies.

References:

The RDC official bulletin.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

45b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | **NO**

Comments:

There is no regulation addressing conflicts of interest for government officials involved in privatization.

References:

The RDC official bulletin.

YES: A YES score is earned if there are formal regulations defining and regulating conflicts of interest for government officials involved in privatization.

NO: A NO score is earned if there are no such formal regulations.

45c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | **0**

Comments:

There is no such regulation.

References:

The RDC official bulletin.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

46. Can citizens access the terms and conditions of privatization bids?

0

46a. In law, citizens can access the terms and conditions of privatization bids.

YES | **NO**

Comments:

There is no formal publication process and no one is included by any law.

References:

The RDC official bulletin.

YES: A YES score is earned if there is a formal process of publishing the details of privatization bids that makes information available to all citizens.

NO: A NO score is earned if there is no formal publication process, or if any citizens are excluded by law from accessing this information.

46b. In law, the government is required to publicly announce the results of privatization decisions.

YES | **NO**

Comments:

There is no regulation in this sense.

References:

The RDC official bulletin.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

46c. In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There is no regulation in this sense.

References:

The RDC official bulletin.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

46d. In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation in this sense.

References:

The RDC official bulletin.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁵²National Ombudsman

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

On July 30, 2004 at the installation of the democratically elected institutions (at the end of 2006) during the postconflict period of the transition in DRCongo, the constitution has instituted, among those supporting democracy, a National Observatory of the Human Rights. Its role is quite the same as an ombudsman. In terms of the new constitution of February 18, 2006 approved by popular referendum, this organ was dissolved and has not been replaced since.

References:

Law n° n°04/20 of July 30, 2004 creating organization, attributions and functioning of the National Observatory of Human Rights. Title V of the constitution of the D.R.Congo in use since June 30, 2006.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

48. Is the national ombudsman effective?

34

48a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

In terms of the law, the National Observatory of Human Rights is an autonomous and neutral organism. It is endowed with a judicial personality.

References:

Points 1, 3, 31 and 39 of the law n° n°04/20 of July 30, 2004 creating organization, attributions and functioning of the National Observatory of Human Rights.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

48b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the National Observatory of Human Rights did not remain outside of political interference. In the context of massive human rights abuse, the National Observatory of the Human Rights has remained a timid organ and inactive against the massive violations of the human rights during all the period of the transition.

References:

Intervention of the UNDP director in the DRC at the restricted meeting on the governance, Bruxelles, July 12, 2005, (available on the web site www.undp.org.cd).

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

48c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The President of the National Observatory of Human Rights is at once protected from removal without justification but also his mode of designation relied on the equal representation by the groups constituted in the peace negotiations, which weakened it. It is touchy to be removed by the group he belongs to. That explains the reason why this organism is weak.

References:

Point 14 and n°04/20 of July 30, 2004 creating organization, attributions and functioning of the National Observatory of Human Rights.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

48d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The National Observatory of Human Rights is endowed of personnel of which the number is greatly limited and the competences subject to a guarantee. Its staff is only present to Kinshasa and the law creating it compels it not to be spreaded in the countryside of country due to the budgetary constraints.

References:

Points 20 and n°04/20 of July 30, 2004 creating organization, attributions and functioning of the National Observatory of Human Rights.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

48e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | **0**

Comments:

Appointments are often based on political considerations. The individuals nominated are always in trouble.

References:

Lobho L. D., Le Congo à l'épreuve de la démocratie. Essai d'histoire politique du Congo, Presses de l'Université de Kinshasa, Kinshasa, 2006, pp.264-284.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

48f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Apart from the fact that the budget of which the National Observatory of Human Rights is endowed to a minimum functioning (salary and office supplies), the charges of verification and to go to court don't follow.

References:

A talk with an expert of the National Observatory of Human Rights expert at Kinshasa, September 13, 2006.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

48g. In practice, the agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The National Observatory of Human Rights publishes its reports each term, every year and occasionally in between. But in general, these reports are mostly the monitorings of the human rights violations, rather than the reports of the actions taken in order to fight against the violations of the human rights.

References:

Periodic reports and the communiqués of Human Rights National Observatory, 2005 and 2006.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

48h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The National Observatory of Human Rights generally initiates and relays the denunciations of the internal and external organizations, not necessarily with much aggression. Its limited means and its political contacts don't allow it to be independent on the ground.

