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Chicken now, not eggs later: short-termism, underdevelopment and regime stabilisation in the DRC's oil governance

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Abstract

The DRC has major possibilities for oil development, but very little actual development. This paper aims to show why this is the case, demonstrating that the main function of the oil sector is regime stability, which manifests itself in various ways. First, the sector is a major source of patronage and rent-extraction. These rents are not created through the active production and development of the sector, but primarily through *not* developing the sector, which is much more interesting for short-term rent extraction for the concerned actors. Second, we show how there are political and social logics behind corruption, which are also related with regime-stability: rent extraction is allowed as a form of political reward, but this political logic equally means that it should not be overdone. Overdoing corruption brings unnecessary attention, which is detrimental for regime stability. Paradoxically, oil sector development is contrary to regime stability: internal geopolitics, regional relationships, and central control over major wealth are threatened by sector development. The importance of describing these dynamics goes beyond the oil sector: it allows for a better understanding of how political control and corruption function within the DRC, and how development becomes their victim.

1. INTRODUCTION[1]

Why does the Democratic Republic of Congo lack major oil production and development? The country has major oil potential – if preliminary studies are to be believed – yet only a tiny fraction of this has been developed. 1990 estimates put reserves at 39 million barrels offshore and 17 million barrels onshore (Kanika, 2013, p. 4). This is the basis of current production. Yet there is plenty more that is either undeveloped or left unproven despite positive signs. According to preliminary studies and official assertions, there is major potential in a number of onshore areas (the Cuvette Centrale[2], Lake Albert[3] and Lake Tanganyika Basin[4]). If accurate, these point to a potential could go beyond 20 *billion* barrels – far beyond the current production level. However, true potential remains unclear: multiple studies have raised possibilities, but serious efforts to determine facticity and develop geological understanding have not been made. Also this in itself is puzzling: given the clear and huge potential, why is there no major effort done to determine reserves?[5]

Through the development of the above potential, the DRC would be the second most significant oil state in Africa, behind only Nigeria, which has proven reserves of around 37 billion barrels, and well ahead of Angola's current 9 billion barrels. Yet limited progress has been made since the 1990s, and production remains at a paltry 25,000 bpd. In order to better understand the lack of development, this paper aims to unpack the ways in which the oil sector is governed. By analysing and unpacking the ways in which the Congolese oil sector is managed, and which functions it fulfils, we aim to answer these questions. While there has been an extensive analysis of natural resource governance in the DRC – in particular of the mining sector (eg. Cuvelier, 2010; Ansoms & Marysse, 2011; Marysse & Tshimanga, 2013) – very little (academic) analysis has been provided on the governance of the oil sector, a gap this paper aims to fill. In doing so, this paper presents the following arguments: first, similar to other states where oil is present, rent-seeking plays an important role. Yet the production of rents primarily takes place in ways that delay rather than promote production and development of the sector. As we will demonstrate, unproductive activities such as signing and cancelling contracts are much more profitable than actually developing the sector. Second, regime stability is much more important than developing the sector, in which – again – it is not to the advantage of the regime to push exploration and production. This would offer opportunities to potential political rivals (or at least non-loyalists), antagonise regional competitors, and involve (foreign) actors who could threaten the stability of the regime. Third, given the precarious institutional and political situation of the country, the short-term is much more important than the long-term perspective, yet the latter is needed to develop the sector. Corruption plays an important role in this, as a

[1] We would like to thank the Carter Center DRC, and in particular Erik Kennes, for their assistance with this research.

[2] In the Cuvette Centrale, COMICO and HRT announced an estimated potential of 7.3-13 billion barrels (COMICO, 2008, p. 3) Damien Delvaux, a Belgian geologist, has argued for caution on such predictions, judging them "highly hypothetical". Delvaux has never demonstrated proof to the contrary, and instead emphasized the need for further studies (Misser, 2013, p. 155-156). Yet activity in the Cuvette Centrale has been blocked by the state for a decade.

[3] In the Albertine Graben, Ugandan declared finding 3.5 billion barrels ("Uganda ups oil", 2012). This geology is mirrored on the Congolese side of Lake Albert, but the only declaration in the area – by Caprikat & Foxwhelp, of 3 billion barrels in two blocks – has not been justified with concrete research findings.

[4] The glimmers continue further south: In March 2010, the Minister of Hydrocarbons announced to the African Petroleum Conference (CAPE) a potential of 8 billion barrels in the Lake Tanganyika basin (Misser, 2013, p. 160).

[5] Moreover, the DRC has unquestionable basis in international law to claim a significant extension to its maritime territory. The most justifiable area for this claim to be made cuts through Angola's most productive offshore blocks. Estimates broadly put production in this area at around half of Angolan production, which stands at around 1.8 million barrels per day. The offshore potential poses a separate complex problematic and is not the main focus of this paper; we mainly focus on the onshore potential.

source of patronage, and transforming the oil sector de facto into a 'grazing ground', in which political allies are allowed to 'eat'. Lastly and importantly, this does not mean that corruption is unlimited: all of this happens within certain limits. As we will show, corruption sometimes attracts too much unwanted attention, and therefore potentially jeopardizes regime stability. The same holds for development: a limited degree of development is allowed, stopping at allocation of blocks and minimal exploration. Yet extensive long-term development, which involves uncontrolled rents and profits, includes foreign and large-scale investors, and potentially jeopardizes fragile geopolitical alliances is equally not tolerated.

By carefully analysing and unpacking these various governance dynamics within the oil sector, the relevance of this paper goes beyond the sector as such: it allows a better understanding of how political control and corruption functions within the DRC, and how development becomes their victim.[6] Importantly, this paper discusses the history and evolution of the oil sector in the DRC in a detailed manner for empirical and theoretical reasons. First, the academic literature on the Congolese oil sector is largely non-existent. This paper (and its level of detail) contributes by to filling this gap. Second, this level of detail allows us to carefully demonstrate our argument on the role of corruption and (non)development in the oil sector.

This paper is based on field research in the DRC – particularly in Kinshasa, and to a lesser extent in Muanda – between September and December 2017. During this time, fifty-nine semi-structured interviews were conducted with a wide range of actors: current and former government officials, analysts, civil society representatives, and so on. Additionally, a review of the academic and grey literature on the issue was conducted.

The paper is structured in the following way: in the next section, we give a brief overview of the relevant theory for the paper. We then give a brief introduction to the oil sector in the DRC, and its history. In the following two sections, we develop the main arguments: we first show the presidentialisation of the sector, i.e. how and in which ways the sector has come under firm presidential control. We then look at how the sector is used as a source of patronage. The conclusion brings everything together, by showing how the oil sector is governed through a range of rules.

2. OIL AND CORRUPTION

In this section, we develop the theoretical perspectives useful for our paper. First, we look into how oil rents are used. Second, we look into theories of patronage and corruption: are there limits to how these rents are used?

2.1. Rent-seeking and oil

Much has been written on how oil rents are being used, most typically in the literature on 'oil rentier states'. These are commonly described with the following characteristics: they do not rely on popular taxation for their income, they spend oil revenue on repressing the population, and leave little room for opposition (Sandbakken, 2006, p. 135). In oil rentier states oil makes up an important part of GDP; this is not the case for the DRC, where it only has a small percentage of the GDP. Yet, the literature on oil rentier states is still useful in analysing the ways in which oil is governed and its rents are used.

[6] We make no comment as to the potential benefits or pitfalls of oil sector development. Some consider it a possible source of wealth and inclusive development, others of environmental degradation, violence and elite capture. This paper does not enter these debates, being limited to discussing the political economy of sectoral lethargy.

On the one hand, oil rentier states try to capture as much as possible rents generated through oil.[7] This rent is "abundant; it accrues directly to the state; it is readily accessible; and it is easily mobilized" (Okruhlik, 1999, p. 308). Much of these rents come from foreign sources, who are engaged in buying oil. The state will use a variety of strategies to capture rents, such as extraction, intrusion and penetration[8].

On the other hand, the state "has discretionary power over how the revenues are spent" (Sandbakken, 2006, p. 138). This means it is not only used for personal enrichment by elite actors, but also for regime stability: the literature on the rentier state argues how governments use "oil revenues to relieve social pressures that might otherwise lead to demands for greater accountability" (Ross, 2001, p. 332). The government aims to "purchase consent and acquire a form of legitimation" (Sandbakken, 2006, p. 138). Potentially, this would be possible through government expenditures on a welfare system. However, this instead often happens through the redistribution of these rents: "Money is the ultimate source of control used to develop the economy in a way that will maximize obedience, which is obtained by controlling the structure of the market and the flow of funds" (Okruhlik, 1999, p. 296). Generally, loyalty and legitimacy is bought through the distribution of public jobs, contracts, licenses, projects and so on (Sandbakken, 2006, p. 138; Ross, 2001, p. 333). The economy and political institutions are used in a way to maximize obedience. Buying-off or repressing political opposition also falls into this category: the government will use its power to prevent the formation of independent sources of power (Ross, 2001, p. 334). In other words, through this generation of rents, the state is not interested in taxation; the primary function of the state is distribution or allocation, which becomes an important source of legitimacy (Okruhlik, 1999, p. 296). In this context, it has therefore been shown how oil abundance leads to continued authoritarianism (Jensen & Wantchekon, 2004).

2.2. Corruption and its limits

Jean-François Bayart (2009, pp. lxxvi, 235) cites the (Cameroonian) proverb 'Goats eat where they are tethered' to characterise corruption as a form of social and political behaviour which is not limited to political elites. In Mozambique, the same phenomenon is referred to as 'Cabritalism' ('goatism', a conflation of cabrito (goat) and capitalismo (capitalism)), defined in a satirical "goat dictionary" as a "socio-economic system characterised by the use of state resources for private profit. Distribution policy is made according to the principle 'from each according to their patience to each according to the length of their rope' " (Harrison, 1999, p. 548)[9]. A key element in the definition, and little developed in the literature, are the rather explicit boundaries for 'eating', as set out in the definition: goats are allowed to eat, but this depends on their patience, and the length of the rope. What happens if the goats do not respect the boundaries set out by this arrangement, i.e. if they do not respect the length of the rope, or have not enough patience? What happens if they over-eat?

Key here is that corruption is directed by a variety of rules. Corruption has a social element to it, as transfers are not only financial, but have wider social and cultural implica-

[7] Rent-seeking can be defined as "the search for financial gain or profit from non-productive economic activities that are especially prevalent among those who depend on state privilege for access to credit, grants, licences, contracts, and, often, monopoly markets" (Harsch, 1993, p. 41).
[8] "Penetration, the extension of state authority in society, occurs not only through formal institutional regulation, but even more through informal penetrative mechanisms such as marriage, business partnerships, and monopolies on economic activity" (Okruhlik, 1999, p. 309).
[9] This is an ironic reformulation of Karl Marx's utopian formulation of economic distribution: "From each according to his ability, to each according to his needs".

tions. This is broadly referred to as 'social corruption'. Clientelism and nepotism are examples of this, as corruption is widely seen as a form of social exchange (Andvig, Fjeldstad, Amundsen, Sissener, & Søreide, 2000, p. 12; Médard, 1998, p. 308). Patron-client relations, in their most basic form, are guided by a social and political exchange: "The patron grants favours in return for goods, loyalty, political allegiance and other services from his dependent clients" (Hall, 1974, p. 506).

Along the same lines, Olivier de Sardan has argued how corruption has a 'moral economy' around it, which means that there are certain 'rules of the game' which need to be followed (1999, p. 36). These are not static, but fairly clear to everyone involved. Importantly, there is pressure by the wider networks of the actor involved, who has to redistribute (access to) resources[10]: "Social pressure is very strong in the direction of the accumulation of wealth in view of redistribution" (Olivier de Sardan, 1999, p. 43). The rules of the game of corrupt practices are not only influenced by bottom-up pressures – by their wider lower constituency who demand redistribution of resources through jobs and financial resources – but also by top-down pressures. Also the relations with higher-level actors are part of a broader moral economy, in which patrons have to respect a number of rules.[11] This brings us back to the proverb of the goat, and more particularly the length of the rope, and the goat's patience: the length of the rope suggests that the goat has to respect certain boundaries in 'eating', as well as showing necessary patience – which is what this paper will explore. Throughout the case of the oil sector in the DRC, we will show how political actors need to respect particular boundaries in corruption practices: the oil sector is considered as an important grazing ground, but grazing needs to respect certain boundaries. Not doing so leads to sanctions. In other words: corruption, and similar practices, where they hurt the regime, are punished.

