
Congo's Odious Debt: External Borrowing and Capital Flight in Zaire

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ABSTRACT

During the dictatorship of Mobutu Sese Seko, Congo (or Zaire, as Mobutu renamed the country) accumulated a public external debt of roughly \$14 billion. At the same time, Mobutu and his associates extracted wealth from the country. By 1990, real capital flight from Zaire amounted to \$12 billion. With imputed interest earnings, the accumulated stock of Zairian flight capital was nearly \$18 billion. Congo's successor governments may be able to repudiate liability for the Mobutu regime's debts on the basis of the doctrine of odious debt. Creditors could then seek to recover their losses by identifying and impounding flight capital which was extracted from the country.

Some politicians, to hold or regain power, they have not hesitated to call on the power of foreigners. They have declared themselves ready to sell the Congolese people and nation. (Joseph Désiré Mobutu, December 1965)

The typical number, that the wealth of Mobutu equals the debt of the country, this is taken out of the sky. There's no question that he's taken plenty of money out of the country, but I don't think anybody knows how much, except possibly him, and even he might not know. (IMF official, March 1989)¹

INTRODUCTION

During Mobutu Sese Seko's 32-year reign, from 1965 to 1997, Congo (or Zaire, as Mobutu renamed the country in 1971) accumulated an external debt of roughly US\$ 14 bn. At the same time the living standards of the vast majority of Congo's people deteriorated from an already low base. The World Bank (1992: 218) reports that Zaire's per capita income declined at an annual rate of 2.2 per cent from 1965 to 1990. The United Nations (1994: 165) estimates that by the 1980s, 70 per cent of the country's population lived in absolute poverty. Meanwhile, Mobutu and his associates amassed remarkable personal fortunes; Mobutu's own assets reportedly peaked in the mid-1980s at US\$ 4 bn (Burns et al., 1997).

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1. The two quotations appear in Askin (1990: 8, 11).

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In June 1997, shortly after Mobutu's overthrow, foreign governments agreed to assist the new Congo government of Laurent Kabila in recovering Mobutu's wealth. Past experience — such as that following the downfall of Philippine president Ferdinand Marcos in 1986 — suggests that such efforts are unlikely to retrieve more than a minor fraction of the loot. A US administration official confided, 'Our folks don't have a clue where it is' (Bonner, 1997). Whatever the mix of truth and disingenuity in this statement, it does not augur well for Congo's prospects of reclaiming Mobutu's money. A more promising strategy for the new government would be to repudiate the liabilities of the Mobutu regime by invoking the doctrine of odious debt. In rejecting liability for borrowing that did not benefit the Congolese people, the new government would turn the tables on the creditors. The latter's incentive to identify and recover Mobutu's loot would be greatly enhanced if this were the only way they could recoup their loans.

The doctrine of odious debt dates from the end of the nineteenth century, when the United States refused to accept the legitimacy of Cuba's external debt after taking control of the island in the Spanish-American War. In international law, this doctrine establishes a distinction between the sovereign debt of the state and the personal debt of the regime which holds power. This is a difficult distinction to make, since the regime borrows in the name of the state, blurring the line between the two. Yet it is a crucial distinction, if international lending is not to be a channel for flagrant abuse of power. The post-Mobutu Congo could serve as the most important test case for the doctrine of odious debt since its introduction a century ago. The legal implications would extend beyond the Congo, paving the way for challenges to the legitimacy of the debts of other nations with similar political legacies, and altering the incentive structure which will govern international lending in future years.

In this article we examine the scope for this unorthodox debt management strategy. First we present computations of the magnitude of Zairian capital flight from 1968 to 1990 (the last year for which the necessary data are available). These indicate that capital flight over this period amounted to US\$ 12 bn in real (1990) dollars. With imputed interest earnings, the accumulated stock of Zairian flight capital totalled nearly US\$ 18 bn. Zaire's public external debt build-up thus appears to have been matched or exceeded by the accumulation of private external assets. The article then moves on to review the evidence that the official and private creditors of the Mobutu regime knew, or should have known, that there was a high risk that their loans, or a substantial portion thereof, would not be used to benefit the Congolese people. Corruption in the use of Zairian loan proceeds was widespread and was widely reported in the press and official documents. Creditors — particularly governments and multilateral institutions — nevertheless continued to lend. This is followed by a brief discussion of the doctrine of odious debt and its applicability to Congo, and by some concluding remarks.

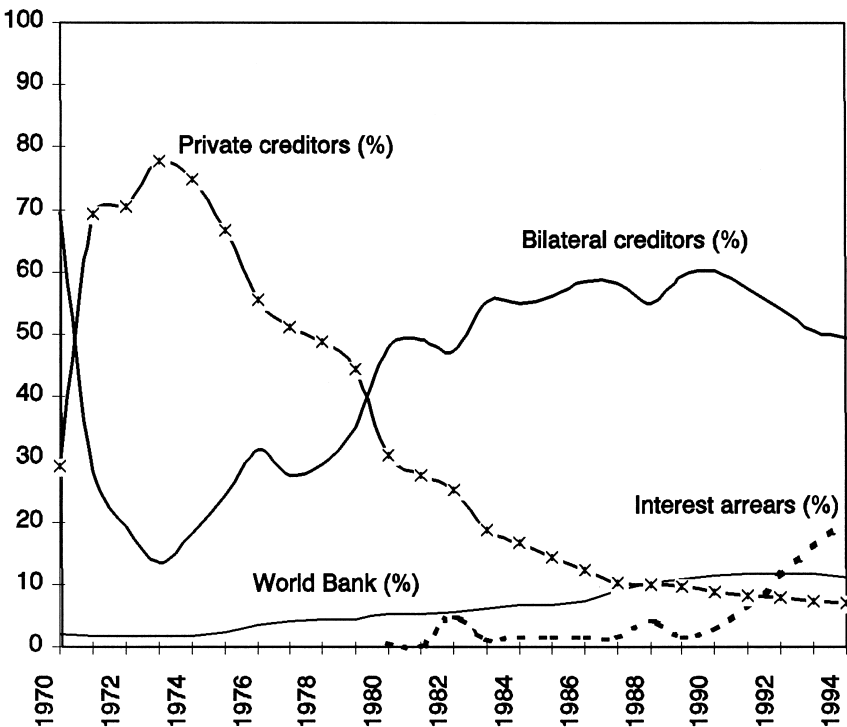
ZAIRE'S EXTERNAL BORROWING AND CAPITAL FLIGHT

Zaire's External Debt

Table 1 presents data on the magnitude and composition of Zaire's external debt from 1970 to 1994. The data show a striking increase in total debt outstanding, from US\$ 311 m at the beginning of this period to US\$ 12.3 bn at the end. The pace of borrowing slowed from 1979 to 1984, but thereafter rapid accumulation resumed.