References:

Periodic reports and the communiqués of Human Rights National Observatory, 2005 and 2006.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

48i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | **0**

Comments:

The National Observatory of Human Rights doesn't have powers to penalize offenders. It must refer to tribunals and courts that remain corrupted and characterized by an inexplicable indolence.

References:

Title II of the law n°04/19 of July 30 supporting the organization, attributions and the functioning of Human Rights Observatory.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

48j. In practice, the government acts on the findings of the agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The reports of the National Observatory of Human Rights are generally ignored by the government, which is one of the biggest violators of Human Rights in the country.

References:

A.B. Mwaka, Conditions and challenges of the dialogue on civilian security in DRC: the role of intellectual and Ngos actors, in S.M. Thomson et Z. Wilson (ed.), Rwanda and the Great Lakes Region : Ten Years On From Genocide, International Insight, Special Issue, June 2005, Nova Scotia, pp.167-188.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

48k. In practice, the agency (or agencies) acts on citizen complaints within a reasonable time period.

Comments:

The National Observatory of Human Rights does not work in a rush. Its interventions generally end with statements that are not followed by real investigations. The situation is more blatant when there are violations of human rights lamented in the countryside 2,000 kilometers away. It doesn't have representation outside the capitol.

References:

Lobho L. D., Le Congo à l'épreuve de la démocratie. Essai d'histoire politique du Congo, Presses de l'Université de Kinshasa, Kinshasa, 2006, pp.264-284.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

49. Can citizens access the reports of the ombudsman?

0

49a. In law, citizens can access reports of the ombudsman(s).

YES | **NO**

Comments:

The ONDH reports are not all put at the disposition of the public. Only their broad communiqués are accessible on the website or by internet.

References:

Lobho L. D., Le Congo à l'épreuve de la démocratie. Essai d'histoire politique du Congo, Presses de l'Université de Kinshasa, Kinshasa, 2006, pp.264-284.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

49b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The National Observatory of Human Rights reports are not accessible in a reasonable time limit. Travel from rural areas produces more delay.

References:

A talk with Bushiri Sumaili, Human Rights activist within the NGO for the cohabitation of the people, Kinshasa, September 6, 2006.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The National Observatory of Human Rights reports are not accessible at a reasonable cost. Travel from rural areas produces more costs.

References:

A talk with Bushiri Sumaili, Human Rights activist within the NGO for the cohabitation of the people, Kinshasa, September 6, 2006.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The court of revenues exists.

References:

Paragraph 3, section 4, title III of the constitution of the DRC in use since June 30, 2006.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

51. Is the supreme audit institution effective?

47

51a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

In terms of the law, the court of the revenues is protected from political interference. Its members are magistrates, and are ruled

by a particular statute. The court of revenues has a budget which is prepared by the president.

References:

By-law n°87-032 supporting the composition, the organization and the functioning of the court of the revenues. By-law n°87-031 on the procedure about the court of the revenues. By-law n°87-032 supporting the statutes of the magistrates of the court of the revenues.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

51b. In practice, the head of the agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The president of the court of revenues is protected against all unjustified eviction. A law protects its action, but he depends on the President of the Republic who nominates and revokes resources. However, since its creation, the court does not know such a situation.

References:

By-law n°87-032 supporting the statutes of the magistrates of the court of the revenues.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

51c. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The court of revenues has a full-time staff located in the capital city Kinshasa. This personnel is largely insufficient to audit throughout the country.

References:

A talk with an agent of the secretariat of the revenues court, Kinshasa, July 23, 2006.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

51d. In practice, agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Even though the nomination at the court of revenues is carried out by the head of state, the law establishes a procedure of recruitment that is relatively observed. But many suspect that appointments remain highly political.

References:

Chapter I of the by-law n°87-032 supporting the statutes of the magistrates of the court of the revenues.

Interview with an agent of the secretariat of the revenues court, Kinshasa, July 23, 2006.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

51e. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The court of revenues, as all the other public services of the state in DRC regularly receives the insufficient charges for its functioning. These charges are generally given when the rulers in power launch an immediate inquiry to the enterprises and services of the state that interest them.

References:

A talk with an agent of the secretariat of the revenues court, Kinshasa, July 23, 2006.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

51f. In practice, the agency makes regular public reports.

100 | 75 | **50** | 25 | 0

Comments:

The court of revenues does irregularly make reports that are intended for parliament and are published by the official bulletin.