Importantly, also the inverse is true: as our paper will show, the boundaries also require an active engagement in corruption – particularly by the actors appointed in the Ministry. Those not engaging in corruption, but instead in the development of the oil sector, are punished. This resonates with the general literature on corruption and its emphasis on the short-term perspective of the actors involved: the focus is on immediate profit, rather than long-term investment (Harsch, 1993, p. 41). As we will see in the paper, active development of the sector is seen as detrimental to these short-term interests, and is therefore not part of the rules of the game: a non-productive sector is much more important than a productive one, as it offers much better opportunities for corruption.

Underlying this moral economy is the political role and importance of the oil sector. Internally, the oil sector is seen as an ideal grazing ground for clients: by allowing clients to accumulate and distribute resources, they and their networks are further tied into the regime. In other words, the oil sector serves as a glue to tie clients to their patrons. Externally, the oil sector

[10] In the words of Bayart (2009, p. 233), "it is more common for it to be imposed on him by meetings of collective savings societies in his home town or village and by the continuous stream of beggars, masters either of the language of kinship and flattery or, more disturbingly, of the accusation of witchcraft: a man who manages 'to make good' without ensuring that his network shares in his prosperity brings 'shame' upon himself and acquires the reputation of 'eating' others in the invisible world: social disapproval and ostracism and, in extreme cases, a death sentence may in time be his reward."

[11] Interesting in this context is Harrison's (1999) reference to corruption as 'boundary politics': corruption has emerged on the boundary between national and global economy, between the public and the citizen, and so on. In doing so, he defines boundary politics as "a set of illicit practices which try to stabilise or valorise unstable and/or permeable social boundaries" (Harrison, 1999, pp. 537-538). Concretely, in the context of Mozambique's structural adjustment's programs, he describes how "corruption has developed along the social boundaries dynamised by liberalization" (Harrison, 1999, p. 547). In this paper, we use corruption's 'boundary politics' in a different way, as the necessity to respect boundaries on how much resources to extract.

equally plays an important political role: as we will show, the oil sector primarily and dominantly plays a pragmatic geopolitical role. Corruption is allowed when serving this purpose, and discouraged when not doing so.

In the next sections, we develop these arguments. We start by giving a brief introduction to the oil sector, after which we show how the sector has become dominated by the presidency, and serves as an important source of patronage.

3. OIL IN THE DRC: A BRIEF INTRODUCTION

3.1. Congolese Oil within African Oil

DRC's long oil history follows the trajectory of much of Africa, being for a long time distinctly marginal in global oil markets. The DRC's continuous production of 25,000 bpd pales in comparison with major producers. The world's largest producers – Russia and Saudi Arabia – pump around 10 million bpd, whilst Africa's largest – Nigeria and Angola – produce roughly 1.4 and 1.7 million bpd respectively (OPEC, 2016; Respaut, 2017, p. 3)

As offshore drilling technology emerged, some oil activity began in Africa. DRC was not excluded. Exploration had been conducted in the DRC's coastal region since the 1940s, with a burst of activity from 1959 to 1962 uncovering five fields. The first onshore drilling came in 1963, conducted by SOCOREP, the Congolese subsidiary of PetroFina, a Belgian oil company (Kanika, 2013, p. 4). Offshore drilling began in 1970, with seven fields discovered by 1976 (ibid.). Although trifling within global markets, this new production was highly significant for newly independent African states. Oil was a vital component of US-Zairean Cold War relations; Gulf (later as Chevron), Texaco, Amoco and Mobil made major investments, and dominated DRC's production until the Anglo-French oil company Perenco took over the ageing littoral fields in the early 2000s (Clarke, 2008, p. 294). Despite tensions over Mobutu's governance record, US favour was retained largely due to strategic resources, although cobalt was more important than oil (ibid.). Since the late 1970s, Congolese oil production has remained at a steady 25,000 bpd. Even the Congo wars had little impact on existing oil production, being at the Atlantic littoral, though they likely held back exploration in other regions (Clarke, 2008, p. 294). The Congolese experience – modest production limited to offshore and littoral fields – was typical of the first decades of African experience of the oil industry.

However, since the late 1990s, the African oil sector has boomed. Africa has "become the great frontier of the modern oil world" (Clarke, 2008, p. 374) and "everybody is talking about Africa's oil and gas" amidst a "new scramble for Africa" (Hicks, 2015, p. 2-3, referencing Southall & Melber, 2009). Part of the story is technology: better and cheaper deepwater drills opened up the Gulf of Guinea in particular. More significantly, change was driven by prices. From 2002 a steady rise in oil prices was underway taking prices from around \$30 to \$120 in 2008, stabilizing around \$90-\$110 until the end of 2014, followed by a sharp fall, oscillating since at \$35-\$60 (FRED, 2018, "Crude Oil prices", chart 1.).[12] Over a decade of high prices drove a rush in investment, much of which fell in Africa.[13] The US, keen to extricate itself from dependence on Middle-Eastern oil suppliers, made great efforts to encourage this (Ghazvinian, 2007, p. 6-12). Investors were more than happy to leap in. Africa boasts potentially vast deposits, including many proven and many more unexplored. African governments keen on injections of cash and with lower negotiating capacity have tended to offer highly favourable contractual terms. Most

[12] West Texas Intermediate prices
[13] A sudden fall in prices in the last months of 2014 has brought a global chill in investment (FRED, 2018, "Crude Oil prices", chart 1).

African oil production remains offshore – being better for logistics and security – but deposits in the continental interior are increasingly vital. It was in this roughly fifteen-year period of high prices that oil in the sub-Saharan interior first became viable for investors. Although prices have now dipped, as the Middle East's woes continue, global consumption remains on the rise, and governments across the continent grasp the opportunities before them, African oil production will only increase. The African oil boom should not be overstated however; whilst in real terms production has boomed, International Energy Association (IEA) estimates suggest that the continent still produces only about 10 per cent of the world's crude, a proportion that has barely changed since 1973 (2013, as cited in Hicks, 2015, p. 3). Still, within the decade and a half before 2014, the oil industry in sub-Saharan Africa was transformed. There was a window of opportunity to gain momentum, which many African governments took, making hay while the sun shone. In these cases, progress continues despite the fall in prices since 2014.

The DRC was different. The boost in interest fuelled a burst of contracts signed 2006-10. However, this has not translated into production, nor even much exploration, and this period was followed by stagnation and blockages, with no more contracts, and a bare minimum of exploration. Some contracts have been extended, shares in others have been sold to partners, and some are in ongoing negotiations, but overall, in contrast to the rest of Africa, Congolese oil has gone nowhere. The reduction of activity in the DRC – beginning in 2010 –does not match with global prices (and therefore investor interest). Something else is afoot.[14]

3.2. Oil during the regimes of Mobutu, and of the Kabilas

During the Mobutu regime, little attention was given to the oil potential – both proven and speculative – and the development of the oil sector was neglected. Only the productive component, in offshore and onshore concessions around Muanda, was at this point already under the president's eye, as it offered direct financial profit: In the oil fields of Muanda, locals would refer to oil wells by the names of Mobutu's ministers who "owned" them (Interview 39: 12/11/17). The Mobutu regimes' main interest therefore was in protecting this income. For example, when a Minister responsible for oil under Mobutu once questioned the production figures, he was immediately sacked: Having made a trip to the coast to attempt a personal verification, he returned to find his ministerial post in the hands of another (Interview 14: 03/10/17). A similar fate awaited Salomon Banamuhere Baliene, who according to a high-level official was reassigned from his post as minister of Energy in October 2008 after making such enquiries (Interview 27: 17/10/17).[15]

A transformation occurred after the seizure of power by AFDL. Pierre-Victoire Mpoyo, a close advisor and major financial supporter of Laurent Désiré Kabila, and who had been

[14] The practical features of Congolese oil have a major impact on sectoral development, but do not provide a fully adequate explanation. First, the DRC's minute coastline leaves very small offshore fields. The vast interior of the country may possess enormous reserves, but until the early 2000s, onshore production was not commercially viable. Even after this point, barriers remained: vast distances, thick equatorial forest, and minimal or absent infrastructure make any activity a major undertaking. Transport to export poses the greatest barrier: by rail or road, costs would make Congolese oil unprofitable. A pipeline (nicknamed "The Reptilian") mooted to run 1500km from fields in the interior to the coast would cost several billion dollars. The project has never moved beyond early discussion. Congolese access to the Hoima-Tanga pipeline running east has long been discussed but never finalised, but is essential to making the Albertine Graben fields viable. However, this logistical challenge does not adequately account for limited development. First, these are important but – especially in the mid 2000s – far from insurmountable obstacles. Second, development of the sector has largely halted well before this point. Even at peak prices, exploration – essential for proving return on larger investments – was minimal, being either not encouraged, indirectly impeded, or actively blocked.

[15] Banamuhere had held ministerial posts since 1999, and the Energy and Oil portfolio from November 2005 to February 2007. After October 2008 he clearly fell lost some favour, being appointed as the first ambassador to Burundi in 15 years, only returning to a ministerial post in 2014.

a major player in the Nigerian oil sector, personally pushed the new president to advance DRC's own oil sector (Interview 28: 18/10/17; "Pierre-Victor Mpoyo", 2003). The hydrocarbons dossier was moved from Mines & Energy to a unique ministry, headed by Mpoyo ("Sommet Africain", 2000) Although the administrative structure changed several times, Mpoyo made some strides in managing the sector, making deals with a variety of companies[16], and beginning negotiations with Angola for offshore rights, though using these as leverage for Angolan assistance rather than to gain territory for the DRC ("Trouble brewing", 2003). He was retained after the assassination of Kabila *père* in 2001, but quickly lost favour with Joseph Kabila, and was sacked a year later (Mulongo 2015). From then until 2007, oil fell off the map again, being re-incorporated into the Mines & Energy dossier, and then a joint Oil and Energy portfolio. 2007 saw the creation of the new Ministry of Hydrocarbons under Lambert Mende. But, importantly, the presidency still paid oil little attention. Despite Mpoyo's personal enthusiasm and some clear revenues, the oil industry was far from crucial to regime stabilisation. The major political developments of Congo had taken place *prior to* onshore oil reserves in the interior becoming viable. Therefore, the political settlement established by the Kabilas – and which they wished to maintain – barely included oil.

As oil prices rose, interest changed. International investors increasingly found African oil fields, including inland fields (which constitute the bulk of the DRC's potential reserves), to be highly attractive. They offered untapped potential, on excellent contractual terms. Western governments backed a strategic shift to African oil, and prices kept rising, making investment in new fields and infrastructure feasible as never before. DRC shared in this sudden peak in interest. Yet the political calculation remained the same: oil development was not crucial to the regime, and instead posed a risk of falling outside political control.

The products of this interest – contracts signed with oil companies, such as with Tullow (2006) and COMICO (2008) – took the presidency by surprise. Unaware of the actions of the relevant ministries and unaware of the strategic possibilities of the sector, the presidency retroactively took control, cancelling contracts or denying presidential ratification (Interview 29: 18/10/17). As a senior official noted, "With oil prices rising, advisors suggested that there was more money in oil than in mines, a responsibility too great for a mere minister. As a result, the president put a moratorium on new contracts" (Interview 28: 18/10/17). It should also be remembered that mineral and metal prices dipped around 2008, spurring a regime search for alternative revenue streams. At the same time, a range of other companies and contracts were explicitly blocked by the presidency.[17] One of these companies (COMICO) only received presidential approval for their contracts in February 2018, another company (HRT) soon left the country. As a parliamentarian noted, "There was a will to not let them work [because] it was a matter which was escaping them [i.e. beyond the control of the presidency]" (Interview 29: 18/10/17). In sum, this period – around 2010 – was key for the sector: around this period, the Presidency fully realised the economic and political importance of the oil sector. Consequently, contracts and negotiations which fell beyond the strategic requirements of the presidency were blocked.

After this period of firefighting, the presidency worked to ensure that all contracts could only be gained via central channels. As a prominent observer noted, "Before, you could introduce your dossier proposing purchase, and tomorrow you could have your title, without the presidency's consent. Around 2010, the president became aware that he needed to master everything" (Interview 56: 27/11/17).