The data illustrate three noteworthy facts about the evolution of the Zairian debt. First, in the 1970s, the country borrowed heavily from private creditors. Private long-term external debt peaked at 78 per cent of total debt in 1973 (see Figure 1); its absolute volume peaked at US\$ 2.1 bn in 1979, when it represented 44 per cent of the total. Second, borrowing from official bilateral and multilateral creditors increased sharply as private creditors started to cut back their exposure to Zaire in the 1980s. By the end of the decade, private long-term debt represented less than 10 per cent of total

*Figure 1. Structure of Zaire's External Debt, 1970–1994
(percentage of total debt)*



Source: Authors' calculations from World Bank *World Debt Tables* data.

Table 1. Structure of Zaire's External Debt, 1970–1994 (million US\$)

Year	Total debt stock	Long-term debt (outstanding and disbursed)				Short-term debt		
		Bilateral creditors	World Bank	Other multilateral creditors	Private creditors	Use of IMF credit	Short term credit	Interest arrears on long-term debt
1970	311	216	6	0	90	0	NA ^a	NA
1971	364	102	6	3	252	0	NA	NA
1972	604	117	10	20	426	31	NA	NA
1973	938	125	17	32	729	34	NA	NA
1974	1377	251	26	33	1032	35	NA	NA
1975	1804	440	40	38	1201	86	NA	NA
1976	2522	793	87	29	1403	210	NA	NA
1977	3429	943	143	63	1750	253	277 ^b	—
1978	4213	1235	188	129	2063	261	336	—
1979	4817	1696	209	175	2143	251	344	—
1980	4770	2287	246	76	1462	373	296	30
1981	4919	2420	256	80	1357	474	332	0
1982	5078	2404	287	101	1280	544	224	239
1983	5146	2849	320	130	961	622	210	55
1984	5150	2830	346	130	855	675	244	71
1985	6171	3467	418	185	888	807	309	96
1986	7190	4205	517	309	886	856	318	99
1987	8758	5106	788	426	887	967	462	122
1988	8562	4695	874	525	847	786	495	340
1989	9239	5480	992	616	878	628	505	140
1990	10270	6189	1162	767	889	521	478	265
1991	10826	6194	1270	935	872	473	391	692
1992	10968	5921	1275	899	852	454	309	1257
1993	11280	5722	1326	885	836	454	256	1801
1994	12336	6095	1382	994	860	478	119	2459

Source: World Bank *World Debt Tables* (various issues).

Notes:

^a NA = The information is not available. For the 1970–6 period, total debt stocks exclude short-term debt.

^b For the 1977–9 period, the figures reported in the short-term credits columns are the total of short-term debt, because separate information on interest arrears on long-term debt is not available.

Zairian external debt, while bilateral creditors accounted for about 60 per cent of the total, and long-term debt to multilateral creditors for another 17 per cent. The World Bank's lending grew steadily, and surpassed long-term lending by all private creditors in the late 1980s. Third, interest arrears on long-term debt increased sharply in the early 1990s. By 1994, interest arrears accounted for 20 per cent of Zaire's total external debt. Notwithstanding this accumulation of arrears, debt service payments have constituted a significant drain on national resources in recent years. The World Bank (1996a: 534) reports that net transfers (disbursements minus principal and interest repayments) turned negative in 1990, and that in 1994 Zaire paid US\$ 201 m more to foreign lending institutions than it received from them.

Methodology for Estimation of Capital Flight

Capital flight refers to mechanisms by which residents of a country seek to evade domestic social control over their assets by transferring them abroad. Obviously, such capital movements are not reported to the official statisticians. Nevertheless, it is possible to obtain a measure of capital flight from data on external debt, the balance of payments, and trade flows.

The most widely used measure of capital flight is calculated as a residual, the difference between capital inflows and capital outflows. Capital inflows consist of net increases in external debt plus net foreign direct investment. Capital outflows comprise the current account deficit and net additions to reserves and related items. The difference constitutes a measure of capital flight. If the sole source of data for this calculation were the balance of payments statistics, this would be equivalent to the 'net errors and omissions' reported therein. In practice, more accurate estimates of the change in external debt outstanding can be obtained from other sources, such as the World Bank's *World Debt Tables*. The resulting measure of capital flight has been used in many studies, including (among the earliest) those of Erbe (1985) and the World Bank (1985).²

The capital flight measure in a given year t is thus computed as:

$$KF_t = CDEBT_t + DFI_t - (CA_t + TRES_t) \quad (1)$$

where $CDEBT_t$ is the change in total external debt outstanding, DFI_t is net direct foreign investment, CA_t is the current account deficit, and $TRES_t$ is additions to reserves and related items.

This measure of capital flight can be improved by taking into account trade misinvoicing and inflation, or alternatively, the interest earnings on the accumulated stock of capital flight.

2. For further discussion on this and other capital flight measures, see Boyce (1992); Lessard and Williamson (1987).

Adjustments for Trade Misinvoicing

Official data on exports and imports are often of poor quality due to trade misinvoicing. Exporters may find it profitable to understate the value of their export revenues, so as to retain abroad the difference between their true value and their declared value. On the import side, there are incentives for both overinvoicing and underinvoicing. Overinvoicing allows importers to obtain extra foreign exchange from the central bank at favourable terms, which can then be transferred abroad. Underinvoicing and outright smuggling allow importers to evade customs duties. Export underinvoicing and import overinvoicing lead to overstatement of the current account deficit in the balance of payments; import underinvoicing leads to its understatement. If the true current account deficit is overstated, the capital flight estimate from equation (1) will be too low; if the true current account deficit is understated, the capital flight estimate will be too high. The net effect can only be determined empirically.

