

**International Studies Program
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**Decentralization in the Democratic
Republic of Congo: Opportunities
and Risks**

Kai Kaiser



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(Exchange Rate Effective {September 10, 2007})

Currency Unit = Franc Congolais (FC)
1 US\$ = FC 560

FISCAL YEAR

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ABBREVIATIONS AND ACRONYMS

CNP	Caisse Nationale de Péréquation
CP	Commission Paritaire
DRC	Democratic Republic of Congo
EF	Equalization Fund
ETD	Territorial Decentralization Entities
IMF	International Monetary Fund

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TABLE OF CONTENTS

Acknowledgements.....	1
1. Introduction and Context.....	2
2. Competency Transfers and Fiscal Intergovernmental Relations.....	5
Competencies: gradual or ‘big bang’?	5
Fiscal aspects: balancing entitlements, equity and viability.....	9
<i>Constitutional interpretations, equity and viability</i>	10
<i>The ‘Commission Paritaire’ scenario : not enough solidarity</i>	11
<i>Solidarity scenario: improved levels of equity, but questions remain</i>	13
<i>The agreed option, Solidarity with central guidance</i>	16
<i>Financial management capacity: how to effectively manage transferred resources</i>	18
Conclusions	18
3. Capacity: Creating a suitable Human Resource Base.....	20
Systemic Issues	20
Provincial level issues	23
4. Central guidance and control.....	26
Budgetary and financial control.....	26
Legality control.....	27
5. Managing public investments: the ‘Caisse de Péréquation’.....	29
6. The Education Sector	31
Unfinished central government reforms.....	31
Fiscal and Institutional Capacity in the Provinces and ETDs	33
Aligning organizational models.....	33
7. Conclusions	35

List of tables

Table 1. Provincial expenditures on Education versus Fiscal Transfer Scenarios	7
Table 2: Provincial Fiscal Transfer Allocation Options	8
Table 3. Transfers per province per capita : pure constitutional interpretation	11
Table 4. Disparities between richest and poorest province per capita under the ‘pure constitutional’ scenario	11
Table 5. Transfer level CP scenario 2008-2011	12
Table 6. Transfer level CP scenario 2008-2011, by Type of Allocation	12
Table 7. Disparities between richest and poorest provinces under the: CP scenario	12
Table 8. Transfer levels per capita, solidarity scenario, By Component	15
Table 9. Transfer levels per capita, solidarity scenario, By Component	15
Table 10. Relative and absolute level of disparity between provinces, per capita	15
Table 11. Provincial Transfers and Wage Expenditures, FY 2008 Budget	17
Table 12. Essential steps to building up provincial public service systems.....	24
Table 13. Wage Bill Estimates per Province (FC mln, 2008, total Education).....	31

List of figures

Figure 1. Revenue allocations under the solidarity model.....	14
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1. Introduction and Context

1. Over the last ten months the decentralization process has emerged as the key issue on the governance agenda in the Democratic Republic of Congo. Whereas the country faces a large number of deep challenges in establishing an effective and democratic governance system, few issues have aroused more political debate than the decentralization process, which has engaged the senior political leadership of the country, up to the President, in a drawn out debate. The decentralization debate has also become a microcosm of all other key issues inherent in the reform of the governance system, as it touches upon the reform of the public service, and notably the public sector wage system, the public financial management system, the delivery of basic public services and transparency and the fight against corruption, which represent the main cross-cutting governance issues in the Government program. The process also has implications for other areas of the governance agenda, in particular the reform process in the extractive sector and revenue collection issues related to this. The latter issue is discussed in depth in a World Bank study on mining sector reform (World Bank, forthcoming).

2. The decentralization process in the DRC is an inherently political process, and part of the broader peace and reconciliation process that has taken place over the last five years. In this context decentralization is part of the process of seeking a new equilibrium and national consensus that provides a more widely accepted sharing of resources while maintaining the national integrity of the country. This sets the process apart from the often donor driven decentralization processes in other African states and also requires from the international community a different, less technical and more politically conscious approach.

3. The Constitution of the 3rd Republic presents the political consensus that was achieved in 2005-6. It provides the broad parameters for the decentralization process but leaves several issues with regard to the details of the implementation arrangements to be decided. For instance, even though it was expected that the Organic Law on Decentralization would have been adopted before the 2006 elections, parliament failed to reach consensus. Other pieces of legislation, such as the Law on Programming the Decentralization process and legislation on key aspects of public financial management and public service, were also not adopted. At the same time, the Constitution is highly specific on other issues, in particular on the division of competencies and on the level of fiscal transfers (40 percent of domestic revenue).

4. In the meantime, the political process has moved on, as Provincial Assemblies and Governors were elected in late 2006 and early 2007 respectively, leading to a demand for prompt implementation of the Constitution, in particular regarding the intergovernmental fiscal arrangements. This has exacerbated the problems of an unfinished legal framework, i.e. Constitutional definitions of competencies and transfer levels combine with a lack of clarity on transitory modalities and aspects of supervision and coordination between levels of government. In addition, the central government effectively curtailed transfers in the first half of 2007, putting all provinces on a 'forfait'

of about 6-7 percent of domestic revenue, instead of the 20 percent that was common practise before the elections. Taken together, the lack of legal clarity and unilateral actions on the side of the central government created a crisis of confidence between central and provincial leaders, leading to the emergence of a highly politicized and acrimonious debate on the decentralization process in the first half of 2007. However, following a direct intervention by President Kabila, and the National Decentralization Forum in early October 2007, some key principles underlying the process have been agreed, and the decentralization debate has become more constructive, with more attention devoted for the tremendous technical and operational challenges ahead.

5. This note, which is the result of joint work by experts from the World Bank and the European Commission, considers technical aspects of the various elements of the decentralization debate. It summarizes and pulls together the conclusions of a series of technical notes that have been produced between April and October 2007, notably the Note on Transitory Arrangements in the Decentralization process (June 2007), the Note on Fiscal Aspects of Decentralization and Competency Transfers, the Note on Human Resource Aspects of Decentralization, as well as Briefs on aspects of guidance and control system ('Tutelle') (September 2007) and the creation of the National Equalization Fund (September 2007) and an impact assessment of the Decentralization Process on Education Sector Reform (October 2007). All these notes were developed in close consultation with government counterparts and the donor community.

6. The analytical work conducted mainly focuses on the provincial level of government, for a number of reasons. First of all central-provincial relations will be a pivotal element of the new intergovernmental architecture of the DRC. Second, the issue of the allocation of finances, competencies and human resources has taken on a particular urgency with the election of provincial assemblies and governors in late 2006 and early 2007, which basically created provincial institutions in the context of a legal vacuum. Resolving the issues that this has generated will be crucial to safeguarding stability in the DRC. Finally, whereas the importance of the decentralized territorial entities (the ETD) is obvious, in particular in terms of creating democracy at local level and of revitalizing local economies, the election of local authorities has been postponed until Summer 2008 at least, giving this issue slightly less immediate urgency at this point.

7. The aim of this summary note is to highlight the technical complexity of the decentralization process, as well as the risks and opportunities inherent in it. It also provides a review of the in-depth work conducted on the fiscal aspects of the decentralization process, which is crucial to obtain an understanding of the real life impact of the '40 percent' rule and the difficulties inherent in its practical application. It also provides an overview of potential solutions to the dilemmas faces by DRC's policy makers. In this regard, this Note will review four key aspects of the decentralization process (fiscal aspects and competency transfers, human resource issues and capacity development, legal supervision issues, public investment management and the equalization fund) as well as a transversal analysis of the impact of these four aspects of the process on the education sector.

8. Over the past year there has been much emphasis on the fiscal aspects of the decentralization process. It should be highlighted that there are several other crucial aspects of the process that require attention from policy makers. One of these is the issue of sequencing. For example, this note will argue that resolving the allocation of competencies needs to precede the transfer of budgets. Even in states that applied a 'Big Bang' approach, such as for example Indonesia, far more detailed decisions about the transfer of competencies had been taken before the implementation of the 'big bang' fiscal decentralization. Sequencing of policy actions is equally important in other aspects of the decentralization process. For instance, strong improvements in the normative framework for the civil service are needed before making appointments of civil servants to the newly created provincial ministries, whether these appointments are made to transfers of staff from de-concentrated agencies or by recruiting new staff.

9. Another major issue is that of accountability. This is a central part of achieving the objectives of the decentralization process. The transfer of resources and of competencies to sub-national level without equivalent strengthening of accountability mechanisms poses risks of increased corruption and capture of the state. Accountability in this context has three directions: upward accountability exists when sub-national governments are accountable to higher levels of government, for example when the provinces have to report on funds that they have received from the higher level of government. Horizontal accountability is the relationship between elected and appointed officials at sub national government levels. This concerns the accountability of the provincial Division Chiefs towards the Governor or to the Provincial Assembly. The third direction of accountability is the relation between the elected officials and the voters in their constituency. This accountability is executed by elections, but frequently the voters try to apply additional accountability, by attending assembly meetings or by contacting their assembly members.