[16] Such as King & King, Heritage, and Perenco.
[17] COMICO, the holder of three Cuvette Centrale contracts, and HRT, their Brazilian exploration subcontractor. According to a senior official, also Total and Chevron were blocked by the presidency (Interview 28: 18/10/17).

In other words, once the presidency realised the importance of the oil sector, it quickly gained control of it. Yet, what does this control exactly look like? And what does it hope to achieve by controlling the oil sector? In the next section, we explain in detail with this presidentialisation of the sector looks like.

4. THE PRESIDENTIALISATION OF THE OIL SECTOR

Oil is for the boss. You must not touch it… You will have a knife at your throat (Interview 27: 17/10/17).

'Presidentialisation' of the oil sector has disrupted change and resulted in opaque and discretionary decisions. (International Crisis Group [ICG] 2012, p. 23).

It is his private hunting ground… He injects his people. He wants to have it under his thumb (Interview 56: 27/11/17).

Oil is considered by Kabila and his advisors as a 'strategic' sector, requiring tight presidential control. The oil sector is an oddity within the category of strategic sectors, being largely inactive: as we will show, *not* developing the sector is considered to be more beneficial than actively developing it. The particularities of the presidency's strategic priorities for the oil sector are the key to understanding this peculiar outcome.

4.1. Means of control

This presidential control is enacted via different mechanisms. These techniques are implemented in a variety of cases for a set of overlapping reasons, which are detailed later in this section.

First, presidentialisation is facilitated by the legal structure of governance. Contracts must be approved by the president to be valid; the president has the final call. This is a legal requirement enshrined within the 1981 mining code, which incorporates legal framework under which hydrocarbons is governed.[18] In the language of the law, "Oil contracts, although duly signed by the parties, have effect only after having been approved by an ordinance of the President of the Republic."[19] The same requirement is also contained within the recently promulgated, but as yet inactive, Hydrocarbons code.[20] As one expert observer noted "The oil code was almost made to measure for the president. It consecrates the fact of the prince, that when he doesn't say yes, nothing can be done" (Interview 56: 27/11/17). Without approval via presidential ordinance, a Production Sharing Contract to an oil field is not legally valid, despite the prior process of negotiation, signing, and bonus payments. It can therefore not be sold, and cannot be worked upon. No company can legally engage with the contract holder without this presidential approval.

This also means that the President can easily block contracts, which was done for a range of contracts: for reasons we show below, COMICO and DIG Oil in the Cuvette Centrale, covering three blocks each, remained without presidential approval after over decade, leaving their legal status for production or resale uncertain. COMICO received approval in February 2018 and DIG may receive approval shortly. The same happened for a whole range of other contracts, which were cancelled, or took a long time.[21]

[18] The 2002 mining code did not include hydrocarbons provisions, so the oil sector remained under the 1981 code.
[19] Ordonnance-loi N° 81-013 du 2e avril 1981 portant législation générale sur les mines et les hydrocarbures, Art. 79
[20] Loi n° 15/012 du 1er août 2015, portant régime général des hydrocarbures, Art. 41
[21] Three PSCs on Albertine Graben Blocks I and II with Tullow and the Divine Inspiration consortium were all erased on the grounds of a lack of presidential approval, which had been lacking for between two and four years at the time of cancellation. Total's Block III took three years to receive presidential approval. By contrast, the final recipients of these Blocks – Caprikat and Foxwhelp – received presidential approval almost immediately.

Delays and uncertainty on this front, with such potentially grave consequences for investments, intentionally ties signatories tightly to presidential favour and thereby to presidential strategy. In other words, the power of these contracts allows the President to push potential signatory in a variety of directions. For example, through a presidential blockage on the Cuvette Centrale, the presidency may be attempting to leverage political transactions from the investors' states of origin, avoiding internal geopolitical shifts, avoiding opening up new territory, and prevent rents falling into unauthorized hands. We discuss all these factors in detail below.

Second, presidentialisation also manifests itself in the appointment and control of the Minister. As shown in section 5.1, since 2010 the Minister has been chosen as a presidential loyalist who will follow presidential requirements, will not act on major issues without presidential orders or consent, and will follow any presidential commands to the letter. The Ministry of Hydrocarbons is one of a small number which the president retains "under his rod" (Interview 56: 27/11/17).[22] In practice, this means that ministers are not only chosen by the presidency, but that major decisions are made by the presidency, not the ministry. This control of the ministry is strong and specific, but not totalitarian. It is restricted to primary strategic decisions (such as contract and amendment negotiations and signings or regulatory change, and claims to productive territory) whilst lower-tier matters (such as internal staffing, budgets, corruption, MoU signing, or exploration projects) are left for the minister to manage as he wishes, within the limits of public scandal.

Third, presidentialisation manifests itself through alternative structures beyond the formal hierarchy, ensuring presidential control either directly, or bypassing senior officials. Significant policy matters are either outsourced to presidentially appointed officials, or managed by presidential counsellors. In other words: rather than the formal institutions responsible for specific oil-related issues, it often is informal power networks of the President controlling them. For example, the Angolan offshore issue has not been controlled by the relevant extant formal channels such as the ministerial hierarchy or the embassy in Luanda, but principally by a trusted network of Presidential advisors – in particular Katumba Mwanke, but also Antoine Ghonda, Gustave Beya Siku and Jean Muganza ("Jean Muganza is trying to carve", 2016).[23]

Fourth, when these mechanisms are not trusted, the president has used his prerogative to block activity altogether. This has been used for a variety of reasons, all related with the President trying to maintain political control, for example as a mechanism of preventing unauthorized activity. A moratorium was imposed on Lambert Mende after several contracts were signed without prior consultation with the presidency (ICG, 2012, 14). They also occur during moments of high political tension, alongside contract moratoria in other sectors. In March 2012, a letter signed by Kabila was circulated to March to all government ministers that forbade them from approving any contracts during the transition period ("Nessergy wins OK", 2012). This is again a mechanism of preventing contract-signing beyond presidential control. In such moments of flux and tension, matters such as contracts might go unnoticed by the presidency: the prospect of lucrative contracts destabilises fragile political balancing games; limiting political and economic movement is vital at such moments to ensuring political plans evolve as foreseen.

[22] This group includes the Ministries of Defense, Mines, Finance, and to a lesser extent Foreign Affairs and the Interior. Other ministers are chosen by, in order of strategic importance, the president's party (PPRD), other majority parties, or allied opposition groups.
[23] Beya Siku was only in 2015 appointed Ambassador to Angola.

4.2. Aims of control

Across all "strategic" matters, the actions of the presidency are principally defined by the goal of regime stability. In the oil sector, direct central control is required to manage a simple effort: provide profits or rents to chosen persons or groups, and deny profits or rents to undesirable individuals or groups. This choice is tied tightly to political loyalty or favour.

4.2.1. Control over oil rents

The regime wishes for the President and his close associates to access the financial benefits of contract negotiation, and deny this to others. This serves various functions: this can be kleptocratic, or as a means of gathering regime cash for future distribution. It was not possible to establish empirically the balance between these two, though the particular nature of the rentier political economy of oil is greatly determined by this detail.

There are several financial streams involved here. The first relates to monies collected as state facilitator of contracts, a process through which informal revenue is collected. For example, a parliamentarian asserted that the Caprikat & Foxwhelp Production Sharing Contract (PSC) [24] was expedited through large payments to Katumba Mwanke, the president's primary counsellor until his death in 2012 (Interview 29: 18/10/17).[25] These are particularly vital at moments of political tension. A burst of activity in early 2018 – renewals for Perenco and Total, and a presidential ordinance for COMICO – is unlikely to be due to a renewed interest in long term development, but is primarily a means of collecting rents at a time of need (Misser, 2018).

The second relates to monies collected as part of international arrangements. For example, the regime at least attempted to control the $600 million from ratification of an agreement with Angola over a Joint Interest Zone (JIZ) (Interview 26: 16/11/17). Although such transactions are difficult to trace, a parliamentarian expressed certainty that "at least some of it was paid into another account … by Angola, but it was not received by the Congolese state" (Interview 29: 18/10/17).

The third relates to taxes paid from oil production. Civil society have direct testimony from senior civil servants that that the tax dollars paid for production onshore and offshore at Muanda to the Congolese state are diverted. That is, the state accounts do not receive these sums, and officially published declarations of received sums are fabricated according to instruction (Interview 35: 06/11/17). According to both company and government figures, this amounts to millions of dollars, approximately $466 million in 2013 (Extractive Industries Transparency Initiative [EITI], 2015a, p. 10) $415 million in 2014 (EITI 2015b, p. 14), $211.6 or 212.6 million in 2015 (EITI 2017, p. 17).

4.2.2. Control over oil profits

Control must also be ensured to ensure oil profits are in the right hands. The drive towards presidentialisation is in large part a defensive move to make sure that the oil sector is not accessed by actors which could constitute a threat to the regime. Oil fields, even unproduc-

[24] Production Sharing Contracts (PSCs) are a common legal mechanism by which states – usually via state oil companies – take a beneficiary and often participative role in oil production alongside private companies. Up-front costs are carried by the private investor, which are then recovered after production from revenue from "Cost Oil". Once costs are covered, shares of proceeds alter via pre-arranged sliding scales, to a stable shared profit arrangement on sales from "Profit Oil". PSCs in African states tend to include lower state participation than in other regions, and the DRC has low participation – typically 15% – compared to most African states; states such as Uganda and Angola take shares upwards of 45%.

[25] As Augé puts it, "despite the strategic importance of these permits, the dossier was politicised from the start. The [Caprikat & Foxwhelp] contract will only permit certain persons orbiting around Joseph Kabila to realise a comfortable capital gain" (Augé, 2012, 13-14).

tive ones, offer high-value, low-input, easy to control resources which can generate major incomes, and therefore constitute a potential foundation of political power. It is therefore crucial to regime stability that oil money cannot be used as a source of opposition political finance. In 2007 when its PSCs were signed, COMICO was reportedly part-owned by Montfort Konzi Sende Ngonga, a close aide of Jean-Pierre Bemba (Misser, 2013; Global Witness, 2018). This likely contributed in the decision to deny a presidential ordinance on the contract.

Indeed, merely major financial independent of regime control is seen as a threat. For example, in 2011 some South African companies arrived to negotiate contracts, attracted by a presentation made by a senior ministry official. The president balked at the possibility that an official unknown to him had courted potential oil investors. This practice would open the possibility of profit from facilitation payments flowing to individuals beyond the president's control (Interview 28: 18/10/17). Preventing ministerial control over such financial streams was also a reason for a temporary moratorium on contracts under Lambert Mende (Interview 28: 18/10/17).

It can also be helpful for oil profits to be used as a political bargaining chip. Concretely, contracts can be awarded to regime loyalists as a reward for, and to guarantee, their continued political support. For example, the Divine Inspiration consortium's 2008 contract for Albertine Graben Block I was spurred by, or perhaps even conceived as a mechanism to supply, the resultant future profit of regime loyalists. According to a prominent parliamentarian, "it was all designed to give $10 million to [a senior Congolese politician]. [The senior Congolese politician] told me this himself. It was repayment for a well fought campaign in the 2006 elections. They just said "oh [he] needs a contract? Ok! Go and sign it!" They didn't care who else was involved" (Interview 29: 18/10/17). The regime was informed that this politician's reward would require this contract, and provided immediate assent. It is worth noting, however that examples of patronage to regime loyalists through contract provision are limited.

4.2.3. International support

This calculus also relates to buying *international* political favour via oil contracts. This carries more strategic significance than internal patronage. In other words: oil contracts are used as a way to cement international political support, in various ways. This transactional diplomacy was a characteristic of Mobutu's relationship with Washington (including securing oil contracts for US oil majors) and is used in a similar manner by the Kabila regime, which uses contractual favours in the oil sector as bargaining chips to secure international political backing with other states in this precise manner. A wide range of examples can be given.

