Section 3

TERMS OF REFERENCE

Terms of Reference for Study on Total Fiscal Burden in DRC

Introduction

1. Taxation is at the center of the state-citizen relation and underpins the nature of the social contract in DRC. Officially, domestic revenue collection has increased more than ten-fold since 2004 (average of more than 40% increase per year), mainly driven by a strong increase in tax revenue. IMF figures show that domestic revenue increased from 9.2% of GDP in 2004 to 19% of GDP in 2011 and 22% in 2012. The government's objective is to reach 29% in 2020.

2. Increasing domestic revenue taxation is a major priority for the current government, which is illustrated by ambitious objectives, government-wide reflection (e.g. workshop on leakage of domestic revenue collection), and initial steps in revising the legal framework. Recently, patterns of taxation have also been strongly influenced by the decentralization process, and increasing taxation levels at provincial and local level.

3. However, informal/illegal taxation and fees are also extremely widespread in DRC. This takes a variety of forms, from fees collected which do not correspond to any legal tax or to taxes that have been cancelled long ago, to taxes collected legally but which are directly negotiated with and pocketed by the person collecting them instead of paid to the relevant account. This situation is related among other things to low or inexistent salaries in the civil service, lack of controls and general impunity, low budget allocations (for example, a recent estimate shows that parents contribute three times more to the education sector than the state[1]).

4. Taxation issues in DRC are at the intersection of several aspects of DFID DRC's work, which we see as crucial to accelerating progress towards poverty reduction and transformative economic development: natural resource revenue; public financial management; private sector development; financing for service delivery; corruption; government legitimacy and accountability.

5. In that framework, the present ToRs outline the modalities and objectives of a study of total formal and informal taxation burden in DRC.

6. Obtaining such information is important in view of the strong push to strengthen domestic revenue collection at national and provincial level, and of donor policies promoting decentralization and capacity building at the provincial level. It is also particularly important as the multiplication of

[1] 2014 RESEN

taxing agencies is occurring simultaneously with attempts at reducing the overall fiscal burden on corporations in Congo and with the introduction of a value added tax in 2012, which begs for an assessment of net effects on households at the grass-roots.

Objectives

7. The objective of this study is to provide a systematic household-level assessment of the total formal and informal taxes paid by DRC citizens to the state and state representatives. This will provide information necessary to:

- Support dialogue and advocacy with DRC authorities at national and provincial levels on tax reform, its impact on citizens, and corruption in tax collection agencies

- Support the design of donor support programmes to strengthen formal taxation systems and accountability and in future monitor progress and impact

- Support the design of citizen control activities by civil society organisations

- Provide elements of comparison with some revenues actually collected and arriving in the accounts of revenue collection agencies in order to assess the degree of leakage

Recipient

8. The primary recipient of this study will be DFID DRC.

9. The study will be shared with the Government and other donors involved in the sector.

10. The study will be done in close cooperation with selected Congolese civil society organisations working on public financial management issues, in order to build their capacity and ensure they are able to use the results of the study for their lobbying and citizen control activities.

Requirements

Deliverable

11. Despite all the macroeconomic and anecdotal evidence detailed in the background section below, there is no systematic household-level evidence on the total fiscal burden faced by the Congolese and decentralization's impact on it. The goal of this study is to seek and provide such evidence.

12. The output of the study will therefore be a report on amounts paid by households to state entities in three provinces, specifying:

- How much different types of households pay on average as fees or taxes (formal or informal) to state entities

- The share that these different types of payments represent as a % of household revenues, differentiating between types of households

- Which state entities collect the funds (police, market, service providers, administrations) and extrapolate how much these entities have collected on a selected number of taxes or fees

- Analyse to the extent possible the respective burden imposed by national, provincial, local taxes, and different types of fees

13. The study will cover three provinces. An initial suggestion – to be confirmed during the inception phase, would be to cover Equateur, Kinshasa, North Kivu and/or Katanga.

Methods

14. The best methodological tool to do so would be a household survey, ideally carried across several provinces. The survey should sample rural and urban households. It could be envisaged to select a certain socio-economic types of households (e.g. farmers, shop-owners and market sellers, etc), which would allow a more focused analysis and comparison across provinces. It is important that this selection allow an appropriate analysis of gender issues and the weight of formal and informal taxation on women compared to men.