10. All three directions of accountability are currently under development as part of the decentralisation process in DRC. It is essential that all three directions of accountability are strengthened as decentralisation is implemented. International experience shows that all decentralisation programs that ignore this aspect will eventually fail to achieve their objectives. This is, for example, the reason why all decentralisation efforts in Indonesia before 2000 failed. It was only when the new, democratic governments post the Suharto regime came to power that decentralisation made progress, because accountability was included as an integral part of the "Big Bang" decentralisation.

2. Competency Transfers and Fiscal Intergovernmental Relations

11. As noted in the introduction, the main focus in the decentralization debate has been on when and how to increase the level of transfers to 40 percent of domestic fiscal revenue. Even though this issue in itself poses some serious technical questions, the picture becomes even more complex when considering the transfer of expenditure assignments, as laid out in the constitution. As per the 2006 constitution, sub-national expenditure assignments include most of the elements of pre-school, primary and secondary education, the regional public service, key aspects of the management of delivery of health services as well as a number of other functions.

12. The danger in conducting the debate on transfers in isolation from a discussion on expenditure assignments is obvious, the discussion on '40 percent' provides an illusion that provinces would have significant resources at their disposal, while in reality it is unclear whether 40 percent of revenues would be sufficient to even ensure the effective fulfilment of transferred obligations. Furthermore, issues of the repartition of resources between provincial and local level remain to be elaborated in the context of the definition of the responsibilities of the latter group of entities, providing for further uncertainty on this issue. In addition, the discussion on competencies is decoupled from the debate on public investment spending, which is covered under a separate mechanism, the 'Caisse Nationale de Péréquation' (CNP), which is conceived as a national fund for investments in the provinces and will receive 10 percent of domestic budget revenues as per the Constitution.

13. The Note on Fiscal Aspects and Competences (2007) reviews the aspects of revenue transfers and expenditure assignment in an integrated manner and the Note on Education present an impact assessment of the potential cost of education expenditures by province. In addition, the Note on Equalization provides options for the ongoing debate on the creation of the CNP. The below discussion of options synthesizes the detailed analysis presented in these notes.

Competencies: gradual or 'big bang'?

14. Global practise on competency transfers basically distinguish between two models, the 'big bang' model of immediate transfers of competencies or a gradual, phased approach.

15. Big bang models, such as for instance applied in Indonesia and the Philippines, are either based on political imperatives, such as the need to pre-empt centrifugal tendencies in a given countries, or on the principle of a 'clean break' with a previous system. The Indonesian case, for instance, included an immediate transfer of responsibilities as a way to prevent the break up of the country. Similarly, the Russian case saw rapid federalization as a response to separatist tendencies in some constituent republics. The Philippine case, even if a further example of a rapid transfer of

competencies, followed a longer preparation process of some five years, similarly to another case of 'big bang' decentralization, that of Poland.

16. Phased approaches to competency transfers are based on a different logic, which is to transfer responsibility in line with absorption capacity, including budget management capacity. The Spanish and Slovak cases provide good examples of this type of approach, while in Africa Tanzania would provide the most suitable parallel.

17. The choice of model has significant implications for the discussion on fiscal aspects of decentralization, while the former model requires a rapid step up in transfers (and/or revenue assignments) the latter is usually paired with a gradual, but defined increase in transfers (and/or revenue assignments).

18. Whereas the two approaches might at first glance appear to be mutually contradictory, there are some elements of (pragmatic) mixtures between the two. For instance, in Indonesia, even though a 'big bang' model was applied, central government, by agreement, retained responsibility for some key aspects of service delivery, by taking responsibility for managing wage payments of public officials at regional level. The resources required for wage payments were subsequently deducted from the transfers to be made. Thus, it is important to emphasize that the speed of implementation is only one dimension, sequencing and maintaining balance are equally important.

19. The case of the Democratic Republic of Congo on the one hand shows features of the 'big bang' cases highlighted above, notably the case of Indonesia with its strong political imperative for decentralization. In addition, the impending division of 11 provinces into 26 would seem to provide a further argument for a rapid resolution of the definition of competencies, along the lines set out by the Constitution.

20. However, initial calculations on the impact on education wage transfers illustrated the risks inherent in decoupling these two elements of the debate. The first cost calculations on the transfer of education competencies, completed following the agreement on wage reform in the education sector between the Government and Trade Unions in August 2007, clearly showed the risks inherent in decoupling the debate on fiscal transfers from that on competency transfers. An initial review of potential resource sharing scenarios showed that virtually all of the provinces would be unable to fund education sector expenditures.

Table 1. Provincial expenditures on Education versus Fiscal Transfer Scenarios

Projected Provincial Transfers as Percentage of Education Wages

2008 Budget Wages

	2008 Budget Wages					Education Sector Note Projections				
	CON	CP	SO	SO-Progr	Budget	CON	CP	SO	SO-Progr	Budget
Bandundu	6.6%	18.6%	121.2%	61.4%	143.8%	5.6%	15.8%	102.8%	52.1%	122.0%
Bas-Congo	160.4%	153.9%	196.3%	127.6%	276.2%	127.7%	122.5%	156.3%	101.6%	219.9%
Équateur	15.4%	38.3%	275.0%	140.0%	252.8%	12.1%	30.2%	216.8%	110.3%	199.3%
Kasaï-Occidental	107.1%	116.6%	279.4%	149.2%	299.6%	86.3%	93.9%	225.0%	120.1%	241.3%
Kasaï-Oriental	57.4%	72.8%	255.7%	133.2%	350.1%	45.5%	57.7%	202.6%	105.5%	277.4%
Katanga	299.6%	308.3%	544.5%	358.9%	481.5%	225.6%	232.1%	410.1%	270.3%	362.6%
Kinshasa	1180.6%	1116.5%	329.6%	284.9%	227.4%	667.6%	631.4%	186.4%	161.1%	128.6%
Maniema	10.2%	36.0%	439.2%	222.6%	243.8%	8.4%	29.6%	361.2%	183.1%	200.5%
Nord-Kivu	70.6%	100.7%	331.7%	184.5%	313.2%	55.6%	79.2%	261.0%	145.2%	246.5%
Orientale	25.9%	56.9%	388.1%	200.7%	326.6%	20.8%	45.6%	310.6%	160.7%	261.4%
Sud-Kivu	82.0%	104.3%	306.6%	167.7%	282.5%	67.2%	85.5%	251.3%	137.4%	231.6%

Source: Estimates for 2008 Education Wages are from 2008 draft budget. The Constitutional (CON), Commission Paritaire (CP), Solidarity (SO), Progressive Solidarity Estimates are based on 2008 revenue projections, allocated according to different criteria (see Fiscal Note, next section). Estimates for the CON, CP, SO scenarios do not deduct the 5 percent charges for revenue collection by the OFIDA, DGI, DGE, DGRAD.

21. Table 1 highlights the financing challenges for particular provinces under various transfer allocation scenarios that have thus far formed part of the national debate. The various options set out in Table 2 are discussed in more detail below. Even just considering education expenditures, which are mainly composed of wages, it is clear that under the Constitutional and initial Commission Paritaire scenarios, most provinces would be unable to finance even teachers wages. For example, under a literal interpretation of the constitution, Bandundu would only have financed 6.6 percent of its teacher expenses. The various alternative scenarios, with a greater emphasis on equity principles and the inability to assign particular revenues such as customs to a particular province, do allow provinces to cover basic costs, although with significant variations. The current nature of the debate has apparently cemented the claims of the provinces to all 40 percent of domestic revenues in 2008. However, the simulations highlight that various phased transfers of both functions and corresponding revenues may also represent feasible options that could be managed over a 2-3 year period (e.g., as outline in the progressive Solidarity Scenario).

Table 2: Provincial Fiscal Transfer Allocation Options

Literal Constitutional (CON)	40 % of all non-petroleum revenues where collected (including customs & large tax payers)
Commision Paritaire (CP)	40% of all non-pertroleum revenues where collected, except Ofida, where partially allocated on basis on population (20%)
Solidarity Scenario (SO)	Revenue classified as type A (easily linked to final location of collection) and type B (customs and large tax payers). Oil producer revenues (type C) excluded. 40 % of A based on location of collection, 40% of B revenues based on population (50%), area (30%), and equal lump sum for each provinded (20%). Type C revenues excluded
Progressive Solidarity Scenario (SOP)	Same as solidarity scenario, but only 20% of B revenues distributed in 2008 (pending full transfer of functions). 30% in 2009, and 40% in 2010.
2008 Budget Scenario	Proposed for 2008 budget assigns DGI and DGRAD revenues on collection basis, and all other non-oil on population basis

22. Considering the above, as well as the conclusions of the Note on Human Resource Capacity and other assessments (IMF, 2005), it might be argued that it would not be prudent for DRC to follow a fully fledged ‘Big Bang’ approach. Additional arguments against a ‘big bang’ approach are that: a) preparatory work to establish structures and capacity at provincial level has not yet been conducted and b) that the in-depth fiscal analyses of the fiscal viability of individual provinces under different modalities of resource and competency transfers still remained to be conducted.

