

DECENTRALIZATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO:
Challenges and Possibilities for Democracy

Adair Kleinpeter-Ross
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CHAPTER 1 | INTRODUCTION

In much of the Democratic Republic of the Congo, roads are a rarity, and travel across the nation is almost impossible in any land vehicle.¹ This begs the question, “who is responsible for building and maintaining these roads?” The answer depends very much on which system of governance is being referred to—the decentralized system outlined in the country’s most recent constitution, or the highly centralized system that continues to characterize the government today. This thesis examines the system of decentralized governance outlined in the DRC’s 2006 Constitution. While a discussion of decentralization in the DRC must examine the philosophical and political motivations behind such a system, this example of a rural road should not be forgotten. At its core, decentralization asserts that the province, and a series of other local and regional institutions, rather than the centralized authority, should be empowered, informed, and financially able to build such a road. Decentralization is a model in which government should and can rely on local institutions to “know best”— what the needs of its constituents are, and how to serve these needs effectively and efficiently. Finally, the philosophy of decentralization imagines that by bringing government institutions in more direct contact with constituents, any citizen who was inconvenienced by the lack of roads would know where to go to voice her complaints. Not only would she have access to the governmental institutions with the power to make the changes she desired, it would be an institution tasked only with the needs of a small area, not an entire nation, thus increasing the likelihood that her complaint would be heard, and acted upon.

These fundamentals of decentralization, however, are often more aspirational than pragmatic. Decentralization requires more than just the establishment of local institutions (or roads);

¹ The Democratic Republic of the Congo is henceforth referred to as the DRC

it requires capacity-building at lower levels of governance, and a shift in the budgetary philosophy of the central government. The DRC has been wracked by violence for well over twenty years, and possesses exceedingly weak state structures. The political instability of the country, and the extreme poverty of so many of its citizens, present considerable obstacles in the journey towards decentralization. It is also a country that possesses vast amounts of mineral resources that lie unequally throughout the country; this creates a division of wealth that decentralization threatens to exacerbate, rather than ease. In short, decentralization has the potential to make tremendous positive change, but also remains relatively unknown in the unique context of the DRC. The potential therefore also exists for decentralization to fail at most of what it promises.

In 2006, the National Assembly decided that a system of decentralization was the right choice for the DRC, but since then there have been few concrete movements towards making decentralization a reality. This thesis analyzes the 2006 Constitution as a roadmap for decentralization. It examines how it is designed with the fundamental principles of decentralized governance in mind, and how it can be improved to more effectively provide the vision of governance described at the beginning of this chapter. The Congolese people are impatient for peace, just as they are impatient for a government that provides the public goods it promises, impatient for roads.² Can decentralization become a tool for this type of reform, and if so, how?

A. *Context*

It is beyond the scope of this thesis to trace the historical and political context in which the 2006 Constitution was ratified. Rather, I attempt here to highlight several details that are di-

² Phillip Sandner, "Decentralization plans for DRC's Copperbelt region," *Deutsche Welle* (April 15, 2013), doi: <http://dw.de/p/18EmX>.

rectly relevant to the later analysis of the 2006 Constitution, while remaining conscious of the breadth of information that must necessarily be excluded.

After seven years of war and three of transition, the Democratic Republic of the Congo's National Assembly passed a new constitution into law in 2006. With this vote, the National Assembly affirmed the first functional constitution and corresponding democratic elections since 1965, in the early post-independence days of the nation. Three hundred and forty-one out of three hundred and forty-eight members of the National Assembly voted in favor of the new constitution. A voter referendum, in which 67% of voters participated, showed 84% support for the new constitution.³ For most Congolese, the potential for peace was the primary electoral concern, and these numbers show that the 2006 Constitution enjoyed tremendous popular support precisely for the peaceful democratic vision it presented and, perhaps only by proxy, the new system of decentralization. While this thesis limits itself to a close reading of the decentralization policies of the new constitution, it must be emphasized that the 2006 Constitution powerfully and inextricably links decentralization with democracy. Not only is decentralization a guiding policy for how the 2006 Constitution established the structures of governance in the DRC, decentralization within the 2006 Constitution represents the effort, on the part of those who wrote it, to imagine a type of government radically different from that which had governed the DRC for the previous forty years.

The 2006 Constitution, however, is both a re-imagining and a return. In the post-independence moment of 1960, the DRC was embroiled in creating a decentralized state, one that balanced the fiscal needs of poorer provinces (which largely advocated a centralized state) and the desire of richer provinces to assert their autonomy based on the wealth of their natural

³ Mvemba Phezo Dizolele, "The Mirage of Democracy in the DRC," *Journal of Democracy* 21.3 (July 2010). http://muse.jhu.edu/journals/journal_of_democracy/v021/21.3.dizolele.html.

resources.⁴ As seen in countries such as Senegal, which have designed and re-designed decentralized governance for over fifty years, decentralization is a process that cannot be mastered or completed in a brief time frame. When Mobutu Sese Seko rose to power, establishing a dictatorship just five years after the experiment with decentralization began, the process of decentralization was far from complete. Mobutu remained dictator for thirty-two years, and in the years following his overthrow in 1997, the DRC has been ruled by Laurent Kabila and his son, Joseph Kabila, both displaying a similar dictatorial style.⁵

In 2001, Kabila welcomed some 5,000 UN peacekeeping troops into his country, the first of the MONUC (*Mission de l'Organisation de Nations Unies en République Démocratique du Congo*; United Nations Mission in the Democratic Republic of the Congo) mission that would grow to become the largest in UN history.⁶ Part of the Sun City Agreements, a previous peace negotiation between Kabila and various faction leaders and warlords, mandated free and fair elections in 2006, and launched a massive project to build and provide the infrastructure for these proceedings in the DRC. These elections marked the end of a transitional government that had been in place since 2003, one that was largely dysfunctional and forced different political factions to work together.⁷ The 2006 Constitution was therefore drafted in an environment of political hostility and haste, due to the tremendous international pressure to move forward with the democratic elections the UN had planned for 2006. Though Kabila had been ruling the DRC before these elections, his victory in 2006 gave him more legitimacy in the eyes of some Congolese

⁴ Herbert F. Weiss, and Georges Nzongola-Ntalaja, "Decentralization and the DRC – An Overview," *Social Science Research Council* (January 2013). http://www.ssrc.org/workspace/images/crm/new_publication_3/%7Bd6c11449-2260-e211-8eac-001cc477ec84%7D.pdf.

⁵ Unless otherwise noted, I am referring to Joseph Kabila, current president of the DRC, from here forth.

⁶ "MONUC Deployment Hinged On Kabila's Commitment," *Pan African News Agency* (February 11, 2001). <http://reliefweb.int/report/democratic-republic-congo/monuc-deployment-hinged-kabilas-commitment>.

⁷ Mvemba Phezo Dizolele, "The Mirage of Democracy in the DRC," *Journal of Democracy* 21.3 (July 2010). http://muse.jhu.edu/journals/journal_of_democracy/v021/21.3.dizolele.html.

and the West, yet despite (or perhaps because of) this, Kabila continues to rule in a dictatorial fashion.⁸

The most important point of context for the 2006 Constitution, however, is that it has yet to be implemented. Drawing on the language of scholars Stephan Ndegwa and Brian Levy, decentralization can be broken down into three stages, “engaging decentralization,” “detailing decentralization,” and “sustaining decentralization.”⁹ Framing decentralization as a process rather than a reality allows space for intervention, which is precisely the work to which this thesis aims to contribute. The 2006 Constitution marks a definitive engagement with decentralization, but the process has yet to progress to the stage of “detailing decentralization.” This is due to several factors, the first of which is a lack of political will on the part of key stakeholders, including President Kabila and many of his political peers. Dele Olowu highlights this flaw when describing common assumptions of decentralization programs in Africa, arguing that typically the “central government bureaucracy constitutes the major instrument for ensuring ‘successful decentralization.’”¹⁰ This is certainly the case in the DRC, where deliberation regarding decentralized law, drafting of decentralized legal language, and the very power to move forward or delay the implementation process remains almost exclusively the responsibility of the stakeholders who have much to lose from a system of decentralization. These stakeholders include not only much of the political elite at the centralized level of government (namely President Kabila and many others),

⁸ Tatiana Carayannis, “Special Report: Elections in the DRC,” *United States Institute for Peace* 200 (February, 2008). <http://www.usip.org/sites/default/files/sr200.pdf>.

⁹ Stephan Ndegwa, and Brian Levy, “The Politics of Decentralization in Africa: A Comparative Analysis,” *The World Bank* (August, 2003). <http://www1.worldbank.org/publicsector/learningprogram/Decentralization/Ndegwa.pdf>

¹⁰ Dele Olowu, “The Failure of Current Decentralization Programs,” in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995): 87.

but the political elite at the local level, whose power could be threatened or replaced with the introduction of a new system of governance.

Yet this lack of movement towards implementation is due to more than an unwillingness to yield power on the part of Kabila and his peers. The inaction in implementing such a central part of the 2006 Constitution eight years after its adoption demonstrates a fundamental flaw in the design and philosophy of the document itself. As my analysis will show, the 2006 Constitution is written largely without specificity, and therefore without guidelines for how to actually develop the types of legislation it outlines in broad strokes. Put another way, despite its power as a governing document, the 2006 Constitution does not *detail* decentralization, and thus the original engagement with decentralization remains incomplete, and the policies remain largely impossible to translate into reality.

B. *Methodology and Chapter Overview*

For the purposes of this thesis, decentralization has been divided into different component parts. Drawing again on the work of Ndegwa and Levy, I explore three categories of decentralization: political, fiscal, and administrative.¹¹ Breaking the process of decentralization into its composite parts has several advantages. First, it enables a more concrete analysis of what actually constitutes “decentralization,” a term which, without additional clarification, flattens the temporality of the process, and obscures the different offices, personnel, and stakeholders involved. The coordination that the process of decentralization requires means that certain systems can be more or less successful than others at different parts of decentralization, both legally and in practice. For example, while Senegal provides far-reaching responsibility and autonomy to its decen-

¹¹ Stephan Ndegwa, and Brian Levy, “The Politics of Decentralization in Africa: A Comparative Analysis,” *The World Bank* (August, 2003).
<http://www1.worldbank.org/publicsector/learningprogram/Decentralization/Ndegwa.pdf>

tralized units of governments, it often does not provide enough funding to allow these units to adequately provide the services for which they are responsible. This is a failure of fiscal decentralization in policy that consequently creates a failure of political decentralization in practice.¹² Therefore, being able to analyze the parts of a nation's system of decentralization allows a more robust assessment of the system as a whole, one that affords successes even in a system that is largely unsuccessful, or vice versa. Furthermore, it provides a more nuanced framework through which to compare systems of decentralization across different nations by defining more specific locations of inquiry, namely the political, fiscal, and administrative context of decentralization.

Broadly defined, political decentralization addresses the division of roles between the centralized and decentralized authorities, and involves the political structures built to implement and facilitate decentralization. Fiscal decentralization addresses the funding of decentralized programs, with particular attention paid to how this fiscal decentralization aligns with, enables, or prevents the separations and structures that compose political decentralization. Finally, administrative decentralization involves the infrastructure deployed to support the process of decentralization, such as workers from the central government being reassigned to work in provincial assignments, or capacity-building programs at the local level to increase the strength of governmental institutions. Chapter II analyzes political decentralization in the 2006 Constitution, while Chapter III focuses on fiscal decentralization. Administrative decentralization is beyond the scope of this thesis primarily because the 2006 Constitution is largely silent on any form of administrative changes to accompany the move to decentralization, which in itself is representative of the inadequate planning that was put into the 2006 Constitution's drafting.

¹² Stephan Ndegwa, and Brian Levy, "The Politics of Decentralization in Africa: A Comparative Analysis," *The World Bank* (August, 2003).
<http://www1.worldbank.org/publicsector/learningprogram/Decentralization/Ndegwa.pdf>

In presenting my analysis of the political and fiscal decentralization in the DRC, I utilize the text of the 2006 Constitution as my primary source of inquiry. Through a close reading of the text, I aim to explicate its strengths and weaknesses in relation to the goals of decentralization. These goals are derived both from a highly aspirational model of decentralization that emphasizes increased democratic participation and governmental accountability, and from the goals that the 2006 Constitution outlines for itself, including the equitable distribution of wealth and the autonomy of the provinces. Cognizant of the lack of on-the-ground examples of decentralization in the DRC, I aim not to speculate but rather to present a thorough investigation of the possibilities of the policies outlined in the document based on the text itself, and on comparisons to systems of decentralization in other African nations. While the fact that decentralization has not yet been implemented represents, in many ways, a failure of the current government to provide the type of governance it has promised its constituents, it also represents an opportunity. I assert that an evaluation of how the 2006 Constitution aims to keep the promises of decentralization is not premature, and must be considered. Much of the scholarship on the DRC has turned to the past for answers to current policy debates, seeking to avoid problems that have been made in the past in order to secure a more stable future. This thesis, however, uses the moment before the full implementation of the 2006 Constitution to look forward for answers, to analyze how this more stable DRC might look, and to design how such a vision is, or could be better, articulated in the 2006 Constitution. To do so, I use the concept of self-governance or democratic participation as one of the guiding principles of my analysis. In this thesis, both terms refer to a conception of governance in which citizens are able and empowered to interact directly with their local governments to shape how these institutions govern. These terms encapsulate the philosophy of decentralization, that government can be customized to meet the specialized needs of constituents

by region, and describe an ideal of governance in which local institutions are both responsive and accountable to the people they serve most directly.