References:

The DRC official bulletin.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

51g. In practice, the government acts on the findings of the agency.

100 | 75 | 50 | 25 | 0

Comments:

In general, the government ignores the results of the audits done by the revenue courts.

References:

A talk with an agent of the secretariat of the revenues court, Kinshasa, July 23, 2006.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

51h. In practice, the supreme audit institution is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Even though the law recognizes that the public prosecutor of the revenue court has the right to investigate, the revenue court has difficulty initiating its own investigations. The insufficient financial means it has does not permit to do anything.

References:

A talk with an agent of the secretariat of the revenues court, Kinshasa, July 23, 2006.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

52. Can citizens access reports of the supreme audit institution?

52a. In law, citizens can access reports of the agency.

YES | NO

Comments:

The law requires that an annual public report is done by the revenue court. Other reports are intended for the minister of finance, the head of state and the parliament.

References:

Point 33 paragraph 3 of the by-law n°87-005.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

52b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The reports of the revenue court are accessible when they are published in the official bulletin. The process of publication takes at least one month.

References:

A talk with an agent of the secretariat of the revenues court, Kinshasa, July 23, 2006.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The audit reports are accessible at a prohibitive price. They are generally published in the special items of the official bulletins which cost between 2,500 and 5,300 Congolese francs or between US\$5 and US\$10. This amount represents a significant portion of the salary of middle class citizens (journalist, High school teacher, etc.)

References:

The official bulletin of the DRC.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

66
V-3. Taxes and Customs

53. In law, is there a national tax collection agency?

100

53. In law, is there a national tax collection agency?

YES | NO

Comments:

In the law, it's the General Direction of the Incomes (DGI) and the General Direction of Administrative takings (DGRAD) that take care of the State incomes and taxes.

References:

Point 2 paragraph 4 of the Decree n°017/2003 of March 2, 2003 creating the creating the General Direction of the incomes, modified and completed the Decree n°04/099 of December 30, 2004

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

54. Is the tax collection agency effective?

38

54a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The DGI has a full-time professional personnel, even excessive in some places in the country.

References:

Decree n°017/2003 of March 2, 2003 creating the creating the General Direction of the incomes, modified and completed the Decree n°04/099 of December 30, 2004

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

54b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

For its functioning and personnel, the DGI has a budgetary allowance of 5 percent of the revenue assigned, 40 percent of fiscal penalties recovered for the investment expenses. However, the distribution of the resources links the representatives to the political actors who nominate them.

References:

Point 4 of the Decree n°017/2003 of March 02, 2003 creating the General Direction of the income, modified and completed the Decree n°04/099 of December 30, 2004

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

55. In practice, are tax laws enforced uniformly and without discrimination?

25

55. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The texts regarding the taxes are applied in discriminatory and arbitrary way as for the taxpayers in power or for those who are close to persons in power, foreigners, ignorants, etc.

References:

Tshungu B., Finances and democracy in DR Congo. Customs without pot, Kinshasa, IDLP, 1999.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

56. In law, is there a national customs and excise agency?

100

56. In law, is there a national customs and excise agency?

YES | NO

Comments:

There is an Excise and Customs Agency named OFIDA, formally mandated to collect excises and inspect customs.

References:

Ordonnance-loi n°79-114 du 15 mai 1979 créant l'office de Douane et accises (OFIDA).

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

57. Is the customs and excise agency effective?

50

57a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

OFIDA has full-time, professional staff to fulfill their excise and customs mandate.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

57b. In practice, the agency receives regular funding.

100 | 75 | **50** | 25 | 0

Comments:

Apart from the salary of the agents, the OFIDA receives regularly five percent that are legally recognized and that are retroceded by the public revenue department for its functioning and the remuneration of its personnel. That's the distribution of their resources between excessive personnel in some entities and the mismanagement of the representatives of which the funds are insufficient. Sometimes there is also a delay in the retrocession of the resources that handicap their work.

References:

Talk with Lambert Okitengeno, agent of the OFIDA agency at Kinshasa, October 2, 2006.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | **25** | 0

Comments:

Customs and excise laws are not uniformly and without discrimination applied throughout the country and for all the citizens. The law is strictly applied for the simple citizens whereas it is not applied as much as for the political leaders. There is frequent escape of the state's rights.