23. At the same time, however, the clear and strict allocation of functions, in accordance with the constitution, the planned administrative reorganization (division of provinces) and political imperatives may make a relatively rapid decentralization of functions all but inevitable. Considering these two contravening arguments, as well as international practise, the following options have been explored in discussions between Government and its development partners:

- a. a phased transfer of competencies, according to an accelerated schedule, which would see the completion of the transfer by the time the new administrative structure of the state is to be created. A tentative schedule for such an accelerated transfer is presented in the Fiscal and Competencies Note;¹
- b. a solution whereby a formal transfer of functions would take place, but accompanied by an agreement between central and provincial governments

¹ The basic premise of the proposals in this note is to start with systemic functions, which are essential conditions for other functions to be performed effectively. These would include public service management and financial management. This could then be followed by essentially local functions (such as spatial and urban planning, housing etc.) and in a second and third phase by social services, including, at a final stage, education

for the central government to temporarily continue to manage certain aspects of these functions (in particular salary payments), the cost of which would be deducted from transfers.

24. Following the discussions at the National Decentralization Forum in October, it was agreed that a variant on the second option would be the most reasonable solution for the DRC at this point in time; functions and resources would be transferred in accordance with constitutional provisions, but wage payments are to be made protected items in provincial budgets, and based on lists of accredited officials established by central government as of end 2007. Thus, whereas the logic of the constitution would be respected, important safeguards to prevent a collapse of public services were also agreed.

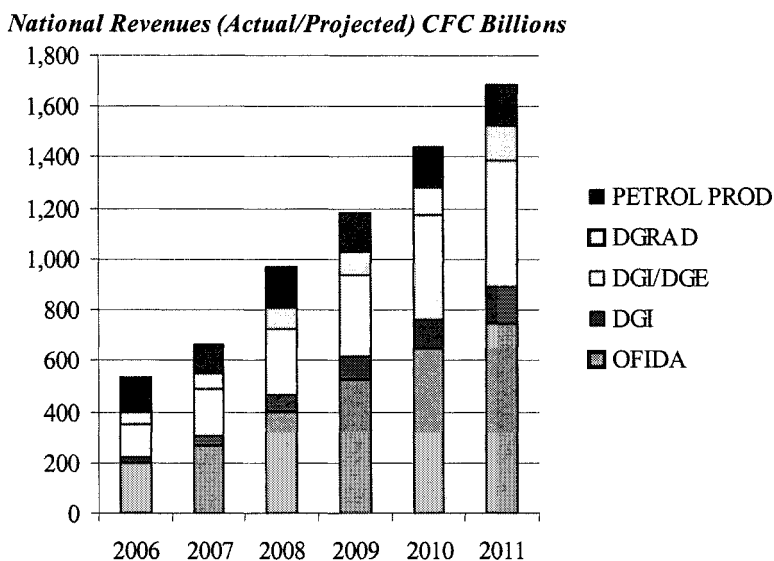
Fiscal aspects: balancing entitlements, equity and viability

25. The policy debate in the DRC has focused so far primarily on the issue of resource transfers, and the modalities (and speed) of the implementation of Constitutional provisions. The discussion in the above section has shown that advancing fiscal aspects of the decentralization process in isolation from a debate on functional transfers will overlook key issues, such as the real cost of fulfilling key functions. Nevertheless, unless the principles underlying the implementation of the constitutional provisions on resource allocation are agreed, it is difficult to envisage the conduct of a more rational debate on functional transfers and other key issues of the decentralization process.

26. *How much revenue would each province receive under different fiscal allocation criteria?* The bulk of domestic revenues in DRC are collected by the central government, through collection entities. These include customs (Ofida), fees and charges (DGRAD), direct taxes (DGE), large taxpayers (DGE), and oil-related revenues (that are collected by both DGI and DGRAD). The various allocation scenario assume that different revenues can be directly attributed to a province, or whether some other criteria of allocation (e.g., population is more suitable). Depending on the projected growth of each individual revenue category, this will not only impact the overall pool of fiscal resources allocated to the provinces (e.g., a vertical share of 40 percent of domestic non-oil revenues), and whether particular revenue pools have more favourable prospects (e.g., large taxpayer receipts versus customs). Figure 1 highlights the main revenue pools by type and how they are projected to develop over time.² Of the CFC 969 billion in domestic revenues projected for 2008, the most important revenue pool was customs and duties administered by OFIDA (40.7 percent), large taxpayer revenues administered by DGE (26.6 percent), petroleum related revenues (16.9 percent), fees and charges administered by DGRAD (8.2 percent), and direct taxes administered by DGI (7.6 percent).

² As per IMF and government estimates.

Figure 1: Domestic Revenue Projections, by Type (2006-2011)



Constitutional interpretations, equity and viability

27. There are multiple ways of interpreting the constitutional provisions that 40% of domestic revenues should be transferred to the provinces, and that this should be done by withholding such revenues at the source. The logic inherent in the constitution is based on two premises:

- a. that individual provinces will be viable entities under this scenario
- b. that all revenues can be automatically attributed to individual provinces

28. The analytical work presented in the Fiscal and Competencies Note, has highlighted that neither of these premises is valid. Firstly, a literal interpretation of the constitution, using the contribution that each province makes to domestic revenues as a basis for retrocession, would create unacceptable disparities in allocated revenue per capita by province. Secondly, it would make more than 75 percent of all provinces financially unsustainable (see Table 1). Thirdly, several important revenue categories (off shore oil revenues, most customs revenues and revenues collected by the central Large Taxpayers Unit, which are all paid in Kinshasa) are not attributable to individual provinces, and therefore further exacerbate large income disparities, mainly between Kinshasa and other provinces with important customs posts and, on the other side the rest of the country.

29. The purely constitutional approach to transfers does not recognize these issues of inequality. Table 3 and Table 4 highlight the significant provincial revenue disparities evident under an application of a literal constitutional interpretation. As a first modification it is generally agreed that oil sector revenues, or at least those that are

generated through off-shore operations,³ should be set aside from the intergovernmental revenue allocations. This in view of their temporary nature and the high degree of volatility in the size of these revenues. This provision is therefore applied to all of the scenarios presented below. It should also be noted that these scenarios deal only with provincial revenue due to revenue sharing (retrocession). They do not include any own revenue generated by the provinces. Increasing these own revenues will in the longer term need to play a larger role, in order to create a stable fiscal basis for the provinces.

Table 3. Transfers per province per capita : pure constitutional interpretation

	2008	2009	2010	2011
Bandundu	215	246	285	338
Bas-Congo	4,153	4,822	5,642	6,669
Equateur	263	304	354	419
Kasaï Occidental	1,566	1,784	2,050	2,439
Kasaï Oriental	954	1,089	1,252	1,487
Katanga	3,450	4,159	4,905	5,700
Kinshasa	34,896	41,286	50,207	59,163
Maniema	165	198	234	273
Nord Kivu	810	964	1,138	1,332
Province Orientale	331	396	465	542
Sud Kivu	1,030	1,199	1,397	1,648
Average	5,349	6,322	7,624	8,976

Table 4. Disparities between richest and poorest province per capita under the ‘pure constitutional’ scenario

	2008	2009	2010	2011
"Richest" (Kinshasa)	34,896	41,286	50,207	59,163
"Poorest" (Maniema)	165	198	234	273
Absolute Difference	34,731	41,088	49,972	58,890
Ratio	212	209	214	217

Source : Calculs du staff

The ‘Commission Paritaire’ scenario : not enough solidarity

30. The two problems highlighted above have been recognised by Congolese policy makers, and were discussed in the context of the ‘Commission Paritaire’ (CP). This commission is constituted of representatives of the central government, of the provincial governors and of the provincial assemblies. It was established in June 2007. The conclusions of the technical work done by the CP highlights both the issue of disparities and the problems of attributing certain revenue categories to individual provinces. In its conclusions, the CP therefore suggested to take customs revenues (about 26% of total domestic revenue) out of the equation for direct allocation and to divide this in part according the location where the revenue was raised (80%) and in part according to a formula (20%) based on the size of the population. The CP scenario has a certain equalising impact. However, in the CP proposals the disparities between income levels

³ Representatives of the province of Bas-Congo have argued for the allocation of 40% of the on-shore revenues to be transferred to this province, as these revenues are generated there

per capita remain unacceptable, and they put the viability of a large number of provinces further into doubt, especially considering the expenditure categories that would be transferred, such as primary and secondary education. Table 5, Table 6, Table 7 below present the retrocession scenarios according to the CP, and highlights that this scenario is still subject to significant disparities.