15. In addition to finding out about the income and other socio-demographic features of selected households, the survey should systematically identify all of their financial outflows over a certain period of time, including informal/illegal ones. Thus, data should be collected on what amount is spent over a certain period of time on food, transport, health care, education, etc., and what part of these amounts is made up by different taxes and fees, formal and informal. In addition, data should be collected on direct and indirect payments of all sorts to state agents, and on financial inflows. This information may be complemented with information on perception of the management of public financial management at local, provincial and national level, and impact of taxation on behaviour. This may involve regular collection of data on payments by households every week or two weeks over a period of a few months.

16. Ideally the collected data should lead to estimates of total fiscal burden in absolute numbers and in proportion to household income. Samples should be large enough to afford an assessment of variations in fiscal burden as a function of socio-professional status, residence, gender, etc. data should also be collected – to the extent possible. Ideally, a

combination of the survey data and previous analysis of the legal framework for taxation (which taxes are legal, which taxes are collected by which level of government) should allow for the identification of the source of taxation in order to generate a distribution of the effective tax burden of citizens by level of administration (national provincial and local) and by degree of formality (legal v. illegal taxes)[2]. Duplicate taxes should also be identified.

17. It is not certain at the onset what the best method might be, but a mix of questionnaire and observation might be called for. Household members can be identified to answer an exhaustive questionnaire on their financial outlets. Surveyors might also need to simulate the daily activities of respondents and record transactions. For example, surveyors might be sent to provincial or local administrations seeking documents such as birth certificates or business licenses and document requested payments and their nature. Similarly, some might be assigned to spend the day at the market with specific traders and record transactions with police and other officials. Etc. It might be possible to use the estimates gathered from such exercises to reconstitute the aggregate "tax' payments by categories of citizens and estimate their burden.

18. Because of the lack of comparable data from earlier period, it might be difficult to estimate the additional tax burden from decentralization[3], aside from identifying the source of taxes (the proportion represented by provincial and local taxes not previously collected at the national level would represent an estimate of the additional burden). One possibility to get around the problem might be to carefully select provinces in which to carry out the survey according to their level of fiscal/institutional development. Thus, Maniema and Equateur, for example, appear significantly behind other provinces in terms of own revenue and might provide a "control" environment in comparison to more entrepreneurial provinces such as Bas-Congo and Katanga.

19. Assuming all 11 provinces cannot be sampled, another dimension to take into account should be the degree of extraversion of provinces. Some provinces, such as Bas-Congo and Katanga, derive a significant proportion of their revenue from taxing economic activities related to exports and imports. But poorer provinces are more likely to depend in large part on the taxation of their own households, their consumption and their daily activities. Thus, the total fiscal burden on households might well be a function of the relative poverty of the province, with poorer ones exacting a higher burden on their citizens. It might be possible to select provinces in such a manner that both this dimension and the degree of effective decentralization mentioned above would be taken into account.

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[2] This implies an analysis of existing legal framework for taxation at national, provincial and local levels in the relevant provinces be carried out before the study.

[3] Although it could act as a baseline for comparison in the future, which should be taken into account in the design

20. Finally, it will be important that the methodology and outcomes of the study be discussed with local civil society involved in PFM reform and citizen control. These organisations could also contribute directly to the implementation of the survey.

Competition criteria

21. The criteria for selecting the best offer will be based on:

- Quality and relevance of the proposed methodological approach
- Quality of the team proposed:
    - Knowledge of the DRC
    - Experience of household survey and related methodologies
    - Experience of studies and surveys related to taxation in DRC and in other countries
    - Excellent communication skills and facilitative client focused approach
    - Strong background in governance and accountability in Fragile and Conflict Affected States (FCAS) in Africa
    - Value for money

22. For more details see Annex 1.

Reporting

23. An inception report (in French) will be produced two weeks after the start of the study, outlining proposed methodology, scope of the survey, outline of the final report. It will be discussed with DFID and a selection of other stakeholders.

24. A final report (in French) will be produced and presented to donor and government stakeholders in Kinshasa and in the three provinces. This report will include a concise summary in French and English.