References:

International Crisis Group, Katanga: Forgotten crisis of the DRC, Report Africa n°103, 9th January 2006, pp.9-10.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. Financial Sector Regulation

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

100

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

YES | NO

Comments:

The General Inspection of Finances (IGF) exists.

References:

Decree n°87-323 of September 15, 1987 supporting the creation The General Inspection of Finances (IGF), as modified and completed by the decree n°91-018 of March 6, 1991 and by the decree n°034-B/2003 of March 18, 2003.

YES: A YES score is earned if there is an agency tasked with overseeing publicly listed companies in the public interest and ensuring that disclosure rules are met.

NO: A NO score is earned if this function is spread over several agencies or does not exist.

60. Is the financial regulatory agency effective?

40

60a. In law, the financial regulatory agency is protected from political interference.

YES | NO

Comments:

In terms of the law, the General Inspection of the finances is not an autonomous agency. It is not under the direct authority of the head of the state.

References:

Point 4 of the by-law n°87-323 of September 15, 1987 supporting the creation the General Inspection of the finances, abbreviated by the IGF , as modified and completed by the by-law n°91-018 of March 6, 1991 and by the Decree n° 034-B/2003 of March 18, 2003.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

60b. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The General Inspection of the finances has a professional and full-time staff to fulfil its task. The law fixes the number to 200 inspectors apart from the technical and administrative personnel.

References:

Points 3 of the by-law n°87-323 of September 15, 1987 supporting the creation the General Inspection of the finances, abbreviated by the IGF , as modified and completed by the by-law n°91-018 of March 6, 1991 and by the Decree n° 034-B/2003 of March 18, 2003.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

60c. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The General Inspection of the finances has for the functioning and the motivation of its personnel sufficient financing sources. These are the blackouts in the retrocession of these resources, who depend mainly on the priorities of the politicians of the moment, that infringe the legal mechanisms.

References:

Points 5, 6 and 6 bis of the by-law n°87-323 of September 15, 1987 supporting the creation the General Inspection of the finances, abbreviated by the IGF , as modified and completed by the by-law n°91-018 of March 6, 1991 and by the Decree n° 034-B/2003 of March 18, 2003.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

60d. In practice, when necessary, the financial regulatory agency independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the inspection of the finances initiates some investigations who come up generally against barrier of the influence peddling, at the impunity that characterizes the management of the state and sometime to the lack of the cooperation of the public services like those of the justice.

References:

A talk with an inspector of the finances. Kinshasa, October 12, 2006. The official bulletin of the DRC.

100: When irregularities are discovered, the agency is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

60e. In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

If it's necessary, the General Inspection of the Finances imposes the penalties on offenders. But these measures encountered some problems when those concerned are the protected by the hierarchy or when those who have to penalize are accomplices or corrupted.

References:

A talk with an inspector of the finances. Kinshasa, October 12, 2006. The official bulletin of the DRC.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partis

61. Can citizens access the financial records of publicly listed companies?

25

61a. In law, citizens can access the financial records of publicly listed companies.

YES | **NO**

Comments:

According the law, the periodic reports of the inspection missions and the investigations reports of General Inspection of the finances are intended to the Head of state. From this point of view, they are not intended to the public.

References:

The by-law n°87-323 of September 15, 1987 supporting the creation the General Inspection of the finances, abbreviated by the IGF , as modified and completed by the by-law n°91-018 of March 6, 1991 and by the Decree n° 034-B/2003 of March 18, 2003.

YES: A YES score is earned if the financial information of all publicly traded companies is required by law to be public.

NO: A NO score is earned if any category of publicly- owned or publicly-traded company is exempt from this rule, or no such rules exist.

61b. In practice, the financial records of publicly listed companies are regularly updated.

100 | 75 | 50 | 25 | **0**

Comments:

The law does not oblige it.

References:

The by-law n°87-323 of September 15, 1987 supporting the creation the General Inspection of the finances, abbreviated by the IGF , as modified and completed by the by-law n°91-018 of March 6, 1991 and by the Decree n° 034-B/2003 of March 18, 2003.

100: Publicly traded companies always disclose financial data, which is generally accurate and up to date.

75:

50: Publicly traded companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value to investors.

61c. In practice, the financial records of publicly listed companies are audited according to international accounting standards.

100 | 75 | **50** | 25 | 0

Comments:

In the practice, the financial records of publicly listed companies are audited according to the principles of the audit of the Congolese general accounting plan. This system is inspired by international accounting standards.