Table 5. Transfer level CP scenario 2008-2011

	2008	2009	2010	2011
Bandundu	610	694	797	949
Bas-Congo	3,984	4,630	5,423	6,407
Equateur	654	748	862	1,024
Kasaï Occidental	1,703	1,940	2,229	2,652
Kasaï Oriental	1,208	1,378	1,582	1,881
Katanga	3,550	4,272	5,035	5,854
Kinshasa	33,002	39,139	47,751	56,236
Maniema	582	670	775	918
Nord Kivu	1,156	1,355	1,586	1,865
Province Orientale	727	845	978	1,154
Sud Kivu	1,310	1,516	1,760	2,081
Average	5,349	6,322	7,624	8,976

Table 6. Transfer level CP scenario 2008-2011, by Type of Allocation

	2008		2009		2010		2011	
	A	B	A	B	A	B	A	B
Bandundu	28	582	35	659	43	754	50	899
Bas-Congo	1,146	2,839	1,413	3,217	1,743	3,680	2,020	4,388
Equateur	59	596	72	675	89	772	103	921
Kasaï Occidental	91	1,612	113	1,827	139	2,090	160	2,492
Kasaï Oriental	65	1,144	82	1,296	99	1,483	113	1,768
Katanga	1,786	1,764	2,273	1,999	2,749	2,286	3,128	2,726
Kinshasa	23,264	9,739	28,103	11,036	35,127	12,624	41,184	15,052
Maniema	87	495	110	560	134	641	153	764
Nord Kivu	374	782	469	886	573	1,013	657	1,208
Province Orientale	148	579	188	656	228	751	259	895
Sud Kivu	265	1,044	333	1,183	406	1,354	466	1,614
Average	3,186	2,163	3,871	2,451	4,820	2,804	5,633	3,343

Table 7. Disparities between richest and poorest provinces under the: CP scenario

	2008	2009	2010	2011
"Richest" (K)	33,002	39,139	47,751	56,236
"Poorest" (M)	582	670	775	918
Absolute Dif	32,420	38,469	46,976	55,318
Ratio	57	58	62	61

Source : Calculs du staff

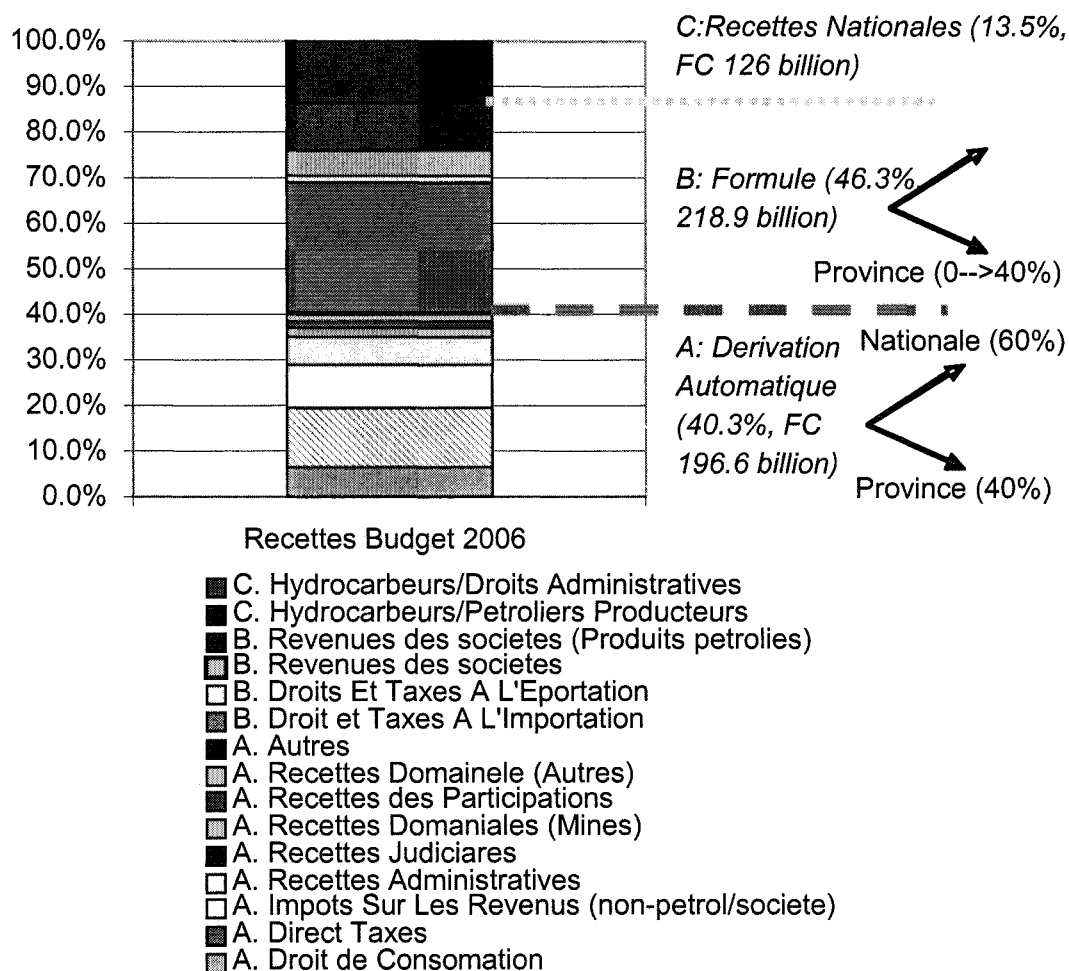
Solidarity scenario: improved levels of equity, but questions remain

31. Therefore, neither the pure constitutional scenario, nor the solution proposed by the CP provide satisfactory solutions to the essential requirements of viability, equity and the feasibility to identify the actual origin of revenues), a third alternative scenario was developed in the context of the development of the background note on fiscal and competency aspects of decentralization.

32. This scenario builds on some of the same elements as those developed for the CP, in particular the feasibility to attribute revenues to specific provinces. The main difference between the solidarity scenario and the CP scenario is that under the solidarity scenario both customs revenue and the large taxpayer unit's revenue are taken out of the equation for direct allocation⁴. These two revenue sources are proposed to be allocated according to a formula that augments the allocations that are based on equity principles. There is limited technical feasibility of identifying the origin of exported and imported goods (as exemplified by the problems that have arisen on the same issue in the Republic of Congo). There is an increased risk that such a process would create large opportunities for fraud and corruption. Therefore, under the solidarity approach, a different mode of allocation of the custom revenues across the provinces is required. Similarly, many revenues generated by the Large Taxpayers Unit at the Tax Administration in Kinshasa actually represent revenue generated by sources in different provinces, notably in Katanga, but also by many others. Therefore, the allocation of these two sets of revenues through a formula would enhance the equity and viability of a larger number of provinces and it would be more equitable with regard to the limited feasibility to attribute revenues to a particular province.

⁴ In addition to off-shore oil sector revenues

Figure 2. Revenue allocations under the solidarity model



33. The allocation mechanism for the Customs and Large Tax Payer revenue sources is proposed to be a simple and transparent formula, based on the factors population (50 percent), territory (30 percent) and lump sum (20 percent). The first two reflect specific aspects of the cost of public services (in particular in education and health) and the third aims to guarantee a basic level of income for all provinces. The simulation results for this approach are presented in tables 6 and 7 below. It should be noted that this approach also proposed a gradual phasing in of transfers (starting from 28% in 2008 to 36% in 2010, which is the same level as under the other two scenarios), which makes total transfer levels lower than the other two scenarios for 2008 and 2009. This is obviously contingent on the decision on the modality and speed of functional transfers as per the above discussion. Table 8, Table 9, Table 10 highlight the projected development of transfers to individual provinces under this scenario, including a breakdown (A versus B) of revenues assigned on a location of collection versus formula basis.

Table 8. Transfer levels per capita, solidarity scenario, By Component

	2008	2009	2010	2011
Bandundu	3,972	4,651	5,593	6,611
Bas-Congo	5,082	6,008	7,243	8,526
Equateur	4,704	5,511	6,627	7,832
Kasaï Occidental	4,083	4,780	5,738	6,782
Kasaï Oriental	4,246	4,973	5,974	7,060
Katanga	6,270	7,516	9,039	10,567
Kinshasa	9,743	11,622	14,155	16,621
Maniema	7,104	8,325	10,012	11,831
Nord Kivu	3,807	4,486	5,400	6,364
Province Orientale	4,956	5,817	6,995	8,259
Sud Kivu	3,851	4,527	5,444	6,423
Average	5,349	6,322	7,624	8,976

Table 9. Transfer levels per capita, solidarity scenario, By Component

	2008		2009		2010		2011	
	A	B	A	B	A	B	A	B
Bandundu	52	3,920	61	4,590	74	4,590	87	5,519
Bas-Congo	1,525	3,557	1,843	4,165	2,234	4,165	2,605	5,009
Equateur	84	4,620	102	5,409	123	5,409	143	6,505
Kasaï Occidental	277	3,806	324	4,456	379	4,456	447	5,359
Kasaï Oriental	177	4,070	209	4,765	244	4,765	286	5,730
Katanga	1,996	4,275	2,511	5,005	3,020	5,005	3,452	6,018
Kinshasa	7,096	2,647	8,523	3,099	10,429	3,099	12,216	3,726
Maniema	97	7,007	121	8,204	147	8,204	168	9,865
Nord Kivu	429	3,378	531	3,955	644	3,955	742	4,756
Province Orientale	171	4,785	215	5,603	258	5,603	295	6,737
Sud Kivu	362	3,490	442	4,086	531	4,086	615	4,913
Average	1,360	3,989	1,652	4,670	2,009	4,670	2,338	5,616

Table 10. Relative and absolute level of disparity between provinces, per capita

	2008	2009	2010	2011
"Richest" (Kinshasa)	9,743	11,622	14,155	16,621
"Poorest" (Nord Kivu)	3,807	4,486	5,400	6,364
Absolute Difference	5,936	7,135	8,755	10,256
Ratio	2.6	2.6	2.6	2.6

34. The calculations under this scenario are overall much closer to the criteria outlined above (equity, viability, alignment with constitutional principles) than the results generated by the other two options. It brings the system closer to generating an acceptable basic level of income for all provinces, does not adversely affect the ability of richer provinces to meet their expenditure obligations on a per capita basis and it is true to the spirit of the constitution. Thus, from a fiscal, economic and developmental point of view this would clearly be the more desirable option.