Time-frame

25. The study is expected to take place over a maximum of four months.

DFID co-ordination

26. This study will be managed by the Deputy Programme Manager of DFID DRC governance team: , and by the Governance advisor in charge of public financial management and taxation issues in the governance team: .

Background

27. Decentralization reforms in the Democratic Republic of Congo (DRC) have resulted in a significant degree of legislative empowerment of provinces and “territorial decentralized entities” (ETDs—communes, towns, sectors and chiefdoms), which are now able to adopts edicts and

decrees in matters deemed decentralized (e.g., education, health, rural development and agriculture).

28. Provincial authorities have used these new legal prerogatives to develop revenue agencies and adopt fiscal legislation. As early as 2009 (a mere one year after adoption by the national parliament of the laws on decentralization), and even earlier for some provinces, all provinces had established revenue agencies (see Table 1). For some provincial assemblies, most legislative output consists in taxation edicts.

Table 1. Provincial Revenue Agencies

Province	Revenue Agency	Established
Bandundu	Brigade des Recettes du Bandundu	2009
Bas-Congo	Régie Provinciale d'Encadrement et de Recouvrement des Recettes (REPERE)	2007
Equateur	Direction Générale des Recettes de la Province de l'Equateur	2009
Kasai Occidental	Direction Générale des Recettes du Kasai Occidental (DGRKOC)[1]	*2009*
Kasai Oriental	Direction Provinciale des Recettes (DPR)	2008
Katanga	Direction des Recettes du Katanga (DRKat)	2009
Kinshasa	Direction Générale des Recettes de Kinshasa (DGRK)	2008
Maniema	Direction Générale des Recettes du Maniema (DGRMA)	*2009*
North Kivu	Direction Générale des Recettes du Nord Kivu (DGR/NK)	*2009*
Orientale	Direction des Recettes de la Province Orientale (DRPO)	2008
South Kivu	Direction Provinciale de Mobilisation et Encadrement des Recettes (DPMER)	*2009*

[1]Formerly Brigade de Mobilisation des Revenus (BMR).

29. The capacity of Congolese provinces to raise their own revenue is an important component of decentralization and a guarantee of their autonomy. It is particularly important as the central government has systematically fallen short of its constitutional obligations in terms of financial transfers to provinces. So-called "retrocession" payments to provinces, which are mandated to equal 40% of domestic national revenue, have hovered instead between 5.6% and 10.2% from 2007 to 2013. Even when including the salaries of deconcentrated personnel in provinces and ETDs (who should eventually be decentralized), and central government direct investments in the provinces (which should eventually be the prerogative of provincial governments), the figure amounts to no more than 22.5% to 28.8% between 2011 and 2013, the only years for which all data is available.[4]

[4] Budget execution data from www.ministeredubudget.cd, accessed January 2014. Using a different method that estimates the revenues from the three large national tax authorities from all 11 provinces and the proportion that should accrue to the latter, the *Cour des Comptes* (2013:19) estimated retrocession at 16% of domestic national revenue.

30. As a result, and with significant help from some donor agencies, provinces have taken it upon themselves to raise their “own” revenue, as allowed by law, to compensate for these insufficient transfers and to lay the foundations of their own policy and institutional capacity. It should be noted, however, that these capacity-building efforts have unfolded despite the absence so far of any actual transfer of authority or personnel to provinces in matters decentralized. In other words, provinces are raising revenue in application of the decentralization laws even though no effective policy decentralization has yet taken place.

31. Despite significant variations between richer provinces (such as Bas-Congo, Katanga and Kinshasa) and poorer ones (such as Bandundu, Equateur or Maniema), all provinces have registered significant increases in local revenue over the last few years. Table 2 provides a snapshot of the evolution of provincial revenues, although its numbers must be treated as estimates given the opacity of provincial accounts. As is visible from the bottom half of table 2, the richer provinces now accrue more revenue from local sources than they do from retrocession.