References:

A talk with an inspector of the finances. Kinshasa, October 12, 2006. The official bulletin of the DRC.

100: Financial records of all public companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of public companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: Publicly traded companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

61d. In practice, citizens can access the records of disciplinary decisions imposed by the government on publicly-listed companies.

100 | 75 | 50 | 25 | 0

Comments:

The records of disciplinary decisions imposed by the government on publicly-listed companies are not easily accessible. They are accessible at the official bulletin after one month, if it does not have an impact on the image of the rulers who are in power.

References:

A talk with an inspector of the finances. Kinshasa, October 12, 2006. The official bulletin of the DRC.

100: These records are freely available to all citizens through a formal official process.

75:

50: These records are available to all citizens, with some exceptions.

25:

0: These records are generally not available through official processes.

61e. In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

These reports are not intended to the public.

References:

Article 10 points 5 and 6 of the by-law n°87-323 of September 15, 1987 supporting the creation the General Inspection of the finances, abbreviated by the IGF , as modified and completed by the by-law n°91-018 of March 6, 1991 and by the Decree n° 034-B/2003 of March 18, 2003.

A talk with an inspector of the finances. Kinshasa, October 12, 2006.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61f. In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

These reports are not accessible.

References:

Article 10 points 5 and 6 of the by-law n°87-323 of September 15, 1987 supporting the creation the General Inspection of the finances, abbreviated by the IGF , as modified and completed by the by-law n°91-018 of March 6, 1991 and by the Decree n° 034-B/2003 of March 18, 2003.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55
V-5. Business Licensing and Regulation

62. Are business licenses available to all citizens?

75

62a. In law, anyone may apply for a business license.

YES | NO

Comments:

The state guarantees the freedom of commerce to any individual. Only the agents and their wives who are obliged to obtain a commerce licence.

References:

Point 35 of the DRC constitution in use since June 30, 2006. Point 19 of the Decree of March 6, 1951 creating the commerce register as modified by the decree of June 16, 1960. Point 4 of the decree n° 79-025 of February 7, 1979 relating to the opening

of a new register of commerce and modifying and completing the decree n°41/161 of June 15, 1951 relating to the register of commerce.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

62b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

There is not a particular mechanism in the Civil and Commercial Congolese code to complain if a business license request is denied. The court of appeals is the default mechanism to protest a denial.

References:

Civil and Commercial Congolese code (updated at March 31, 1997 by Kalongo Mbikayi and Inier Latebo Ekwa)

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

62c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Even though the law requires a 15-day time-limit in order to answer to all the request for the obtention of the new register of commerce, this answer intervenes generally after a longer term.

References:

Civil and Commercial Congolese code (updated at March 31, 1997 by Kalongo Mbikayi and Inier Latebo Ekwa)

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months.

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

62d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with representative of commerce, Kinshasa, October 2, 2006.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

63. Do businesses receive equitable regulatory treatment from the government?

0

63a. In law, basic business regulatory requirements for meeting health, safety, and environmental standards are transparent and publicly available.

YES | **NO**

Comments:

No particular mechanism protects the traders to meet health, safety, and environmental standards.

References:

The DRC Official Bulletin.

YES: A YES score is earned if basic regulatory requirements for meeting health, safety, and environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

63b. In practice, business inspections by the government are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The arbitrary aims of corruption dominates the government actions on the commerce inspection. Most of the controls initiated by the public services aim for money.

References:

Talk with an agent of the Federation of the Bussinessmen of Congo, Kinshasa, and October 3, 2006.

100: Business inspections by the government (i.e. health, safety, or environmental inspections) are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government (i.e. health, safety, or environmental inspections) are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections (i.e. health, safety, or environmental inspections) are routinely carried out by the government in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁵⁷Anti-Corruption Law

64. Is there legislation criminalizing corruption?

100

64a. In law, attempted corruption is illegal.

YES | NO

Comments:

The law expressly condemns attempted corruption.

References:

Points 147 to 150 of the Congolese penal code Book II as modified by the laws n°73-010 of February 14, 1973 and 05/006 of March 29, 2005.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

64b. In law, extortion is illegal.

YES | NO

Comments:

The Congolese law condemns extortion.

References:

Point 84 of the Congolese penal code of Book II.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

64c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Offering a bribe is illegal in Congolese law.