The agreed option, Solidarity with central guidance

35. Discussions at the National Decentralization Forum and subsequent technical work by a mixed Commission of Experts have led to the identification of a consensus position on the fiscal aspects of decentralization, one of the key preconditions to move the process forward. The consensus view elaborated following the Forum has the following main features:

- a. It follows the logic of the categorisation of revenues set out under the 'solidarity' scenario (attributable revenue, non attributable revenue and 'off shore' revenue, as well as the principle of applying different principles of distribution according to this categorisation)
- b. A simpler formula (based on a population co-efficient only) has been devised for non-attributable revenue
- c. Although a re-allocation of resources between Kinshasa and Bas-Congo (on an ad hoc basis) was introduced during the Forum discussions, this has not yet been reflected in the final 2008 budget proposal⁵

36. In addition to the revenue side aspects, risk mitigation measures have been proposed on the expenditure side. Based on a calculation of actual wage expenditure under transferred functions, wage enveloped will be protected items and provinces will be obliged to base wage payments, at least in 2008, on the staffing lists provided by the central government, thus postponing de facto some delicate problems of human resource transfers.

37. Initial estimates of the impact of the above scenario shows that a large majority of provinces would be fiscally viable, albeit with very limited room for manoeuvre in terms of expenditure, at least for the fiscal year 2008. Table 12 presents projected fiscal allocations to individual provinces as set out in the 2008 budget. DGI and DGRAD revenues are assigned on a collection bases. The bulk of other non-oil revenues (Ofida, DGE) are assigned on a population estimate. Based on estimates of wage costs, all provinces would be able to cover education, health, agriculture, traditional authorities, public functions transferred to the provinces. However, a number of provinces such as Bandundu and Kinshasa would have limited room to manoeuvre beyond these

⁵ Based on the so-called 'osmosis' principle, which considers the interlinkage between the Kinshasa and Bas-Congo economies

expenditures given prevailing wage liabilities. Given recent pressures to increase wages in education, the realism of these wage estimates for the full year of 2008 may also need to be verified.

Table 11. Provincial Transfers and Wage Expenditures, FY 2008 Budget

	PC Total	PC by Collection	PC by Population	Education Wages/Total	Provincial Wages/Total	Population (2008 Budget)	Ratio to Alternative Pop Figures
Bandundu	4,373	22	4,351	69.5%	86.9%	7,637,700	108%
Bas-Congo	8,254	3,903	4,351	36.2%	48.5%	3,387,437	87%
Equateur	4,396	45	4,351	39.6%	57.3%	6,364,842	98%
Kasaï Occidental	4,415	64	4,351	33.4%	46.5%	5,326,850	99%
Kasaï Oriental	4,409	58	4,351	28.6%	41.4%	5,874,994	132%
Katanga	7,775	3,424	4,351	20.8%	31.5%	6,230,738	71%
Kinshasa	6,800	2,449	4,351	44.0%	80.0%	7,184,001	99%
Maniema	4,426	75	4,351	41.1%	60.9%	1,515,381	89%
Nord Kivu	4,802	451	4,351	31.9%	46.8%	3,398,078	75%
Province Orientale	4,461	110	4,351	30.6%	44.3%	6,732,660	93%
Sud Kivu	4,661	310	4,351	35.4%	49.2%	3,291,783	76%
	5,347	995	4,351	37.4%	54.9%	56,944,464	93%

38. Whereas the compromise solution has a number of positive features, several important issues remain to be addressed:

- Fiscal estimates rely heavily on provincial budget estimates for own revenues. These estimates show a wide variation, posing a risk of building a system of shifting sands, especially once the protected status of wage expenditures will be eliminated;⁶
- In several instances, provinces do not appear to have budgeted adequate resources for non-salary related staff cost (*frais de fonctionnement*), which, if not properly analysed could lead to the problem of fiscal viability re-entering through the backdoor
- The legal basis for the above system is still far from complete. Whereas it may be possible to operate, for the first half of 2008, based on interim regulations, the rapid adoption of an amended Organic Public Finance Law, based on a decentralized public expenditure management context remains an urgent priority
- While population figures provide a simple and transparent criterion for allocating the bulk of transfers to the provinces, the lack of even basic data in DRC means that additional clarification may be needed as to the choice of numbers used for the interim allocations pending a full census. For example, Table 12 highlights that there are significant differences between the population figures used in the 2008 budget, versus those projecting forward 2002 baseline figures.
- Whereas there appears to be broad agreement on the interim solutions for wage bill management, a number of problems (establishment of real staff numbers, creation of payroll management capacity in the provinces and at local level) remain as urgent as ever, and there is a risk that a solution to these

⁶ Wage expenditures will be mandatory items for the provinces at least for the year 2008. Provinces will be obliged to pay wages as per staff lists drawn up by the central government

fundamental problems may be postponed indefinitely, thus leaving the process in a 'half-way house'.⁷

39. Therefore, whereas political brinkmanship and a (reluctant) willingness to compromise have created what appears for the time being to be a viable solution to the fiscal and competency transfer dilemmas in the DRC, a number of crucial issues remain to be addressed over the coming months (the first three issues above) or throughout 2008 (the last issue above). Only once these points will have been addressed the process will be on solid ground.

Financial management capacity: how to effectively manage transferred resources

40. Apart from the political and technical questions surrounding the definition and phasing in of transfer mechanisms, an important capacity building agenda remains, in particular at provincial, and later also at ETD level. Discussions with provincial authorities have revealed an important agenda of establishing strengthened local systems for managing public resources. In particular, the development of new rules and procedures for managing the expenditure chain is an urgent issue, as existing legislative and regulatory frameworks do not account for the existence of a provincial government or provincial ministers.

41. The nature of the relation between the adoption procedure of the provincial budgets and that of the national budget needs to be urgently clarified (see the point on the credibility of estimates above). Furthermore, conflicts have emerged in a number of provinces due to the lack of fulfilment of the role of the assemblies in the adoption of provincial budgets. Similarly, the relation between the provincial government and the tax, customs and administrative fee collection agencies needs to be clarified. Whereas it is clear that these agencies will continue to be subordinated to the central government, a linkage between the revenue management, budget preparation and expenditure managements systems needs to be defined and operationalized in the relevant IT systems. In addition, a serious effort in capacity building of the newly appointed provincial governments (ministers and their cabinets) will be required, as most of the appointees are new to public management processes.

Conclusions

42. Finally, it is important to emphasize once more that in the medium term it is essential that the fiscal aspects of decentralization are put on a firm and stable basis. There will continue to be uncertainty about provincial revenues based on the volatile nature of the political agreements that underpin the revenue sharing arrangements. Ultimately, there will need to be a re-allocation of taxes and other revenue categories

⁷ The case of Indonesia shows the real nature of this type of risk

between the levels of government, large improvements in own revenue generated by the provinces and a fundamental reform of the tax administration, to enhance its accountability and to bring the tax administration in line with the new reality of the decentralised state system. A first step in this reform process is the revision of the nomenclature of taxes.

43. Finally, a similar exercise on fiscal transfers remains to be conducted at the level of each province on the allocation of responsibilities and of resources between the provinces and the Territorial Decentralization Entities (ETD).

3. Capacity: Creating a suitable Human Resource Base

44. The Constitution of the DRC foresees the creation of a Provincial and Local Public Service, as one of the elements of the decentralization process. Whereas this is a key condition for other elements of the reform process to succeed, there has been surprisingly little interest in this issue, notably at the central government level. Provincial governors have frequently raised the disconnect between the principle of decentralized governance and a centrally managed civil and public service. Equally, provincial officials have highlighted the risks that the lack of clarity on issues of subordination poses for institutional stability at provincial level. The risks include a disconnect and overlap between the parallel public service systems, which would be both fiscally expensive and unnecessary, and the degradation of the quality of the existing public service at provincial level, which so far had been relatively unaffected by the malaise in the public service at central level. Furthermore, based on international experience, decentralization processes pose serious organization and management issues, in particular the question of whether and how to transfer staff currently working at de-concentrated government agencies to the provincial public service to-be-defined.

