Tom Lantos Human Rights Commission Hearing

Democracy and Human Rights in the Democratic Republic of the Congo

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Thank you, Congressman Pitts, McGovern, and other members of the Lantos Commission for holding this hearing today on the Democratic Republic of Congo and for the opportunity to testify. Tom Lantos was a personal inspiration to me in his lifelong fight against oppression, and it is a deep honor to testify at the commission named after him.

The Problem

The Congo is facing another pivotal turning point in its history. Congo has arrived at turning points like this in the past, and the results have usually been tragic. In this light, I would like to focus my remarks on what the U.S. government can do now to help prevent a repeat of history that leads to a much wider violent crisis in the coming weeks, together with the private sector and European allies, and the key role Congress can play in this.

President Joseph Kabila's attempt to hold on to power risks taking Congo back 15 years to mass violence and absence of the rule of law. His government is escalating the current political crisis by failing to hold constitutionally mandated elections, cracking down on protestors and independent media, jailing pro-democracy activists, and increasing grand corruption. According to an Order recently issued by the SEC in a U.S. Foreign Corrupt Practices Act case related to Och-Ziff Capital Management, members of Kabila's inner circle received $100 million in bribes in exchange for doling out natural resource concessions. December 19th is a flashpoint date. Kabila's constitutional term expires then, and sustained mass protests and much more extensive violence will likely take place – that is, unless the Congolese government comes up with a credible interim government that gives the opposition meaningful participation until elections take place, and it takes strong steps to build confidence with its citizens that a democratic transition is truly occurring. If not, regional stability is put at risk, as street and/or militia violence could spark large refugee flows into neighboring Angola and Congo-Brazzaville.

Looking past December 19, if the crisis is not properly resolved, Congo will go backward on many markers of progress that have been made over the past 15 years, as governance and security reforms depend on having a legitimate government and moving forward with the constitutional process. Two important measures of progress have been that the number of internally displaced persons has been cut in half from 2008 to 2016, from 3.4 million to 1.7 million, according to the United Nations, and 79 percent of miners working in previously conflict minerals tin, tantalum, and tungsten mines now work at conflict-free mines, according to the International Peace Information Service. This has been due principally to some progress in resolving the conflict in eastern Congo and a reduction of the conflict minerals trade, and the U.S. government through the Dodd-Frank legislation passed by Congress and Special Envoys Russ Feingold and Tom Perriello have helped spur much of this progress. However, a botched electoral process would put some of that progress at risk. Furthermore, critical reforms in the areas of justice, the security sector, rule of law and anti-corruption, mining governance, natural resources and fiscal transparency, and other issues that could bring the country forward would stall, leaving the population worse off, creating safe havens for criminality, and leaving a very negative environment for responsible investment. On the other hand, a successful transition would help move the rule of law forward, increase security across the country, including in conflict-ridden eastern Congo, and lay the foundation for responsible businesses to invest.

The repression, corruption, and violence in the east we are seeing today are the latest manifestations of a wider systemic problem in Congo, that of violent kleptocracy. As the Enough Project revealed in a recent comprehensive study that I authored, "A Criminal State: Understanding and Countering Institutionalized Corruption and Violence in the Democratic Republic of Congo," ruling networks in Congo and their commercial partners have hijacked governing institutions and maintained impunity in order to extract resources for personal gain and to maintain the security of the regime. This has been the case in various ways for over a century, dating back to Belgian King Leopold's reign in the 1890s. Ruling elites then use varying levels of violence to maintain power and repress dissent. The pillars of this system include letting security forces pay themselves, personally profiting from lucrative natural resource deals, maintaining an army that pillages on its own soil, and ensuring there is no accountability for regime-connected elites. This system is manifesting itself now with the current regime's attempt to subvert a democratic transition, as it has in driving war in the east. Kabila and his inner circle profit from corruption and are trying by all means necessary to hold on to power.

The Solution: What the United States can do to prevent a wider crisis

The key to changing this equation, preventing a spark to wider violence in cities and in conflict-ridden eastern Congo, and starting the process of reform away from violent kleptocracy in Congo is to impose serious consequences on those who profit most from violence, illicit resource extraction, theft, and undermining democracy. This should be accompanied by policies to improve governance, human rights, and transparency. However, without financial and legal consequences for the top leadership that run this system, there will not be sufficient leverage to support human rights, peace, and good governance objectives.