Table 2. Estimates of Provincial Own Revenues							
in $ million							
	2007	2008	2009	2010	2011	2012	2013
Bandundu	0	0	0.5	0.9	0.8	2.2	3.6
Bas-Congo	1.0	1.8	3.4	6.9	8.6	14.7	20.9
Equateur	0	0	3.2	3.6	N.A.	N.A.	N.A.
Kasai Occidental	0	0	0.7	0.8	1.2	1.5	2.2
Kasai Oriental	0	0	1.5	1.8	2.2	4.3	N.A.
Katanga	0	0	45.1	92.1	154.6	136.4	182.6
Kinshasa	0	0	22.3	24.1	30.3	38.5	42.5
Maniema	0	0	0.4	3.1	N.A.	N.A.	N.A.
North Kivu	0	0	5.2	7.1	6.0	5.8	6.8
Orientale	0	0	1.7	11.9	N.A.	14.4	N.A.
South Kivu	0	0	3.7	7.4	4.2	4.7	6.0
in % of retrocession payments							
Bandundu	0	0	4	11	6	18	30
Bas-Congo	13	8	20	49	42	77	103
Equateur	0	0	20	30	N.A.	N.A.	N.A.
Kasai Occidental	0	0	6	8	10	13	18
Kasai Oriental	0	0	13	19	16	30	N.A.
Katanga	0	0	189	370	479	309	536
Kinshasa	0	0	164	65	154	148	237
Maniema	0	0	6	53	N.A.	N.A.	N.A.
North Kivu	0	0	55	84	50	39	55
Orientale	0	0	9	80	N.A.	71	N.A.
South Kivu	0	0	55	85	30	35	42

32. While the increased capacity of provinces to generate revenue may be seen in some respects as a positive development, it is predicated at least in part on a multiplication of taxes across the territory and at different levels of administration. Some scholarship suggests that such taxation might have beneficial effects on governance though *Magna-Carta* type mechanisms of accountability. In Congo, however, this point is largely moot until provinces and ETDs actually obtain policy authority.

33. The proliferation of new taxes and the increased rate of execution of taxes that used to be national but have now been assigned to provinces are broad-ranging trends across the territory. In Bas-Congo, for example, the provincial assembly adopted 74 taxes as early as 2007 and granted the towns and ETDs of Bas-Congo another 14. Some of these taxes are far-reaching. For example, there is a consumption tax on locally produced beer, tobacco, cement, flour and sugar; a tax on the cutting of trees, on the loading and offloading of cargo in the port of Matadi, on electronic fund wiring, on pollution, and on the sale of prepaid phone cards, among others. Bas-Congo subsequently adopted more taxes including a tax on schooling fees, on the rental of electric poles (on which people or companies post ads and banners), on hunting permits, on trash, on water and electricity, on the delimitation of housing lots, on the sale of charcoal and fire wood, on pest control, and even on the exhumation of human cadavers. The province also adopted tolls on national, provincial and local roads.

34. As of 2013, the Province of Kinshasa had more than 100 taxes. Like Bas-Congo, it has a broad consumption tax on everything but staples. It also has a "pollution tax" levied on the use of (ubiquitous) plastic bags, a $5 airport departure tax, a parking tax, as well as taxes and fees on notarized acts, real estate transactions, advertising, and the organization of public events. Aside from new taxes, Kinshasa's increased revenue also probably derives from better execution on the collection front. According to Phondo and Luyelo (2008), the *patente* (business tax) used to generate no more than $36,000 per year when it was administered by the central government's *Direction Générale des Impôts* (DGI). With the DGRK, it brought in $435,000 in 2008 alone. One possible explanation is that the DGI kept more of its revenue for its functioning costs and "leaked" more of it.

35. Mineral-rich Katanga has a "tax for the rehabilitation of provincial infrastructure," and a tax applied to companies that export their copper and cobalt unprocessed out of the province. There are also accounts that the governor exonerates certain companies from central government taxes while charging his own and selling mining licenses. The bulk of the province's revenues derives from "exceptional income" which does not correspond to any of the tax categories of the law.

36. Poorer provinces have also made some taxing strides, but generally with lesser success than the three richer ones. In Kasai Oriental, as of mid-2012, of the 30 edicts the provincial assembly had adopted since its installation, 25 dealt with the creation of new taxes. Kasai Oriental has the usual taxes on rental income and on the consumption of liquor and tobacco, as well as a 1%-tax on the value of diamonds that leave the province, and road and river-crossing tolls. For a while, it even had a tax on the drilling of wells, even though only 43% of the province's resident have access to drinkable water. Other provinces also try to innovate with taxes beyond the constitution and the 2008 law, but their opportunities are

fewer. Bandundu has imposed road tolls, and South Kivu charges a $7 fee to those boarding the boat to Goma in Bukavu.