45. Several fundamental issues are to be addressed if a working public service system at all levels of government is to be created. Some of these issues are elements of overall reforms that are long overdue, such as public service wage system reform and the management and redeployment of staff between de-concentrated and decentralized units. Others are more specific to the provincial level, such as the creation of human resource management systems at provincial level that would be able to handle issues of recruitment and career management and the issues referred to above, i.e. decisions on ways of handling the transfer of personnel that will most likely need to accompany the transfer of competencies, and how to handle the cases of staff that may not meet the requirements posed by the new responsibilities assigned to the provinces.

Systemic Issues

46. Recent studies of the public service system in the DRC (World Bank, 2007) highlight several key systemic challenges:

- To modernise the civil service system and amend its legislation in order to bring it up to improved standards of efficiency in service delivery and human resources management by means of reinforced values like merit, results, performance and professionalisation;
- To fill the normative vacuum by setting rules and procedures for the management of the new decentralised civil service;
- To ensure consistency between the legal base and organization of the national and sub-national civil services with the new constitutional order; and

- To make the public administration a more attractive employer for young skilled professionals by reforming and improving the public sector wage system through systematic and sound reform measures.

47. The current civil and public service system, while upholding the illusion of an integrated system, is in fact a system fragmented along sectoral lines, based on more than 27 legal statutes that provide significantly different employment conditions for different professional groups in the public service. The harmonization of this system, and the development of a small number (4-5) model statutes for specific professional groups (general public service, education, health and social services, civil security) is a pre-condition for the development of a manageable provincial public service system, as provincial statutes will invariably be based on the central model. In this line of reasoning, chaos at central level will bring chaos in the provinces. The modernization of the legal base for the civil and public service system therefore needs to be well aligned with the creation of the provincial public service.

48. Along with the creation of a modernized (set of) statutes for the civil and public service, the development of secondary legislation and rules and procedures that would enhance the chances of developing a merit based and professional public service is a further priority, as provincial legislation would be likely to follow the central examples.

49. A second element of systemic issues is the public service wage system. Even if there are some 27 different statutes currently in place, they invariably create opaque and inadequate wage systems, based on a plethora of bonuses and allowances and very low base wages. Whereas more recently the establishment of a more transparent system has become an issue for discussion, notably in recent discussions on education wages, the principles of transparency and predictability are still far from being respected.⁸ In addition, there are large differences between provincial and Kinshasa wage levels, mostly brought about by differences in allowances, which are not justified by differences in responsibility or difficulty of the job. A separate World Bank study addresses specifically the reform of the public service wage system, and proposes a medium term strategy to address these issues. It is highly important that decisions on a wage reform strategy be taken rapidly, so that these can be taken into account when designing wage systems at provincial level. Specifically, provincial level wage systems should respect the same principles as those applicable overall (equal pay for equal work, merit, transparency and predictability). In addition, whereas regions may be given the right to vary salary levels, it is important that variations remain within a certain defined level (e.g. $-20 > X < +20$). For this to work, central level wage system issues would need to be addressed at least at the level of strategy and policy.

50. Finally, central rules for transfer and deployment of public servants would need to be set, along with attestation procedures, which would ensure an orderly transfer, where appropriate, of staff between the current de-concentrated units and the new provincial public service.

⁸ This is a problem in particular in the general public service, where base pay is between 5-10 percent of real pay

51. Another set of systemic issues is evolving around the organisational aspects of decentralisation. In part these issues derive from the lack of clarity regarding the relations between central and provincial level and to the incomplete devolution of functions between these levels of government. As a result, a number of organisational difficulties have emerged. The existing de-concentrated entities (Divisions and '*Régies Financières*') find themselves in a position of uncertainty with regard to their tasks and responsibilities and the hierarchical relation with central and provincial government. In most provinces it is assumed that these entities will support the provincial authorities, but the extent of their involvement and responsibilities for provincial functions is not clear. On the other hand, the new provincial governments, who lack adequate staff of their own, expect full support and allegiance from these de-concentrated entities. At occasions, this situation has led to conflicts and confusion, and more frequently de-motivated staff and resistance. There are cases where staff work enthusiastically for the provincial authorities, motivated by the opportunity to advance their home province, but this is not common, especially among the '*Régies Financières*', which are centralised entities with a national staff rotation programme.

52. In the meantime, new organizational structures have been set up at the provincial level. In accordance with the Constitution, the Governors have appointed provincial ministers. These will be supported by ministries, but at present, these are not yet firmly established or staffed. Nevertheless, the organisational shape of the provincial governments is becoming clear, based on the job titles of the provincial ministers. Ideally, these job titles should reflect the competences that the Constitution transfers to the provinces to ensure that all tasks and responsibilities are adequately covered. A review of the job titles of the ministers in the 11 provinces shows that there is a wide variety in job titles and in the division of labour in the provincial governments. All provinces bar one (Bas Congo) have limited themselves to the maximum of 10 ministers prescribed by the Constitution⁹. The Ministry of Interior has made an attempt to regularize the scope and responsibilities of these ministers but this happened after their appointments and this guidance was therefore widely ignored by the provinces. The result is a variety that reflects the circumstances of the provinces, but also the need to have a number of core government responsibilities covered by the ministers. For example: all provinces have a minister responsible for Finance (often combined with Economy), Planning and Budgeting (mostly combined, but separated from Finance), and Territorial Administration (including decentralisation and the relations with ETDs). Not well assigned among these core functions is public administration. Seven of the provinces have not clearly allocated this function to one of the ministers. Beyond these core government tasks, the provincial ministries show a wide variety of combined responsibilities. In most cases these combinations make sense, in order to limit the size and cost of the provincial administration. The only concern could be that in five provinces Health and Education are combined into a single ministry. This may create difficulties as these are large sectors with complex problems and huge numbers of staff which from FY2008 onward will become a responsibility of the provincial governments.

⁹ Bas Congo has added one Commissaire General des Mines avec rang de Ministre Provincial.

53. One of the key risks inherent particularly to this element of the reform process is a disconnect between the rapidly advancing debate on fiscal decentralization (and increasingly on transfers of competencies) and the very slow movement in the public service reform process. Whereas ideally the three above issues, normative base, wage system and transfer principles, should be addressed in each province on the basis of a central strategy, this may prove to be elusive if the speed and direction of the public service reform process is not increased dramatically. This poses, yet again, the risk of a legal vacuum, which could generate a disorderly process in the development of provincial public service systems. Therefore, if the reform process at central government level does not move forward, it could be foreseeable that provinces themselves move forward on the definition of provisional rules and procedures for public service management. In this regard, adherence to good practise principles, both in recruitment, career management and wage policy, are crucial.

Provincial level issues

54. Considering the fact that central level reforms on the legal statute and wage and management systems for the public service may not move fast enough to address the immediate needs of the provinces in building up their public service systems, it is important that capacity issues at provincial level are addressed without delay. Table 8 below sets out the essential elements of a strategy to address this immediate need. The steps highlight the complexity of the issue, which has repercussions for three levels of government;

- For central government level, which will face the need to reduce the role, functions and staffing levels of de-concentrated agencies in a significant way;
- For provincial level, where legal and organizational frameworks as well as management capacity will need to be created, and processes to decide whether and how to absorb current staff at de-concentrated agencies will need to be defined and implemented
- For local (ETD) level, that will have to establish, eventually, its own capacity to handle public service management issues. ETDs face specific challenges in this regard, due to remoteness and the small size of units, which will require the pooling of resources and capacity to handle HRM issues.

Table 12. Essential steps to building up provincial public service systems

<i>Steps for creation HRM capacity</i>	<i>Enabling conditions</i>
Creating provincial capacity	
<ul style="list-style-type: none"> ◦ Definition of the provincial authorities (ministries) responsible for public service management ◦ Establishment of provisional provincial rules and procedures for public service management ◦ Create capacity to handle payroll and personnel database management ◦ Create processes and capacity to manage recruitment of provincial staff, from deconcentrated entities or from the local labor market. ◦ Staff new provincial public service systems 	<ul style="list-style-type: none"> -- Resources for establishing the ministry staff -- Procedures for competitive recruitment based on overall legal principles and existence of a control mechanism -- Development of planning tools for assessing staffing needs -- Establish interface with the public finance ministry for management the payroll system
Review of de-concentrated agencies	
<ul style="list-style-type: none"> ◦ Review of competencies and coordination mechanisms between the provincial structures and de-concentrated entities ◦ Adoption of the juridical instruments providing for a new set of competencies and coordination mechanisms ◦ Adaptation of the structures of de-concentrated entities ◦ Create processes and capacity to manage attestation of de-concentrated entity staff ◦ Adaptation of the number of posts, including retirement of staff older than 56 years in all deconcentrated entities. ◦ In coordination with the provincial ministries, manage the (partial) transfer of staff from deconcentrated entities. 	<ul style="list-style-type: none"> -- Clear and transparent relations between provinces and de-concentrated agencies, prevention of overlap in competencies and functions -- Clear procedures and mechanisms to manage the retirement of superfluous staff
Managing capacity at sub-provincial level (ETD)	
<ul style="list-style-type: none"> ◦ Create capacity to manage exclusive competencies allocated to the ETD. ◦ Transferring public service management authority to decentralized bodies. ◦ Set up inter-municipal services to support HRM in local authorities 	<ul style="list-style-type: none"> -- Formal allocation of personnel management authority to the ETD. -- Establish clear rules for personnel transfers from de-concentrated agencies -- Establishment of pools of personnel that can provide support to individual ETD based on a rotation schedule -- Sufficient funds to cover operational cost for support functions to the ETD.