In the DRC, the debate over decentralization as a system of law has already occurred, and a decision has been made in its favor. Accepting the 2006 Constitution and decentralization as foundational building blocks for the future of the country is a necessary step towards building an analysis of the Constitution that shifts away from the question of “why decentralization?” and towards “how decentralization?” How can the philosophical principles of decentralization be deployed to serve the citizens of the DRC more effectively, more fairly, more democratically? Yet “how decentralization?” must still take into consideration the answer to “why decentralization?” and asserting that the DRC’s recent adoption of decentralized law aims to push back against long-standing systems of centralized law would be too simplistic. One cannot ignore the underlying popular desires and grievances that could be addressed by the change from centralized to decentralized systems. The construction of a centralized, urban authority that is responsive to its citizens has historically been proven to be nearly impossible in a country as vast as the DRC—geographically the size of Western Europe and with a population of over sixty-four million—and one as diverse—home to over two hundred different ethnic groups and a variety of valuable minerals distributed unevenly across the country.^{13,14} Although Mobutu was able to hold power for thirty-two years, he did so at the sacrifice of most, if not all, popular political participation. He ruled instead as a dictator unresponsive to the needs and desires of his people, and at times massacred those who dared speak out against him. As Congolese Bishop Fulgence Muteba of Katan-

¹³ “The World Factbook—Congo, Democratic Republic of the,” *CIA*, December 4, 2013.
<https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html>.

¹⁴ Herbert F. Weiss, and Georges Nzongola-Ntalaja, “Decentralization and the DRC – An Overview,” *Social Science Research Council* (January 2013).
http://www.ssrc.org/workspace/images/crm/new_publication_3/%7Bd6c11449-2260-e211-8eac-001cc477ec84%7D.pdf.

ga province said in an interview for *Deutsche Welle*, “In this large area, a high level of organization is required for the state to reach the people.¹⁵” Decentralization has the potential to create this link between the government and the people it governs.

My analysis of the 2006 Constitution will focus not just on how it articulates a plan for decentralized law that could be successfully implemented—as measured against similar systems in other African nations—but also on how deeply the Constitution embraces the philosophy of decentralized rule. Success in this second criterion means provisions for power to be transferred from the capital, or center, to the margins, and for the structure of governance to develop up from the bottom of the system, the voices of the people, rather than be imposed from the top.¹⁶ How, then, can decentralization be designed and deployed in the DRC to address these problems, and to create the most positive change possible for the Congolese population? This is the guiding inquiry of this thesis; the analysis in the following chapters will present one small part of the answer.

¹⁵ Phillip Sandner, “Decentralization plans for DRC’s Copperbelt region,” *Deutsche Welle* (April 15, 2013), doi: <http://dw.de/p/18EmX>.

¹⁶ Sheldon Gellar, “State Tutelage vs. Self-Governance: The Rhetoric and Reality of Decentralization in Senegal,” in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995).

CHAPTER II | POLITICAL DECENTRALIZATION

A. Introduction

Political decentralization is perhaps the most complicated part of decentralization, but the aspect most easily evaluated in the 2006 Constitution. The components of political decentralization are the most clearly articulated in the constitution because they represent the ideological starting point for political negotiation towards decentralization. Political decentralization, more than fiscal or administrative, addresses most directly the guiding philosophy of decentralization, and sets the tenor for how fiscal and administrative decentralization will be undertaken. Several processes define political decentralization. First, the term addresses which responsibilities will be designated for the provinces and which are designated for the central government. These distinctions are inherently political; each responsibility confers a certain burden or benefit to its administrative entity (provincial or central). Political decentralization also involves the governmental framework through which decentralized rule is established. In the case of the DRC, this governmental framework includes the twenty-six provinces that are designed to operate semi-autonomously, and the policies of governance within these provinces.

B. Divisions of Responsibility

The 2006 Constitution outlines the specific division of responsibility between the national and provincial governments. The philosophical backbone of decentralization is the transfer of responsibilities to the local level, yet the responsibilities of the province in the DRC's 2006 Constitution are noticeably smaller than those of the central government, and can be placed into two general categories. The first can be broadly defined as bureaucratic, including such tasks as the acquisition of goods for the province, internal communications in the province, and the organiza-

tion of small border trade (between provinces).¹⁷ These are typical of decentralized systems, as they allow basic tasks of the government to be completed by local authorities in a way that is more directly relevant to that constituency. The other responsibilities of the provinces, according to the 2006 Constitution, are noticeably overseen and even controlled by the central government, despite being defined by the 2006 Constitutions as “exclusive competence[s] of the Province.”¹⁸ First, many of the responsibilities of the province are limited to the enforcement of national laws and standards. Therefore, while the province is responsible for things like setting the minimum wage, law enforcement, issuing property titles, organizing public companies, and planning forestry programs, all of these must be done in accordance with national law. While in all cases the requirement to conform to a national standard limits the autonomy of the province, the extent of this limitation differs within the DRC. In the examples provided above, the province may have some leeway in the creation of provincial legislation that, while ultimately required to fall within certain national perimeters, may differ slightly from similar legislation in other provinces. In other cases, such as the health plan, the province is simply tasked with implementing a program designed by the central government. This defeats the philosophy of decentralization by making the province simply an administrative site for centralized policies, rather than a territory that generates its own legislative standards. Of the twenty-nine responsibilities afforded to the province, eleven include a statute that the outcome of the provincial law must be in accordance with the corresponding national legislature.¹⁹ Furthermore, Article 205, an ultimate caveat to provin-

¹⁷ “The Constitution of the Democratic Republic of the Congo,” 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

¹⁸ Ibid.

¹⁹ Ibid.

cial power, states that any provincial law that is not in accordance with national legislation is automatically void.²⁰

The duties of the province are further curtailed by the central government through a power-sharing agreement between the two parties. While the Constitution breaks governmental responsibilities into three categories (“exclusive competence of the Central Authority,” “exclusive competence of the Provinces,” and “concurring competence of the Central Authority and the Provinces,”), several responsibilities are mentioned in all three sections.²¹ The responsibilities that fall into all three categories are significant areas of governance, namely education, health care, taxation, and, of particular importance to a country as mineral-rich as the DRC, legislation of mining, industry, and natural resources. Therefore, although certain responsibilities are designated under Article 204 as the “exclusive competence of the province,” they are also listed as either shared responsibilities or simultaneously the exclusive responsibility of the central government.²² This overlap means that while some responsibilities are technically shared between the provincial and central government (including reinforcement of human rights, domestic security, tourism, scientific research, cultural production, and the protection of vulnerable populations), national legislation always takes precedence according to Article 205.²³ Simply put, many of the responsibilities that are given “exclusively” to the provinces are also listed as shared responsibilities—in an agreement in which the central government always has ultimate authority.

These policies demonstrate a significant limitation to the power of the provinces, and highlight a central ambiguity in the assignment of responsibility. It is impossible to say defini-

²⁰ “The Constitution of the Democratic Republic of the Congo,” 2005.
<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

²¹ Ibid.

²² Ibid.

²³ Ibid.

tively, before implementation, that the current legal arrangements could, or would, limit the autonomy of the province in practice. It is safe to say, however, that without more clearly defined language directly protecting their responsibilities, provincial autonomy is certainly more vulnerable. It is worth noting that the Constitution outlines specific ways in which the central authority has the ability to limit or alter the powers of the provinces, yet the only explicit power the provinces have to alter their responsibilities is in their ability to temporarily (or permanently) *cede* a responsibility to the central authority. The national government is likewise allowed to temporarily cede jurisdiction of one of its responsibilities to the provinces.²⁴ In many ways, these conditional and limited transfers of power map out a parent-child relationship, positioning the provinces as the inferior ruling body, rather than one that is equal, or in many ways, more important than the central government.

The West African nation of Senegal provides a point of comparison for the types of responsibilities shared between central and decentralized entities, and the method of distinction between the two. Some brief background on decentralized rule in Senegal is necessary for this comparison. Senegal has had one of the longest legacies of decentralized rule in post-independence Africa today, and has arguably some of the most democratic institutions in Africa, including free speech, free press, competitive elections and a thriving network of NGOs. These NGOs have effectively provided for the population in the gaps between the services of the decentralized authority and the central government.²⁵ Senegal also has a system of decentralization that is more complex than the DRC's, involving several levels of local governance, including

²⁴“The Constitution of the Democratic Republic of the Congo,” 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

²⁵ Sheldon Gellar, “State Tutelage vs. Self-Governance: The Rhetoric and Reality of Decentralization in Senegal,” in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995).

regions, departments, communes, neighborhoods, and rural communities.²⁶ In its constitution, Senegal ostensibly affords more power to its decentralized entities than the DRC does, especially in the realms of regional economic, scientific and cultural development—areas that are subject to more national oversight in the DRC’s constitution. Furthermore, the Senegalese legislation defines these regional powers in more specific language. In “The Local Government Financing System in Senegal,” Guy Gilbert and Emmanuelle Taugourdeau write that within the category of education, regions are afforded ten responsibilities in literacy, “including literacy map and plan for eliminating illiteracy, management of literacy teachers (except salaries), educational infrastructure and equipment.”²⁷

This example is small, but offers important insights into the differences between the systems. The DRC’s stipulation about education reads that “maternal, primary, secondary, professional and special education as well as programs to fight the illiteracy of citizens in conformity with the rules established by the Central Authority” are the responsibility of the provinces. The responsibilities conferred by the Senegalese legislation are much more detailed and specific, especially considering that, as stated earlier, education is one part of the DRC’s constitution that is listed as a shared responsibility of both the central government and the provinces, generating even more ambiguity about how education should be implemented. In this way, perhaps, the Senegalese constitution shows what comes with longer experience with decentralized law; the most recent Senegalese constitution was adopted in 2001, but continues a tradition of decentralized law there since independence in 1959. I assert that clearly defined processes of political de-

²⁶ Guy Gilbert and Emmanuelle Taugourdeau, “The Local Government Financing System in Senegal,” in *The Political Economy of Decentralization in Sub-Saharan Africa: A New Implementation Model in Burkina Faso, Ghana, Kenya, and Senegal*, ed. Bernard Dafflon and Thierry Madies (Washington D.C.: International Bank for Reconstruction and Development & The World Bank, 2013).

²⁷ Ibid.

centralization, especially in regards to the division of responsibilities, are crucial to preserving the power of the decentralized entities, and therefore to preserving the political participation of local people. Furthermore, the Senegalese document proves that such specific language has a place in a constitution, rather than simply in proceeding legislation. In this way, Senegal's legislation offers an important example of how political decentralization can be achieved, legally, through a well-articulated division of power that allows significant autonomy of the decentralized units (be they provinces or regions).

The 2006 DRC Constitution is riddled with contradictions that muddle the extent to which political decentralization is legally defined, and which would conceivably further confuse or impede actual implementation. A clear contradiction can be found in the opening sections of the 2006 Constitution. Article 3 states that provinces "possess legal personality and are managed by local authorities."²⁸ Furthermore, it states that they "enjoy administrative freedom and managerial autonomy with regard to their economic, human, financial, and technical resources."²⁹ This statement, especially positioned at the very beginning of the constitution, offers a very clear and deep commitment to political decentralization by ostensibly granting the provinces extensive control over their own affairs; the term "autonomy" particularly communicates a level of provincial power and authority that is simply not reflected in later sections of the constitution. Similarly, the 2006 Constitution begins with the statement that the DRC consists of twenty-six provinces. Aspirational, at best, this statement does not describe the reality of the DRC, where, even now, there are only eleven provinces. Furthermore, the lack of any actual legislation in the constitution that would allow for the establishment of these provinces has proved to be a significant

²⁸ "The Constitution of the Democratic Republic of the Congo," 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

²⁹ Ibid.

roadblock to moving forward with decentralization more generally. The opening articles of the 2006 Constitution articulate a strong commitment to many components of political decentralization—namely the establishment of decentralized entities and the declaration of autonomy for these provinces to manage their own affairs—but proceeding sections of the constitution either limit, monitor, or fail to protect the autonomy granted to the provinces.

The following section evaluates the degree to which the structures of governance in the DRC's constitution achieve political decentralization, and returns to the case of Senegal as a point of comparison.

C. Structures of Governance

The division of responsibilities between the provincial and central governments is the locus of action for the philosophy of decentralization. However, political decentralization also involves structures of governance, which I define as both the political units of a decentralized system—in the DRC, provinces—and the types of governing bodies employed within these units.³⁰ According to the 2006 Constitution, there will be two types of governing bodies in the provinces, a provincial assembly and a provincial governor. This section explores how effectively the 2006 Constitution presents a system of governance that enables or encourages decentralization as a step towards self-governance. The case study from Senegal addressed in the previous section will be extended to illustrate political decentralization within another context.

The number of provinces envisioned for the DRC's system of decentralization provides an opportunity for quantitative comparison with the systems of other African nations, namely Senegal and Uganda. While the DRC constitution states that the “decentralized territorial entities

³⁰ Stephan Ndegwa, and Brian Levy, “The Politics of Decentralization in Africa: A Comparative Analysis,” *The World Bank* (August, 2003).
<http://www1.worldbank.org/publicsector/learningprogram/Decentralization/Ndegwa.pdf>

are the city, the commune, the sector and the chiefdom,” there is no other mention of these units in the constitution, which discusses solely provinces as the decentralized units of government. Therefore, while the Senegalese system also includes several layers of governance, including communes, I will limit my comparison to the highest level of decentralized governance, which in the DRC is the province, in Senegal is the region, and in Uganda the district. Presently, there are forty-eight districts in Uganda, which is an increase from the original thirty-nine that were established with the system of decentralized law in the 1980s.³¹ Uganda has a population of thirty-seven million people and over 240,000 square kilometers of land.^{32,33} When analyzed next to the DRC’s population of over sixty-four million people and area of over 2.3 million square kilometers, the number of districts in Uganda is not just numerically larger than the DRC’s provinces, it comparatively breaks the Ugandan population into much smaller units for governance.³⁴ This is equally true of Senegal. While Senegal only has eleven decentralized regions, its population is approximately thirteen million people across an area of 196,000 square kilometers.^{35,36,37} Therefore, as in Uganda, the regions in Senegal contain much smaller segments of the population—and the land area—in each semi-autonomous decentralized unit.

³¹ Stephan Ndegwa, and Brian Levy, “The Politics of Decentralization in Africa: A Comparative Analysis,” *The World Bank* (August, 2003).<http://www1.worldbank.org/publicsector/learningprogram/Decentralization/Ndegwa.pdf>

³² Carol Natukanda, “Uganda population at record 37 million,” *New Vision*, June 23, 2013.
<http://www.newvision.co.ug/news/644270-uganda-population-at-record-37-million.html>.

³³ “About Uganda,” *State House of Uganda*. <http://www.statehouse.go.ug/about-uganda>.