First, there are a number of examples which illustrate how oil contracts have been used to cement support from South Africa. South Africa is the largest single supplier of goods and services to the DRC, making up 30% of imports (Besharati & Rawhani, 2016, p. 16), as well as one of the top aid contributors (ibid., p. 21), and provides crucial military support via large troop contributions to the Force Intervention Brigade. More importantly, South Africa has been characterized as "Kabila's closest bilateral ally and…a key lifeline for his continued grip on power", a relationship that is deeply tied to personalised business dealings, including oil contracts (Bauer, 2017). For example, a major defining factor behind presidential favour for Caprikat & Foxwhelp's 2010 contract on Blocks I and II on Lake Albert was the involvement of the Zuma family, via the South African president's nephew, Khulubuse Zuma ("Zuma Inc", 2010; Trefon, 2016; McKune, 2016; McKune & Wood, 2016). By contrast, the prior contract for Block I, held by the Divine Inspiration consortium, was connected financially to the Moseneke family, close allies of Thabo Mbeki (a rival to Jacob Zuma). This connection contributed to the contract's anulation (Interview 58: 12/12/17).

Second, regional geopolitics (with neighbouring countries) also fits into this rubric. There is a sense that the Kabila regime offers oil as both debt and protection payment to neighbouring states. As a parliamentarian put it: "The neighbours serve themselves. The neighbours exploit. We let them do it. It is an indirect payment for what they did for the regime. The neighbours get paid" (Interview 27: 17/10/17). This applies principally to Angola: the DRC has unquestionable basis in international law – through the United Nations Convention on the Law of the Sea (UNCLOS) – to claim a significant extension to its maritime territory. The most justifiable area for this claim to be made cuts through Angola's most productive offshore blocks. Estimates broadly put production in this area at around half of Angolan production, which stands at around 1.8 million barrels per day. With the addition of this production – at least several hundred thousand barrels a day – would move the DRC to the second or third largest oil producer in sub-Saharan Africa, from its current 12th place. On the one hand, the DRC has for a decade and a half made an intentionally noisy, continuous and international legal claim to segments of Angola's most productive oil blocks. On the other hand, it has never seriously acted upon this claim, allowing Angola to keep exploiting. This also serves a strategic aim: this claim serves as a reminder and possibility that this grace might be withdrawn, and primarily seeks to cement support from Angola. Due to the value of these blocks, and Angola's military predominance, support, and deep involvement in the DRC, jeopardising this carefully balanced policy could have existential consequences for the Kabila regime, therefore requiring highly centralised decision-making power.

Third, these political dynamics have materialised more broadly in interactions with international oil companies: there is at least a Congolese expectation that oil is exchanged for political favour. In recent years this favour entails military backing, clemency on human rights and tolerance of third-termism. Of course, such policy is increasingly unacceptable to western voters and investors, and so expectations of transactions lead to inaction. For example, many press reports claim that Total's desire to renew their current contract and acquire further blocks in the Albertine Graben has influenced French leniency during Congo's political crisis (Wondo, 2017; Noir, 2017). Although Kabila would expect this to happen, this does not seem entirely plausible.[26] For both the French state and Total, the risks of scandal do not appear worth the benefits. Further international oil companies in DRC, including, Eni, Tullow, Surestream and COMICO, have faced presidential barriers that would likely have been overridden by offers of political support from their requisite governments – but which did not materialise. As the head of a Congolese oil company noted, "If you do not have behind you people or companies who can help to secure what is there [ie. to offer something to the regime], you will never have your [presidential] ordinance" (Interview 58: 12/12/17). The lack of relative success seen by international majors in DRC relative to smaller internationals and national companies, is most therefore likely a factor not of Kabila's unwillingness to deal with international majors *per se*, but of the unwillingness of these majors and their states of origin to engage in the transactional diplomacy that the regime expects.[27]

[26] First, in La Defense, the stakes are low for Total. The current block is but a small piece in Total's global mosaic, and the addition of two or more other Congolese blocks would be welcome but not game-changing. Total's recent priority in Paris meetings with oil ministry staff has been the extension of their exploration permit on Block III, and their long-term goal of acquiring Blocks I and II will most likely be deferred until these are reacquired by the state; Dan Gertler's desire that Total engage as a partner is all but impossible ("Total and Kabila", 2017). Meanwhile, in the Elysée, Macron has stated a commitment to seeing elections in the DRC before the end of 2018 (Carlier, 2017).

[27] On February 1st 2018, presidential ordinance 18/010 was signed, granting COMICO permission to conduct operations. This is part of a pattern of using oil contracts for much-needed liquid cash (from a payment for the ordinance). It may be that (in the regime's unrealistic expectation) they might also win British political leniency.

4.2.4. The oil sector and regime priorities

In sum, the above section has shown how the oil sector – and particularly oil contracts and profits – are used in a variety of ways to strengthen the control by the regime, and the President in particular: it is used to collect rents, as a way to support political clients (and conversely, to prevent the emergence of political rivals), and finally as a mechanism to strengthen the international support base for the regime. Sometimes these various control mechanisms clash with each other. In doing so, it becomes clear that internal patronage – provision to loyalists – is certainly less of a priority than other strategic aims, such as rents collected by key regime figures or favourable provision to international allies. Concretely, this means that contracts provided for political loyalists (and which are provided as a way of internal patronage) are regularly overridden, because they are less important than for example international geopolitical connections or illicit payments to higher-placed authorities.[28]

4.3. A restricted information environment

Presidentialisation is further manifested in the way information is managed. The oil sector is characterized by opacity and secrecy[29]. Almost nobody has a complete overview of the sector, and transparency is actively discouraged. Actors therefore have limited and compartmentalized knowledge of what is going on, including many actors who due to the requirements of their position to make well-informed decisions should in theory have comprehensive and sound information available. This was particularly clear during interviews: even those working in significant roles in the sector have only fragmented knowledge. A prominent observer with strong contacts in the industry and government noted that the oil sector is "all sensitive and managed at the highest level" (Interview 56: 27/11/17).

The bounds of secrecy appear to be both self-policed by some actors, and rigorously controlled by the presidency. Actors who due to formal roles would be expected to have played significant parts in oil-related matters, were instead never included. One such figure (with a high-level formal position) acted as a glorified chaperone to presidential counsellors, was unaware of the strategy or activities of these officials. He was also unaware of activities of collaborative arms of government on the same matters, or the identities of key officials covering these same issues at the time (Interview 26: 16/10/17). Significant oil officials were never privy to meeting minutes of negotiations with Angola (Interview 30: 20/10/17). Important oil contracts have not been seen, even by major officials.[30]

Several members of parliament who had once paid close attention to various parts of the oil sector did not fully understand details on the public record and either knew next to nothing of the activities and strategies of the presidency, or refused to speculate or discuss such matters. One parliamentarian noted that oil politics and the stories behind contracts remain "very blurry *(flou)*" (Interview 29: 18/10/17). Another emphasised that oil matters were "very delicate and very difficult" and "make everyone afraid" (Interview 31: 20/10/17). Parliamentarians interviewed, whether recently joined, or active on the oil dossier prior to 2010, repeatedly emphasised their recent lack of knowledge, interest or involvement. "I interest myself very little [in the matter]" said one, despite expressing clear fears of negative consequences brought by oil

[28] An example of this was the 2008 Divine Inspiration contract given as a reward to a regime loyalist, which was cancelled in favour of Caprikat & Foxwhelp, as the international connections and illicit payments in the latter contract predominated.
[29] These dynamics also play out in other sectors, such as for example the education sector (Titeca & De Herdt, 2011; De Herdt et al., 2012; Titeca et al., 2013; De Herdt & Titeca, 2016).
[30] For example, the two contracts between Sonangol and Cohydro, the first dealing with Nessergy, the second allegedly with joint offshore exploitation (Interview 30: 20/10/17; "Who has seen", 2015).

development (Interview 27: 17/10/17). They also specifically noted that activities of the parliament to push the sector are usually ineffective. In the words of a parliamentarian, "We present [reports] and things stay as they are" (Interview 27: 17/10/17).

Many interlocutors assured us that they or others had received serious threats or warnings for attempting to verify production figures, or trying to explore beneficiary structures of Congolese-registered oil companies, including the subsidiaries of Perenco. This extreme response suggests that significant regime insiders have dealings they wish to hide.

4.4. Limits to presidential control

The president's control is nonetheless not absolute. This stems primarily from the negotiated nature of his authority, and governance within the Congolese state: patronage does not only rely on the patron (i.e. the President) giving out support to clients (i.e. various politicians). It also implies certain rules of the game: the client is supposed to act in certain ways, and the patron is supposed to have certain sticks to punish the client in case of misbehaviour. Yet, punishing misbehaviour, administering patronage, and driving broad policy, are all held up by the inefficiencies built into the negotiated neopatrimonial regime. In this section, we explain these inefficiencies, which explain why the President lacks absolute control.

There are a number of factors which interfere in any policy processes, such as party-political or regional machinations, limiting the power of the President. This applies particularly to his capacity to punish those who do not follow presidential strategy. The case of minister of hydrocarbons René Isekemanga Nkeka is a good illustration of this. In March 2009, Nkeka went to the press to accuse Angola of extracting several hundreds of millions of barrels a day in Congolese waters, and spoke of redrawing borders (Reuters, 2009; AFP, 2009). As we explained above, bilateral relations take precedence over claims to Congo's oil rights. This kind of ministerial action was therefore unacceptable. Nkeka's overzealous activities relating to Angola began a major diplomatic incident. He had clearly overstepped the boundaries of what was considered acceptable political behaviour. Yet he was not sacked immediately. His party, PALU, had a deal within the presidential majority on quotas of ministers. Only after several months, at the expiration of this deal could a formal successor be appointed (Interview 28: 18/10/17). Similar cases happened because of regional affiliation, and the power resulting from this. For example, as we will show below, Minister Mbuyu and his secretary general, Christian Kanku, overstepped the boundaries of what was considered acceptable rent-seeking behaviour. Yet the minister's position as head of the Katangan ethnic organisation in Kinshasa gave him major clout, allowing the restriction of punitive action against himself and his collaborators.

Ministerial choices are also not hand-picked by the president. Even under presidential control as a primary strategic sector, shortlisted options for the minister of hydrocarbons emerge from PPRD nomination lists, a complex and confusing process. The president's inner circle then makes personal selections.[31] The simultaneous calculi of patronage and loyalty mean that prominence and influence within regional and ethnic politics also factor into choices. The choice for the provision of the lucrative Ministry of Hydrocarbons thus rests within the broader regime apparatus, particularly among tribal organisations and parties, and in an endless stream of whispers in corridors (Interview 30: 20/10/17). Although the presidency itself is not the sole agent, and its power in the decision has therefore limits, the choices follow the same patterns of regime stability.

[31] There is some suspicion that Zoe Kabila had a desire to see Aimée Mukena take the post (Interview 57: 01/12/17).

In sum, while the President has a large degree of control over the oil-sector, this is not absolute, as a range of factors interfere in this process, primarily due to persons within the hierarchy taking and protecting their slice.

4.5. A (mostly) passive stranglehold

This "strategic" nature does not mean however that the sector is a development priority. Indeed, it appears that as presidential control has tightened, development advances in the sector have decreased. No contract has been signed since 2010, despite some scattered negotiations and many unclaimed blocks. Further, no major international company has bought out any block from a minor company, as is expected practice. This cannot be explained only by oil prices. Prices only fell in 2014, from $90-$110 to a new plateau, around $35-60. Although this later price point renders Congolese oil production in the interior unprofitable, activity diminished well before the collapse in prices. Therefore, activity must be primarily explained by governance-side issues. These emerge from a combination of all of the above-described control techniques – which create barriers and uncertainty for investors – along with a disinterest in ameliorating conditions in the sector, and possible interests in stymying certain developments. As a parliamentarian put it, the sector is "governed with complete irresponsibility, whether intentional or not, all to stabilise a fragile regime" (Interview 27: 17/10/17).

4.5.1. The stifling side-effects of control

The majority of the presidential controls here described are focussed on ensuring the presidency is the channel by which investors come and policy is made. These very actions have had a major impact on restricting investment: those who do begin negotiations must pass through a series of filters set by the president. If external oil initiatives do not meet presidential criteria, they do not succeed. As explained above, companies are increasingly unwilling – due to shareholder ethical demands, and legal liabilities in countries of origin – to make corrupt informal payments to secure contracts. Governments are less willing to make political concessions in return for contracts. Therefore, when these are expected, the investor is refused. Some investors see this possibility and never make the approach.