The extent of trade misinvoicing can be estimated by comparing a country's data on exports and imports to those of its trading partners. Under the assumption that the data from industrialized countries are relatively accurate, we will interpret the discrepancy between their data and Zairian data as evidence of misinvoicing.

Export discrepancies with the industrialized countries ($DXIC_t$) are computed as follows:

$$DXIC_t = PXIC_t - (ZXIC_t * CIF_t) \quad (2)$$

where $PXIC_t$ is Zairian exports to industrialized countries as reported by the trading partners, $ZXIC_t$ is Zairian exports to industrialized countries as reported by Zaire, and CIF_t is the cif/fob factor, representing costs of freight and insurance.³

Import discrepancies with the industrialized countries ($DMIC_t$) are computed as:

$$DMIC_t = ZMIC_t - (PMIC_t * CIF_t) \quad (3)$$

where $ZMIC_t$ is Zairian imports from industrialized countries as reported by Zaire, and $PMIC_t$ is Zairian imports from industrialized countries as reported by trading partners.

To obtain global totals, we multiply these discrepancies by the inverse of the average shares of industrialized countries in Zairian exports ($ICXS$) and

3. The cif/fob factor reported for Zaire in the IMF's *Direction of Trade Statistics Yearbooks* seems anomalously high; for example, it is higher than that of land-locked Burundi. Hence we use the average factor for Africa in our computations.

imports (*ICMS*).⁴ We obtain total trade misinvoicing as the sum of export discrepancies and import discrepancies:

$$MISINV_t = \frac{DXIC_t}{ICXS} + \frac{DMIC_t}{ICMS} \quad (4)$$

We then obtain a measure of capital flight adjusted for misinvoicing as:

$$ADJKF_t = KF_t + MISINV_t \quad (5)$$

Adjustment for Inflation or Interest Earnings

To compare the flows of capital flight over an extended period of time, it is appropriate to convert nominal flows into constant dollars. For this purpose we use the United States producer price index. This allows us to examine the year-to-year changes in the real magnitude of capital flight, and to obtain values of total capital flight that we can compare to other cumulative aggregates, such as the stock of debt. Real capital flight (*RADJKFB*) is calculated as:

$$RADJKF_t = ADJKF_t / PPI_t \quad (6)$$

where *PPI_t* is the US producer price index (base 1990 = 1.00).

An alternative measure of the accumulated stock of flight capital can be obtained by adding imputed interest earnings to the nominal total. The funds that fled the country were used partly to finance real assets such as real estate, and liquid and semi-liquid assets such as savings deposits and stocks. These gain value through market appreciation over time or from interest earnings: a dollar invested abroad in 1970 is worth more today due to these accumulated earnings. Some of the funds which fled the country were undoubtedly used to finance consumption, rather than being invested, but imputing interest earnings to capital flight allows us to estimate the opportunity cost to the nation of the funds lost to capital flight. We compute the interest-earnings adjusted capital flight (*SADJKF_t*) as follows:

$$SADJKF_t = SADJKF_{t-1}(1 + TBILL_t) + ADJKF_t \quad (7)$$

where *TBILL_t* is the interest rate on short-term US Treasury bills.⁵ If the real interest rate is positive, the interest-earnings adjusted capital flight stock will be greater than the inflation-adjusted capital flight stock.

4. The data reported in the IMF *Direction of Trade Statistics Yearbooks* show occasional wide, unexplained fluctuations in the shares of industrialized countries in Zairian exports and imports. In our calculations, we use the average shares over the 1968–90 period: 83.4 per cent and 77.8 per cent, respectively.

5. *TBILL* is the annual average of the discount on new issues of three-month Treasury bills reported in the IMF's *International Financial Statistics Yearbook*.

Estimates of Capital Flight from Zaire, 1968–1990

Table 2 presents computations of nominal capital flight as the difference between capital inflows and outflows, without adjustment for trade misinvoicing. The data begin in 1968, the first year for which we have data on debt inflows, and end in 1990, after which the IMF stopped reporting Zaire's balance-of-payments statistics. Debt inflows accounted for US\$ 10 bn of the total capital inflows of US\$ 11.4 bn over this 23-year period. On the uses side, Zaire's accumulated nominal current account deficit was US\$ 8.9 bn. The country drew down its foreign exchange reserves over this period by US\$ 292 m. By deducting total uses from total capital inflows, we obtain the residual measure of nominal capital flight: US\$ 2.9 bn over the 23 years.

Table 3 presents the estimates of international trade misinvoicing, for which this residual measure must be adjusted, as discussed above. On the export side, the trading partner data comparisons reveal chronic underinvoicing. Over the entire period, Zaire's official trade data, as presented in the IMF's *Direction of Trade Statistics Yearbooks*, under-reported the country's exports to industrialized countries by US\$ 7.8 bn. Assuming the same degree of understatement of exports destined for other countries, this corresponds to a total export misinvoicing of US\$ 9.3 bn for all Zaire's trading partners combined. On the import side, we find significant net underinvoicing, totalling US\$ 3.9 bn over the period for industrialized countries, or US\$ 4.9 bn for all Zaire's trading partners. This implies that import smuggling outweighed import overinvoicing. Combining the effects of export and import misinvoicing, the data show a net overstatement of Zaire's trade deficit with the industrialized countries by US\$ 3.9 bn. The corresponding figure for Zaire's trade with the entire world is US\$ 4.4 bn.

Our adjusted measure of total nominal capital flight (*ADJKF*) is reported in the first column of Table 4. This is the residual measure of capital flight (from Table 2) plus the trade misinvoicing adjustment. In the second column of Table 4, we report real (that is, inflation-adjusted) capital flight (*RADJKF*), and in the third column interest-adjusted capital flight (*SADJKF*). Total nominal capital flight from 1968 to 1990, adjusted for trade misinvoicing, is roughly US\$ 7.3 bn. In real terms (at constant 1990 dollars), capital flight amounted to a total of US\$ 12.1 bn over the period. This exceeds the accumulated external debt of US\$ 10 bn as of 1990. If, alternatively, we compute the accumulated stock of flight capital by imputing interest earnings (at the US Treasury bill rate), we get a total of almost US\$ 18 bn over this period. By either measure, the comparison of accumulated flight capital to accumulated external debt suggests that Zaire was in fact a net creditor to the rest of the world, exporting more capital than it imported. The difference, of course, is that while the external debt is a public liability bequeathed to the new government of Congo, the external assets built up through capital flight are strictly private.