³⁴ “The World Factbook—Congo, Democratic Republic of the,” *CIA*, December 4, 2013.
<https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html>.

³⁵ “Country Programme and Documentation—Senegal.” *United Nations Population Fund*.
<http://profiles.unfpa.org/senegal>.

³⁶ “The World Factbook—Senegal,” *CIA*, November 8, 2013. <https://www.cia.gov/library/publications/the-world-factbook/geos/sg.html>.

³⁷ Stephan Ndegwa, and Brian Levy, “The Politics of Decentralization in Africa: A Comparative Analysis,” *The World Bank* (August, 2003).<http://www1.worldbank.org/publicsector/learningprogram/Decentralization/Ndegwa.pdf>

The figures from Uganda and Senegal show that the DRC's proposed division into just twenty-six provinces places its system in a significantly different class in terms of both the population and land area that each decentralized unit is responsible for governing. Basic calculations reveal that the Ugandan system provides for the smallest decentralized unit, with its districts governing—on average—approximately 770,000 people. Next, Senegal's regions are responsible for just over one million people each. Finally, the DRC's provinces are responsible for 2.5 million people each, more than double that of Senegal's regions, and over three times the amount in Ugandan districts. In terms of land area divided by the number of decentralized units, the three systems follow the same order of Uganda, Senegal, and the DRC, from smallest to largest. This comparison is significant because one of the primary guiding philosophies of decentralized law is its ability to make governance structures more accountable to citizens by restricting the area and population for which they are responsible.

In a country as large as the DRC, the change from a central government ruling sixty-five million people to smaller provincial governments each managing an average of 2.5 million people is huge, and could fundamentally change its citizens' relationship to their government.³⁸ Despite this, these numbers beg the question: are twenty-six provinces enough for the DRC—enough to effectively manage the different stakeholders, ethnicities, languages, wealth, mineral resources, and political parties within a province? More pointedly, will it be enough to allow the provincial government to be fully accountable to all segments of its population? It is this accountability, I assert, that is at the core of decentralization's aim and efficacy. If implemented in a way that does enrich and enforce this accountability, decentralization would increase democratic participation by ensuring that a citizen has more traction and power in affecting change. Fur-

³⁸ "The World Factbook—Congo, Democratic Republic of the," *CIA*, December 4, 2013. <https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html>.

thermore, smaller decentralized units allow governments to more effectively harness the political innovation of individual communities, which may already have informal systems of governance.

Dele Olowu writes of “the essential characteristics of local self-governing” that

The first is appropriate size which, in the African context, generally means smaller than has hitherto been attempted. As much as possible, basic local institutions must encompass the basic local community, since this is the most natural community in which working understandings about human relationships may already be expected to exist or to develop.³⁹

To support these claims, Olowu cites the case of Nigeria in the 1970s. Reforms in 1976 created 301 local governments to manage a population of 100 million, which meant that some governmental units were responsible for approximately 330,000 people each.⁴⁰ Olowu states that even this figure caused significant political issues, where “in many cases, ‘local governments’ have lumped several antagonistic communities together leading to paralysis in such areas. In at least one case in Oyo State...it led to serious violence.⁴¹” In this example, the average number of people for which each unit was responsible was significantly less than the number in Senegal, Uganda, or the DRC. Furthermore, Olowu’s discussion of Nigeria’s system highlights how basic provisions of the law can translate into much more explosive lived realities. The relatively small number of provinces established, in relation to population, had the potential to spark violence by putting different or antagonistic ethnic groups within the same governmental unit. Conversely, this example may also illustrate that, if planned conscientiously, decentralization can serve to ease, rather than exacerbate, regional tensions.

While the number of provinces provided for by the legislation has turned out to be a contentious issue for the future of decentralization in the DRC, a more substantive illustration of po-

³⁹ Dele Olowu, “The Failure of Current Decentralization Programs,” in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995): 92.

⁴⁰ Ibid.

⁴¹ Ibid.

litical decentralization is the actual structures of governance to be employed in the provincial governments. According to the 2006 Constitution, the provincial governments will consist of two governing bodies, the provincial assembly and the provincial governor. This bipartite governmental structure is significant for decentralization in two ways. First, this dual system mirrors the system of governance used by the central authority, in which provincial governor is analogous to the president and the provincial assembly functions similarly to the national assembly (although the provincial assembly would be unicameral rather than bicameral). In fact, the constitution defines the authority, responsibilities and structures of the provincial assembly by simply referring to the text that defines these perimeters for the national assembly. Second, the dual system presents a balance between a centralized system of governance (represented by the unilateral power of the provincial governor) and a system of governance that diffuses power and decision-making power across the province (the provincial assembly).

This second point is worth clarifying; in my estimation, there are two ways in which decentralization can be assessed. According to Gellar, “centralization...simply refers to the concentration of formal power within a single political authority.⁴²” *Decentralization*, by extension, spreads political power across multiple stakeholders or political parties. This, as a definition of decentralization, can be achieved on the national or provincial level, and is the type of decentralization represented by the provincial assembly. The second type of decentralization is based on the degree to which a structure of governance is developed from the unique legislative needs of a region’s constituency, rather than simply modeled on the centralized authority. My emphasis on democratic participation as a criterion for analyzing the 2006 Constitution of the DRC allows an

⁴² Sheldon Gellar, “State Tutelage vs. Self-Governance: The Rhetoric and Reality of Decentralization in Senegal,” in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995), 131.

evaluation of decentralization at a deeper level than a simple discussion of how many governance responsibilities are given to the provinces. Rather, my analysis evaluates how structures of decentralized governance in the DRC rely on repertoires of governance developed by and for the central authority, and the extent to which the Congolese population is empowered to become involved in the democratic process, through these repertoires or other means.

The transfer of the national assembly model to the provincial level raises certain philosophical questions. The concept of self-governance outlined in this thesis is in direct opposition to a system of decentralized law that simply uses decentralized systems as a locus of management and governance by the centralized authority. Extending the model of self-governance to a philosophical limit would allow the population of a decentralized unit complete autonomy in determining its governance structure. This would open the possibility for communities to choose systems of governance that are rarely, if ever, implemented by national governments, including communal living, traditional village formations, or other alternatives that defy typical governmental structures. However, this theoretical end-point of self-governance is clearly both impractical and impossible in most nations today, particularly countries like DRC that are just now experimenting with nascent democratic processes. Therefore, instead of using this model of ultimate self-governance as a basis for analysis of the 2006 Constitution, I assert that decentralized systems should be examined by viewing democratic participation along a continuum of individual political power. Along this scale, the philosophical limits of self-governance as just described would be to the extreme left of the scale, in which individuals have complete political power in shaping governance systems. A dictatorship that limits any popular political action represents the opposite end of the scale.

The provincial assembly structure outlined for the DRC exists at a unique place on the spectrum of self-governance. First, as noted earlier, it represents a type of centralized governance given that it is based on the DRC's national assembly; transferring the model of the national assembly creates the same system of governance on a smaller scale, without allowing for modifications of the governance structures based on the particularities of each province. Yet despite this fact, the provincial assembly can also be seen as decentralized by allowing for more voices and more factions of a community to be politically represented. Even linguistically, the *assembly* model suggests the coming-together of many different people and groups, something that can help protect the rights of a diverse set of political stakeholders. If completely communal and consensus-driven decision-making is viewed as the theoretical limit to decentralized democratic participation, the provincial assembly can be seen as a more practically-scaled model, one in which many voices are still heard as part of decision-making processes. Furthermore, the text of the 2006 Constitution does not stipulate how many seats each provincial assembly must have.⁴³ While earlier sections have suggested that the vagueness in the language in the 2006 Constitution may overall prove to be an obstacle to implementation by giving centralized authorities a wide latitude in designing programs and systems, I want to suggest here that the omission of the number of provincial assembly seats is, in fact, an advantage. The 2006 Constitution mandates that all provinces must use the provincial assembly model, but the lack of a determined number of provincial assembly seats could enable provincial governments to tailor their assemblies to the needs of their constituents. The possibility that any political group could add a seat to the provincial assembly if it received enough votes provides a politically incentivized balance to the power of majority political parties.

⁴³ "The Constitution of the Democratic Republic of the Congo," 2005.
<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

The assembly model, at the provincial level, achieves the goals of decentralization much more effectively than does a similar model at the national level. At the national level, only a few seats are reserved for each region of the nation, meaning that each region is only able to select a small number of political representatives. The scope of stakeholder interests that these politicians may represent is thus limited; only those politicians supporting large majority parties will be elected. The DRC's current national assembly has five hundred seats to represent its sixty-four million citizens, and those five hundred seats currently represent ninety-eight different political groups.^{44,45} It is debatable whether these five hundred representatives can adequately address the needs of all the stakeholders in the DRC but it is fair to say that, as a member of the assembly is responsible for, on average, 128,000 citizens, it would be difficult for him or her to accommodate every constituent's distinct governmental needs.⁴⁶ Furthermore, national assemblies are poorly equipped to legislate on local or regional issues because they often lack national relevance or the ability to create an impact beyond a specific geographical area. Therefore, provincial assemblies, as instruments of decentralization, correct many of these failings of the national assembly. Most significantly, provincial assemblies reduce the breadth of legislative action required to achieve what is directly relevant to its constituents. Scholar Pranab Bardhan summarizes the way that provincial assemblies can increase accountability and efficiency when he writes, "In democratic countries, the local politicians may have more incentive to use local information

⁴⁴ "The World Factbook—Congo, Democratic Republic of the," *CIA*, December 4, 2013. <https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html>.

⁴⁵ "Carter Center: Democratic Republic of the Congo Legislative Election Results Compromised," *The Carter Center*, February 23, 2012. <http://www.cartercenter.org/news/pr/drc-022312.html>.

⁴⁶ This is because the current provinces are so large and therefore naturally subsume many viewpoints to a majority; these minority viewpoints, however, may constitute a majority in a new province split from a larger one.

than national or provincial politicians, since the former are answerable to the local electorate while the latter have wider constituencies, where the local issues may get diluted.⁴⁷,”

The creation of the provincial assembly *in addition* to the national assembly illustrates an important way in which decentralization can create increased democratic participation, namely that it offers multiple distinct governmental agencies with which to interact. For scholars Herbert F. Weiss and Georges Nzongola-Ntalaja in their analysis of decentralization in the DRC, these multiple avenues for expressing grievances is a hallmark of democracy: “At a minimum this ordinary citizen must be able to articulate grievances against locally instituted authority and he must be able to do so by expressing him/herself to an authority other than the one against which an individual wishes to lodge a complaint.⁴⁸” In other words, if a provincial authority cannot or will not move forward with a popular initiative, constituents can voice their complaints to someone else with power in the situation from a different source of authority, such as their national assembly representative.

At a theoretical level, the position of a provincial governor stands, to some degree, in opposition to the philosophy of decentralization in the way that it centralizes power into one individual instead of dividing authority across multiple viewpoints in the way that an assembly does. However, almost all democratic governments strike a balance between legislative and executive powers; it would be irresponsible to condemn the governorship simply because it centralizes power on a theoretical level. In fact, having a governor provides yet another avenue through which constituents may voice governmental concerns. Despite this, however, the DRC’s design

⁴⁷ Pranab Bardhan, “Decentralization in Governance and Development,” *Journal of Economic Perspectives* 16.4, Autumn, 2002. 185-205.

<http://www.jstor.org/stable/pdfplus/3216920.pdf?acceptTC=true&acceptTC=true&jpdConfirm=true>.

⁴⁸ Herbert F. Weiss and Georges Nzongola-Ntalaja, “Decentralization and the DRC—An Overview,” *Conflict Prevention and Peace Forum*, January 2013.

of the provincial governor must be critiqued in the way that it centralizes power into the governor beyond simply having an executive representative at the provincial level. The 2006 Constitution stipulates that the members of the provincial assembly elect the provincial governor.⁴⁹ This means that the position will, most likely, be given to a politician who represents the interests of the majority party in the assembly. Given that the DRC currently has ninety-eight political parties represented in the National Assembly, I assert that not only would this political fractionalization continue at the provincial level, it would ensure that the majority political party did not represent a majority of the province's population.⁵⁰ While the 2012 elections showed that majority parties in some provincial assemblies were themselves overturned, thus unseating the provincial governors, the 2006 Constitution, by design, isolates the provincial governor more from the population than if he or she were elected directly. Accountability to local stakeholders is a very important part of decentralization because it helps prevent local institutions from being "captured by a small local oligarchy...particularly when the people are mobilized into local affairs because local institutions deal with real issues and matters," and the design of the provincial governor threatens to destabilize this accountability, even if only slightly.⁵¹

Sudan in the late 1970s provides an excellent example of why the centralization of power within the provincial governor position is noteworthy, and a possible hindrance to decentralization. Dele Olowu writes of Sudan:

At the apex of this decentralization plan was the provincial commissioner, a political appointee who presided over the provincial executive council...the commissioner...had the power to veto decisions of the provincial council...The provincial commissioner worked

⁴⁹ "The Constitution of the Democratic Republic of the Congo," 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

⁵⁰ "Carter Center: Democratic Republic of the Congo Legislative Election Results Compromised," *The Carter Center*, February 23, 2012. <http://www.cartercenter.org/news/pr/drc-022312.html>.

⁵¹ Dele Olowu, "The Failure of Current Decentralization Programs," in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995): 95.

directly under the president's office. Responsibilities were decentralized on paper, but the powers of taxation for a wide range of local activities were retained by the government.⁵²

This example demonstrates how a centralized authority figure, even one who is ostensibly intended to work in conjunction with a provincial assembly, can gain and maintain power, particularly if connected to the president. Sudan's example also illustrates how important strictly defined responsibilities are for centralized authorities, even at the provincial level. In the 2006 Constitution, the only responsibility outlined for the provincial governor is to present his or her "government program" which must be adopted by the majority of the provincial assembly.⁵³ In the case of Sudan, Olowu claims that "responsibilities were decentralized on paper, but the powers of taxation for a wide range of local activities were retained by the government." I assert that currently the responsibilities for the provincial government are not even "decentralized on paper" in the DRC's 2006 Constitution.⁵⁴

D. Conclusion

In this discussion of how political decentralization in the 2006 Constitution serves the goals of decentralization more broadly, several important themes have emerged. The first is that any form of decentralization faces many challenges. As political decentralization deals most directly with the philosophical core of decentralization generally, it tends to be particularly fraught with obstacles. A challenge that the DRC is currently facing, and one that many other African nations have encountered when first adopting decentralized systems, is a central authority's unwillingness to yield power. This is true both in President Kabila lack of action or implementa-

⁵² Dele Olowu, "The Failure of Current Decentralization Programs," in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995): 77-78.