37. Starting in 2010 the central government began to challenge some of the tax innovations of provinces, claiming that several of them had exceeded their new legal prerogatives in adopting excessive taxes beyond their area of competence. The government also disputed some taxes to the provinces, claiming that they should accrue to the central government. In February 2013, the national parliament adopted a "tax nomenclature" law the goal of which was to list all legal provincial and local taxes. While it aimed to constrain the rise in new taxes, the nomenclature illustrated the considerable extent to which this rise had already taken place and the degree to which the fiscal limitations of the 2008 decentralization law had been sidestepped.

38. The 2013 nomenclature ends up listing four provincial *impôts* (taxes on different forms of income), 135 common interest taxes (many of which were formerly administered by DGRAD) and 61 province-specific taxes. Although they fall short of capturing the full range of provincial fiscal innovations, these taxes reach deeply in the daily lives and activities of the Congolese. For example, there is a tax on the "destruction of expired medicine," on taking pictures of sites belonging to the province, a levy on the "delivery of verification certificates of aquarium fish" (which, arguably, will be of limited relevance to the majority of Congolese), a duty on the "transfer of human cadavers from one province to another" and a fee for "certificates of non-contagiousness of transported cadavers."

39. It also bears pointing out that the taxation push by provinces and their own appropriation of several local taxes have led ETDs to, in turn, develop new taxes, the multiplicity of which partly reflects the paltry revenues that many of them provide. In addition to the provincial taxes, the nomenclature identifies 53 town-specific taxes, 48 municipal taxes and 13 chiefdom or sector taxes.

40. At any rate, Congolese decentralization seems to have unambiguously increased the number of existing taxes and fees faced by citizens. The 2013 nomenclature lists some 314 combined provincial and ETD taxes. While this number is similar to the 300 local taxes that Markus Kostner (n.d.:10) identified when the AFDL took over in 1997, he notes that by 1998 these had been reduced to 62. In that case, the number of taxes would have increased five-fold in 15 years, although not to an unprecedented level. Nevertheless, the greater contemporary degree of execution of these taxes and the rising revenues of provinces suggest that the effective number of taxes has gone up.

41. Tax proliferation associated with Congolese decentralization brings up the concern that decentralization has led to a net increase in the total fiscal burden borne by the Congolese. This concern is potentially aggravated by the fact that most formal taxes in Congo are accompanied by a number of informal ones collected by tax agents. The multiplication

of tax agencies stands therefore to magnify opportunities for all sorts of taxation: formal and informal, legal and illegal, national, provincial and local.

42. The multiplication of provincial taxes brings about the question of whether Congolese citizens and businesses are paying the price of decentralization through rising effective tax rates without corresponding services. The macroeconomic evidence suggests a significant rise. Although much of tax revenue comes from trade at borders or a few large economic operators, and not necessarily on households, the total ratio of non-aid revenue to GDP at the national and provincial levels rose from 8.26% in 2007 to 22.48% in 2012, despite very incomplete provincial revenue data.[5] The 2012 level is not out of scale with tax burdens elsewhere.

43. However, it contains only official receipts. Yet, anecdotal evidence suggests revenue leakages are common across the board. In a recent study, the *Observatoire de la Dépense Publique* (ODEP 2013) estimated their magnitude in the context of Kinshasa's central market. Based on the value and periodicity of taxes, ODEP estimates that total government revenue from the market should amount to about $2.1m. However, payment receipts produced by traders added up to only $1.5m, suggesting a loss of $600,000 in collection. Moreover, the actual revenues registered in Treasury accounts from the market amounted to only $280,000, which indicates that another $1.2m of collected revenue disappears before reaching the Treasury.

44. We can take such estimates and similar ones as indicative of the amount of revenue failing to reach the budget and get a more accurate picture of the actual effective tax burden on citizens. In 2007, A. Batamba Balembu estimated that 55% of potential budget revenue disappeared in the corrupt practices of those in charge of raising it (cited in Tedika 2012). If this is true across collection agencies and given combined national and provincial revenues of about US$4 billion in 2013, it could imply that another $4 billion are actually extracted from Congolese citizens and companies but never make it to state coffers. This amount would increase the ratio of effective "tax" extraction to GDP to more than 40%.