Why the United States has leverage

President Kabila's inner circle relies on financial transactions denominated in U.S. dollars, many of which pass through the U.S. financial system, either directly for activities taking place here or through the correspondent banking system related to activities ultimately taking place somewhere else. This gives the United States options to use certain tools that can create financial pressure in order to prevent the escalation of violence and constitutional crisis related to Kabila's transition. These tools have been used to counter nuclear proliferation or terrorism. It is time to use those tools to help prevent costly humanitarian crises and atrocities in Africa, including in the Congo.

The good news on this issue is that 1) the vast majority of Congolese citizens strongly believe in democratic change; 2) the United States and Europe have leverage over the Congolese leaders because they use U.S. dollars and Euros for virtually all major transactions; 3) the United States government has a key role to play but the private sector (banks in particular) here and in Europe should also act; 4) the process has already started and has begun to have some impact. But unless more pressure is applied now, we will likely fail to stop the possibility of bloodshed.

U.S. Strategy

A three-part strategy would leverage the negotiations to get the Congolese government to meet the policy benchmarks the U.S. government is working to get it to agree to – namely, committing to hold elections in 2017, publicly stating that Kabila will step down at the end of the transition, dropping criminal charges against democracy activists and opposition candidates, and committing to require state-owned mining companies to be audited by independent third parties and that the audits be published. This combination would strongly support Congolese efforts to change the system and enhance good governance. Congress should urge the Obama administration to take some steps immediately, and if the Congolese government makes progress on the benchmarks by January 1, it could avoid an escalation of pressure.

1) **Financial pressure through anti-money laundering measures**
2) **Political and financial pressure through enhanced targeted sanctions**
3) **Appointing a new U.S. Special Envoy**

1) Financial Pressure through anti-money laundering measures. Congress should urge the U.S. Treasury Department to take measures to counter money laundering activities that transit from banks in Congo to the international financial system, together with key African and European government financial intelligence units (FIUs). The Treasury Department Financial Crimes Enforcement Network (FinCEN) should issue a public advisory concerning the patterns used to launder the proceeds of corruption from Congo and concern about how such patterns may be exacerbated at the end of the regime's constitutional term. The recent BGFI bank scandal and corruption with the electoral commission would be a useful starting point for an Advisory. FinCEN issued an analogous Advisory related to the end of the Yanukovych regime in Ukraine. The advisory should also include any other sets of transactions that may represent money laundering activity, such as elements of the gold trade.

Such an advisory should include, where possible, discussion of the correspondent banking channels used by Congolese and regional banks to connect to the international financial system. Other financial intelligence units should take similar advisory steps, which collectively should urge banks and other financial institutions to conduct stronger due diligence and provide more reporting on suspicious transactions. However, given the relevance of the U.S. dollar to transactions that underlie kleptocratic activity in Congo, an advisory from FinCEN would be the strongest first step. FinCEN and FIUs from African governments, such as South Africa, Uganda, and Tanzania, should collaborate on information sharing, capacity building programs, and enforcement to make these advisories and the subsequent investigations more effective.

Several sub-steps can be taken under this umbrella in an escalating manner. A first step would be for FinCEN to counter money laundering activities connected to the regime and key elites by issuing a request to financial institutions pursuant to Section 314(a) of the Patriot Act. The request would demand vigilance and lead to more vigorous reporting of suspicious activity regarding the laundering of the proceeds of corruption. This is a private step that the U.S. government would inform Congolese leaders about but without providing specifics. This would not cut off the general Congolese population from the banking system, but rather be directed against a specific list of individuals and entities.

Another step would be to engage directly with U.S. and European banks that do business with Congolese banks and/or Congolese officials. Treasury and State officials should meet with the U.S. and European correspondent banks that do significant business with banks in Congo that are believed to facilitate money laundering, as well as with key regional bodies. Raising concerns about possible money laundering activities with individual banks could cut off the worst money laundering banks in Congo and elsewhere from the international financial system.