⁵³ "The Constitution of the Democratic Republic of the Congo," 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

⁵⁴ Dele Olowu, "The Failure of Current Decentralization Programs," in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995): 78.

tion, and in design, as the structures of governance within the provinces still allow for significant central governmental oversight and control. These challenges suggest that while decentralization, if implemented conscientiously, could increase democratic participation among the public, there remain woefully few examples of African nations that have implemented largely decentralized systems successfully. Most systems inevitably move towards centralized control—either from the capital city or indirectly at the provincial level—for the streamlined decision-making process and the opportunities it offers elites to consolidate power. Few significantly commit to allowing local populations to generate their own systems of governance. Without this autonomy, Dele Olowu argues, “[local] institutions cannot attract the most crucial resources: public interest and local political leadership.⁵⁵” The apathy that accompanies the lack of these two resources is a hallmark of a failed decentralized system, as it prevents the type of democratic participation and governmental accountability that decentralization aims to bolster.

Another important theme has been the importance of strictly defined legislation to ensure proper implementation. In examples including the DRC, as well as Sudan, a professed goal of decentralization is often only as strong as the leniency in the legal language. For example, the lack of specific legal language in the DRC’s 2006 Constitution about how its current eleven provinces will be divided into twenty-six may be a contributing factor to President Kabila’s (and other’s) blockade of the process. While the 2006 Constitution currently expresses support for provincial autonomy and a policy of decentralization, it fails to make strict boundaries between the responsibilities of the central government and the provinces, limiting the power of the provinces by failing to offer any protections against the encroachment of the central government. Similarly, the lack of definitive responsibilities for the provincial governor and the provincial

⁵⁵ Dele Olowu, “The Failure of Current Decentralization Programs,” in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995): 93.

assembly poses the risk of Sudan's situation in the late 1970s, in which the provincial commissioner controlled almost all power in a system that remained only nominally decentralized. This, I assert, will be a continual challenge for the DRC as it moves forward with decentralization, if it does: to ensure that the guiding principles of the 2006 Constitution will be supported by more precise legal language that will allow implementation that is strictly controlled by legislation and has the support of the country.

The final theme worth highlighting is the persistent presence of centralized authorities in systems of decentralization. This can be observed at several levels of most decentralized systems. From the most macro view, many decentralized programs can become simply tools through which a centralized authority can implement policies and programs. Even at a provincial level, the presence of positions that centralize rather than distribute power are problematic not just at a local level but for the easy link they can provide for the centralized government working from the capital. Even in a country like Senegal, which has used decentralized systems for over fifty years and presents a model for effective delegation of responsibilities to decentralized units, the presence of a strong central authority governing all the decentralized units has ultimately precluded the possibility of full decentralization. Instead, most of the decentralized units continue to act as the locus for centralized agendas.⁵⁶

The constant centralizing impulse observed in many African nations, even under decentralized systems, is a powerful demonstration of what is at stake when analyzing the degree to which the 2006 Constitution achieves, or fails to achieve, political decentralization. More so than fiscal and administrative decentralization, which will be discussed in the following chapters, po-

⁵⁶ Sheldon Gellar, "State Tutelage vs. Self-Governance: The Rhetoric and Reality of Decentralization in Senegal," in *The Failure of the Centralized State: Institutions and Self-Governance in Africa*, ed. James Wunsch, and Dele Olowu, (San Francisco: ICS Press, 1995): 131.

litical decentralization hits the philosophical crux of decentralization, namely its potential to increase democratic participation and self-governance. Ultimately, decentralization is a process of customization, with the idea that the more a population can customize its government to address specific needs, the more likely it is that it will serve its constituents more effectively, and that the public will get—and stay—involved in democracy.

CHAPTER III: FISCAL DECENTRALIZATION

A. Introduction

Political decentralization often represents the ideological backbone of decentralized law, but it is just one component of decentralization as a system of governance. And, like a machine, decentralized law cannot function unless all component parts operate in harmonic unison. This chapter addresses the second component part of decentralization, fiscal decentralization. Fiscal decentralization details the way in which costs and revenue are distributed between the central government and the provinces, and is arguably as ideologically driven as is political decentralization. Like Chapter II, this chapter will utilize the 2006 Constitution as the primary source of inquiry, and will deploy examples of fiscal decentralization in other African nations to illuminate strengths and weaknesses in the DRC's system that might otherwise be difficult to determine without on-the-ground examples from the DRC itself.

Fiscal decentralization policy must balance the political power of the centralized and decentralized entities, and must ensure that the programs and administration of decentralization have the funds to be implemented, to be sustained, and ultimately, to be successful. According to scholar Junaid Ahmad, fiscal decentralization itself has four component parts: “1. Allocation of expenditure responsibilities by central and local governments; 2. Assignment of taxes by government tiers; 3. The design of an intergovernmental grant system; and 4. The budgeting and monitoring of fiscal flows between different government tiers.⁵⁷” Like political decentralization, fiscal decentralization, if developed successfully, can bring governmental expenditures closer to the people who will benefit from them, which can streamline fiscal processes, cut costs, and

⁵⁷ Junaid Ahmad et. al., “Decentralization and Service Delivery,” *World Bank Policy Research Working Paper Series* (2005).

hopefully increase democratic participation and governmental accountability. Even by just transferring fiscal decision making and funds management to the local level, decentralized fiscal policy can eliminate a chain of involvement stretching to the central government, thus increasing the chances of efficiency and transparency. Furthermore, fiscal decentralization can help develop national macroeconomic health through regional growth and poverty management, by promoting more locally informed and relevant fiscal policy solutions and management of funds.⁵⁸ Of course, these benefits are by no means guaranteed or unconditional in a system of decentralization; some public goods, such as clean water or big highway systems, might be more efficiently and adequately provided for by a national system rather than a provincial one.⁵⁹ Successful fiscal decentralization lies not just in developing policies that fulfill all four component parts, but in how the four component parts are developed, balanced, and modified to ensure that the system continues to provide public services to citizens in the most effective, transparent way possible by whichever governing body—central or provincial—would be best suited to the task.

In the DRC, the challenge with fiscal decentralization is not simply that the country is rich in mineral wealth, but rather that these natural resources are unevenly distributed throughout the country, an inequality that has prompted tension in the country throughout its post-colonial period. For the central government, the challenge in developing effective fiscal decentralization is determining the extent to which the resources of a province should remain in the area to benefit the local community, and the extent to which these resources—and the revenue they generate—belong to the entire nation, and should be used to redistribute wealth and develop poorer areas. A prime and persisting example of how this delicate balance can boil into conflict can be

⁵⁸ Adam B. Elhiraika, “Fiscal Decentralization and Public Service Delivery in South Africa” (paper presented at the workshop on “Public expenditure and service delivery in Africa: Managing public expenditure to improve service quality and access” organized by Economic Council of Africa, Lusaka, Zambia, 11-13 October 2006).

⁵⁹ Ibid.

found in Katanga Province. Katanga is one of the most mineral-rich provinces in the country, located in the heart of the country's "copper belt" and also possessing cobalt and uranium.⁶⁰ Just days after the independence of the DRC in 1960, Katanga governor Moise Tshombe declared that his province would also become an independent state, prompting several years of civil war.⁶¹ The issue of Katanga's autonomy remains far from resolved; in March 2013 over 300 rebels marched through the streets of Lubumbashi, the capital of Katanga.⁶² These rebels, just part of an estimated 2,000 rebels in the province, called themselves "Kata Katanga," meaning "cut off" Katanga, and they carried the 1960 Katanga independence flag.⁶³

In areas that possess the natural resources such as Katanga, the policy of decentralization translates not just to—ideally—a more direct connection to, and accountability from, local officials, it also translates very significantly into monetary terms. In Katanga, the road from the capital Lubumbashi to Kolwezi, an area of high mineral concentration, remains unpaved. This hinders and often halts any extraction of these minerals, rendering the road useless and contributing to a cycle of poverty. In an interview with *Deutsche Welle*, Henri Muhiya, Secretary of the Episcopal Commission on Natural Resources in the DRC summarized the issue so succinctly, stating, "The people living there, where the raw materials come from, feel this is unjust."⁶⁴ Because of governmental failures such as these, decentralization has gained tremendous support in Katanga. In the broadest strokes, the 2006 Constitution lays out a plan for fiscal decentralization in which provinces would be able to retain 40% of their revenue, which includes the revenue gained from the sale of natural resources. For this reason, the plan has received tremendous support from

⁶⁰ Phillip Sandner, "Decentralization plans for DRC's Copperbelt region," *Deutsche Welle* (April 15, 2013), doi: <http://dw.de/p/18EmX>.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

provinces such as Katanga. Consequently, the lack of progress on the actual implementation has fueled frustration, some of which may have contributed to the rebel violence and the continued calls for independence in Katanga.

Fiscal decentralization necessarily introduces a slightly different analytical frame for evaluation than political decentralization. The question is no longer what the balance of responsibilities will be between the central and decentralized governing agencies, but rather both how resources will be distributed between the provinces and the central government, and how resources will be distributed across provinces, with the central government acting as the intermediary arbiter. In the latter situation, it must also be determined if the funds distributed to poorer provinces will originate from the revenue that the central government raises through federal taxes (paid by constituents) or if instead it will come from the funds the provinces are required to pay to the central State. Finally, the political implications of the 60% contributions of the provinces to the central State must be considered in the context of the incredible variance in the wealth of each province.

Consequently, the discussion of fiscal decentralization must also set new goals for the success of the 2006 Constitution. In this thesis, I pose the question of how decentralization—with all its component parts—can increase self-governance, political participation, and government accountability for the Congolese people. To be sure, fiscal decentralization specifically contributes to all of these goals, most significantly by simply providing the funds through which provincial governments can function effectively. Yet fiscal decentralization is fundamentally different from political decentralization because it functions not at a conceptual level of political power and responsibilities, but rather with the very specific monetary resources of the nation. Article 58 of the 2006 Constitution states that “All the Congolese have the right to enjoy national

wealth. The State has the duty to redistribute the wealth equitably and to safeguard the right to development.”⁶⁵ This stated right provides the opportunity to evaluate fiscal decentralization not just against this thesis’s conception of successful decentralization—self-governance, increased democratic participation—but also against the goals that the 2006 Constitution has put forth for itself. Therefore, the analysis of fiscal decentralization will highlight both the extent to which the policies are achieving and preserving autonomy for the provinces, but also for the ways in which the policies aim to “redistribute wealth equitably.”⁶⁶ While few other countries in Africa have the amount of mineral wealth of the DRC,⁶⁷ examples of fiscal decentralization in other Africans will be analyzed not only to evaluate the potential of the DRC’s system, but also what even qualifies as “*equitable*” wealth distribution.⁶⁸

B. *Debt, Taxes, Wages, and Currency*

Article 171 of the 2006 Constitution states, in its entirety, that “the finances of the central authority and of the provinces are separate.”⁶⁹ However, as Chapter II has shown, such definitive declarations of separation and decentralization often mask much more nuance and contradiction than Article 171 may initially suggest. With political decentralization, the division of responsibilities between the central and provincial authority was muddled, at best. The division of fiscal responsibilities, however, presents a much more defined boundary between the central and pro-

⁶⁵ “The Constitution of the Democratic Republic of the Congo,” 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

⁶⁶ Ibid.

⁶⁷ It should be noted that although the DRC does possess very high quantities of tremendously valuable natural resources, this wealth remains largely potential wealth. Therefore, part of the challenge in analysis is balancing the fiscal policies not just against the current financial realities of the country but also against the possibly increased harnessing of the natural resources if provinces had the ability to finance their extraction to a greater extent than the central government has thus far.

⁶⁸ “The Constitution of the Democratic Republic of the Congo,” 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

⁶⁹ Ibid.

vincial governments, and balances the necessity of the central authority and the autonomy of the provinces more successfully, perhaps, than political decentralization does.

According to Article 202 of the 2006 Constitution, the following matters are the “exclusive competence[s] of the central authority”: “the public finances of the Republic,” “the establishment of income taxes, company taxes, and personal taxes,” “the public debt of the Republic,” “foreign loans for the needs of the Republic or the Provinces,” “domestic loans for the needs of the Republic,” “the currency, the issuance of the currency and the debt extinguishing character of the currency.”⁷⁰ Article 204 states that the following matters are the “exclusive competence[s] of the Provinces”: “the public finances of the Provinces,” “the public debt of the Province,” “domestic loans for the needs of the Provinces,” and “provincial and local taxes and duties, in particular property tax, local income and motor vehicle tax.”⁷¹ In this formulation of fiscal decentralization, the 2006 Constitution very clearly establishes the central authority and the provinces as two separate spheres of authority that are almost organized horizontally. This stands in contrast to the policies of political decentralization, in which the central authority was often established as the top of a hierarchy, with the ability to interfere, control, or manages the affairs of the provinces. Here, the central authority’s fiscal responsibilities include only those which the provinces would be unable to manage themselves, namely policies that are internationally-focused (such as foreign loans), or which affect all of the provinces simultaneously and equally (such as the currency and the public debts). The provinces, therefore, seem to have almost complete control over the fiscal policies in their jurisdiction; this control exists notably without any policies that would allow the interference of the central authority in these matters.

⁷⁰ “The Constitution of the Democratic Republic of the Congo,” 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

⁷¹ Ibid.