References:

Point 147 of the law n°05/066 modifying and completing the Decree of January 1947 of the Congolese Penal code.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

In terms of the law, receiving a bribe is illegal.

References:

Points 147 to 150 of the Congolese penal code Book II as modified by the laws n°73-010 of February 14, 1973 and 05/006 of March 29, 2005.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

To bribe an official foreigner or any other person is illegal.

References:

Point 147 (paragraph 2) of the Congolese penal code Book II as modified by the laws n°73-010 of February 14, 1973 and 05/006 of March 29, 2005.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

64f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

In terms of the law, use of public resources for private profit is illegal.

References:

Section VI (points 145 to 146) of Book II of the Congolese penal code as modified by the laws n°73-010 of February 14, 1973

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Generally speaking, State agents have to keep secret the public confidential informations. They cannot be used for private ends. The law expressly erects it to a press offence, all use of judicial informations are supposed to be kept confidential.

References:

Point 73 of the Congolese penal code. Point 149 of the law n°05/006 modifying and completing the Congolese penal code. Article 79 of the law n°96-002 of June 22, 1996 laying down the mode of the press freedom exercise.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64h. In law, money laundering is illegal.

YES | NO

Comments:

According of the law, the laundering of money is illegal.

References:

Law n°04/16 of July 19, 2004 carrying the fight against the terrorism financing and the capital laundering.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

64i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Regarding to the law, conspiracy to commit a crime (i.e. organized crime) is illegal.

References:

Point 34 of the law n°04/16 of July 19, 2004 carrying the fight against the terrorism financing and the capital laundering.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

A law creating the Commission of Ethics and for the Struggle against Corruption exists. The new constitution in use since June 30, 2006 does not consider it among the institutions supporting democracy contrary to the previous constitution of the transition.

References:

The law n°04/020 of July 30, 2004 carrying organization, attributions and functioning of the Commission of Ethics and for the Struggle against Corruption. Points 211 and 212 of the DRC constitution in use since June 30, 2006.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

66. Is the anti-corruption agency effective?

66a. In law, the agency (or agencies) is protected from political interference.

YES | NO

Comments:

The Commission of Ethics and for the Struggle against Corruption is legally protected against the political interferences.

References:

Point 1 and 4 the law n°04/020 of July 30, 2004 carrying organization, attributions and functioning of the Commission of Ethics and for the Struggle against Corruption.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

66b. In practice, the agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the CELC is not protected against political interference. Its constitution from the protagonists of the war in DRC did not permit its effective functioning. It has been sapped by internal conflicts.

References:

Intervention of the UNDP director in the DRC at the restricted meeting on the governance, Bruxelles, July 12, 2005, (available on the web site www.undp.org.cd).

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

66c. In practice, the head of the agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

In principle, the members of the CELC have been designated for all the period of the transition. However, their eviction depended on the chiefs of the components who could block their progress if ever they become bothersome for their interests. That is why this commission has remained ineffective.

References:

Point 11 of the law n°04/020 of July 30, 2004 carrying organization, attributions and functioning of the Commission of Ethics and for the Struggle against Corruption.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

66d. In practice, appointments to the agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The nomination of people at the CELC did not necessarily take into account the professional criteria. It's in term of the arrangements aiming to put an end of the belligerent situation that the political components were charged to propose the persons to be recruited. It is not professional criteria that prevailed in these nominations.

References:

Inclusive and Global Agreement. Point 8 of the law n°04/020 of July 30, 2004 carrying organization, attributions and functioning of the Commission of Ethics and for the Struggle against Corruption.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

66e. In practice, the agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The CELC does not have enough staff members to fulfill its tasks. It has 23 staff members and about 20 persons recruited as experts.

References:

Interview with a member of CELC staff, Kinshasa; August 13, 2006. UNDP, existing mechanisms of the good governance in DRC. Intervention of the UNDP director in the DRC at the restricted meeting on the governance, Bruxelles, July 12, 2005, p. 5 (available on the web site www.undp.org.cd).

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

66f. In practice, the agency (or agencies) receives regular funding.

100 | 75 | 50 | **25** | 0

Comments:

The CELC has a financial autonomy and elaborates budgetary predictions on the Budget of state. It can also have recourse to other financial means coming from partners other than the Congolese government. The financing of its budget by the government has remained irregular and insufficient. That is the same with the support international organizations like the UNDP.