Table 2. Nominal Capital Flight (million US\$)

Year	Capital inflows		Foreign exchange uses		Apparent capital flight ^a
	Change in external debt outstanding (CDEBT)	Direct foreign investment (DFI)	Current account deficit (CA)	Net additions to reserves (TRES)	inflows-uses (KF)
1968	44.0	10.6	-50.3	69.7	35.2
1969	33.0	7.0	-47.0	60.0	27.0
1970	6.0	42.2	63.9	-28.9	13.2
1971	53.0	52.6	124.8	-62.1	42.9
1972	240.0	104.5	365.6	-17.9	-3.2
1973	334.0	81.7	279.3	43.4	93.0
1974	439.0	127.0	471.8	-52.3	146.6
1975	427.0	37.1	592.7	-125.2	-3.4
1976	718.0	79.6	832.4	-161.8	127.0
1977	907.0	51.2	1450.6	42.7	-535.1
1978	784.0	114.9	-294.4	-6.9	1200.2
1979	604.0	58.8	-146.0	90.4	718.3
1980	-47.0	56.0	153.6	14.4	-159.1
1981	149.0	255.9	610.8	-171.0	-34.9
1982	159.0	176.5	591.7	-198.7	-57.5
1983	68.0	129.3	349.0	-75.0	-76.7
1984	4.0	-	324.0	-146.0	-174.0
1985	1021.0	-	289.0	-18.0	750.0
1986	1019.0	-	414.0	6.0	599.0
1987	1568.0	-	644.0	112.0	812.0
1988	-196.0	-	581.0	37.0	-814.0
1989	677.0	-	611.0	210.0	-144.0
1990	1031.0	-	643.0	86.0	302.0
Total	10042.0	1384.9	8854.5	-292.1	2864.6

Sources: World Bank, *World Debt Tables*; IMF, *Balance of Payments Statistics Yearbook*; IMF, *International Financial Statistics Yearbook* (various issues).

Note:

^a These amounts are not adjusted for misinvoicing; for adjusted measures, see Table 4.

Table 3. Trade Misinvoicing (million US\$)

Year	Exports to industrialized countries			Imports from industrialized countries			Total misinvoicing	
	Partner's data PXIC	Zaire's data ^b ZXIC * CIF	Discrepancy DXIC	Zaire's data ZMIC	Partners' data ^c PMIC * CIF	Discrepancy DMIC	Industr. countries DXIC + DMIC	World ^a MISINV
1968	620.0	623.7	-3.7	294.4	296.4	-2.0	-5.7	-7.0
1969	763.0	577.9	185.1	347.1	376.7	-29.6	155.4	183.9
1970	841.0	610.1	230.9	434.4	467.3	-32.9	198.0	234.6
1971	623.0	611.6	11.4	575.5	582.7	-7.2	4.2	4.4
1972	633.0	477.3	155.7	566.1	508.8	57.3	213.0	260.4
1973	1161.0	601.3	559.7	619.7	690.2	-70.5	489.3	580.7
1974	1557.0	896.2	660.8	703.7	983.1	-279.4	381.3	433.2
1975	1010.0	1029.8	-19.8	958.6	974.6	-16.0	-35.9	-44.4
1976	1327.0	1346.0	-19.0	705.0	717.1	-12.1	-31.1	-38.3
1977	1528.0	1549.0	-21.0	786.6	797.2	-10.6	-31.6	-38.8
1978	1750.0	1777.5	-27.5	734.9	746.2	-11.3	-38.7	-47.4
1979	2000.0	1392.5	607.5	621.1	886.0	-264.9	342.5	387.9
1980	2411.0	1671.6	739.4	747.6	1087.7	-340.1	399.3	449.5
1981	1945.0	746.1	1199.0	619.5	964.7	-345.2	853.7	994.0
1982	1450.0	636.6	813.4	424.8	792.0	-367.2	446.3	503.5
1983	1311.0	1386.7	-75.7	747.6	730.8	16.8	-58.9	-69.2
1984	1604.0	1629.0	-25.0	828.3	842.2	-13.9	-39.0	-47.9
1985	1611.0	1043.9	567.2	711.4	935.1	-223.7	343.4	392.5
1986	1596.0	1201.9	394.1	781.2	1107.5	-326.3	67.7	53.0
1987	1665.0	1076.6	588.4	685.2	1117.3	-432.1	156.4	150.2
1988	1872.0	1224.1	647.9	684.0	1249.9	-565.9	82.0	49.4
1989	1788.0	1624.2	163.8	995.0	1254.4	-259.4	-95.6	-137.0
1990	1779.0	1308.1	470.9	921.0	1241.0	-320.0	151.0	153.4
Total	32845.0	25041.5	7803.5	15492.7	19349.0	-3856.3	3947.2	4400.6

Sources: World Bank, *World Debt Tables*; IMF, *Balance of Payments Statistics Yearbook*; IMF, *Direction of Trade Statistics Yearbook*; IMF, *International Financial Statistics Yearbook* (various issues).

Notes:

^a For the world, export and import discrepancies are scaled up using the average shares of industrialized countries in Zaire's exports (83.4 per cent) and Zaire's imports (77.8 per cent). Total misinvoicing for the world is given by *MISINV* as defined in the section on methodology.

^b Zaire's export data are adjusted by the cif/fob factor for Africa.

^c Trade partner's import data are adjusted by the cif/fob factor for Africa.