55. The essential steps outlined above are complex, and will take significant time to put in place. In the current situation there is in most provinces an uneasy co-habitation of public and civil servants (who are still accountable to the central government) and

provincial ministers. These ministers are appointed by the elected governors and formally they do not have authority over the de-concentrated units that operate at the provincial level. This has already led to budget preparation processes in provinces being handled by small groups of politically appointed officials (cabinet staff), without being able to draw (sufficiently) on the more experienced staff available in de-concentrated units. This is a clear indication of the need to find a solution to this anomaly, caused by the co-existence of outdated legal statutes with new political realities.

56. Once legal and competency issues are addressed, a significant capacity building agenda will remain. Provincial governments do not currently have the capacity, the manpower or the systems to handle career and wage bill management, and they have limited, if any, capacity to manage recruitment and dismissal processes. In addition, to take responsibility for the management of a provincial public service will include the need to negotiate with trade unions on employment conditions and wage levels. This is currently handled exclusively by the central government.

57. Like many aspects of the decentralization process, human resource management issues both poses opportunities and risks. The creation of provincial public service systems may help unblock stalemates on crucial issues such as statutory and wage reform, as provinces, in the absence of central legislation, could establish their own legal regimes, within the constraints of constitutional principles (which outline in some detail the principles on the organization and management of the public service is to be based), including more rational and viable wage systems. However, at the same time this poses risk of fragmentation and disparities in civil service employment conditions, which is far from desirable in a decentralized unitary state. It also poses risks for the very limited capacity to manage public service issues at provincial level, both in terms of career and wage system management and in terms of negotiation capacity with the trade unions.

58. Considering the above, it is essential that rapid initiatives are put in place to assist provinces in putting in place management capacity for the provincial public service. In addition, in the absence of progress in reforming employment systems at central government level, provinces could need to be assisted in drawing up provisional rules and regulations for the provincial public service, until key issues at central level might be unblocked.

4. Central guidance and control

59. The Constitution provides, at a general level, guidance to the management of relations between the central level and the provinces and, in a more limited way, between the Provinces and the ETD. The Constitution clearly distinguishes between exclusive powers (at provincial and central government level) and concurrent powers.

60. The Constitution focuses on the legal aspects of these relations, i.e. the powers of the national and provincial assemblies to adopt laws that affect the lower levels of government. The background Note on issues of control and supervision raises a number of options to operationalize these legal provisions, in particular with regard to public expenditure management and budgets. The note provides examples of the different options for ex-ante and ex-post control.

61. It should be noted that the Constitution does not provide clarity on the issue of authorities the competencies which are to be shared between the national and the provincial authorities, apart from reaffirming the acknowledged legal hierarchy according to which a national law shall prevail on a provincial law. The principle of subsidiary should help filling the gap, providing for that an action should in principle be taken at the level which is the closest to the citizen for as long as it appears as the level where the action can be carried out more effectively.

62. A first and crucial task is to provide detailed guidance to central and provincial authorities on the nature and implications of the changes in the guidance and control function of the central government. This implies adopting appropriate legislation and appears particularly urgent as the last months have already shown an increasingly uneasy cohabitation between provincial ministers and their cabinets, whose authority is derived from the Governor, and the de-concentrated entities, which are subordinated to the central ministries.¹⁰

63. The delay in the creation of a Constitutional Court, foreseen in the Constitution, makes taking decisions on such issues highly complicated in the interim assured by the Supreme Court alone. .

Budgetary and financial control

64. As far as the control of budget and finances is concerned, the principles set out by the constitution (providing for a decentralization unitary state) leave open four options to define control systems in this area:

¹⁰ Traditionally these units also reported to the Administrative Directors at Provincial level. However, since these are centrally appointed positions this does not resolve the current stalemate on issues of administrative subordination

- c. Ex-ante control of budgets by the central government, based on a review of budgets adopted by the provincial assemblies. Central authorities would in this case submit their observations to the provincial authorities and ask the provincial executive and assemblies to reflect these in an amended version. Under this model, in case of disagreement the view of the central authorities could prevail and be reflected in a veto, but only in case of three specific circumstances, being; a) a lack of balance between revenues and expenditures; b) the lack of commitments on obligatory expenditure items, and; c) the lack of respect for budget adoption deadlines
- d. A review modality ('droit de regard'), under which the central government would review provincial budgets following their adoption by the assemblies, and provides its comments to the provincial authorities without, however, giving a veto right. Review would be limited to obligatory expenditure items
- e. Third, and [in our view] the most literal interpretation of article 171 of the constitution, the provinces would only send their budgets to the central government for notification and consolidation within the central government budget.
- f. An accounting control carried out by the regional audit institutions could be added to the third option above, to provide an opinion on the economic viability of the provincial budgets, notably on the balance between revenues and expenditures. The creation of regional audit institutions would be a precondition in this regard.

65. In our view, a combination of the third and fourth control systems would be the closest to the spirit of the constitution, though in view of the serious capacity constraints that remain at provincial level the second option might also pass scrutiny. It is important, however, to emphasize that whatever the option selected, budgets will continue to be subject to ex post legality control. Finally, ex-post control by the Supreme Audit Institutions would also apply to provincial budgets.

Legality control

66. On the control of legality of provincial and local government acts, there are equally two potential options in the context of the DRC constitution:

- a. Simple ex-post review, which would apply in any case
- b. Ex-post review combined with ex-ante review. The latter would be applicable only to the acts passed by ETDs, not by the provincial authorities, and would be limited to certain categories of acts, as for instance: a) budget acts; b) organizational structures and; c) decisions related to the status of personnel

67. In terms of the options outlined above, control functions over the legal acts of ETDs could be assumed either by the provinces or by the central government. In the case of the DRC, considering the size of the state and the potential cost of establishing a review system managed by the central government, it would be preferable to move

towards a system where the provinces would take on this role. However, in view of the still weak capacities at this level, it would be desirable to postpone a transfer of these responsibilities for a certain period of time, to prevent an overload of the provincial institutions.

68. The scope and depth of control and guidance systems, both in terms of financial and legal issues, is curtailed by the definition, in the constitution of the DRC as a decentralized unitary state. In line with international practice and norms, this limits the options to be explored in this regard. In view of the still recent establishment of elected provincial authorities, one option to be considered is the introduction of light control mechanisms, along the lines set out under the 3rd and 4th options under the financial control section, along with the definition of a transitory period during which the 'droit de regard' would continue to apply.

5. Managing public investments: the ‘Caisse de Péréquation’

69. The Constitution prescribes the creation of an Equalization Fund (EF), the Caisse de Péréquation, which would absorb 10 percent of national revenues. This Fund would only provide resources for investments in the provinces. Within the constitutional definition there is a range of options for the role of the Equalization Fund and for its institutional model.

70. The EF provides the basis for a stronger element of solidarity in the financial relations between the provinces and the central government. It should be noted that this, in part, may compensate for the lack of solidarity that has so far emerged in the proposals on retrocession. At the same time, however, it is difficult to imagine that the investments funded by the EF could be managed effectively if provinces lack the basic means to build up their internal capacity to manage these investments.

71. There are several options for the institutional model for the EF. However the Note argues in favour of an institutional model that is run by representatives of both the central State and the provinces, is a reliable funding agency for useful infrastructure development and is able to build consensus between the provinces and the State.

72. There are several models that can be considered to determine the eligibility criteria for accessing the EF's funds by the provinces. It is essential that these criteria are transparent, updated and open for scrutiny and that they are based on data that is easily accessible given the scarcity of quantitative data in DRC. The Note indicates that for the effective functioning of the EF there is a need to develop a detailed planning and appraisal mechanism that will enable the provinces to prepare plans and investment proposals that produce the most viable investment initiatives and that allows the EF to select the most appropriate proposals. Moreover, the Note recommends several selective principles for the investments in the provinces such as: respecting the decentralization legal framework for competences, co-financing, programming, compatibility with the national investments programme, auditing.

73. As a funding agency, the EF will have specific capacity demands, which will need to be met by a relatively lean organization that minimizes the overhead cost burden of the EF. The EF will be regularly audited and placed under democratic control in order to make sure it remains accountable. The Agency will have to develop legal and financial selection criteria.

74. The EF will also impose capacity demands on the provinces. It is expected that preparation of public investment proposals that are submitted to the EF will need to meet these access criteria. At a minimum these proposals will need to spell out the economic and financial case for the proposal. In addition, the proposals would need to look at the impact of the proposal, for example on income levels of the population or revenue generated for the province. To prepare such proposals will require certain capabilities in provincial government which at the moment do not yet exist.