While these policies seem decidedly more clearly devised and described than many discussed under political decentralization, they require more analysis in order to be fully explicated. As stated in the Introduction to this chapter, one of the most popular stipulations of fiscal decentralization is that 40% of each province's income will be retained by the province, with the remaining 60% being contributed to the central government. This policy will be discussed at length in the following section, but must be mentioned here for the way it nuances the distinct separation that the 2006 Constitution outlines between the provincial and central budgets. Simply put, this "separation" requires the provinces to balance their budgets to manage all provincial expenses—and any potential debts they accrue—on only 40% of the revenue that they are generating. Therefore, the strict separation of the debts of the provinces and the central government appears to be more a protection for the central government from debt than a protection for the provinces. Furthermore, despite the fact that each province contributes over half of its revenue to the central government, with the policy of fiscal decentralization there are no policies outlining any recourse available to provinces that are struggling financially.

Ultimately, the language of the 2006 Constitution that states that the "public finances of the Provinces" are the exclusive competence of the province is misleading. It hides the fact that the central government is very much implicated in the finances of the provinces in the way that it takes 60% of each province's revenue, leaving each province with "exclusive competence" over only the remaining 40%.⁷² Furthermore, this separation, while ostensibly aligning with the goals of decentralized more clearly than many of the political decentralization policies, also presents the possibility for the central government to absolve itself of financial responsibilities to the provinces while simultaneously bringing in revenue from them. This potential pitfall is certainly

⁷² "The Constitution of the Democratic Republic of the Congo," 2005.
<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

significant; the success of decentralization as an entire process depends tremendously on each province's ability to properly finance the goals of its self-governance. Despite this weakness, the separation should empower provinces to have more control over the fiscal decisions they make, ideally allowing each province to tailor their expenditures to most accurately mirror the needs of their constituency.

Another noteworthy feature of the division of fiscal responsibilities is the establishment of a two-fold taxation system. In this system, specific sources of taxation income are separated between the two governmental agencies: property and motor vehicles, for example, can only be taxed by provincial governments. Income, however, is taxed simultaneously by both. This is an important policy because it acts to preserve the integrity and the viability of the central government. Without an additional income tax that every citizen pays directly to the national government, the central authority would be entirely dependent on the provinces for its funding, funding that would be used for things like foreign policy, national defense, etc. In such a system, each citizen would not be financially equal before the central government, as certain mineral-rich provinces would end up contributing large portions of the central government's annual budget, while other provinces would have significantly less to contribute. The two-fold income taxation system establishes a reciprocal relationship of responsibility between not only a citizen and her provincial government (the one that might affect her most directly), but also between a citizen and her national government. Furthermore, it serves (theoretically, at least) to insulate the central authority from the political purchasing power that richer provinces may have. In reality, however, the distinction between the provincial and the central taxes is less rigid. Although the fact that a national tax exists for all the reasons just cited, the ostensible separation between provincial taxes and central taxes masks the fact that the central government is still implicated in the collec-

tion of provincial tax. Because the provinces are only allowed to keep 40% of the revenue that they raise (with the rest going to the central government), 60% of the provincial taxes raised are actually going to the central government. Therefore, while the establishment of a two-fold taxation system is necessary to ensure that both the provinces and the central government have a funding source originating from their constituencies, by granting certain taxation privileges to the provinces (such as property and motor vehicle taxes), the 2006 Constitution is not only achieving this aim but also guaranteeing an additional funding source for the central government.

The division of responsibility between the central and provincial authorities with regards to taxation, debts, loans, and even wages set up a system of somewhat horizontal co-existence, in which provinces have the ability to manage the finances of their provinces while operating within a larger system that ensures the financial stability of the national economy. However, one provision of the central government's fiscal responsibilities directly contradicts the apparent non-interference of the central government. Article 202 states that the central government is responsible for determining "economic legislation including the laws on mines, minerals, and mineral oil, industry, energy sources, and the conservation of natural resources."⁷³ This section is notable for two reasons. First, despite the fact that each province is designed to have its own provincial assembly, the 2006 Constitution does not outline any matters, including financial matters, on which the province has the ability to legislate. Therefore, in this instance, it appears as if it is solely the central government that has the ability to design any legislation surrounding economic issues. While certain fiscal responsibilities granted to the province, as outlined above, are protected by the text of the 2006 Constitution, the stipulation that only the central government has

⁷³ "The Constitution of the Democratic Republic of the Congo," 2005.
<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

the authority to legislate on economic issues suggests that perhaps the power of the provincial government in fiscal matters is less robust than it might appear at first blush.

The stipulation regarding the legislative power of the national authority on economic issues is also cause for pause due to the fact that it specifically notes that these economic issues include “laws on mines, minerals, and mineral oil, industry, energy sources, and the conservation of natural resources.”⁷⁴ In a country with as many natural resources as the DRC, distribution and control of mineral wealth has been—and will most likely continue to be—a contentious issue. Much of the popular support that the policy of decentralization has received, in fact, has been primarily due to the idea of fiscal decentralization, and the potential it offers for individuals to actually retain the mineral wealth produced from or near their land.⁷⁵ Despite the support that such a policy has received, it also represents a tremendous concession for the central authority, and one the stipulation regarding economic legislation seems to suggest that perhaps the central authority is not ready to make completely or unequivocally. Referring back to the 2006 Constitution’s assertion that it will guarantee the “right to enjoy national wealth,” the central government’s ability to legislate on how mineral wealth is utilized will directly impact the degree to which this right is provided in actual fact.

While the most significant fiscal stipulation of decentralization in the 2006 Constitution is that 40% of each province’s revenue will remain in the province, this brief overview of the separation of fiscal responsibilities between the central and provincial authorities has yielded new and pertinent issues that will need to be re-raised in the discussion of the 40% rule. First, the separation of provincial and central debts complicates the value of provincial autonomy. While

⁷⁴ “The Constitution of the Democratic Republic of the Congo,” 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

⁷⁵ Phillip Sandner, “Decentralization plans for DRC’s Copperbelt region,” *Deutsche Welle* (April 15, 2013), doi: <http://dw.de/p/18EmX>.

the analysis of political decentralization stressed the value of granting as much autonomy to the provinces as possible, here the question must be reformulated to evaluate which entity—central or provincial—the autonomy granted by fiscal policies has been designed to protect. Furthermore, in the absence of more detailed and concrete language in the 2006 Constitution itself, special vigilance must be paid to how the fiscal provisions of the 2006 Constitution would function during times of crisis, especially crises that would most likely lead to high levels of governmental or provincial debt. The DRC has incredibly weak state structures, low income, and has experienced incredible conflict; for these reasons, it is particularly important that the fiscal policies protect against a robust range of crises that could emerge. Beyond crises, however, the DRC must also grapple with the fact that decentralized policies will bring many more individuals into contact, and into service, with the government than previously; these policies, therefore, should also be simple to navigate, and fortified against corruption.

C. Retenue à la Source

Article 175 of the 2006 Constitution states “the percentage of national revenues allocated to the provinces is fixed at 40%. It is retained at the source (*retenue à la source*).⁷⁶” Before discussing the implications of this stipulation, it is important to note several significant aspects of the actual language employed. First, the word “fixed” is key, because it guarantees a degree of stability in the fiscal relationship between the central and provincial authority. While it can be debated whether or not allowing provinces to retain 40% of their revenue is a policy that helps or hinders the autonomy of the province, the use of the word “fixed” suggests that, at the very least, the provinces are protected from the government forcing an increase in the provincial contribu-

⁷⁶ “The Constitution of the Democratic Republic of the Congo,” 2005.
<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

tions to the national coffers, no matter the circumstances. In this instance, the 2006 Constitution does make preliminary measures to ensure continuity in policy even in times of potential crisis. It is also interesting to note that the language of the 2006 Constitution highlights what the provinces are able to keep from this new policy—40% of their revenue—rather than noting what the provinces will have to turn over to the central government, which is, in fact, the majority of each provinces' revenue. This phrasing may have contributed to the excitement surrounding the policy, which is phrased to highlight what the provinces “get to keep” as opposed to what they are forced to give up. The way that this 40% is granted to the provinces is also important. The phrase used in Article 175 is “retained at the source” or “*retenue à la source*” in the original French.⁷⁷ This means that each province is required to contribute 60% of their revenue to the central government but that the remaining 40% will remain in the province. This stands in contrast to a system in which the provinces would turn over all of their revenue to a central government that would then re-distribute wealth to each of the territories. In many ways, the fact that the revenue is retained at the source pre-empts several problems that plague the DRC's current government. For example, the DRC continues to have incredibly weak state structures, which means that the transfer of funds to the central government and then back to the provinces would provide more opportunity for delays, inefficiencies, and corruption.

This is not to say, however, that the policy of *retenue à la source* is not without ample opportunity for corruption, delays, and inefficiencies. The most striking example of this potential is the complete lack of legal language in the 2006 Constitution detailing how the financial transactions between the central and provincial governments will take place. Therefore, it remains wholly undetermined what party will be responsible for the exchange of money between the

⁷⁷ “The Constitution of the Democratic Republic of the Congo,” 2005.
<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

provinces and the central government, or when and how often funds will and should be transferred. It is not difficult to imagine that in a country with already weak state structures and entrenched corruption, that provinces could—and are almost incentivized to—find methods to minimize the official figure for the revenue earned in order to send less money to the central government. The 2006 Constitution does provide some protection against such a scenario, albeit a protection that is, like many other sections of the text, vague at best. The 2006 Constitution describes an Audit Office that is responsible for “the management of State finances...as well as the accounts of the provinces.”⁷⁸ The Audit Office maintains legal personality and is under the purview of the National Assembly. Candidates for the Audit Office are chosen and dismissed by the President, but only with the approval of the National Assembly. This description of the Audit Office stands in contrast to a similar articulation in the South African constitution. While a case study of the South African system of fiscal decentralization will appear later in this chapter, its design of an audit office is worth quoting in full here:

221. (1) The Commission consists of the following women and men appointed by the President, as head of the national executive -
- a. a chairperson and a deputy chairperson who are full-time members;
 - b. nine persons, each of whom is nominated by the Executive Council of a province, with each province nominating only one person;
 - c. two persons nominated by organised local government in terms of section 163; and
 - d. nine other persons.
- (2) Members of the Commission must have appropriate expertise.
- (3) Members serve for a term established in terms of national legislation. The President may remove a member from office on the ground of misconduct, incapacity or incompetence.⁷⁹

It is clear that this audit office, analogous to the one designed for the DRC, is managed by stricter and detailed legal language intended to limit imbalances in power and corruption. Not only are

⁷⁸ “The Constitution of the Democratic Republic of the Congo,” 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

⁷⁹ “Chapter 13 of the Constitution of the Republic of South Africa: Finance.” 1996.

<http://www.worklaw.co.za/SearchDirectory/Legislation/conchapter13.asp>.

its responsibilities more specifically outlined, the South African system aims to mitigate the potentially problematic dynamic of having the Audit Office controlled by centralized authorities. In South Africa, involving representatives from each province helps provide other checks and balances for the system.

I argue that it would be easier and more worthwhile for provinces to attempt to minimize the figure for their revenues (to avoid paying more to the central government) than it would be for the central government to attempt to inflate provincial revenue figures to increase the payments they receive. Therefore, the Audit Office may be an important step in reducing the potential for bribery and corrupted book-keeping, but should be paired with a more detailed articulation of the transference of funds from the provinces to the central government. The difference, for example, between having a central authority responsible for auditing provincial accounts and then transferring the funds, and allowing provinces to surrender their 60% voluntarily without an audit (except in cases of suspected foul play) would have a significant effect on how accounts would be managed. Likewise, policies that require the transfer of funds to the central government every month versus every five years would produce vastly different outcomes in fiscal decentralization. Here, once again, the 2006 Constitution is weakened considerably by a lack of detail in the legal language used to outline many of these fiscal policies. It is impossible to determine if this vagueness is politically motivated or simply a series of oversights during a drafting process that was urged to be expedient.

Despite the brevity of Article 175, its policy has garnered much of the attention paid to the move to decentralized law more generally.⁸⁰ It therefore must be analyzed and evaluated on the implications of its adoption, and not just the explicitness of the language used to construct it.

⁸⁰ “The Constitution of the Democratic Republic of the Congo,” 2005.
<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

Perhaps the most important question that this policy raises is simply: is 40% enough? In Chapter II on political decentralization, I evaluated the 2006 Constitution's success largely based on how many responsibilities the law ceded to the provinces. These responsibilities included, among other things, the creation and maintenance of public works such as housing, roads, and parks, education and health care, energy and water, and the development of a mining sector. While these responsibilities offer the opportunity for the provinces to respond more directly to the needs of their provinces than the central government might be able to, these responsibilities must be re-evaluated in the context of this fiscal policy. First, if 40% of provincial revenue proves to not be enough money to adequately fund the successful completion of these tasks and the others outlined in the 2006 Constitution, then the policy of decentralization fails as a policy to more effectively provide public goods and good governance to a population. Second, it must be noted that this stipulation refers to the *gross* revenue, rather than the net revenue, of the province. This means that each province will have to turn over 60% of its revenue no matter what its costs are. According to Paul Smoke, three problems arise in fiscal decentralization policy that focuses on revenue-generation of provinces:

First, assigned revenues are almost never adequate to meet the local expenditure requirements. This means that the central government transfer programs are inevitably required. Second, sub-national governments often use too many unproductive revenue sources that barely cover the costs of collecting them. Third, individual local revenue sources suffer from some serious design problems, such as stagnant bases, overly complex structures, and ineffective collection mechanisms. While building local revenue systems is important, care must be taken to approach reform strategically...one of the most critical international lessons of local tax reform is that sub-national governments should focus their energies on systematic development of a few local sources of revenue that can provide substantial yields.⁸¹

⁸¹ Paul Smoke, "Fiscal Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward" (paper presented at the Conference on Fiscal Decentralization, International Monetary Fund, Washington, DC, November 20-21, 2000).

Smoke's analysis offers two important insights into the DRC's 40% system. First, his assertions that provinces are "almost never" able to raise enough revenue to cover their costs suggests that the answer to the question "will 40% be enough?" is simply no, at least in the case of most of the provinces in the DRC.⁸² Smoke's recommendation, however, that provinces should focus on cultivating a few high-yield sources of revenue does offer some hope, although this point also suggests that the DRC's system might only work for the provinces that possess significant mineral resources.