Table 4. Adjusted Capital Flight Estimates (million US\$)

Year	Nominal capital flight ^a ADJKF	Real capital flight ^b RADJKF	Cumulative stock of capital flight ^c SADJKF
1968	28.2	95.6	28.2
1969	210.9	689.1	240.9
1970	247.9	781.9	504.3
1971	47.3	144.2	573.5
1972	257.2	752.1	854.1
1973	673.6	1740.7	1587.7
1974	579.7	1260.3	2292.4
1975	-47.8	-94.9	2378.1
1976	88.7	168.6	2585.5
1977	-573.9	-1028.4	2147.9
1978	1152.7	1914.8	3455.7
1979	1106.2	1634.0	4908.9
1980	290.5	375.7	5769.7
1981	959.1	1137.7	7541.2
1982	445.9	518.6	8795.5
1983	-145.9	-167.5	9407.9
1984	-221.9	-248.8	10086.3
1985	1142.5	1288.1	11984.3
1986	652.0	756.4	13351.8
1987	962.2	1088.5	15092.4
1988	-764.6	-831.1	15334.5
1989	-281.0	-290.9	16297.1
1990	455.4	455.4	17976.4
Total	7265.2	12140.1	17976.4

Source: Authors' calculations using information contained in Tables 2 and 3 above and data from IMF, *International Financial Statistics Yearbook* (various issues).

Notes:

^a Adjusted for trade misinvoicing.

^b Converted to 1990 dollars using the United States producer price index.

^c Including imputed interest earnings at the United States Treasury Bill rate.

CREDITOR COMPLICITY AND COMPLACENCY

Mobutu's regime left Congo in complete economic disarray, with one of the highest debt burdens among developing nations. By 1994, Congo's ratio of debt stock to exports stood at 1200 per cent, far exceeding those of other heavily indebted developing countries like Argentina, Brazil, and Mexico, or sub-Saharan Africa and low-income countries as a whole (Table 5). Despite vast natural resources, Congo today ranks among the twenty poorest nations in the world, with a per capita income of US\$ 130 in 1994. The country's poor economic performance was partly due to forces beyond its control, including the collapse of international commodity prices (especially copper) and the international energy crises. However, a major reason for the country's economic misery is that Mobutu and his associates relentlessly pursued their

Table 5. Zaire's Indebtedness and Economic Performance Compared to Other Developing Countries (1994)

	EDT/XGS(%) ^a 1994	GNP (\$) per capita 1994	Average annual growth of GNP per capita (%) 1985–1994	Average annual inflation (%) 1985–1994 (CPI)
Zaire	1200.0 ^b	130	−6.6	699.8
Argentina	368.0	8110	2.0	236.8
Brazil	298.2	2970	−0.4	898.0
Mexico	228.1	4180	0.9	41.9
Nigeria	341.9	280	1.2	31.6
Philippines	160.6	950	1.7	9.2
SSA ^c	265.7	460	−1.2	28.3
LIC ^d	162.8	380	3.4	47.2

Sources: World Bank, *World Debt Tables 1996*; World Bank, *World Development Report 1996*; IMF, *International Financial Statistics Yearbook 1996*; World Bank, *World Development Indicators 1997*.

Notes:

^a EDT/XGS = Ratio of total external debt to exports of goods and services.

^b Zaire's EDT/XGS ratio is computed using exports and total debt stock reported by the Economist Intelligence Unit (1996: 17).

^c SSA = Sub-Saharan Africa.

^d LIC = Low-income countries.

own personal enrichment at the expense of the public good, and spirited the bulk of their gains abroad for safe keeping.

'A Kleptocracy to End All Kleptocracies'

After seizing power in 1965, Mobutu abandoned his promise to live on his soldier's salary as quickly as his promise not to establish military dictatorship.⁶ In the recent history of Africa, such broken promises have been all too common. What set Mobutu apart from other dictators on the continent was his exceptional drive for personal enrichment. In this respect he followed in the footsteps of his Belgian predecessor, King Leopold II, who similarly governed Congo for his personal gain (Askin and Collins, 1993). Commenting on Mobutu's talent for converting national wealth into his own personal assets, Askin (1993b) remarked: 'Many people view Mobutu's regime as the classic example of a military coupmaker transformed into a civilian ruler. In

6. In a speech announcing his military coup in 1965, Mobutu declared that: 'The High command of the National Army of Congo strongly emphasizes that the decisions that it has undertaken [military coup] will not result in a military dictatorship. Only love for the nation and sense of responsibility *vis-à-vis* the Congolese nation guided the decisions. The High Command is responsible before history, Africa, and the world' (Tshibangu, 1976: 174).

fact, he might better be seen as a rogue accountant who used military means as one of many tools for achieving his financial ends'.⁷ As army chief of staff in the early 1960s, Mobutu had already acquired considerable personal wealth by tapping military aid from Western countries (Dayal, 1976: 66).

As president, Mobutu erected an institutional structure that allowed him rapid accumulation of wealth from foreign borrowing and aid as well as from the country's national resources. Mobutu, his family, and his political and business allies secured effective monopoly control in key sectors of the Zairian economy, via exclusive ownership of companies, expropriations in the name of the national interest (notably during 'Zairianization' in 1973–5), and illicit mechanisms such as kickbacks from Zairian and foreign-owned private businesses. Revenues from exports of copper, cobalt, and diamonds were channelled directly to private accounts held in foreign banks. A World Bank team which visited the giant state-owned mining firm Gécamines in 1978 found that the governor of the Zairian central bank had instructed Gécamines to deposit 30 per cent of the proceeds of its exports to its principal trading partner (the Belgian Société Générale des Minerals) into a presidential account (Blumenthal, 1982: 148). A confidential World Bank memo in October 1979 reported off-the-books sales of 200 tons of cobalt in Switzerland, 10,000 tons of copper to South Africa, and 20,000 tons of copper to China (cited by Kwinty, 1984: 97). Ngunza Karl-I-Bond, a former Prime Minister under Mobutu, testified before a United States Congressional subcommittee in 1981 that proceeds from sales of Zairian cobalt, copper and diamonds were directly deposited into Mobutu's personal accounts (Richburg, 1991). In the 1970s Zaire's neighbour, Congo-Brazzaville, emerged as one of the world's top ten diamond exporters, even though it has no diamond mines of its own, simply by 'serving as the staging ground for smuggling Zairian diamonds' to Europe (Gould, 1980: 145). In 1988, World Bank and USAID officials reported that roughly US\$ 400 m in Zairian mineral exports revenues had disappeared (Richburg, 1991). Askin and Collins (1993: 79) report that in a single year in the early 1990s, Mobutu and his associates smuggled diamonds worth up to US\$ 300 m.