75. The EF is a key element in the financial solidarity system between the State and the provinces and between the provinces. Therefore, it is important to put in place this institution in the first phase of the decentralization process. In this regard, the experience of the EU in managing regional development funds could be particularly instructive.

6. The Education Sector

76. A final background note pays specific attention to the education sector. The education sector constitutes the main part of the public sector wage bill (about 45 percent), as well as almost 50 percent of public sector employment. At provincial level these levels are even higher; the proportion of education wages in total wage bill expenditures in the provinces is likely to range between 57 and 85 percent (see table 9 below). At the same time, the Constitution foresees a significant decentralization of the sector, with most functions in pre-school, primary and secondary education (apart from setting standards and curricula and inspection) to be transferred to provincial and ETD level.

Table 13. Wage Bill Estimates per Province (FC mln, 2008, total Education)

Province	Total wage bill	EPSP wage bill	EPSP share of total
Bandundu	27,368	23,224	85
Bas-Congo	12,708	10,119	80
Équateur	14,048	11,072	79
Kasaï-Occidental	9,751	7,852	81
Kasaï-Oriental	9,343	7,402	79
Katanga	13,352	10,055	75
Kinshasa	37,985	21,479	57
Maniema	3,355	2,759	82
Nord-Kivu	6,622	5,212	79
Orientale	11,498	9,203	80
Sud-Kivu	6,618	5,425	82
Total RDC	152,648	113,800	75

Source: Ministère de Budget et MEPSP, Novembre 2007.

77. This poses three main questions: first, the viability of decentralization of functions in the light of the large unfinished education reform agenda at central government level, second, the ability, both fiscal and capacity wise, of provincial governments and ETDs to take on, in the short term, the responsibilities assigned by the Constitution and, third, the need to align the organization of the education sector with a decentralized service delivery modality.

Unfinished central government reforms

78. There are several ongoing initiatives to address the irregularities in the education sector. These include, in particular, the question of the large number of non-accredited teachers working in the system, which is a result of two separate developments. First, the inability (financially and organizationally) of the central government to treat accreditation processes, leading to a backlog of an estimated 50 000 cases. These teachers are currently

directly paid by parents through a system of 'primes' which the government is trying to eliminate. Second, a large number of teachers in the post-conflict provinces are 'nouvelles unités', which means that not only are they not accredited, but also that their positions are not authorized by the central government (though they were authorized by the provincial authorities during the conflict period). It is important that the exact number and accreditation/integration processes are clearly defined before a transfer of education competencies, or at least before expenditure responsibilities are transferred. If not, provinces will be faced with unknown levels of expenditure assignment. Whereas this is currently also a problem at the level of the central government, the problem would be seriously exacerbated if spread over 11 provinces.

79. A second key issue is the management of salary payments, which has been identified as a major issue in the Public Expenditure Review (World Bank, forthcoming). The complex system of salary payments is known to lead to significant 'leakages' of funds and less than full payment of teachers. Whereas transferring responsibility to the provinces and ETDs may shorten the 'delivery line' for salary payments, it should be noted that part of the problems in the salary payment system are due to weaknesses in the control environment at provincial level, that would need to be addressed before salary payments are transferred.

80. Thirdly, the wage system itself poses problems. Some of the features of this issue were discussed in section three above. Salaries are not harmonized across the country (in the current system there are three salary zones, i.e. Kinshasa, Lubumbashi and the rest of the country, but the differences between these are based on payment or non payment of 'primes' not of differences in base pay levels), and consist in a large proportion of a) allowances and indemnities and b) direct payments by parents. Discussions (August 2007) between the government and the trade unions have sought to address part of these issues (integration of part of indemnities and allowances in base pay, move towards two salary zones instead of three, official elimination of parent contributions).

81. Finally, reforms in the sector have barely started to have an impact on the issues with regard to accountability and performance of the education system. Extensive systems of additional payment by parents remain in place without adequate accountability. Oversight over schools and teacher performance remains limited without parent involvement. These are all issues that in due course will need to be addressed in the context of decentralization, in particular with regard to the roles of ETDs in the education sectors.

82. Whereas it might be impossible to address all the above issues before functions are transferred, an effort should at least be made to calculate the impact of wage system reform and integration and accreditation of teachers. This would imply that even if competencies be partially transferred, the central government will need, through an interim arrangement, to guarantee wage payments for a period of time.

Fiscal and Institutional Capacity in the Provinces and ETDs

83. The organizational and fiscal capacity of the provinces to take on the responsibilities assigned by the constitution is currently not in place. In terms of organizational capacity, the issues in the education sector are a microcosm of those discussed in the section on human resources above. There is no clarity as yet on the process for separating functions and resources between the centrally subordinated education departments at provincial level and the emerging education management structures at provincial level. Whereas for some aspects of the system the situation is clear (i.e. inspections will remain centrally subordinated) for others this is not. This makes provincial governments ill-equipped, at this point in time, to take on large scale responsibilities in the sector. It is unlikely that this issue will be solved quickly in the absence of the required legislation. Therefore, unless satisfactory interim arrangements are put in place, this is likely to create serious organization and management problems in the education system.

Aligning organizational models

84. The organizational model of the education sector will require a major adaptation in order to comply with the new realities of decentralization as envisaged by the Constitution. One important factor in this regard is that the state is not the only, and not even the main provider of education in DRC. The non-state education sector (mainly faith based schools) is the main provider of these services. This will provide its own dynamic in the decentralization of the education sector.

85. Another aspect to be considered is that the geographical dimension of the education system does not necessarily coincide with the administrative territorial division. This will need to be adapted in order to enable ETDs to play a major role in the decentralized model for the education sector.

86. The organizational structure of the education sector is very elaborate. It will need major changes in order to adapt to the new reality of decentralization. Most effected are the departments for supervision and inspection of the schools at lower levels. The role and nature of administrative supervision will need to undergo fundamental changes in the future.

87. A summary review of key issues to be addressed to ensure a successful decentralization process in the education sector highlights the challenges faces by the DRC authorities. This confirms again the need for the process to be properly designed from a technical perspective, to prevent institutional and political turmoil that could affect social stability and put the viability of the whole process in danger. The case study also shows the interlinkages (and mutual impact) between what remains a largely unfinished central level reform agenda and the challenges faces at provincial level. Whereas the decentralization process in some instances may help unblocking frozen reform issues at central level, in other aspects there is a clear risk of currently

unresolvable issues at central level being transferred to provincial level and putting an undue burden on their currently limited fiscal and administrative capacity. This is an important point to be considered in making the final decisions on the phasing and programming of the decentralization process.

7. Conclusions

88. The previous sections include a brief review of the key issues outlined in a set of five policy notes and briefs developed jointly by World Bank, EU and government experts. The key issues and recommendations that follow from the analysis are the following:

- i. Fiscal solidarity should remain an important element of the debate on fiscal transfers, even if solutions have been identified that would assure the fiscal viability of most provinces, a number of questions remain on the model that need to be urgently answered;
- ii. A detailed assessment of the cost of competency transfers should be done urgently, as a rudimentary assessment for the education sector has already raised several important issues to be addressed before education competencies are transferred;
- iii. The political and administrative infrastructure of the provinces is starting to develop, with the political side of provincial governments now in place and functioning in all provinces. This now needs to be followed by a rapid resolution of issues related to the definition of authority of provincial authorities over current public and civil servants working at provincial level. There are a number of modalities that could be used to separate the remaining central and provincial public servants, based on international practice, in particular in areas where the provinces have exclusive competencies. The definition of an orderly process of staff transfers, including a recruitment and attestation processes, is a matter of urgency, as is the design of, at the very least, interim arrangements at provincial level to define the mode of cooperation between ministers and public servants subordinated to the central government;
- iv. The elaboration of permanent consultation mechanisms between central and provincial governments is urgent. This should help prevent situations such as the one highlighted for the education system, where centrally managed negotiations between trade unions and the government have generated agreements that could impose serious fiscal burdens on provincial authorities (and effectively make most of them unviable), if competencies would be transferred along with expenditure assignments in 2008. Such mechanisms should be used to define common positions between central and provincial authorities before such negotiations are initiated;
- v. It is essential that clarity is provided on the schedule of the introduction of some key reform measures at central level that are crucial to the ability of provincial authorities to function effectively, including public service reforms (legal, wage system, etc.), crucial elements of sector reforms (in particular in education) as well as the introduction of key framework laws on public financial management.

89. Provided the above measures issues are carefully considered and appropriate pragmatic and practical solutions are addressed, decentralization would still hold significant potential benefits to the DRC. The dynamic environment at provincial level and the rapid formation of provincial structures provides an indication of the interest and commitment that exists at sub-national level to address the key issues facing the population. It is important that this momentum is built upon to make decentralization work for DRC's citizens and to view decentralization as a potential 'win-win' process, rather than to think in terms of short term political objectives.