This was made clear by the blockage of several companies. A senior official noted interest that never reached contractual stages from Tullow, CNOOC, Petroplus, and COMICO (Interview 28: 18/10/17). As noted above in relation to geopolitics, such internationals are often unwilling to meet the requirements of the presidency. They are difficult to control, most specifically, they will not provide political conditions or financial payments that the president likely expects. For many multinationals, it is deemed difficult or risky to deal with DRC. This results in a general preference for small-scale, obscure companies. These are much easier to handle than multinationals, and will follow requirements for payments. However, these companies are also small enough that the state's parasitism regularly devours them.

Further, presidential control has undermined fundamental requirements for many investors: property rights, predictability, and administrative facilitation. This has a major effect in discouraging arrivals. As an oil industry observer noted,

> "the DRC government could do more to strengthen the business climate. This means ensuring attractive and, more importantly, stable terms that enable foreign companies to invest with confidence for an extended time horizon. It means creating confidence around the application of laws and regulations, and confidence in the decision making process and who makes decisions. If that confidence doesn't exist or can only be sustained over the short term, the government will only ever attract companies representing commercial interests with a short term vision – those who want to get in, make money and get out as quickly as they can" (Interview 54: 27/11/17).

4.5.2. A disinterest in development

However, there is clearly no impetus from the presidency to make executive decisions to develop the sector, and no significant effort to make the sector more functional or attractive. The key actions that would make this possible – such as relinquishing presidential control over oil property rights, not demanding facilitation payments, or tightening controls on corruption in the ministry – would undo other strategic decisions or systemic requirements, and therefore left undone. Moreover, many policies such as the training of officials and technicians, exploration of oil blocks, or the analysis and proper treatment of extant data, are not encouraged by the presidency, although they do not conflict with strategic requirements. Clearly the presidency does not mind a ministry which under-works. A further factor here is that the rents required by the regime can be supplied by other, less investment-heavy, and less risky alternatives, such as the mining sector.

Meanwhile, over-work by any oil official bears greater risks of accidentally overstepping presidentially-defined bounds than does theft and corruption. In particular, one might provide benefits to unapproved persons or groups, or be suspected of being such a person yourself. This is well demonstrated by the example above (Section 4.2.2) of a ministry official who fell in hot water for attracting South African investors without prior approval. Another example is the following: a senior official noted that a conference to connect financiers with the oil sector had been specifically blocked by the ministerial cabinet. This would have taken the sector too far beyond their control; their position as gatekeepers allows more profitable rent seeking. This kind of early-stage blockage can have a serious negative effect on the sector, by preventing the industry networks that create investment from forming. (Interview 28: 18/10/17)

Therefore, this sort of policy impetus for the sector to develop does not emerge from the ministerial level either. As a prominent observer noted, "The administrations are abandoned. They try to manage themselves (*se debrouiller*), or they try to take what they can. Either way, it doesn't permit them to advance" (Interview 56: 27/11/17). With regards to the presence of companies, the fact that they are both discouraged and not attracted to develop the sector is not important to the primary goal of all presidential activity: regime stability. The regime does not lack for funds from other sources, and therefore negative controls – preventing unauthorised activity – is more important than bringing in clients. It is more important that the president is the only channel, even if that channel is empty.

The negative developmental consequences of the permission of patronage are also not managed or minimised by executive intervention: key for the regime are the strategic purposes outlined above – regime stability – not the development of the sector. In this situation, an unproductive sector is much more useful than a productive sector, which means that from a development perspective, the executive hardly intervenes.[32] Interventions are only done for the strategic purposes outlined above (more particularly regime stability), not for developmental reasons.[33]

4.5.3. Interests in restricted development

There are also – though less influential – certain strategic concerns which feed an unwillingness to develop the sector: regional geopolitics, internal geopolitics, and internal security.

[32] As a prominent observer noted, "From the start all is unclear, with nothing at the head, with everyone turning in circles, taking sodas and knitting, with no objective" (Interview 56: 27/11/17).
[33] This can be seen in the cases of the conflict over exploration between Fugro and BGP, the conflict between KLEC and EPPM over Lake Kivu gas production, and the messy stack of MoUs left by Mbuyu.

The first is a geopolitical concern relating to Congo's neighbours. There is reason to believe that a vibrant internal oil sector in DRC might antagonise Angola, Uganda or Rwanda. As a background factor, all three countries view a prosperous and therefore powerful DRC as a major potential threat, whilst seeing a pliable DRC government, and a Congolese economy dependent on imports from their neighbours, as an ideal compromise (short of the direct domination attempted fifteen to twenty years ago). All three countries retain the capacity and willingness to involve themselves in DRC security affairs in ways that could threaten the Kabila regime. For example, there are whispers of Uganda threatening to push for a regression to an early colonial border. This reversion would place most of the Albertine Graben fields within Ugandan territory.[34] Though unsustainable in international law, it speaks to Ugandan incentives and Congolese fears. Presenting Uganda with proven reserves might be a risk that the DRC state does not wish to take. In other words, further developing the oil sector across the Ugandan border might provoke action from Uganda. Similarly, in 2009, actors within the Congolese political system – as shown above, minister Nkeka, and also a range of parliamentary actors – were actively pushing for Congolese oil rights on Angolan territory. This led to severe actions from Angola: border skirmishes, population expulsions, and unilateral incursions were used to signal greater threats.[35] Although the whole pattern of events were never specifically publically linked to oil by state representatives on either side, by late 2009, "in both capitals the conviction took root that in reality oil was at the centre of the crisis" (Misser, 2012, p. 203). Misser points to the opinion of Floribert Chebeya, a prominent Congolese human rights activist, who noted in a public statement "It is now understood that the crisis between Angola and the DRCongo is linked to control of oil exploitation zones off the Atlantic coast", and that "the Angolan government wishes to be paid the bill for its military support to the Congolese government by the exploitation of oil and other minerals" (VSV, 2009).

The second is a concern regarding the maintenance of current regional balances in economic and political power within the DRC. As the International Crisis Group notes:

"In the longer term, successful exploration programs will alter and even disrupt the DRC's economic geography, challenging its image as a mining country and the economic and historic importance of Katanga province as its main source of wealth. The emergence of a new source of income in marginalised regions will shift economic centres of power, impact on internal geopolitics and revive the debate about the national division of revenues from natural resources between the centre and the periphery" (2012, p. 17).

This is primarily a concern of Katangan dominance, particularly of the elite of northern Katanga: they do want to keep political and economic dominance, and therefore would like to prevent the economic development of other regions, particularly if this include the exploitation of potentially profitable natural resources. As a senior official noted, "From the beginning [of oil activity in DRC], the Katangans understood one thing, that Bandundu and Equateur, the poorest of the provinces, had a lot of geological work done in them, and that these provinces could become rich from oil" (Interview 49: 21/11/17). Whilst this was limited under Mobutu, as little work was done and focus was kept on mining, since exploration began seriously after the accession of Kabila *père*, "many realised that it suffices that they discover oil in these provinces,

[34] Until 1910, this ran through the Semuliki valley, before being shifted west to its current location, cutting through the Rwenzori mountains (Muliwavyo, 2014).

[35] Throughout 2009, Angolan troops conducted operations and incursions on Congolese soil (ICG 2012: p. 4). Of particular note, in October, Angolan troops opened fire on protesters in Muanda (Misser, 2012, p. 203). Between late 2008 and mid-2009, Angola expelled over 100,000 persons, primarily Congolese, many in excessively violent fashion (ibid.). They also suspended flights of the national airline, TAAG, to Kinshasa (ibid.). The Angolan president refused to visit Kinshasa for a regional economic summit (ICG, 2012, p. 4).

and Katanga's weight will disappear that same day" (ibid.). While the discovery of oil does not affect Katanga's wealth, political dominance relies on relative wealth, and would hence have a potential impact.

This bias towards regional benefits also played out with regards the legislative battle for offshore territorial rights. A senior senator noted that "When I became a senator I tried with the senators of Bas-Congo to push our rights, because the maritime territory would be a continuation of the provincial competency. It was mostly Bas-Congo senators who interested themselves with that, and they didn't receive much support from other senators" (Interview 31: 20/10/17). It is likely that other parliamentarians saw such bids as a Bas-Congo issue, and therefore unattractive for reasons apart from relations with Angola.

It also contains an element of threat to the state itself, and its capacity to control the territory within its borders. As a senior official put it, "The authorities are scared. The day that work begins in the Cuvette Centrale, they have lost control. The oil companies come equipped like it is a war. They come with machines and materials, open new routes, they put in infrastructure, people, towns... The economy of the cuvette provinces will take hold again" (Interview 49: 21/11/17). In other words, although there is development potential in the Cuvette Centrale, this is not properly explored, as the political risk is considered too high. The central basin would have appeared particularly hard to retain control of, were oil revenues to flow, Equateur having been the fief of Jean Pierre Bemba and the MLC. COMICO, one contract holder, also had direct financial connections to the MLC (Misser, 2013; Global Witness, 2018). There may also have been a risk that Bemba or related figures would profit from facilitation payments or secondary economies. The regime may even have stretched to collective punishment by denial for association with Bemba. According to a number of key actors, it is a strategic decision by the government not to develop certain potential oil reserves, as they could constitute a political threat to the regime. This fear applies to possible oil production in all regions of the DRC. The state has more work to do where new wealth, new activity, new allegiances and new actors (including international actors) arise: any and all of these might contain a threat to regime stability. Most areas within oil blocks are heavily underdeveloped. Some are swamps and forests. Opening up such territory to oil production will bring populations which the government must control. In a weak state such as the DRC, there is no default guarantee that a newly expanded, newly wealthy area would be loyal to the regime. Indeed, since much of the regime's stability rests on requiring people to buy into the regime on their road to wealth, new and independent sources of wealth are a direct threat.

The end result is that potential oil rich areas are not looked at, and not developed. Again: all of this demonstrates how an unproductive oil sector is more useful for the government than a productive sector.

5. THE OIL SECTOR, VIA THE MINISTRY, AS A SOURCE OF PATRONAGE.

They are minister according to interests only, never aptitude or capacity (Interview 10: 29/09/17).

It is not just anyone who gets such a post… Mukena is a strong man… It's an affair of Katangans. You have to be close to power. You need to be capable of keeping quiet (Interview 27: 17/10/17).

Everything relating to a ministry is very political… The minister of hydrocarbons must have a great capacity to know how to say nothing… I don't know of a minister of hydrocarbons who has done anything [to develop the sector] … there is a lot of money in the post (Interview 29: 18/10/17).

The sector is dominated by short-termism, therefore it is very volatile (Interview 56: 27/11/17).

In this section, we look at how the minister, and the ministry, are used as sources of patronage for the presidency. The role of Hydrocarbons minister is particularly useful for providing patronage. The Minister of Hydrocarbons is broadly a comfortable, low risk, low input role, with ample opportunity for financial gain, within bounds.

5.1. Ministerial appointments

Ministerial choices are a transaction of benefit for loyalty, not a means of ensuring competent governance. Rather than a direct presidential offering, postings emerge from a negotiation between the formal regime and various political parties or communities. This affects the expectations of patronage through corruption. The more leverage one's group has over the president, the higher the price at which loyalty is bought, which in real terms means the more leeway one is given to "eat" within your domain. The Katangan community is the key example of this for the oil sector. As with much elite politics, the mutual loyalty between the presidency and Katangans is strong not for its simplicity but for its constant contestation, in which high value loyalty is bought at high prices in ongoing negotiations (Englebert & Tull, 2013).[36]

Two factors are key in the loyalty required: a general political loyalty, including specific past service or action, which is recognised, rewarded, secured or maintained by the posting. Second, loyal management of the post of minister, with emphasis on adherence to particular strategic aims of the presidency, avoiding filling strategic gaps, and remaining quiet on matters of controversy. As we will show, the two are not necessarily the same, and the latter became increasingly important, given that past political loyalty did not automatically materialise into policy adherence of the strategic aims, as defined by the presidency.