Mobutu's control over the central bank allowed him to transfer money directly into his personal accounts and secret budget lines. For example, Ngunza Karl-I-Bond testified that in 1981, Mobutu ordered a direct transfer of US\$ 30 m from the Zairian central bank to his account abroad (Richburg, 1991). In addition to direct transfers, Mobutu was able to tap the government coffers through the 'dotation présidentielle', a budget line completely outside of any form of control or independent audit. Large amounts of government funds were also diverted through various 'special accounts' to which only Mobutu and his appointees had access. Erwin Blumenthal, a West German central banker appointed by the IMF to lead an expatriate

7. Mobutu was trained as an accountant in the Belgian colonial military.

team at the central bank of Zaire in 1978 and 1979, identified at least seven such special accounts held at various foreign banks which were used to make direct transfers to Mobutu's own accounts or to pay for the leader's personal expenses. Blumenthal (1982: 151) reports that between 1976 and 1978, 400 m Belgian francs had been withdrawn from these special accounts via cheques, one of which was paid to one of Mobutu's European architects in the amount of 60 m Belgian francs.

Mobutu's extravagant spending became legendary. The chairman of the Africa subcommittee of the US Congress estimated, for example, that in 1982 Mobutu spent US\$ 2 m to bring a 100-member entourage on vacation at Disney World (Richburg, 1991). The president made little distinction between the nation's resources and his personal wealth. Blumenthal (1982: 144–5), in a confidential report which ultimately became public, called the attention of the international financial institutions to this problem: 'Any attempt to establish a more strict control of the budget is bound to fail because of one major obstacle: the Presidency . . . In this office, no distinction is made between state expenditures and personal needs'. US Congressman Stephen Solarz, a member of the Africa subcommittee, claimed in 1991 that Mobutu 'has established a kleptocracy to end all kleptocracies, and has set a new standard by which all future international thieves will have to be measured' (quoted by Richburg, 1991).

Of Bankers and Bureaucrats

Mobutu relied heavily on external resources to maintain his grip on political power and thereby on Congo's internal economic resources. Loans came both from private bankers and from public-sector bureaucrats of the official bilateral and multilateral aid agencies. These were complemented by outright gifts and military aid from Western governments, doled out in the name of 'national security'.

During the first decade of Mobutu's rule, according to former US National Security Council staff member Roger Morris (1977), he received payments totalling about US\$ 150 m from the US Central Intelligence Agency.⁸ By the early 1970s, loans from private banks had become a crucial source of external support. Between 1972 and 1975, Zaire borrowed nearly US\$ 1 bn from private creditors (see Table 1). Much of this borrowing financed 'prestige' projects characterized by excessive scale, poor location, dependence on external funding, high capital costs, high foreign exchange costs, long gestation periods, and systemic corruption and maladministration (Ghosh, 1986). The Inga-Shaba power project, intended to generate hydroelectric power near the mouth of the Congo River for transmission to the mines of the Shaba region more than a thousand miles away, exemplified these projects.

8. For an account of Mobutu's early CIA ties, see Kwitny (1984: 56–70).

Mobutu reportedly received a 7 per cent kickback on expenditures for this billion-dollar scheme (Askin, 1993a).

The meagre economic returns on these projects, together with a collapse in copper prices and the disruption of the economy by the Zairianization of key sectors, soon precipitated a debt-service crisis. This resulted in the formation of the 'London Club' of commercial creditors in 1976, and the first of what would prove to be many reschedulings of developing-country debts, in which the banks offered Zaire a new loan exactly equal to the debt service the country owed them (Payer, 1991: 83). As fresh lending from private banks above and beyond rescheduling dried up in the aftermath of this crisis, lending from official creditors increased. This aid was supplemented by direct military support to Mobutu in 1977 and 1978, when French and Moroccan troops were dispatched to quell armed rebellions in the Shaba region.

As a condition for the rescheduling of private debts and increased official aid, Mobutu agreed to various ostensible reforms and to the installation of expatriate teams, such as that headed by Blumenthal at the Central Bank, which were charged with improvement of economic management. These steps provided a 'vener of international legitimacy behind which the political elite could pursue its own economic interests' (Leslie, 1987: 65). Blumenthal himself resigned in frustration in 1979, concluding that the 'impossibility of control of frauds' meant that there was 'not any — I repeat any — chance on the horizon that the numerous creditors of Zaire will recoup their funds' (Blumenthal, 1982: 154–5).

The 'ritual of debt rescheduling' was re-enacted repeatedly after 1976 both by the official 'Paris Club' creditors and by their private London Club counterparts. The latter sought to use 'adjustment' assistance provided in the wake of Paris Club reschedulings to service private debt not formally insured by Western governments and international agencies. The private banks' repayment rate was ten times higher than that of the public creditors, a preferential treatment 'reinforced by the banks holding out the enticement of further lending, much of it to individual members of the ruling group, however, rather than to the state' (Callaghy, 1984: 24).

'By the early 1980s', a senior banker told *The Financial Times*, 'Mobutu was an untouchable in client terms — I couldn't think of exposing another penny to him. The country was virtually bankrupt and massive inflows of foreign exchange were clearly being siphoned off . . . In that context if there were any bankers still willing to lend money, there are some serious questions to be asked about them' (Burns et al., 1997). Bureaucrats of bilateral and multilateral agencies were less averse to lending public monies. Official credit bailed out Mobutu as well as his private bankers. An American scholar summarized the situation in 1980:

Zaire was a country racked by a serious underdevelopment crisis: widening socioeconomic inequity, political de-participation, repression of human rights, and abject dependency on the West. The edifice was kept from collapsing, however, by continued, massive infusions of foreign assistance, 'throwing good money after bad', spurred by scarcely credible promises of

'reform' and an image of 'pro-Western anticommunism' in a turmoil-ridden part of Africa. (Gould, 1980: xii)

This was to prove a remarkably apt description of the next decade as well.