45. Moreover, the reluctance of the national revenue agencies, particularly DGRAD, to part with their taxes (largely because they pay salaries out of collections), has led to several instances of double taxation, in addition to the apparent provincial hijacking of some national taxes, which led Prime Minister Muzito to call a meeting on double taxation in November 2010. The problem has endured. Kinshasa provincial finance minister Guy Matondo held a meeting in October 2013 with representatives of the Fédération des Entreprises du Congo (FEC) who complained that double taxation continued even under the 2013 nomenclature and about rising

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[5] Based on our provincial own revenue data, Ministry of Budget for national revenue, and World Development Indicators for GDP.

taxes at the port of Kinshasa and payment of a new “professional tax.”[6] As recently as May 2014, a Congolese business lawyer complained about the “unhealthy competition among different administrative levels who raise the same taxes” (Jeune Afrique, 18-24 May 2014, #2784, p.113). In general, the relative confusion and uncertainty of reform implementation favors double taxation.

46. In Kinshasa, the governor decided in December 2013 to reduce the business license tax (*patente*) by almost two thirds (it varied from $21to $43) after lobbying efforts by the *Syndicat National des Vendeurs*.[7] Tobacco company BAT, based in Kinshasa, has also threatened provincial authorities that it might leave the country to avoid the consumption tax. In South Kivu, miners reacted “angrily” and traders halted their purchases after the provincial government increased its tax on mineral production from $0.01 to $0.05 per kilogram in August 2013 (UN 2014:44).

47. Moreover, if we consider the wide-ranging nature of taxes included in the nomenclature, it is hard to imagine that the Congolese are not adversely affected, even if many of the taxes still go uncollected. Provinces and ETDs have taxes on riding bycicles, making charcoal, having vagrant animals, cutting trees, and they charge fees on the delivery of many vital documents such as birth and death certificates.

48. The above-mentioned ODEP (2013) report gives an idea of the tax burden (mostly from the province and communes) faced by the estimated 15,000 operators at Kinshasa’s central market. There is a “daily tax” of FC200, the business license (average FC25,000/year), a cleanliness (*salubrité*) tax (FC100/day) although there is no evidence of cleaning services, a possibly illegal “economy tax” (FC500/year), a display tax (FC200/day or week), a “finance tax” (FC300/day or week), a storage tax (FC1,000/daily or weekly for those using storage), and a police “tax” which is apparently a “voluntary” contribution (FC150/day or week). Although payment rates for these taxes vary from 99% (daily tax) to 18% (police tax), conditions at the market suggest that operators are suffering from such extractions. As a rough estimation, these taxes (far from the only ones these people face) add up to at least $150 per year, in a country with a per capita income of about twice as much. That these or similar ones might be facilitated by donor policies without corresponding improvements in local governance might be a cause for concern. If we are to believe the words of a Kasai-Oriental Catholic nun working in human rights, “people here have become slaves to taxes.”

Donor support to tax reform in DRC

49. There are currently 5 donors actively supporting revenue collection and taxation reform at national level in DRC (with a total of 9 different projects). Of these, France and African Development Bank are each developing major programmes that will support computerisation, human

[6] www.mediacongo.net 11/26/2013, accessed December 2013.
[7] *Le Potentiel*, 11/30/2013.

resource, institutional, legal and infrastructure reform of the existing three tax collection agencies ("*regies financieres*"). At provincial level, four donors are involved, covering all of the 11 provinces: African Development Bank (Province Orientale, Bas Congo, Maniema), World Bank (South Kivu, Katanga, Kasai Occidental, Bandundu), European Union (North Kivu and Kinshasa), UNDP and World Bank/DFID (North Kivu, Kasai Oriental and Equateur). These programmes all include components supporting revenue collection at provincial and sometimes ETD level.