The particularities of the interplay of loyalty and reward play out in various patterns. The first postings paid only minimal attention to the minister's potential behaviour within the ministry, and saw the post as a simple transaction for past actions, with the assumption that this would secure future political loyalty. As the presidency increasingly required adherence to their oil strategy, later postings prioritised predicted loyalty to the president's expectations as minister, and the logic of reward for past action became less prominent. This manifests in a shift between an early willingness to provide the post to fringe figures as a centripetal political magnet, and a later preference for providing the post only to those already securely in the confidence of the regime. In other words, initially appointments were used to bring figures on the edge of the political regime closer to the regime.

[36] Katangan loyalty is not guaranteed. Internal divides over favour and control, principally between Katangans from the south of the province, and those from the north, exacerbate this dynamic. The desire for presidential control, which functions via ministerial loyalty, thus drives corruption, since this is the price by which loyalty is bought. This is magnified by the fact that ministerial choices buy constituencies via these individuals: buying a larger pool of loyalists via the minister means more unqualified officials must be hired, and more funds diverted.

The first Minister of Hydrocarbons, Lambert Mende, is an example of this dynamic: his appointment as a minister was used as a means to buy and secure broad political loyalty. At this point, loyalty to presidential oil strategy had not emerged as a deciding factor. Nor was the hydrocarbons a major ministry: Mende's origins in politically marginal Sankuru demonstrate that the ministry was not yet viewed as a means to buy vital constituency loyalty. He was named in February 2007, less than a year after his election to the senate. At this point, he had newly inscribed on presidential majority lists, after nearly a decade in opposition parties. The ministerial post rewarded this change of heart and secured a loyalty to Joseph Kabila that endures to this day.

This dynamic was also played out for René Isekemanga Nkeka: he was given the ministerial post as recompense for concessions to the regime, and to bring him closer. He took up the ministry post in late October 2008 after his 2006 election as national deputy for Befale was annulled by the supreme court for fraud. This appointment was considered as a conciliation to Isekemanga for a likely arranged re-election[37]. Such an arrangement (i.e. Isekemanga as minister) did not suit the other criteria of regional origin or known loyalty, so Gustave Beya Siku, a close advisor to the president, was appointed vice minister – to ensure the ministry would behave as expected. However, this did not play out well: as we have shown above, even this could not control Isekemanga's behaviour, and he was side-lined after pushing for offshore oil rights. René Isekemanga Nkeka was a choice forced by circumstance, who was – correctly – deemed likely to diverge from the president's strategy. After this posting, loyalty to strategy became increasingly important.

Celestin Mbuyu unlike his predecessors, already had hold a few ministerial positions. Appointed in February 2010, he had held the role of Minister of the Interior since October 2008, and previously Vice-Minister of Budget. "To pass from the Interior to Hydrocarbons could appear as a demotion in the governmental hierarchy, however this nomination should be understood as a financial and economic recompense" (Augé, 2012, p. 13). In other words: after having shown loyalty for a number of years, it was his 'time to eat'. Mbuyu was also President of the Kinshasa community of Katangans, a powerful community with the leverage over Kabila to influence appointments, but also close enough to power to be deemed likely to stay on message. However, as we will show below, he crossed the line by bringing too much attention to his corrupt activities.

As a result, Mbuyu's temporary successor, Martin Kabwelulu, was appointed first and foremost as a safe pair of hands. The trusted Minister of Mines, led the Ministry of Hydrocarbons for a month during transition.

The appointment of Crispin Atama is a refinement of the necessary balance between securing loyalty in ministerial activity, rewarding past behaviour, and ensuring that the right Presidential line was followed. Appointed Minister of Hydrocarbons on 28 April 2012, he had delivered well in the 2011 elections as Orientale interior minister. At the same time, as a former ANR official, and a close associate of the then-recently deceased Katumba Mwanke, he was deemed a safe pair of hands to clear up the mess left by Minister Mbuyu's enthusiastic self-service.

Minister Mukena, by contrast, appears to have been chosen not for his good service, but principally for an expectation of strategic adherence and for the pyramidal patronage he can supply. Immediately prior to being appointed Minister of Hydrocarbons, Aimé Mukena

[37] Which fell in favour of Denis Engunda Litumba, who still holds the seat.

held the post of Defence Minister. It is doubtful that Mukena received the hydrocarbons post as a reward: he had accomplished nothing of import. His reassignment occurred at a moment of scandal, and – under pressure – he apparently requested a change.[38] He was clearly in the confidence of the presidency, despite these problems. It was opportune for Mukena to move out of Defence, and yet was trustworthy enough to keep the shift simple by taking the now vacant hydrocarbons post: he simply exchanged places with Crispin Atama.

In sum, the above section show how ministerial appointments are done through a variety of incentives, and how general political loyalty through past appointments not always was not always a guarantee for behaviour in line with strategic aims of the Presidency – this gradually became more dominant through appointments and sanctions, and further fine-tuned the patronage appointments. Particularly from 2010 onwards, after Mbuyu's regime, decision-making around the minister became increasingly centralised.

5.2. Sub-ministerial appointments

Other posts within the ministry are also distributed on a patronage basis, exchanging salary and rent opportunities for political and social loyalty. These are principally a ministerial prerogative; the distribution of posts to (extended) family, friends, and political connections is a key means by which regime patronage filters out into broader constituencies. Many of these are incapable of fulfilling the tasks expected of their role, and see the position not as work but as privilege – throughout our research, a range of examples were given of appointments who never worked, but receive their salary (Interview 57: 01/12/17).

A further category of individuals receives their posts through the favour of officials within the presidency; Jean Muganza, the long-time ministerial chief of staff, is here a key example. A Katangan former ANR officer, nephew to Theodore Magalu, a key Kabila advisor, mentored by Celestin Kabuya Lumuna, and tied closely (including by marriage) to Gustave Beya Siku, Muganza draws his influence from friends in high places, and likely plays a vital role in tying the ministry into the authority of the presidency ("Kabila vents", 2016; "Jean Muganza is trying to carve", 2016; "President Kabila places his men", 2017). In contrast to typical cabinet staff, such active and connected staff (whether supported by ministers or presidential advisors), tend to endure; the departure of the original benefactors does not mean the departure of the recipient of favour. This means that webs of influence link sub-ministerial hydrocarbon officials to figures beyond the ministry, undermining and confusing the hierarchies that properly should ensure the authority of a minister, or indeed Prime Minister.

This mixture of inactivity and counter-activity was a principal barrier to Prime Minister Matata's attempt to draw the sector back into a technocratic mode. As a senior official put it, "the composition of the cabinet, that's where the problem is… the Prime Minister had a good plan of action, but the minister had no plan of action, and the administration had no plan of action" (Interview 30: 20/10/17). Spurred by international technocratic partners such as the World Bank, Matata drew up development plans for most economic sectors. For Hydrocarbons, he had the ambitious intention of expanding production tenfold over five years (from 25,000 bpd to 250,000). This would have required an end to the rent-seeking culture of the ministry, and active officials had both vested interests to maintain this culture, and the networks required to succeed.

[38] In part this was personal: he had ambiguously called Paul Kagame a "providential man" at a summit in Kigali ("Aimé Ngoy Mukena", 2015). This was also a period of great tension, particularly focussed on massacres in the Beni area of North Kivu. He may also have been under pressure from Katangan generals (Interview 59: 30/12/17).

5.3. Means of profit: making money through the ministry

The Ministry of Hydrocarbons is a source of financial profit by various mechanisms. Since the ministry's core budget is relatively small, most profit extraction is not directly by 'stealing', but by using the formal procedures to extract informal revenue: Congo's infamous 'article 15', but on a bigger and institutionalised scale.

5.3.1. Profit through contracts

The first and foremost is direct profit in the negotiation and signing of contracts. High value investors must pass through multiple layers of interaction with the ministry, all of which cost money. Companies must pay to acquire information – principally maps and survey data – on which planning, negotiations, and early-stage research is based. One parliamentarian mentioned the sum of $75,000 for access to these (Interview 29: 18/10/17). This information often is provided as part of the terms of a Memorandum of Understanding (MoU), which can cost around $150,000, in addition to multiple additional "taxes", which can push the cost towards $1 million (Interview 28: 18/10/17). Payments are also required in order to meet the minister, or a civil servant. This can have differential pricing for a meeting in the ministry compared to a meeting in a restaurant or hotel. This cost, the '*pas de porte*' is typical of Congo's business environment.[39] Usually a core official with the minister's trust is the gatekeeper. Jean Muganza, a long-time chief of staff, often filled this role, and at one point formalised his position through a price-list. Consultations with Muganza cost $6000 within the ministry, or $9000 at another location. Discussions with lesser advisors would cost $5000 to $7000 according to location ("Munganza's price list", 2012; Interview 10: 29/09/17).

More significant sums then come at the signing of contracts, which come with signature bonuses for the ministry staff involved. These bonuses alone are mostly in the millions of dollars, and are usually accompanied by substantial informal payments to key figures. Further payments are formally required for exploration and exploitation rights, and as bonuses upon production and after ten million barrels.[40] .For example, the Divine Inspiration contract included a $2.5 million signature bonus, with up to $4 million total in contractual fees (Divine Inspiration Consortium, 2008, §12.9). The Caprikat & Foxwhelp PSC for Blocks I and II held a $6 million signature bonus, with $2.5 million for exploration permit (with the same for renewal), $2 million for exploitation permits (and the same for renewal) and a further $2 million production bonus (Caprikat & Foxwhelp, 2010, §12.9). The accretion of fees can in many cases build up to vast sums. For Production Sharing Contracts on three blocks in the central basin, which have as yet not received presidential approval, one company paid up to $7 million (Interview 29: 18/10/17). The head of a Congolese oil company said DIG Oil lost $20 million in the attempt to secure their Cuvette Centrale blocks (Interview 58: 12/12/17). According to a senior official, Total was required to pay $6 million to acquire SacOil's contract on Block III (Interview 30: 20/10/17).

Interlocutors tended to emphasise that informal payments also accompanied such formal requirements, often being crucial in deciding which are approved. Neither are likely to enter official state coffers; informal payments of course are taken by individuals, but formal payments also pass "*entre les mains des gens*" (Interview 29: 18/10/17). As a prominent observer noted, "All the money from signatures and the like goes into shadowy places" (Interview 53: 24/11/17). The benefits of this also extend to presidential staff managing oil.

[39] This informal but obligatory access fee is separate from and prior to formal signature bonuses.
[40] Earlier contracts had lower fees, as the government had not yet secured its negotiating position, capacity and awareness.

Some suggest $30-40 million received personally by a presidential advisor tipped the balance for Caprikat & Foxwhelp (Interview 29: 18/10/17).

In this process, cancellation and renegotiation is standard practice to further increase revenue. New ministers will often cancel their predecessors' contracts in order to engage in the negotiating and signature process themselves. For example, in the words of Lay & Minio-Paluello, "It was a central strategy of the cancellation/amendment of the 2006 Tullow/Heritage contract that Kinshasa wanted to attract further bonus payments" (2010, p. 9). They further note that signature bonuses were an apparent obsession for Congolese state representatives; even parliamentary oversight tended to focus on the size of these payments, rather than the production-stage terms of the contract. In this situation, state representatives were "distracted by signature bonuses, as they represent hard cash up front. Much of the debate in DRC over the contracts has focused on these kinds of payments at the expense of looking at more important provisions" (Lay & Mino-Paluello, 2010, p. 9). As we elaborate below, much of this is related with the short-term political horizons of the political actors involved: the general unpredictability of the political careers and positions, combined with the permissive (and institutionalised) context for corruption.

Another particularly lucrative ministerial activity is the signing of Memoranda of Understanding (MoUs). Under minister Mbuyu, a scheme had been set up which allowed maximum profit out of these, via the following mechanism. The MoUs contained a poorly defined 'obligation' for the companies to produce research, which would be used to annul contracts. This in turn left the ministry clear to re-sign or overlap as many MoUs as it wishes, without committing to allowing a company to develop or sell blocks. This attracted customers by offering easy profits from flipping – selling on at much higher prices without value addition – to a long list of mostly unknown companies in return for informal payments to Mbuyu or his associates (Interview 28: 18/10/17; Interview 30: 20/10/17; "Oil Sector", 2013). According to the head of a Congolese oil company, some were signed with fictive companies before first contact with the customer to whom the contract would be sold: finished MoUs became items for quick sale (Interview 58: 12/12/17). The ministry had no developmental purpose in mind with any of these agreements. Normally flipping is seen as a problematically non-productive activity. Even this option was undercut by Mbuyu's desire for profit; these MoUs were overlapped, so many were never more than pieces of paper: Minister Mbuyu signed thirty-four of these MoUs for a handful of blocks, causing multiple overlaps; six MoUs were signed for the as yet unclaimed Albertine Graben Block IV.[41]

The vast majority of these companies lacked the technical or financial capacity for the contracts they signed (i.e. to conduct such research). They were under the impression that the research requirements were non-binding, and that upon the 'obligatory' signature of a PSC, they would sell their concession on to a larger company. Many of the companies were created freshly for the signature of the MoU.