Between 1979 and 1990, the country's total external debt soared from US\$ 4.8 bn to US\$ 10.3 bn, even as the country's debt to private creditors fell from US\$ 2.1 bn to less than US\$ 900 m (see Table 1). In 1981 the IMF provided Zaire with the largest loan to an African country in that institution's history — more than US\$ 1 bn.⁹ Shortly after Ngunza Karl-I-Bond's damning testimony on Capitol Hill that same year, the US State Department announced increased financial and military aid for the Mobutu regime. The French government likewise came forward with increased assistance; M. Guy Penne, President Mitterand's Adviser on African Affairs, explained: 'Zaire is the most important francophone country after France' (*West Africa*, 1982). In 1983, months after a cable from the US embassy in Kinshasa warned that control over aid expenditures was impossible because 'major diversions of funds and goods are made by the barons of the regime', President Reagan requested a doubling of US aid to reward Mobutu for dispatching troops to defend the US-backed government in Chad (Askin and Collins, 1993: 80).

In March 1986 the IMF published a report on the Zairian economy in the *IMF Survey* (Goreux, 1986). The report characterized Zaire's economic policies as 'broadly satisfactory', and lamented the fact that the country's efforts had not 'been rewarded by an increase in disbursements from foreign loans and grants'. At a 1987 meeting of the Consultative Group for Zaire, the World Bank (1987: 5) acknowledged that economic development and growth were 'severely constrained by a system, evolved over the years, which has fostered rent-seeking rather than productive activities', a situation compounded 'by the unwillingness of Zairians to repatriate their holdings of foreign exchange from abroad'. Nevertheless the Bank recommended (*ibid*: 12–13) 'full support from the international community' for the government's adjustment programme, and called for 'a major effort ... to mobilize financing at concessional terms on the part of the donors'. The Bank also urged donor governments 'to facilitate investments in Zaire by their nationals', noting that the country had 'one of the most liberal foreign investment climates in Africa', and that Zaire's recent accession to the Bank's Multilateral Investment Guarantee Agency provided a further inducement.

These sanguine views were not universally shared within the international financial institutions, but they faithfully reflected the political dictates of their major shareholders. In 1987, the IMF approved a new loan to Zaire, under pressure from the US government, despite strong objections from senior IMF staff members; at the time Mobutu was allowing the US to use

9. In the end Zaire was unable to draw all of this Extended Fund Facility credit, however, due to its failure to comply with the IMF's budget deficit and domestic credit expansion targets (Ghosh, 1986: 465).

Zairian territory as a base for covert action against neighbouring Angola (Askin and Collins, 1993: 80). Such decisions prompted the former director of the IMF's Trade and Finance Department to decry 'the intrusion of political factors' into the Fund's decision-making; balance-of-payments assistance, he warned, was in danger of becoming 'indistinguishable from political support' (Finch, 1988: 127).¹⁰

The end of the cold war undermined the political rationale for backing Mobutu. The US, the IMF, and the African Development Bank all suspended further aid in 1992 (Askin, 1993b), and the World Bank finally pulled out in January 1994 (*Project and Trade Finance*, 1994). When Mobutu was finally toppled in May 1997, an internal World Bank report offered a disarmingly candid assessment of the impact of billions of dollars in external assistance: 'It would be hard to argue much was achieved in Zaire, either in economic or social terms, as a result of the aid' (quoted by Burns et al., 1997).

The Price of 'National Security'

For the Western powers, however, economic and social progress was not the primary objective in lending to Mobutu's Zaire. Rather, the overriding aim was the pursuit of national security. Mobutu was valued as a cold-war ally in the heart of the African continent. 'For what reasons did Western countries persist in awarding not only loans but also grants?' Blumenthal (1982: 142) wrote. 'Moral obligation? Speculation? Political considerations? Zaire, a bastion against communism in Central Africa? Overcome the contradictions of the North-South conflict? Probably a little of all that'. Mobutu's ability to retain power, while leading his country to economic and political ruin, was largely due to this support.

The philosophy behind Western economic assistance was articulated clearly, and coldly, by Robert McNamara (1968: 149, 162) when he stepped down as US Secretary of Defense to become President of the World Bank. 'In a modernizing society security means development', he wrote. 'The affluent nations that spend billions of dollars each year on military hardware will begin to question the growing disproportion between those immense sums and the relatively minuscule amounts devoted to developmental aid — not because the rich nations will suddenly become more philanthropic, but because they will gradually become more realistic. They will reach a point of realism at which it becomes clear that a dollar's worth more of military

10. Askin (1993b) reports that in a rare dissent, three members of the IMF's 24-person executive board opposed the Zaire loan. This loan, together with a similar politically motivated credit to Egypt, reportedly prompted Finch's resignation from the Fund (*Africa Analysis*, 1989; Askin, 1993b).

hardware will buy less security for themselves than a dollar's worth more of developmental assistance'. McNamara portrayed development and security as complementary goals, but there was an intrinsic and unacknowledged conflict between these goals when 'security' translated into support for corrupt dictators. Nowhere was this tension more apparent than in Zaire.

Knowing that his hold on power depended on his ability to manipulate the international political arena, Mobutu assiduously cultivated relationships with government leaders and officials of international financial institutions. He treated loans as disguised grants. Blumenthal (1982: 140) observed: 'Mobutu and his government do not care about the question of repayment of loans and of the public debt. They count above all on the generosity of their creditors and on the indefinite rescheduling of the loans and their repayment'.

In his dealings with influential Westerners, Mobutu reciprocated this generosity. Kwinty (1984: 19) reports that construction projects involving businesses controlled by relatives of French president Giscard d'Estaing accounted for nearly one-third of Zaire's foreign debt in the early 1980s. At the World Bank and the IMF, Mobutu had close ties with Belgian financier Jacques de Groote, an executive director of both institutions who reportedly passed confidential IMF negotiating strategies to Zairian officials and helped the regime to secure IMF loans (Pound, 1990). Mobutu met, by his count, fifteen times with George Bush before and during the latter's presidency (Kohler, 1990: 3). At one point, the largest corporate donor of honoraria to US Congressmen was the New Jersey businessman who held a lucrative contract to procure equipment for the Zairian government-owned mining company, Gécamines (Kohler, 1990).

In addition to its strategic role as a cold war ally, Zaire's mineral wealth provided a motive for Western involvement in the country. This too afforded opportunities for mutually beneficial dealings between the Mobutu regime and its Western confederates. For much of the Mobutu era, Zaire was the world's top producer of cobalt and one of the top five exporters of copper and diamonds (Meditz and Merrill, 1994). Foreign investors — including American, Belgian, British, French, Japanese, and South African firms — competed for mineral concessions in Zaire by establishing or exploiting their close ties with key members of the government (Young and Turner, 1985: 301–4).