References:

Points 4, 28 and 29 of the law n°04/020 of July 30, 2004 carrying organization, attributions and functioning of the Commission of Ethics and for the Struggle against Corruption. Interview with a member of the CELC staff, Kinshasa, July 13, 2006. Intervention

of the UNDP director in the DRC at the restricted meeting on the governance, Bruxelles, July 12, 2005, p. 5 (available on the web site www.undp.org.cd).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66g. In practice, the agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The CELC irregularly produces reports that remain confidential and often intended for the justice. Some reports of the activities popularization are occasionally reserved to the public.

References:

Refer to www.undp.org.cd

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

66h. In practice, the agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the CELC does not hold enough power to carry out its mandate. The few affairs that it has tried to initiate have come to nothing. Sometimes it has made the State agents sensitive to corrupt practices and more observant of code of good practice of the state agent. It has brought more than five million dollars to the State.

References:

Interview with the CELC staff member, Kinshasa, August 13, 2006. Intervention of the UNDP director in the DRC at the restricted meeting on the governance, Bruxelles, July 12, 2005, p. 5 (available on the web site www.undp.org.cd).

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

66i. In practice, when necessary, the agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the CELC has unsuccessfully initiated some investigations. For the moment, the justice has refused to cooperate by pursuing the persons incriminated in the CELC reports.

References:

Germain Kadima, « DGRAD: the mafia networks battle » in Le Phare, April 15, 2006.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

67. Can citizens access the anti-corruption agency?

0

67a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The CELC rarely takes on corruption in the country. A good many mining contracts have been scandalous affairs that remained without investigation or even a statement by the CELC. That is the same with corruption in the public enterprises.

References:

Reports of the special commission works in charge of the validity of the conventions of economic and financial nature concluded during the wars of 1996-1997 and of 1998 (Lutundala Commission).

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

67b. In practice, citizens can complain to the agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Citizens do not yet know that they can complain to CELC in case of corruption. CELC has registered few cases according to the established procedure because many persons who have attempted to denounce the cases of corruption were usually afraid to be identified for fear of eventual retaliations and recriminations.

References:

Interview with a member of CELC staff, Kinshasa; August 13, 2006.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

42 VI-3. Rule of Law

68. Is there an appeals mechanism for challenging criminal judgments?

42

68a. In law, there is a general right of appeal.

YES | NO

Comments:

There is a general right of appeal in the law.

References:

Chapter II, title II of the Congolese judicial Code

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

68b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The time limit to lodge an appeal is 30 days from the judgement. Although registered immediately, the appeal examination takes many months, or even years.

References:

Interview with Mr Florent Matambela, lawyer at the bar of Gombe; august 28, 2006.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

68c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Officially, the cost of using of an appeal mechanism is possible. But, this amount is inflated by the charges created by the administration of the justice and the complexity of the law that recommend that in such a situation, one must use a lawyer. These charges can be evaluated to more or less US\$300 for the civil affairs.

References:

Interview with Mr Florent Matambela, lawyer at the bar of Gombe; august 28, 2006.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

69. In practice, do judgments in the criminal system follow written law?

50

69. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

As a general rule, all the judgement in the criminal system follows the written law procedure. But there are a good many cases of exceptions where the motivation is corruption, the intrusions of political pressure, etc.

References:

Interview with Mr Florent Matambela, lawyer at the bar of Gombe; august 28, 2006.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

70. In practice, are judicial decisions enforced by the state?

50

70. In practice, are judicial decisions enforced by the state?

100 | 75 | **50** | 25 | 0

Comments:

In general, the state participates in the execution of the judicial decisions. But some decisions are not implemented.

References:

"Struggle against impunity: almost all is still to be done", June 29th 2006. Available at <http://www.monuc.org/news.aspx?newsID11575>

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

71. Is the judiciary able to act independently?

71a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

The independence of the judicial power in comparison with the executive power is guaranteed by the Congolese constitution. The law sets that the judicial power has an elaborated budget by the High Board of the magistrature, a managing organ enrolled in the budget of the country.

References:

Points 149-152 of the Congolese constitution in use since June 30, 2006.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

71b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, judges at the national courts are protected from political interferences.

References:

www.mlc-france.org/aticle.php3?id_article=367

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

71c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | **NO**

Comments:

There is no transparent mechanism of the distribution of the cases between the judges at the national level.