If these measures fail, FinCEN could escalate pressure further, including through issuing a Foreign Financial Agency request (31 CFR 1010.360), which requires specific institutions to provide information on particular types of transactions, such as involving particular senior officials or transactions through BGFI. FinCEN could also declare certain institutions or classes of transactions related to Congo as “primary money laundering concerns” under Section 311 of the Patriot Act and impose special measures, such as the conduct of additional due diligence.

2) Political and financial pressure through enhanced targeted sanctions. The U.S. government should designate a short list of high-level officials and advisors with strong influence on President Kabila and who have significant financial assets that can be impacted by a designation. The designation of three Congolese generals during 2016 has been a good start and taken seriously by Kinshasa, but it is likely to be insufficient to change the DRC government’s stance on elections unless higher-level targets are designated. Congolese civil society supports additional designations. Kabila’s top financial advisors and heads of state-owned companies should be targeted because of the potential for demonstrable financial impact. The United States should continue working with the European Union, African Union, Southern African Development Community, and the United Nations Security Council to pursue multilateral sanctions as well, but the United States should not wait for those bodies in order to move ahead.

It is important that sanctions not simply be “name and shame” but have real financial impact on the regime. The U.S. and the other governments or bodies should learn the lessons of past sanctions, in particular that they must aggressively enforce those sanctions against properties and accounts in the United States and abroad and conduct diplomacy in countries where the designees have assets. Applied smartly, sanctions can be used to *prevent* crisis rather than punish its perpetrators after blood has already been spilled. Sanctions are not intended to motivate change in behavior, rather than punish, but in African contexts, we often use them in exactly the opposite way.

If these measures fail, the U.S. should increase the sanctions pressure by targeting senior Congolese politicians, enabling business partners of the regime, and members of Kabila's family. Members of Kabila's family, certain commercial partners, and senior politicians have been involved in undermining democracy through significant kleptocratic behavior from receiving major bribes to creating shell companies to manipulating banks, as well as repression. Such designations would demonstrate seriousness of U.S. pressure and could trigger a real change in policy. Looking forward, Congress should urge the Trump administration to issue a new U.S. Executive Order on Congo that expressly includes corruption as a reason to place targeted sanctions on individuals in Congo.

3) Appointing a new U.S. Special Envoy. The crisis in Congo and the Great Lakes of Africa requires sustained policy attention, particularly during this critical period. That is simply too much for one Assistant Secretary of State who must deal with 54 countries at once. The special envoy position is therefore critical to moving policy, and the past two envoys, Tom Perriello and Russ Feingold, have proven that point. Feingold helped negotiate the end of the M23 rebellion, and Perriello has made measurable progress in helping reduce repression during this critical electoral process and helped prevent mass atrocities from occurring in Burundi through focused diplomacy. It is imperative that the Trump administration continues the special envoy position and appoints a new person to the job as soon as it begins. The United States has been the leader on international policy on Congo, as Europe has been too slow to come to the table. Without an envoy, Kabila will take advantage of the U.S. policy gap, and move ahead rapidly to subvert democracy and put the country at major risk. The envoy should report to the White House or Secretary of State directly so they have authority, as their steps on Congo will need to be bold and require decision making power quickly.

Finally, I would also urge Congress to take three steps that would help constrain the overall environment for violent kleptocracy. First, it should pass the Global Magnitsky Act, championed by Reps. McGovern and Smith in the House. Second, it should keep Section 1502 of the Dodd-Frank act, which is the backbone to progress on conflict minerals. Third, Congress should increase appropriations funding to FinCEN and OFAC, the entities at Treasury responsible for anti-money laundering efforts and sanctions.

In conclusion, the United States has an opportunity now to be on the right side of what has been an all-too-often bloody history in Congo. With the right combination of financial pressure and diplomacy, it can work with the Congolese people and help them have their first ever peaceful transfer of power and prevent a violent crisis that would risk breaking the Great Lakes of Africa apart again, costing thousands of lives, subverting the will of Congo's citizens, creating a terrible investment climate, and costing hundreds of millions of dollars in aid to respond.