50. Relevant DFID programmes supporting taxation in DRC do not focus on institutional and system strengthening at national level. Instead, they focus on:

- Revenue collection at provincial level (North Kivu, Equateur, Kasai Oriental) – coordinated with other donors supporting the other provinces (PFMA programme, WB multi-donor trust fund, 14m£ 2014-2017)
- Participatory budgeting and citizen control on revenue collection and public expenditure at national and provincial level (PFMA programme)
- Corruption in relation to private sector development – therefore with a strong focus on formal and informal taxation (Private sector development programme, 100m£ 2013-2023)
- Supporting coalitions and competition on specific governance issues such as taxation, civil service reform, etc. (SIPI programme – to be designed)
- Enhancing transparency and accountability in mining sector revenue flows (PROMINES programme – WB trustfund 27m£ 2011-2015)

References and key documents:

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Duty of care

51. The Supplier is responsible for the safety and well-being of their Personnel (as defined in Section 2 of the Contract) and Third Parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property.

52. DFID will share available information with the Supplier on security status and developments in-country where appropriate. DFID will provide the following:

- All Supplier Personnel will be offered a security briefing by the British Embassy/DFID on arrival. All such Personnel must register with their respective Embassies to ensure that they are included in emergency procedures.
- A copy of the DFID visitor notes (and a further copy each time these are updated), which the Supplier may use to brief their Personnel on arrival.

53. The Supplier is responsible for ensuring appropriate safety and security briefings for all of their Personnel working under this contract and ensuring that their Personnel register and receive briefing as outlined above. Travel advice is also available on the FCO website and the Supplier must ensure they (and their Personnel) are up to date with the latest position.

54. The Supplier is responsible for ensuring that appropriate arrangements, processes and procedures are in place for their Personnel, taking into account the environment they will be working in and the level of risk involved in delivery of the Contract (such as working in dangerous, fragile and hostile environments etc.). The Supplier must ensure their Personnel receive the required level of training and complete a UK government approved hostile environment training course (SAFE)[8] safety in the field training prior to deployment.

55. Tenderers must develop their Tender on the basis of being fully responsible for Duty of Care in line with the details provided above and the initial risk assessment matrix developed by DFID (see Annex 2 of this ToR). They must confirm in their Tender that:

- They fully accept responsibility for Security and Duty of Care.
- They understand the potential risks and have the knowledge and experience to develop an effective risk plan.

[8] UK Government approved hostile environment training course is known as safe (security awareness and hostile environments. The course should be booked through DFID and factored in to the commercial tender.

- They have the capability to manage their Duty of Care responsibilities throughout the life of the contract.

56. If you are unwilling or unable to accept responsibility for Security and Duty of Care as detailed above, your Tender will be viewed as non-compliant and excluded from further evaluation.

57. Acceptance of responsibility must be supported with evidence of capability and DFID reserves the right to clarify any aspect of this evidence. In providing evidence Tenderers should consider the following questions:

a) Have you completed an initial assessment of potential risks that demonstrates your knowledge and understanding, and are you satisfied that you understand the risk management implications (not solely relying on information provided by DFID)?
b) Have you prepared an outline plan that you consider appropriate to manage these risks at this stage (or will you do so if you are awarded the contract) and are you confident/comfortable that you can implement this effectively?
c) Have you ensured or will you ensure that your staff are appropriately trained (including specialist training where required) before they are deployed and will you ensure that on-going training is provided where necessary?
d) Have you an appropriate mechanism in place to monitor risk on a live / on-going basis (or will you put one in place if you are awarded the contract)?
e) Have you ensured or will you ensure that your staff are provided with and have access to suitable equipment and will you ensure that this is reviewed and provided on an on-going basis?
f) Have you appropriate systems in place to manage an emergency / incident if one arises?

Annex 1: Duty of Care risk table

You must also consider the nature of the project separately to these factors below, and any specific areas being worked in, or travelled to during the period of the work being undertaken. The overall score is the average of the mode and the mean.

	Kinshasa risk score
Overall rating	2.8
FCO travel advice	3
Host nation travel advice	
Transportation	4
Security	3
Civil unrest	4
Violence/crime	4
Terrorism	2
War	3
Hurricane	1
Earthquake	1
Flood	2
Medical services	2
Mode	2/3/4
Mean	2.6

1 Very Low risk	2 Low risk	3 Med risk	**4 High risk**	5 Very High risk
Low		**Medium**	**High Risk**	

[1] The Overall Risk rating is calculated based on discussions with the security committee at post

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