References:

A talk with a judge of the Supreme Court of Justice. Kinshasa, August 28, 2006.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

71d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

The laws of the country protect the judges at the national level of the unjustified dismissal. A disciplinary procedure exists in this matter. The reform on the way aims to protect the judges.

References:

Section II, chapter VIII of the by-law n°88-056 of September 29, 1988 supporting the statute of the magistrates.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

72. Are judges safe when adjudicating corruption cases?

100

72a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

No documented case is known.

References:

A talk with a judge of the Supreme Court of Justice. Kinshasa, August 28, 2006.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

No documented case is known.

References:

A talk with a judge of the Supreme Court of Justice. Kinshasa, August 28, 2006.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

73. Do citizens have equal access to the justice system?

33

73a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are often affected by ethnic bias.

References:

Interview with a member of the office of the first President of the Supreme Court of Justice who required anonymity, Kinshasa, December 22nd, 2006.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

73b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

No any documented case of exclusion is known.

References:

A talk with a judge of the Supreme Court of Justice. Kinshasa, August 28, 2006.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence.

73c. In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Comments:

In practice, legal counsels for defendants are put at the service of the citizens in criminal cases who cannot afford it. The generalization of poverty explains the reason why they are not the best while defending their clients.

References:

Interview with Mr Florent Matambela, lawyer at the bar of Gombe; august 28, 2006.

100: State-provided legal aid is basic, but well trained and effective in representing the rights of indigent defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some indigent defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most indigent defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

73d. In practice, citizens earning the median yearly income can afford to bring a legal suit.

Comments:

In practice, citizens earning the median yearly income cannot afford to bring a legal suit. The middle class citizen earns less than 2,500 Congoese Francs, less than one U.S. dollar.

References:

Interview with Mr Florent Matambela, lawyer at the bar of Gombe; august 28, 2006.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

73e. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In practice, a typical small retail business cannot afford to bring a legal suit. Those among them who are situated in the big centers like Kinshasa, Lubumbashi, Mbuji-Mayi can make it.

References:

Interview with Mr Florent Matambela, lawyer at the bar of Gombe; august 28, 2006.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

73f. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

In general, the Congolese citizens do not have the facility to access the courts and the tribunals. The major part of this population has to walk hundreds of kilometres to reach them.

References:

<http://hrw.org/French/docs2005/01/13/congo9993txt.htm>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

74. Is the law enforcement agency (i.e. the police) effective?

17

74a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The nominations in the services of the national police are essentially done according to the political criteria that ended the belligerent situation. These signatory components of the agreement at the end of the war that propose the nominations.

References:

Articles on the incoherences in the nominations.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

74b. In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The police have an insufficient budget: generally, it does not have an office, office supplies, etc.

References:

A talk with a member of the staff of the the inspection of the national Congolese police. Kinshasa, September 26, 2006.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

74c. In practice, the agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The national Congolese police are not protected from political interferences. It is subject to the influences of the rulers to the power.

References:

"The reform of PNC is still a big challenge," December 19th 2006. Available at <http://www.monuc.org/news.aspx?newsID=13445>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

75. Can law enforcement officials be held accountable for their actions?

42

75a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

There is no specific and independent mechanism apart from the military justice.

References:

The RDC official bulletin

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions.

NO: A NO score is earned if there is no such mechanism.

75b. In practice, the independent reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Such a mechanism doesn't exist.

References:

The RDC official bulletin.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

75c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

There is no specific and independent mechanism, although the Commission of the Ethics and the Fight against the Corruption does have jurisdiction over the police.

References:

The RDC official bulletin.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity is separate from the regular police department.

NO: A NO score is earned if no such agency/entity exists.

75d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | **25** | 0

References:

As noted in the series of indicators for the Anti-Corruption Agency (66), the Commission of the Ethics and the Fight against the Corruption is deficient in many areas of implementation, enforcement, and capacity.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

75e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

The law enforcement officials are subject to the ordinary tribunals for their common law crimes and to the military jurisdictions for the offences that are in the military penal code.

References:

Point 55 of the by-law n°002/2002 of January 26, 2002 supporting institution, organization and the functioning the Congolese National police.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

75f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | **25** | 0

Comments:

The enforcement officials as the policemen are rarely deferred to the court. They have a tacit immunity.

References:

Struggle against impunity: almost all is still to do,' June 29th, 2006. Available on <http://www.monuc.org/news.aspx?newsID=11575>.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.