Importantly, many of these companies had connections to the regime and the ministry. The plan appears to have been to permit the more connected companies to 'flip' the concessions, while the ministry knew that most other MoUs would be cancelled. These companies were never going to be able to conduct the exploration adequately. This defeated a formal pur-

[41] Although these dynamics are not unique to the oil sector, their concentration and extremity without productive development is unique. In the oil sector, resale happens on unproductive concessions. In mining, resale happens on productive concessions, or production can begin soon after sale. Long time-horizons in oil mean that companies need to know that investment in exploration and infrastructure will pay off, and resale prevents certainty.

pose of the MoUs, having originally been devised by the oil administration as a mechanism of improving data and mapping on oil blocks. (Interview 30: 20/10/17).

Barring the incident described above of a price-list written up by Jean Muganza, the long-serving ministerial Chief of Staff, the rules of these costs are kept unclear. This further places investor in the control of ministry advisors, who they must be paid to act as guides and brokers. The system is designed more for the broker than for development. Unclear rules also allow contracts to be cast aside easily. Many incomplete processes bring more profit than a single complete process, while unclear rules are easily broken, and a broken rule is an excuse to tear up a contract and restart the process, or demand a larger payment to fix the problem.

5.3.2. Profit beyond contracts

The second mechanism of financial gain – in the traditional manner of institutional corruption – is that ministry funds assigned for official purposes are diverted. Throughout our field research, a range of examples were given, such as part of the funds budgeted for conferences which is commonly diverted, or money paid to the state by companies as part of PSCs and allocated for exploration and training is also commonly 'eaten' (Interview 28: 18/10/17). This also incorporates the downstream oil sector, also managed from the Ministry of Hydrocarbons. Here, examples were given in which fuel, intended to provide state services, is signed off by high-level actors to political clients, personal businesses or family members (Interview 30: 20/10/17).

The third mechanism is by creating opportunities for per diem and expense payments. This can be paid by the state, or by investors. Flights abroad, hotel stays, large meals, perhaps more, are available. Even in Kinshasa, meetings are often held outside the ministry, inducing payments from investors for travel and food. Investors often court contracts by holding seminars in a hotel, usually catered. Ministry staff design their work programmes to maximise such benefits, privileging them over effective plans (Interview 13: 01/10/17). The continuous negotiations, commissions and working groups around oil relations with Angola should be seen in light of this goal. As one observer noted in relation to this case, "one must create a situation" because "the clique must eat" (Interview 10: 29/09/17).

5.4. Institutionalised extraction

When someone wants to profit, he wants it all now. Someone who is not sure of tomorrow; you only know today. You have to win. You don't want others, after you, to get something tomorrow (Interview 26: 16/10/17).

A culture has emerged that all projects should be first and foremost about financial gain, mitigating the willingness to make investments. This relies on the expectation of extraction coupled with relatively short and unstable tenures.

Political office and futures are often short and uncertain in the DRC: "pushed in part by the short term of their political horizons, Congolese elites in charge of the economy generally privilege transaction over production" (Englebert & Tull, 2013, p. 15). In oil, this applies principally to ministers and their cabinet staff. Ministers have occupied the post a rough average of 24 months[42]. Although we were unable to determine average duration of cabinet posts, interviewees expressed that the norm was for cabinet members to accompany ministers, therefore being of roughly similar length. Highly connected figures such as Jean Muganza constitute useful exceptions which prove the rule. Muganza worked in senior cabinet posts in the ministry for nearly ten years, and was an indispensable chief of staff to several ministers, primarily through strong

[42] Excluding the outlier of Martin Kabwelulu, who held the post for one month.

ties to the president's inner circle. He is consistently noted as an extreme outlier with no peer. It is fully understood by ministers and their cabinets that their moment of grazing is finite. It is thus essential to graze while pastures are available, and so planning prioritizes extraction rather than development. Oil suffers particularly in this regard in relation to other economic sectors, since investment periods are longer than even the most durable staff tenures: oil projects in an environment such as DRC would rarely see returns on investment within a decade. As a senior official put it, "for exploration and production, one must invest, with returns after 10 or 15 years. It is not in their heads to do this. If you go to a minister with even a five-year investment project, he would say "I won't be there [when it finishes]" (Interview 28: 18/10/17). Those in more senior positions, often implicitly there for the purposes of buying their loyalty to the regime, and with no geology training or prior experience of the oil industry, know that before long it will be someone else's turn. Now is the time to eat. As a senior official put it "There is not a good culture of exploration and exploitation. People want to benefit immediately! And you can't do that with oil. They think: we want to benefit directly…This is partly because oil is not exploited in artisanal ways. Diamonds and gold and coltan you can just turn up and pick it out of the ground. With oil you can have just as much money, maybe more, but not in the same way, not as easily" (Interview 28: 18/10/17).

This attitude was present from the start, but this culture saw an acceleration from 2010 onwards. Around this period, a variety of factors came together, encouraging informal extraction from the oil sector. First, as elections approached, actors became uncertain of their tenure in the short term, providing strong incentives to extract. They were not sure if they were going to be re-elected or if the regime would hold: time seemed to be running out, so as if preparing for hibernation, a feeding frenzy began. As a senior official put it, "The minister became uncontrollable. He thought all was about to collapse. In 2011, there were elections, so he wanted to profit quickly" (Interview 28: 18/10/17). Second, at this time, oil prices were rising rapidly, providing greater opportunity to extract from eager investors. Third, it was also encouraged by the regime and by elite groups, since mineral prices – usually the foundation of Congolese clientelism – saw a sizeable fall and relatively slow recovery after the 2008 financial crisis. Lastly, around this period (under the Mbuyu regime), a particular political coalition was in charge of the ministry, facilitating extraction[43]. This culture endured under the other Ministers.

5.5. Impact on the development of the sector?

The institutionalisation of extractive practices has a significant impact on the development of the sector: among our interviewees, there was a consensus that the sector lacks a coherent long-term plan. The following quote of a senior official is illustrative in this regard: "The minister has no real plan. He will show you one, but it will just be last year's work or a plan so they look busy. But they don't work" (Interview 28: 18/10/17). Further illustrative of this process are the annual reports of the hydrocarbons administration (*secretariat generale*), which are meagre documents. That of 2015 runs to a grand total of four pages, only one of which covers the content of the year's administrative labour.

Short-termism has such as severe and destructive logic that it even eliminates developmental steps that would themselves provide personalized profit maximization in the short to medium term. In the words of a regime insider, commenting on the oil sector: "I see in all

[43] Following the sacking of his first Secretaty General, Djunga, minister Mbuyu chose Christian Kanku, one of his 'corporals', and a man of his 'village' in Katanga as the new Secretary General ("Oil sector", 2013; "Senior Aide", 2013). Kanku also married Mbuyu's daughter, Chantal Lwamba, who was (and remains) a key ministry advisor. As a trio, these three began the MoU signing spree described above (Interview 28: 18/10/17)

these institutions, they take the eggs and the chicken and eat the lot. They don't help the chicken produce. The kill and eat the cow, and don't let it produce milk" (Interview 17: 05/10/17).[44] For example, the common practice of financial gain through the negotiation and signing of contracts could be orders of magnitude more profitable if sufficient data were collected on blocks: these data would in turn allow oil companies to be attracted, and further develop the sector. Exploration for these data is relatively inexpensive, is adequately budgeted for, and would bring major value gains, even at the level of signature bonuses. Yet limited exploration is conducted. Instead, exploration money is eaten, money for the training of experts (who would provide the means to better data) is eaten, and attempts to get data from the private sector are rendered ineffective: MoUs signed by Mbuyu, officially to acquire better understanding of oil fields, were given to companies incapable of providing such data analysis and research.

This culture has embedded itself over time: individuals in the sector encourage one another to engage in illicit deals, treating those who do not engage as self-destructive and irrational. One private sector in-country manager for an international company, whilst fixing a deal that would also benefit himself by an abnormal contract structure, assured ministry officials that their adherence to principle would mean they would "die poor" with "nothing at the end" (Interview 18: 05/10/17). This extends to the extreme that corrupt officials actively seek to side-line colleagues who do not cooperate, since there is among officials desirous to make money through office a perception that long-term investment and short-term money making practices are incompatible. Attempts by colleagues to restrict extractive activities are often punished. According to various ministerial interlocutors, those who seek to encourage major reform and long-term planning are seen as "blockages" (Interview 19: 09/10/17) who "slow down" the moneymaking activities of "pragmatic" officials (Interview 18: 05/10/17).[45] In a particularly striking anecdote, these interlocutors recounted how a group of ministerial officials was once chased from a ministry meeting with a private sector group for presenting a potential blockage to improper money-making deals (ibid.). In such a culture, those who wish to remain in the room must quietly facilitate actions as proposed, or indeed participate in the deal. Rather than running alongside development, or a drain on it, the culture of short-termism actively excludes long term development planning. The culture also includes the national fixers and country representatives of oil companies. As a prominent observer summarized the situation: "Anyone who tries to put policies in place are barriers to backhanders. There is a lack of vision and a lack of expertise. [State administrators] are hedonists (*jouisseurs*), there to maximise what they have" (Interview 53: 24/11/17).

Lastly, competing financial interests, or financial interests competing with practically-inclined management, have also blocked progress in several cases. Where two or more officials of comparable seniority, usually including one who is paid to back a company, arrive at deadlock over a decision, usually over contract provision, there is often a protracted conflict. This happened in a number of cases. First, it stalled exploration in the Central Basin and along Lake Tanganyika due to a conflict between Fugro (backed by chief of staff Jean Muganza) and BGP (backed by the president's oil advisor, Michel Ngoy). Michel Ngoy Kasongo, erstwhile presidential oil counsellor, planned for two companies to conduct research on two different basins.

[44] Crucially, this metaphor is from the perspective of an actor interested in development. For those in the administration, the eggs and milk keep coming, from chickens and cows in the form of a set of property rights which are sold and resold.
[45] Interlocutors speak of "pragmatic" officials –meaning those willing to find ways of making money through governance – and of "logical" officials – being those who follow paths of work and planning which aim towards sector development, economic inclusiveness, environmental management and other such ends.

Fugro, a Dutch company – now within the French CGG – was to conduct studies on the central basin. This was deemed sensible since extant studies of this area had been conducted by French companies. Meanwhile, BGP, a Chinese company linked to CNPC, was to conduct studies on Lake Tanganyika. BGP already had exploration teams on the ground in Tanzania working on the same geological basin, reducing set-up costs and providing a basis of expertise in the particularities of the field. However, Jean Muganza, the ministerial chief of staff, backed Fugro for both contracts, due to a financial relationship with Fugro's Congolese representative. Due to Muganza's influential connections, this dispute was not resolved, and no exploration has taken place (Interview 30: 20/10/17). In other words: also here, political calculations – in this case leading to a blockage between two actors – have precedence over the development of the sector. A similar conflict appears to have occurred with Lake Kivu gas contracts competition between EPPM and KLEC (backed respectively by the minister of hydrocarbons and another major figure, the prime minister according to some accounts) (Interview 51: 21/11/17; "Minister Steadfast", 2016; "KLEC bowls over", 2017).

In sum, the quest for short-term informal revenue maximization blocks the development of the sector in various ways: it stops any medium- or long-term plans, and it leads to a number of conflicts.