In the context of revenue-based policy, provinces have two primary methods of boosting their budgets if the 40% of revenue retained at the source is, in fact, proving insufficient to properly fund the activities of a province. The first, of course, is to further cultivate its sources of revenue, which might be taxes, mining, or other resource extraction (such as deforestation). The second method is to cut costs to allow the 40% of revenue to go further, particularly, perhaps, in the direction of developing revenue-generating infrastructure (such as roads to mines, etc). It is not difficult to anticipate the problems that might emerge in a system that incentivized such profit-maximizing and cost-cutting policies in the face of a 40% budget that proved to be too tight to adequately fund a province's new decentralized responsibilities. Simply put, this policy positions provinces as for-profit institutions vying to retain their revenue in the face of the central government, and fails to encourage the type of provincial spending that would actually increase the public goods provided to the public.

The example of road-building here might illustrate some of the issues that might emerge should the 40% prove to be too lean of an endowment for the provinces to manage a healthy

⁸² Paul Smoke, "Fiscal Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward" (paper presented at the Conference on Fiscal Decentralization, International Monetary Fund, Washington, DC, November 20-21, 2000).

budget. The Introduction to this chapter described the current situation in Katanaga province, where the lack of proper roads to the mine sites has discouraged foreign investment or even much local extraction, leaving the tremendous value of minerals such as coltan and uranium largely untapped, and leaving the population in continued poverty. There is hope in provinces like Katanga that the adoption of the new fiscal decentralized policies will correct situations such as these by placing the funds and the responsibility to focus on locally relevant issues in the hands of local government officials. Undoubtedly, the policy of decentralization increases the likelihood that such a road leading to mining sites in Katanga would be built and maintained, not only because local officials are more likely to recognize the need for such a road, but also because the 40% system incentives projects that might generate additional revenue for the province (with mineral extraction being a primary source of this revenue). What might go unnoticed, however, is a second hypothetical road that needs to be built, one that would connect isolated rural communities to resources like schools, hospitals, or larger cities. Such a road would certainly be a cost rather than an income-generating project, and, furthermore, would detract valuable funds that might be otherwise used to develop a lucrative industry like mining. What incentives exists for a province to invest in a road like this?

The question for the DRC's policy, therefore, is not just necessarily whether or not 40% of a province's revenue is enough to fund the operations of the province, but rather, what does the split of 40/60 represent about the relationship between the provinces and the central government within a system of "decentralization?" Furthermore, what, if any, progress will the 40% policy offer towards the right to national wealth and the promise to redistribute wealth "equita-

bly” described in the 2006 Constitution?⁸³ In order to address the latter question, the opportunity for equitable wealth distribution must be evaluated as redistribution both within a single province and across the potential twenty-six provinces. As the example above illustrates, the opportunity for increased focus on development is complicated by the concurrent goal to “redistribute wealth equitably.⁸⁴” In many ways, a focus on developing the mineral industry could help generate wealth for a vast segment of a province’s population, particularly if now, before decentralization has been implemented, this source of wealth remains largely underutilized. Simultaneously, one must be wary of the possibility that such efforts would serve to distribute wealth to only the already wealthy, leaving many others excluded and entrenched in poverty. Again, these challenges are not unique to the DRC or even decentralized systems of governance, but do come into starker relief in light of the DRC’s fiscal decentralization policy. Rather than being assigned or granted a standard amount of fiscal resources by the central government with which to run a province based on its unique expenses, the 40% policy places the agency and incentive to increase revenue and cut costs directly on the provinces in order to retain as much wealth as possible. The penultimate section in this chapter will provide examples of fiscal decentralized policies in other African nations in the hopes to illuminate how analogous systems have navigated similar dilemmas.

The unequal distribution of mineral wealth presents several unique challenges for the 40% policy with regards to equitable distribution of wealth across the potential twenty-six provinces of the country. The most central challenge is how the 40% system will account for the inequalities between provinces. By inequalities, I mean here not only the inequality in the final monetary amount that each province contributes to the central government, but also the inequali-

⁸³ “The Constitution of the Democratic Republic of the Congo,” 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

⁸⁴ Ibid.

ties in the revenues and costs in each province, and the inequalities in mineral and natural resource distribution. Article 181 of the 2006 Constitution is the only section in the document that attempts to address this inequality with fiscal policy. Article 181 states:

A National Trust for Equal Development (*Caisse Nationale de Péréquation*) is established. It possesses legal personality. The National Trust for Equal Development has the mission to finance public investment projects and programs in order to ensure national solidarity and correct the uneven development among the provinces and among the other decentralized territorial entities. *It has a budget at its disposal which is financed by the Public Treasury at the rate of ten percent of all national revenues due to the State each year.* It is placed under the guardianship of the Government (emphasis mine).⁸⁵

The establishment of the National Trust for Equal Development⁸⁶ is a significant mechanism for ameliorating the unequal wealth of the potential twenty-six provinces, particularly because the budget of ten percent of the national revenue is a hefty sum. Assuming that each province must submit 60% of their revenue to the central government on an annual basis, the national revenue of the government will include revenue from all twenty-six provinces, and revenue from the national taxes that are collected. This means that the ten percent allocated to the NTED would be, at the least, over three times the amount of the poorest province's contribution to the national government, although it will most likely be significantly more, particularly considering the vast variation in provincial wealth. This is to say that focused deployment of the fund could make a huge impact on the finances of a few provinces. In such a formulation of fiscal decentralization, the incentive to maximize revenue at the provincial level that was critiqued above is, in fact, also serving the greater development of the nation, and could thus be viewed as an effective policy if regulations were in place to insure that the profit-maximizing policies did not lead to governmental neglect in other areas.

⁸⁵ "The Constitution of the Democratic Republic of the Congo," 2005.

<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>;

⁸⁶ Henceforth referred to as the NTED

However, like the establishment of the Audit Office, the weakness of the NTED lies certainly not in its creation but rather in its lack of legal language to determine details crucial to its successful functioning. According to Paul Smoke:

There are several typical issues and problems involved in designing transfer programs. First, no one type of transfer meets all desired objectives. Unconditional grants, for example, are best for income redistribution purposes, while conditional grants are a more efficient way of encouraging expenditures on particular types of target services. Second, fiscal equalization grants are often considered important, but they are very difficult to design because of the technical and political complexities involved in defining an “optimal” distribution of income across decentralized jurisdictions and in determining a fair way to raise the revenues to be redistributed.⁸⁷

Tasked with determining solutions to the complexities that Smoke describes, the 2006 Constitution is markedly mute on any of the details that would shape the NTED. The DRC does not publish information about internal transfers of funds, so it is difficult to determine which or how many provinces would need funds from the NTED, especially given that the provinces have yet to be split from eleven to twenty-six. However, even the idea that the NTED funds would be disbursed to provinces of lower economic status is, at best, an assumption, given that the 2006 Constitution does not outline any criteria for how the funds will be distributed. While providing funds to the provinces that have the least wealth would be a positive step towards the equitable redistribution of wealth in the country, an interested party could easily argue that financing the development of the mining industry in a rich province like Katanga would fall under the category of “a public investment project” that would “ensure national solidarity.”⁸⁸ This is particularly true when the control of the funds is placed under the executive branch of the government, rather

⁸⁷ Paul Smoke, “Fiscal Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward” (paper presented at the Conference on Fiscal Decentralization, International Monetary Fund, Washington, DC, November 20-21, 2000).

⁸⁸ “The Constitution of the Democratic Republic of the Congo,” 2005.
[http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf](http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf;);

than the national assembly; the development of a close relationship between rich provinces and the president could certainly be mutually beneficial politically and very lucrative for both parties.

Here, again, the opportunity for corruption is vast, and few—if any—safeguards have been developed to guard against it. This is true not only in how the money is awarded, but how it is managed after it has been awarded. Article 181 does not stipulate how the money will be transferred, and what oversight—if any—of the funds there will be. More specifically, there is no information about whether the funds will be turned over to the provinces to manage as they see fit, or whether the funds will be accompanied by some form of central governmental management. This distinction not only has important implications for the potential for corruption or mismanagement of the funds (on either side of the equation), but also for the philosophy of decentralization in general; governmental oversight of a development projects in a province would most likely undermine the autonomy that decentralization hopes to foster, particularly in the fiscal realm.

Another initial flaw in the construction of the NTED is the way in which the funds will be distributed. First, while the fund is a significant sum, it would require careful and conscientious spending in order to actually ameliorate the vast inequalities between provinces. Splitting the fund between all twenty-six provinces, even unequally, would considerably decrease the impact that such a fund could have on developing less wealthy provinces; this would also be true (to a lesser extent) if the fund is divided among half or even fewer provinces. If the goal of the NTED is truly to “correct the uneven development among the provinces” as stated in Article 181, the government would be well-served to establish a metric with which to measure the relative wealth and development of each province, and from which a dividing line can be determined between those which require aid from the NTED and those that do not. A crucial part of this metric would be not only the revenue, but also the expenses of each province. As noted earlier, a prov-

ince that might have relative wealth in terms of revenue collected but also very large expenses (from a lack of infrastructure, rebel fighting in the area, a large population), could have a much smaller operating budget than a province with little revenue but low expenses.

In fact, the formulation of the 40% rule with *gross revenue* rather than “profits” (or net revenue) creates an interesting conundrum in evaluating, and hopefully ameliorating, inequality across the provinces. Ostensibly, the 40% rule requires that all provinces work on a budget of 40% of their revenue—the 40% that they are able to retain. Here, again, the question is not just “is 40% enough?” but also, what happens if when it is not—and when it *is*. In the DRC, rebel violence still rages in certain parts of the country, and has proven difficult to halt. Conceivably, this type of fighting would remain an issue, even if the system of decentralized governance were adopted. It is not difficult to image, therefore, a scenario in which a bout of violence hits a province, leaving much of its infrastructure destroyed. If the province must run on a budget that exceeds 40% of its revenue (which would most likely be decimated in the face of violence), would it still have to turn over the remaining 60% of its revenue, even if this would put the province in debt? If a province is already in debt, will it continue to have to pay 60% of its revenue to the central government? These questions remain unanswered by the text of the 2006 Constitution, and furthermore pose the risk of creating and sustaining, rather than eliminating, a system of inequality between provinces, even in the face of the NTED. A simple solution, here, would have the provinces turn over 60% of any funds left after the province had funded all of its responsibilities—60% of its *net* revenue.

The 40% rule is almost as problematic in the opposite scenario, namely when 40% is not just “enough” to finance the activities of the province, but when 40% is actually more than is needed. For many of the provinces that do not possess many, or any, natural resources, taxes

would most likely form the core of their revenue, yet in provinces such as Katanga, such a scenario of extreme revenue-generation is not completely inconceivable. Most of the DRC lives in such a state of poverty and underdevelopment that it is difficult to imagine how exactly a true surplus of funds would develop, considering the vast need of public works, infrastructure, and other development, yet if this were the case, such a province would have several fiscal options that poorer provinces do not, namely a revision of the taxation system. How can the possibility of some provinces having very few—if any—taxes while others having very steep taxes be reconciled with the 2006 Constitution’s promise to “redistribute wealth equitably”?⁸⁹ More stubborn is the question of whether this type of variance in provincial experience is the goal of a decentralized system of governance, or the weakness of such a system in a country with as much variation as the DRC.

The final consideration of fiscal decentralization that I would like to raise in regards to its role in moderating inequality between provinces is the question of the unequal final sums that each province is required to make to the central government. The amount that each province must contribute is a complicated policy to parse; if each province were required to give the same flat fee, for example, it would be difficult for the central government to raise the desired level of funds without significantly burdening the poorer provinces. Because of this, the percentage rule determined by the 2006 Constitution is in many ways a more fair method, as each province is contributing the same share of their wealth (although, as mentioned earlier, this conception largely ignores the variance in the expenses of each province). This system is not without its faults, however, the most important of which is that it would result in a tremendous variation in the amount of money that each province pays to the central government. The sums from poorer

⁸⁹ “The Constitution of the Democratic Republic of the Congo,” 2005.
[http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf](http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf;);

provinces without any mining industry could be small fractions of the sums paid by the provinces, such as Katanga, that are rich in natural resources. While all provinces are conceived as equal under the law and under the control of the central government, this variation in the amounts paid by the provinces has the potential to quickly devolve into an opportunity for richer provinces to buy political power from the capital. As mentioned above, the establishment of the NTED incentives this system to generate a market for political capital; an investment in the mining industries in a richer provinces would, very literally, produce a higher return on investment for the central government than a project to build a rural road in a poor province.

The evaluation of the 2006 Constitution's fiscal decentralization policy reveals several important points. The first, which is consistent with the evaluation of political decentralization in the DRC, is that the 2006 Constitution offers up, at best, a sketch of a new system of governance, rather than complete, complex, and nuanced road map for implementation and viability in a diverse set of future circumstances. In the realm of political decentralization this lack of specificity presented several philosophical and implementation challenges. Because fiscal policy deals so directly with money and wealth, this same underdevelopment of the legal language surrounding decentralization also creates an acute risk for increased corruption. While even the most well-articulated legal systems can still fall victim to corruption, the DRC is currently a country with very weak state structures and a culture of entrenched corruption, ranking 162 out of 180 countries evaluated by Transparency International's Corruption Perception Index in 2009.⁹⁰ Emerging from this context, it would be prudent for the fiscal decentralization policies developed for the DRC to be designed with a keen eye towards the potential for corruption. This would start, at the

⁹⁰ Marie Chêne, "Overview of corruption and anti-corruption in the DRC," *Anti-Corruption Resource Centre* 257 (2010). <http://www.u4.no/publications/overview-of-corruption-and-anti-corruption-in-the-drc/#sthash.HjCuFZ29.dpuf>.

very least, with more detailed legislation surrounding the criteria for disbursement of funds from the NTED, as well as more oversight for the actions of the NTED, and how the revenue in each province is reported, collected, and translated into political action by the central government. While these are merely provisional suggestions for improvements that could be made to the 2006 Constitution, the real questions must remain largely unanswered until the policy has been implemented. It is only then that it will be illuminated whether or not it is reasonable, with a budget of 40% of revenue, for provinces to adopt, complete, and be held accountable for the myriad of responsibilities lauded in Chapter II. In lieu of such real-life examples from the DRC, the following section will examine fiscal decentralization in other African nations to provide points of comparison and, hopefully, diagnosis.

D. Models of Fiscal Decentralization from Other African Nations

This section will attempt to answer some of the questions posed in the preceding section by drawing on other African systems of fiscal decentralization. The close reading of the 2006 Constitution in terms of fiscal policy produced several core questions and lines of inquiry regarding the policy therein described; these interrogations arose primarily from the viability of the 40/60 division of provincial revenue. In imagining the possibilities of the 2006 Constitution's policy in action, the most important unknown was always, *will 40% of a province's revenue be enough to finance its responsibilities?* To move this question from speculation and toward diagnosis, I will examine the policy of fiscal decentralization in South Africa.

South Africa is an unconventional choice for comparison with the DRC, as it is arguably the most developed nation on the African continent, while the DRC is ranked 186 out of 187

countries on the UN Human Development Index.⁹¹ This choice, however, is not without reason; the DRC and South Africa share several similar characteristics that have been central to the analysis of the 2006 Constitution in the preceding section, and are therefore valuable points of continuity for the comparison. Both countries are rich in mineral wealth; South Africa is a leading global producer of gold, chrome, manganese, platinum, vanadium, and vermiculite.⁹² Both countries rely heavily on their mining industry, which accounts for approximately 20% of the GDP of each country.^{93,94} Another important similarity between the two nations, born in part from the unequal distribution of minerals in both, is the marked inequality across provinces, although much of this inequality in South Africa is also the legacy of apartheid. Both countries have constitutions outlining decentralized provinces that are relatively new. The South African system was adopted in 1994, which stands in contrast to a country like Senegal, which has been developing and remodeling its own system of decentralization since independence in 1959. Finally, South Africa represents a type of aspirational model for the DRC, as many of the obstacles that could limit the success of the fiscal decentralization policy in the DRC, such as an underdevelopment of the mining industry or low government capacity, have been overcome or substantially improved in South Africa. Because of this, struggles that continue to plague the South African system will provide particularly salient points of diagnosis for the DRC's system. However, in recognition of the large development differential between the two countries, I will also present brief case studies of fiscal decentralization in Uganda to offer another perspective.

⁹¹ "Table 1: Human Development Index and its components," *United Nations Development Programme* (2011). <https://data.undp.org/dataset/Table-1-Human-Development-Index-and-its-components/wxub-qc5k>.

⁹² "Mining in South Africa," *Mining Intelligence Database* (2013). <http://www.projects iq.co.za/mining-in-south-africa.htm>.

⁹³ "Resource Governance Index: Democratic Republic of the Congo," *Revenue Watch Institute* (2013). http://www.revenuewatch.org/sites/default/files/country_pdfs/democratic_republic_of_the_congoRGI2013.pdf.

⁹⁴ "Mining in South Africa," *Mining Intelligence Database* (2013). <http://www.projects iq.co.za/mining-in-south-africa.htm>.

Critical to the project of a comparison of decentralized fiscal policy is similarity in political decentralization parameters; the responsibilities granted to a decentralized territory are, essentially, a description of the primary expenditures of each province. Unless two systems are designed to fund comparable public goods to their constituencies, the relationship between the fiscal policies is virtually irrelevant. Provinces in South Africa are responsible for providing health, education, roads, housing, and social welfare within their jurisdiction.⁹⁵ These responsibilities mirror, in a general sense, the responsibilities granted to the provinces in the 2006 Constitution, as discussed in Chapter II. The responsibilities listed above are perhaps the most significant, although the DRC also tasks the provinces with tasks like forestry, and, in part, mineral management.

In South Africa, provinces are notably limited in the ways that they can raise revenue. The permitted methods are: “road traffic fees, including motor vehicle licenses and registrations and driver’s licenses and learner’s permits....Other important provincial sources including gambling...interest...and hospital fees.”⁹⁶ Of note is the fact that provinces are not able to levy income, corporate, or value-added tax; these are the responsibilities of the central government.⁹⁷ In this regard, South Africa is a bit of an anomaly, as many developing countries, including Brazil, India, and the DRC, allow provinces to raise revenue primarily through personal or sales

⁹⁵ Adam B. Elhiraika, “Fiscal Decentralization and Public Service Delivery in South Africa” (paper presented at the workshop on “Public expenditure and service delivery in Africa: Managing public expenditure to improve service quality and access” organized by Economic Council of Africa, Lusaka, Zambia, 11-13 October 2006).

⁹⁶ Paul Smoke, “Fiscal Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward” (paper presented at the Conference on Fiscal Decentralization, International Monetary Fund, Washington, DC, November 20-21, 2000).

⁹⁷ Adam B. Elhiraika, “Fiscal Decentralization and Public Service Delivery in South Africa” (paper presented at the workshop on “Public expenditure and service delivery in Africa: Managing public expenditure to improve service quality and access” organized by Economic Council of Africa, Lusaka, Zambia, 11-13 October 2006).

tax.⁹⁸ Because of this, any sort of taxation on the mining that takes place in South Africa is also the responsibility of the central government. Technically, the limiting of this type of taxing to the central government makes the South African system quite centralized in terms of revenue-generation; I take issue with this definition of fiscal centralization, however, as discussed in the following pages. Despite the fact that South Africa uniquely limits the forms of revenue-generation that it grants its provinces, the disparity between the revenue-generation of its provinces and the provinces of other developing nations that can levy taxes is not as great as might be expected. According to Elhiraika, “sub-national own revenues represent 17 per cent of public revenue in developing countries compared to only 4 per cent in South Africa.”⁹⁹ Therefore, while the amount of revenue that the provinces generate in South Africa is virtually negligible compared to the revenue of the central government, developing countries generally fail to raise even a fifth of national revenue from their provinces.

However, the revenue that *is* generated in the provinces in South Africa only accounts for, on average, 4% of the province’s budget.¹⁰⁰ In the wealthier provinces, the percentage of own-revenue from the provinces is over 6%, while the Eastern Cape province generates just under 2%.¹⁰¹ In other developing countries, provincial revenue accounts for approximately 58% of the province’s total revenue.¹⁰² Framed this way, the impact of South African provinces’ inability to tax can be seen more clearly; according to Elhiraika, provinces in most developing countries are able to raise slightly over half of the total revenue that they need, as opposed to just un-

⁹⁸ Adam B. Elhiraika, “Fiscal Decentralization and Public Service Delivery in South Africa” (paper presented at the workshop on “Public expenditure and service delivery in Africa: Managing public expenditure to improve service quality and access” organized by Economic Council of Africa, Lusaka, Zambia, 11-13 October 2006).

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

der 5% in South Africa.¹⁰³ In both examples, however, there remains a significant budgetary shortfall for the provinces, requiring revenue outside of that which the province is able to generate for itself. In South Africa, 96% of provincial funding is provided by the central government in the form of fund transfers, and in other developing countries, similar governmental transfers account for 42% of sub-national revenues.¹⁰⁴ The transfers to provinces in South Africa accounts for 43% of total (national) public sector expenditures, and come in two primary forms.¹⁰⁵ The majority of the transfers in South Africa are “equitable share” grants, accounting for anywhere between 75-88% of the total funds transferred, with the remaining revenue coming in the form of a conditional grant (the average breakdown being 83/13% respectively).¹⁰⁶ In general, the provinces that raised the least amount of revenue independently received more of their governmental transfers in the form of equitable share grants, which are unconditional grants of funding.¹⁰⁷

What does South Africa’s system of fiscal decentralization illuminate about the DRC’s 2006 Constitution’s proposed system? Most significantly, the South African system presents a radically different vision of “fiscal decentralization” than the system in the DRC, and suggests that the 40% system in the DRC is destined to fail. Regardless of how relatively uniquely *little* revenue the provinces in South Africa are able—and allowed—to raise for themselves, its system positions the central government in a vastly different fiscal and philosophical relationship with the provinces than the DRC’s system does. South Africa’s constitution establishes that each

¹⁰³ Adam B. Elhiraika, “Fiscal Decentralization and Public Service Delivery in South Africa” (paper presented at the workshop on “Public expenditure and service delivery in Africa: Managing public expenditure to improve service quality and access” organized by Economic Council of Africa, Lusaka, Zambia, 11-13 October 2006).

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Paul Smoke, “Fiscal Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward” (paper presented at the Conference on Fiscal Decentralization, International Monetary Fund, Washington, DC, November 20-21, 2000).

¹⁰⁷ Ibid.

provinces “is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it...and additional revenue raised by provinces or municipalities may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue.”¹⁰⁸ In this conception of fiscal policy, not only are all the provinces entitled to a portion of the national revenue, the provinces, rather than the central government, are prioritized in their guaranteed wealth, regardless of the local revenue they are able to raise for themselves.

While South Africa’s system has been classified as a system of fiscal decentralization that remains highly centralized in terms of revenue generation, I argue that, in fact, South Africa’s system is more consistent with the larger project of decentralization than the DRC’s system.¹⁰⁹ It is true that in the South African system, the vast majority of revenue is generated and collected at the national, rather than provincial level. However, the South African system also has a highly developed system of governmental transfers, which enables the provinces to be fully funded. This is an important distinction. In the DRC’s system, the revenue generation is decentralized, but the ultimate destination of the revenue is still primarily centralized; the opposite is true in South Africa. Under this model, the responsibilities of the provinces can be further concentrated towards providing public goods for constituents, rather than on trying to raise additional revenue. Paul Smoke argues that, in fact, revenue generation in the form of tax collection is often barely cost-effective for provinces in terms of the time and resources needed to collect

¹⁰⁸ “Chapter 13 of the Constitution of the Republic of South Africa: Finance.” 1996.
<http://www.worklaw.co.za/SearchDirectory/Legislation/conchapter13.asp>.

¹⁰⁹ Paul Smoke, “Fiscal Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward” (paper presented at the Conference on Fiscal Decentralization, International Monetary Fund, Washington, DC, November 20-21, 2000).

comparably low yields of revenue.¹¹⁰ Therefore, the South African system may originally collect revenue at the level of the central government, but this revenue is very quickly funneled back out to the provinces; in this way, the revenue mirrors the flow of responsibilities that are associated with political decentralization—originating from the central government but being granted to the provinces. In the case of both South Africa and the DRC, the most important question is not where the revenue of the nation is being generated, but rather, who has access to the capital once it has been generated, and whether this capital enough to properly fund the provincial responsibilities under decentralization.

I assert that despite having a system of revenue generation that is highly decentralized, the DRC's 40% system is ultimately more centralized, overall, than the South African system. In the DRC's system, the flow of capital is towards the central government, not towards the provinces. In many ways, the DRC's system of fiscal decentralization sets up a type of feudal relationship between the provinces and the central government, where the provinces are responsible for providing a fiscal contribution to the central government, while meanwhile funding and supporting their own governmental responsibilities to their constituents. Unlike the South African system, the DRC has only a limited fund (10% of national revenue) to transfer back to the provinces. Accordingly, provinces would conceivably be competing for these funds, instead of each being entitled to—and receiving—an equitable share of the national wealth. This system has the potential to breed resentment between the central government and the provinces, a potentially

¹¹⁰ Paul Smoke, "Fiscal Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward" (paper presented at the Conference on Fiscal Decentralization, International Monetary Fund, Washington, DC, November 20-21, 2000).

dangerous dynamic when rebels continue to fight throughout the country, particularly in the eastern provinces.¹¹¹

The appeal of the fiscal decentralization plan in the DRC, for many, has been the potential for an increased standard of living from each province's ability to raise, keep, and manage its own revenue. It is anticipated that the 40% system will increase the efficiency and relevance of the spending by allowing the *retenue à la source* of funds rather than being dependent on a central government that might be unreliable in the transfers of funds to provinces. This is certainly a concern; the type of high-volume transfers that the central government provides to its provinces in South Africa is something that undeniably requires strong state capacity that might simply not be present in the DRC. In fact, the DRC does not even have the type of legal language to guide such transfers, weakening the project even before it begins. Section C of this chapter quotes the establishment of the National Trust for Equal Development at length, but what was conspicuously missing from the stipulation that 10% of national revenue would be granted to provinces is any description of how, when, why, or to whom such transfers would occur. This stands in contrast to the South African system, which has developed a formula to determine each province's equitable share of the national revenue, as well as how much of the transfer should come in the form of a conditional or unconditional grant. Therefore, it is certainly a worthwhile consideration that the DRC might simply not have the governmental capacity to make a system such as the South African system that effectively and reliably transfers funds to the provinces. If this is the case, the 40% policy is appealing for its stipulation of *retenue à la source*, although I would argue that a focus on increasing the governmental capacity for transfers would be a more positive

¹¹¹ Phillip Sandner, "Decentralization plans for DRC's Copperbelt region," *Deutsche Welle* (April 15, 2013), doi: <http://dw.de/p/18EmX>.

step for the system of decentralization than using the 2006 Constitution's system simply because it is more feasible under the current governmental institutions.