5.6. Comparing proximate productive sectors: Angolan oil and DRC mining

An important question to be asked in this context is why the oil sector in Angola is so much more developed than the Congolese oil sector. Comparison to Angola's highly productive oil sector highlights the particularities of DRC's oil. Again, it is not corruption or cronyism in and of itself which stymies development. If so, Angola would be no different than the DRC. Instead, the sector's relationship to the regime stability defines development. In Angola, the regime is founded on and strengthened by oil, whilst in the DRC oil is marginal or a threat to the regime. This stems from the structure of oil distribution in these two states: Angolan oil is primarily offshore and Congolese oil (if all developed) would be primarily onshore. Offshore oil exists beyond intra-state regional politics. Cabinda here proves a sound exception that proves the rule: only Cabinda can claim the relevant offshore fields, and Cabinda is the site of Angola's most fervent separatist movement. Offshore oil also gave Angola a head start. During the post-colonial period of political consolidation (largely by war), offshore oil fields were already highly productive. By contrast, onshore fields in Africa – which the DRC's overwhelmingly are – only came into their own in the early 2000s, by which time Joseph Kabila's regime, however fragile, had already established its means of retaining control over the political settlement. New money and activity in many cases would only disturb the balance.

In the same way, Congo's productive mining sector and unproductive oil sector stand in stark contrast, despite both being highly politicized and deeply corrupt. The crucial factor again is each sector's relation to regime stability. Mines were viable at Congo's moment of political competition and consolidation. Oil was not, since deposits in the interior only become plausible prospects in the early 2000s. Congo's political settlement is thus tied to a mining economy, and those actors tied to it. As argued above, the internal balance of power and regional relationships essential to the Kabila regime have frozen in time political interest in certain economic sectors. Innovation would be deleterious to these. Oil development is thus either marginal or a threat to the established political settlement, whilst mines are central to it.

6. CONCLUSIONS. THE RULES OF THE GAME: THE LIMITS OF GRAZING, AND THE LIMITS OF DEVELOPMENT

In this final section, we will summarize the main points of the paper, through which we aim to explain why the sector remains underdeveloped. The main lesson we can draw from the above is that the oil sector is governed through a number of rules, which are largely related with regime stability and rent generation. Concretely, production and development of the oil secondary is secondary to regime stability and rent generation. Generally, conduct in the oil sector is mostly not micro-managed by the presidency; yet, when actions are taken which threaten these general rules, the president intervenes – a process which particularly intensified after 2010. Concretely, both development and corruption of the oil sector need to respect certain limits: developing the sector can only happen to a certain extent. For example, and as we will see, activity such as claiming oil rights or inviting companies who were unknown to the regime are actively punished. Along the same lines, while corruption is accepted and part of the strategy, when this goes beyond certain boundaries, and attracts too much attention, it is punished. Corruption is not a free-for-all. Officials must graze within bounds, that is, 'goats eat where they are tethered'.

6.1. Punished for developmentalism

At the national level, officials are often side-lined or removed for policy efforts that were, for various reasons, too developmental. Actions which have as the explicit aim to develop the sector, or generate systematic public revenue from it, actively harm the sector's main functions for the regime (patronage and geopolitical), and threaten regime stability.

The most prominent example of this dynamic is former Minister of Hydrocarbons René Isekemanga Nkeka. From early 2009 he emphasised in the press that "For a long time Angola has occupied Congolese territorial waters, flouting the Montego Bay Convention" (Reuters, 2009). That is, he pressed Congo's claim under UNCLOS to hundreds of thousands of barrels of oil produced daily in Angolan offshore fields. He then backed a law defining the maritime territory in which this occurs. This active claim on DRC's rights to oil in Angola's offshore fields was unacceptable to the Congolese presidency. While presenting a major opportunity for public revenue, such claims create a direct threat to regime security by destabilising DRC's relations with Angola. As a direct consequence, Isekemanga's duties were handed to his vice-minister. After several months, he was removed from the ministerial post entirely (Interview 28: 18/10/17; "A Kabila Stalwart", 2010). One presidential counsellor was also sacked for his over-zealous work on the same maritime borders. In the words of a colleague "They chased him because he was working too hard on it" (Interview 28: 18/10/17).

The same rules apply at lower levels, such as within the ministry. Throughout field research, Ministry staff of all levels were encountered who had been side-lined for work directed more towards development than short-term financial gain. Many of these officials retain their salaries, as insurance against the public damage that these informed individuals could cause the ministry. They are excluded for their lack of what interlocutors termed "pragmatism", that is, their unwillingness to engage in corrupt deals, and their emphasis on more developmental priorities in their professional conduct. For example, one was particularly attacked for having attracted oil investors to DRC from South Africa. Since the official was unknown to the presidency, this action was beyond presidentially sanctioned channels, thus causing a risk to the presidency's stability calculus. For all the regime knew, the official might have profited in the process of promoting Congolese oil fields, and might have opposition connections. The companies might have signed contracts on blocks to be attributed to regime clients, or to be left strategically undeveloped.

6.2. Punished for excess grazing

Corrupt behaviour is informally permitted, principally in order to buy regime stability. Yet there are limits to behaviour. Overstepping these bounds is punished. The bounds are defined principally by an excess of mess and noise, rather than for the size of the illicit gains. Corruption which becomes too visible no longer serves the function of stability, and therefore is no longer tolerated. The most prominent example of this dynamic can be seen with Minister Celestin Mbuyu. His rush of MoUs created conflict with companies, and some of his activities became public: while corrupt activities as such are not a problem, too much unwanted attention[46] creates a problem. His successors, Martin Kabwelulu (temporarily) and Crispin Atama, were specifically tasked with cleaning up the mess, principally by cancelling MoUs (Interview 28: 18/10/17). Mbuyu was sacked in early 2012. The boundaries of behaviour appear therefore to be defined by public exposure. Crucially, corruption in the oil sector is almost never punished legally, and in those rare cases, only by isolated officials.

Other ministerial staff are removed for excessive corruption. Minister Mbuyu's first Secretary General was caught taking over $300,000 in cash from a single MoU. This caught the attention of the state prosecutor, who imprisoned the official. Although freed after eight days, he was sacked soon after.[47] As noted above, in October 2012, Jean Muganza, the long-time ministerial chief of staff, issued a letter – under the ministry's letter-head and signed by the minister – detailing precise costs for meetings with himself, other civil servants, or the minister, with differential pricing according to location ("Munganza's price list", 2012). He was reprimanded by the presidency after complaints from companies, and was made to issue a retraction of the list. He was later sacked upon the urging of the prime minister, Matata Ponyo, for attempting to create a cash-cow for himself in the form of a new state oil company and a new agency for the negotiation of contracts, to be headed by himself and his associates ("Jean Muganza is trying to carve", 2016).[48] In other words, both of these examples illustrate how these actors had overstepped the boundaries set out for corruption: they had tried to extract too much, by respectively charging too much and by making a list of 'fees'[49]. Moreover, their attempts had also become public, which became fatal for their position.

6.3. Negotiated Rules: the network strikes back

It should be emphasised that the rules are defined not only from above, but in a negotiation between different levels of the formal hierarchy. As discussed, even the presidency does not have complete freedom of manoeuvre, and does not defined the rules unilaterally. Instead, authority is distributed unequally and non-hierarchically through the system, via "rhizomic" networks of varying strengths, founded principally in family and regional origin (Bayart, 2009, pp. 218-227)

For example, even the president is restricted in his power to sack ministers by those individual's regional origin. This creates a differential in grazing space. Mukena and Mbuyu's status as prominent Katangans provided them with far more leeway for corrupt activity. Mbuyu

[46] For example, in 2011 a small opposition newspaper reported that Mbuyu had pocketed $6 million paid by Total to the state for access to Albertine Graben Block III (Interview 30: 20/10/17).

[47] Freed after eight days through the influential support of Minister Mbuyu, who was also president of the Katangan organisation at the time, the Secretary General was later sacked permanently after being caught for an MoU deal for $1,000. Mbuyu having left by this point, the official had no protector ("Oil Sector", 2013; Interview 28: 18/10/17).

[48] Muganza's choice of a position controlling contract negotiation over any involvement in production shares is a clear sign of where the real value in the sector lies.

[49] The example of the list illustrates that the practice of charging fees for visits is accepted, publishing a letter, and sending it to firms, is seen as a bridge to far – as attracting too much unwanted attention.

may have crossed a line, but Mukena walks right up to that line. The boundaries of acceptable grazing for Atama and Mende, were far more limited. As the official put it "they could fear the President, they're not from the same tribe" (Interview 30: 20/10/17).

The same resistance to enforcement through networks also comes from less senior levels. Officials are often willing and capable of making efforts to push back against the rules when they have enough protection from connections. For example, Jean Muganza, the long-standing ministerial chief of staff, retained his post despite multiple overambitious moves, including distributing a price-list for meeting officials, attempting to accede to the minister's post, and several attempts to create new administrative organs to his own benefit (although these attempts eventually became too much). This was largely due to his strong connections (including by family or marriage) to close presidential aides[50]. In a similar manner, a presidential oil counsellor was also not sacked for many years, due to his Katangan origin, despite developmental overreach, including conflicts with financial interests in the oil sector, and conflicts with the presidency over the Angola dossier (Interview 30: 20/10/17).

In other words, attempts at change, including sackings, are restricted from both above and below. This is particularly detrimental for the development of the sector. In 2012, Prime Minister Matata attempted to significantly increase the production of the sector. As a senior official remembered "Matata had a good action programme… But the ministry was incapable of taking the necessary measures" (Interview 28: 18/10/17). Matata's technocracy tried to take control of the ministry, but failed. In the situation as described, change is difficult to achieve.

6.4. Overall conclusions

In sum, in this paper we have analysed the ways in which the DRC oil sector is governed. In line with the theoretical introduction, we have shown the ways in which oil creates rents for the regime in place. In doing so, we add three important additions to the literature. First, we highlight how rents are not necessarily generated through the production and development of the sector, but how the lack of development can be an important source of rents. Put differently: the kind of rents which are generated by *not* developing the sector are much more interesting for the regime than by developing the sector. Although the production and development of the sector would be financially more interesting, it would require a long-term investment, and engaging with a wide range of (largely foreign) actors, whose behaviour cannot be controlled or predicted. In other words, rents should remain under control of the regime in place, even if this means actively sabotaging the development of the sector. To repeat a quotation used above, a regime insider summarized this: "I see in all these institutions, they take the eggs and the chicken and eat the lot. They don't help the chicken produce. The kill and eat the cow, and don't let it produce milk" (Interview 17: 05/10/17). In other words, the rents which are remaining are still 'eaten' by the regime in place, a practice which 'kills the cow', but guarantees regime stability.

Second, the theory shows how states have discretionary power in allocating these rents. On the one hand, we have shown the strong presidential control over the sector, a move primarily inspired by a need for regime stability: increased presidential control over the oil sector enable the sector to better serve as a source of patronage, in handing out positions (such as the ministry) and contracts. On the other hand, we have shown how presidential (and regime)

[50] Including Gustave Beya Siku and Theodore Mugalu. The departure of Beya Siku is credited as a major reason that Muganza was successfully removed by the Prime Minister after Muganza attempted to restructure the oil administration to his own benefit ("President Kabila places his men", 2017; "Jean Muganza is trying to carve", 2016; Interview 12: 30/09/17).

control is not absolute: once particular actors become a threat to regime stability, it is not that easy to lay them off, as they are able to rely on other sources of power (such as ethnicity), or on power within the ministry.

Third, we have shown the political and social logics behind corruption: this means that corruption certainly is allowed as a form of political reward, but this political logic equally means that it should not be overdone. The goat eats where it is tethered, but only there, and within certain limits.

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Acronyms

BGP – Geosurvey company, part of China National Petroleum Corporation

CGG – Compagnie Générale de Géophysique. French Geosurvey company.

CNNOC – Chinese National Offshore Oil Company

COHYDRO – Congolaise des Hydrocarbures. Former Congolese state oil and petrol company.

COMICO – Compagnie Minière Congolaise. Congolese oil company backed by various foreign investors.

DIG Oil – Divine Inspiration Group (former name, now used only in acronym). Oil company of South African origin.

EITI – Extractive Industries Transparency Initiative

HRT – High Resolution Technologies. Brazilian geo-survey company.

IEA – International Energy Association

PSC – production sharing contract

SOCOREP – Société Congolais de Recherche et Production, Congolese subsidiary of Petrofina. Still legally functional in littoral field ownership structure.

SONAHYDROC – Société National des Hydrocarbures du Congo. Current Congolese state oil and petrol company.

SONANGOL - Sociedade Nacional de Combustíveis de Angola. Angolan state oil company.

IOB
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