Still, the success of the fiscal decentralization in the DRC rests on the answer to the question of whether 40% of provincial revenue will be sufficient for the province to provide the public goods with which it has been tasked. The comparison to South Africa suggests that the answer to this question is, overwhelmingly, negative. While South Africa may be unique in the way it limits the taxation rights of its provinces, the extent to which provinces need to be funded suggests that perhaps the DRC's fiscal policy is naïve in its construction. Certainly the DRC is unique in its own mineral wealth, which has the potential to raise significant revenue for the nation, and for certain provinces. The problem again, however, is that this sort of prosperity would only be accessible to a *few* provinces in the DRC, rather than all of them. Instead of designing a system that "tops off" the provincial revenues to cover the shortfall between a province's expenditures and the revenue it can raise (this being the system in South Africa, albeit to a more extreme extent), the DRC's system pre-supposes that many provinces will not just raise some revenue, but raise enough revenue to finance their expenditures on just 40% of what they raise. The example of South Africa, and the aggregate data presented from developing countries, suggests that the underlying assumption in the DRC's system that, through decentralization, provinces would be able to be even simply fiscally self-sufficient (let alone fiscally self-sufficient on less than half of their own revenue) is unfounded.¹¹²

Uganda, too, illustrates this point, and in ways that account for some of the anomalies of the South African system. In Uganda, like in the DRC, provinces are allowed to levy a variety of

¹¹² Paul Smoke, "Fiscal Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward" (paper presented at the Conference on Fiscal Decentralization, International Monetary Fund, Washington, DC, November 20-21, 2000).

taxes, including personal income tax. Like the DRC, the provinces are responsible for providing most public goods, significantly health and education services. Central governmental transfers to decentralized units in Uganda account for 24% of the national budget, and account for over 80%, on average, of the revenue for decentralized territories (meaning that provinces only raise approximately 20% of their own revenue).¹¹³ This illustrates another flaw in the DRC's system, namely that it only allots 10% of the national revenue to the National Trust for Equal Development. Both Uganda and South Africa spend a considerably larger percentage of their national revenue (14% and 34% respectively) in grants to decentralized territories, in systems that allow these territories to retain 100% of the revenue that they raise.¹¹⁴ Bearing this in mind, it is nearly impossible to imagine that most or many provinces in the DRC would be able to raise any significant amount of revenue, or that they would be able to fund necessary expenditures on this total revenue, let alone on just 40% of this revenue. Equally unimaginable is the notion that just 10% of the national revenue would be able to adequately cover the shortfall between the retained 40% revenue of each province and the expenditures they have based on their political responsibilities.

D. Conclusion

Returning again to the example of Katanga illustrated at the beginning of Chapter III, it becomes clear that decentralization, and fiscal decentralization in particular, will not bring the type of monetary prosperity that has been anticipated. Furthermore, real implementation of the 2006 Constitution would also mean breaking up what is currently Katanga province into four new provinces, prompting the question of whether all four of these new provinces would even

¹¹³ Paul Smoke, "The Evolution of Subnational Development Planning Under Decentralization Reforms in Kenya and Uganda," in *Planning and Decentralization*, ed. Victoria A. Beard et. al. (New York: Routledge, 2008).

¹¹⁴ Adam B. Elhiraika, "Fiscal Decentralization and Public Service Delivery in South Africa" (paper presented at the workshop on "Public expenditure and service delivery in Africa: Managing public expenditure to improve service quality and access" organized by Economic Council of Africa, Lusaka, Zambia, 11-13 October 2006).

contain the mineral wealth that the residents of current Katanga are hoping will help financial develop their province under fiscal decentralization.¹¹⁵

It is impossible to say which part of decentralization—political, fiscal, or administrative—is the most important to the overall mission of decentralization, but it is possible to say that without properly planned fiscal decentralization, the entire process of decentralization falters. If adequate funds are not distributed to, or generated by, the provinces, decentralization—in terms of the division of responsibilities and budgets between the central and provincial authorities—will inevitably become a burden, an impoverishing force, rather than one that has the potential to effect the type of positive change that is so eagerly awaited in areas like Katanga. In short, providing provinces with the authority and jurisdiction to build the roads required to make a mining site a viable source of income for the provinces is a positive step in decentralization only if the province is also able to finance the building of such a road. If provinces are not able to fund *all* of their needs—the roads to mining sites, as well as into rural areas devoid of any mineral wealth—then decentralization becomes an abdication of central governmental responsibility to the needs of its citizens, rather than a force to empower local self-governance.

¹¹⁵ Phillip Sandner, “Decentralization plans for DRC's Copperbelt region,” *Deutsche Welle* (April 15, 2013), doi: <http://dw.de/p/18EmX>.

CHAPTER IV | CONCLUSION

The DRC has suffered incredible hardship, in colonial times and in the recent post-colonial past. Decentralization is far from a silver bullet, and is just one of any number of structures of governance that could be deployed as the country stands at the brink of, hopefully, a new era of governance. Despite this, decentralization has the potential to make a profound difference in the DRC, if implemented thoroughly and conscientiously, if for no other reason than the fact that it has the ability to make the government a more directly involved part of each citizen's experience. More than anything, the DRC needs strengthened state structures, increased democratic participation, lower corruption, and a reduction in violence and poverty. Decentralization is by no means the only method—or even the most comprehensive method—for addressing these problems, but it is the method that was chosen in the 2006 Constitution. Managed correctly, decentralization is a tool like any other to strengthen democracy and the well-being of DRC's citizens. Mismanaged, it has the potential to be as harmful as, if not more harmful, than the centralized system that was in place in the past and continues into the present.

As the DRC emerges from nearly twenty years of brutal warfare, much scholarship has focused on analyzing the past to illuminate the present: what went wrong? What mistakes were made, and how can they be avoided in the future? This thesis aims to turn away from this framework and to instead look to the future for answers to current policy debates. The past has indelibly influenced the 2006 Constitution and the model of decentralization that it offers. The country's current and historic experiences with highly centralized governments is inextricably bound both in the movement towards decentralization as a promising alternative system, and in the distrust of power dispersal to the provincial level. The DRC's past is also clearly reflected in the fiscal decentralization policies: much conflict has been sparked over the distribution of min-

eral wealth in the country, and tensions over who controls these resources are often high. In this context, the policy of *retenue à la source* is, in many ways, a logical one, as it returns money to those who have often struggled to claim a portion of the wealth to which they believe they are entitled. Yet if the DRC is to truly achieve the type of peace and democracy it has so long struggled to attain, attention must be devoted to imaging and articulating what such a future state would look like in practice, as it is only with such an eye towards the future that the steps required to achieve such a goal can be successfully designed.

A. Policy Recommendations

In order for decentralization to be successful in the DRC, there must exist a clearer consensus—in the 2006 Constitution’s legal language, and perhaps across the political spectrum as well—on cultivating decentralization in practice, rather than just in name. Currently, the 2006 Constitution describes a system of governance that is often more deconcentration than decentralization. Deconcentration is a process by which centralized power is geographically dispersed to local levels, creating a system of power from, and accountability to, the central government. Decentralization, on the other hand, places the power in the hands of local constituents to whom the central government is accountable. The tension between these two types of governance, both of which function most directly at the local level, must be resolved before any comprehensive policy can be developed for the DRC.

In order for decentralization to be successful in the DRC, more power and more resources must be granted to the provinces, and to the structures of governance below the provinces, such as cities. The provinces must truly be ceded authority to make government effective, but all levels of government must also be afforded the financial and administrative resources to make a decentralized government system possible. As mentioned in the Introduction, the 2006 Constitu-

tion stands silent on the issue of administrative decentralization; without properly trained and educated people with experience in governance available to guide and advise the decentralization process at the local level, the entire policy has the potential to be unsuccessful. My analysis has shown that 40% of provincial revenue is simply not enough to finance the operations of the provinces with all the governmental functions for which they are responsible. The requirement that provinces to turn over the majority of their revenue to the central government merely entrenches deconcentration, and does little to genuinely achieve decentralization. By creating a flow of capital that moves primarily from the provinces towards the central government, the 2006 Constitution's system establishes the provinces as serving the needs of the central government; this stands in contrast to systems such as that in South Africa, where the flow of capital from the central government to the local level suggests that the central government exists primarily to empower and enable the provinces to govern themselves.

One way that more resources could be granted to the provinces, and in a manner that would fit into the existing framework of the 2006 Constitution, would be to change the policy of *retenué à la source* to apply to provincial *net* revenue, as opposed to gross revenue. Even absent this precise language change, great attention needs to be paid to the financial limitations of the current policy of fiscal decentralization. In my analysis, many of the weaknesses of the policy as it stands relate directly to the very real possibility that provinces would not be able to generate enough revenue to fund their governmental responsibilities on just 40% of their revenue. Not only would changing the policy from gross revenue to net revenue reduce the complications of provincial debts, it would reinforce two of the central values of the current fiscal policy, namely the idea of *retenué à la source* and a separation of provincial and central finances. By requiring the provinces turn over 40% of their net revenue, the policy would effectively give provinces more

money. This would reduce the chances that the central government would need to distribute funds from the NTED, thus eliminating the steps of having the central government collect and then redistribute the resources, and thus actually allowing the wealth to be retained at its source. Furthermore, the altered policy would incentivize the province to spend all of their revenue instead of cutting costs, thus incentivizing the type of development that the NTED was established, in part, to promote. Finally, in line with decentralization rather than deconcentration, the shift would empower the provinces to govern based on the resources they can raise from their own province, rather than feeling burdened by a debt owed to the central authority. Of course, this recommendation would also need to be accompanied by a more robust funding plan for those provinces that could flounder financially even with the opportunity to retain all of their own revenue. Such a plan would need to be detailed in its articulation of, and vision for, the redistribution of wealth across the nation.

Finally, a decentralized state cannot exist in the absence of a central authority, or even in the absence of a well-managed and well-designed central government. A prime example of the current weakness of the central government is the lack of specificity and detail in the 2006 Constitution. One of the most significant flaws of the document, as it stands, is that it contains a tremendous number of holes and contradictions. Some of the most basic, and crucial, inquiries of this thesis—such as what the protocol is for provinces who would go into debt by surrendering 60% of their revenue to the central government—are impossible to answer based on the text of the 2006 Constitution. It is difficult to imagine, therefore, that the 2006 Constitution would be able to actually be implemented, even under the optimal political conditions. Currently the 2006 Constitution is a sketch, rather than a roadmap, and without significant direction, there is little

hope for the success of decentralization, or the even the vision of democracy that was the impetus, and requirement, for the 2006 Constitution.

Most importantly, a strong central authority is necessary for the success of decentralization because it provides what provinces, as semi-autonomous regions, cannot: the unity of a nation state. I assert that the value of decentralization lies in the way it allows sub-sections of a nation to personalize government to best suit their individual needs. While this often involves a distancing of individual constituents from their national government, and even from different provinces that might have different laws and developmental priorities, decentralization is no longer a system of governance if it mutates into complete disassociation between provinces existing in isolated independence. The central government is crucial in ensuring that the success of any province is the success of all provinces. For example, a well-designed and well-maintained national highway system would be instrumental in linking the provinces in travel and in trade, in increasing prosperity and unity, and in providing individual provinces with increased incentive to develop their own system of roads to connect to the national ones.

B. Limitations & Further Research

This thesis has offered a close reading of the 2006 Constitution in an attempt to focus precisely on the legal language that has the power to affect the shape and policies of the government in the years to come. While I believe that a legal document such as the 2006 Constitution must fully and thoroughly articulate the will of the people and of the government in creating a functional system of governance, my exclusive focus on the 2006 Constitution is necessarily limited in its scope. Most significantly, the macro-level nature of my analysis ignores current realities of governance at the local level in the DRC, both because they lie outside of my methodology, as well as my access, writing as I am from within the United States, rather than the DRC.

While this thesis imagines a constitution for the DRC that codifies a system of governance allowing for and promoting self-governance and democratic participation at the local level, it recognizes that many such communities may currently exist, in practice, in the DRC currently. Without legislation at the national level that truly articulates the goals of decentralization, the type of local political autonomy described in Chapter 2 is not a guaranteed right enforceable across the country, but a certain degree of autonomy is not entirely dependent upon properly drafted legal language could, and may certainly already, exist. I believe that government is most effective when it adapts and responds to the needs of those it is designed to serve and protect, so it must not be forgotten that many communities that lie outside the scope of this thesis may very well be involved in the hard work of forging and formulating a local system of governance to serve their needs, regardless of whether such a system exists within the specific parameters of the 2006 Constitution.

The possibility of a full implementation of the 2006 Constitution's vision of decentralization offers many opportunities for further research. This thesis has begun to tackle two central questions, both "is decentralization the best option for the DCR?" and "how can decentralization be designed to be most successful within the context of the DRC?" Both are questions that necessarily involve political, philosophical, economic, and historical factors in order to be answered in depth. I have attempted to offer a portion of these answers as they relate to the legal language of the 2006 Constitution; a more complete answer would include a study of how the current system of governance is experienced at the local level throughout the country, and how it could be changed to more adequately address the needs of its constituents. Finally, while this thesis offers cursory policy recommendations, movement towards any new system, be it the 2006 Constitution revised or as it stands now, would require a substantial amount of planning prior to imple-

mentation. As the 2006 Constitution itself is silent on the actual process of implementation, the development of recommendations on how best the change in systems of governance could be managed—or if such a switch would truly be feasible under the current conditions of the DRC—would be a significant contribution to understanding how decentralization can have the most positive impact on the lives of the Congolese.

C. Concluding Thoughts

To conclude this thesis, I turn one final time to the example of roads to illustrate the conundrum of decentralization within the DRC. To imagine the mechanisms that would enable the construction of a road requires winding through the contradiction and gaps in the 2006 Constitution. The document simultaneously declares that roads are the exclusive responsibility of the provinces, while maintaining that the central government may build any roads declared “of national interest,” which includes both inter- and intra-provincial roads.¹¹⁶ The responsibility for the maintenance of such roads of “national interest” lies simultaneously with the central and the provincial governments. In this case, the overlap may be confusing and inefficient, but seems to suggest that, under one or more authority, roads would be built. Yet none of these stipulations clarify the details of funding or personnel needed for road construction, limiting any possibility of actually moving forward with construction. Are provinces required to fund the maintenance of national roads that pass through their province? What would happen if the province does not have the funds to do this, or were not involved in the decision to build the road? Are the managers of the construction employees of the province, or of the central government?

¹¹⁶ “The Constitution of the Democratic Republic of the Congo,” 2005.
<http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>;

Perhaps what is lost within all of this is, who will be able to have a say in which roads are built, and where? The ultimate question is not whether the decision lies with a central or provincial authority, but rather if there are structures in place that allow these decisions to be made with the input of those who would use the road, or those who would be isolated if the road were not built. In theory, decentralization could facilitate this type of interaction between the government and its local constituents to make the type of governance offered more accessible, more accountable, and more relevant. The DRC has failed to make the move from theory to practice with the implementation of the 2006 Constitution, but as it stands now, even the legal articulation of decentralization fails to adequately capture the benefits that decentralization could offer to the DRC. More than anything, there must be a commitment to decentralization in all the transfers of power, funds, and administrative resources entailed, such that it prompts the implementation of such a new system of governance and the type of development that the DRC so deeply needs.

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