Mobutu and his friends at home and abroad were handsomely rewarded for their contributions to 'national security'. The costs were borne by Western taxpayers, whose money financed official loans, grants, and guarantees for private loans to Zaire, and by Congo's poor majority, whose deprivation deepened under Mobutu's rule. Western taxpayers may be able to derive solace from the claim that all this was part of the price of winning the cold war. There remains, however, the inconvenient legacy of Congo's external debt which, if not resolved, will continue to impose a heavy price on the Congolese people for years to come.

CONGO'S ODIIOUS DEBT

When the accumulation of large-scale private external assets accompanies the accumulation of large-scale public external debt, the late Carlos Diaz-Alejandro (1984: 379) once remarked, the juxtaposition of the two 'reduces the political legitimacy of efforts to service the external debt'.

In the case of Congo after Mobutu, the legal legitimacy of this debt can be challenged as well. The basis for such a challenge is the doctrine of odious debt, which was introduced into international law a century ago by the United States after it won control of Cuba in the Spanish–American War. Cuba had accumulated a substantial external debt under Spanish rule, and the question arose of whether the new US colonial administration would shoulder this liability. The United States refused to do so on the grounds that the debt had not been incurred for the benefit of the Cuban people; indeed, some of the loans had financed 'the continuous effort to put down a people struggling for freedom from the Spanish rule'. From the beginning, the US asserted, the creditors 'took the chances of the investment': they could not demand repayment from people whose oppression they had helped to finance.¹¹

Three decades later Alexander N. Sack, a former minister in Tsarist Russia who became a law professor in Paris, in his study on *The Effects of State Transformations on Their Public Debts and Other Financial Obligations*, set forth the basic tenets of the doctrine of odious debt:

If a despotic power incurs a debt not for the needs or in the interest of the State, but to strengthen its despotic regime, to repress the population that fights against it, etc., this debt is *odious for the population of all the State*. This debt is not an obligation for the nation; it is a regime's debt, a *personal* debt of the power that has incurred it . . . The reason these 'odious' debts cannot be considered to encumber the territory of the State, is that such debts do not fulfill one of the conditions that determine the *legality* of the debts of the State, that is: *the debts of the State must be incurred and the funds from it employed for the needs and in the interests of the State*. 'Odious' debts, incurred and used for ends which, *to the knowledge of the creditors*, are contrary to the interests of the nation, do not comprise the latter . . . except to the extent that real advantages were obtained from these debts. The creditors have committed a hostile act with regard to the people; they can't therefore expect that a nation freed from a despotic power assume the 'odious' debts, which are the personal debts of that power. (Sack, 1927: 157–8; translated by Adams, 1991: 165; emphasis in the original)

The circumstances under which the doctrine of odious debt can be applied have not been clearly established in international law. In particular, differing interpretations exist as to whether and to what extent it requires proof that the creditor was aware of the ultimate use of the loan proceeds. O'Connell (1967: 459) cautions that odious debt is a 'dangerous' doctrine, which if not limited 'tends to be expanded as States seek a pretext for avoiding obligations which otherwise would be imposed upon them'. Citing Sack, he maintains

11. Quoted in O'Connell (1967: 459–60) and Hoefflich (1982: 53–5).

that a successor state ‘should be required to prove, first, that the debt was contrary to the interests of the population of all or part of the absorbed territory and, secondly, that the creditors were aware of this’. Once these have been proven, ‘the onus is upon the creditors to show that the funds have in fact been utilized for the benefit of the territory’.¹²

O’Connell (1967: 460) also notes that the use of loans to finance the suppression of revolution is not necessarily contrary to the true interests of the territory. ‘On this topic, politics assume dominance over legal analysis’, he concludes, ‘and for this reason the only exact test of whether or not a debt is odious is the extent to which it is unbeneficial to the population of the territory it burdens’. By the latter test, much of the debt accumulated by the Mobutu regime was unquestionably odious.

Adams (1991: 170) comments that the mere fact that a loan was on paper intended for beneficial purposes does not exempt it from repudiation under the odious debt doctrine:

Even those loans extended for purposes that are broadly governmental — to an electric utility or for balance-of-payments support — are subject to challenge. When government officials treat state investments as vehicles for political favors, graft, and capital flight, and are prepared to turn a blind eye to the technical and economic viability of such projects, foreign bank loans become grease in wheels that turn against state interests. Foreign bankers who fail to recognize or act upon pricing irregularities, slipshod plans, and suspect contracts soon become parties to hostile acts against a populace.

In Mobutu’s Zaire, as we have seen, such practices were not the exception but the rule.

Rather than continuing to service the external debt accumulated by the Mobutu regime, the Congo government could invoke the doctrine of odious debt to repudiate much, if not all, of this debt. To win support for this stance, the government could tell the creditors that it will accept liability for those loans or portions thereof which can be demonstrated to have been used for *bona fide* purposes in Congo. At the same time, it could inform them that unless the creditors can furnish proof of such use, the new government will be forced to assume that the loans were diverted to the personal benefit of Mobutu and his associates, in which case it will refuse to accept liability for them.

CONCLUSIONS

The US\$ 14 bn external debt accumulated by Congo under Mobutu’s rule brought few tangible benefits to the country’s poor majority. Instead,

12. However, Frankenberg and Knieper (1984: 434), who also cite Sack, maintain that the burden of proof should fall on the creditor: ‘[T]he creditor (or supplier) would first have to show evidence that the credit (or supply) was used or was supposed to be used in the debtor country’s national (developmental) interest’.

external borrowing helped to sustain a corrupt and oppressive regime. Part of the money flowed into personal accounts of Mobutu and his associates; part was used to finance the patronage and coercion on which the regime's control over the nation's internal resources rested. The powerful few, who thus benefited directly or indirectly from the creditors' largess, transferred much of their wealth to safe havens abroad. By 1990, cumulative capital flight from Zaire had reached US\$ 12 bn in real terms, and nearly US\$ 18 bn with imputed interest earnings.

It is extremely unlikely that the external debt inherited by Congo's new government will ever be repaid. *De jure* recognition of this *de facto* reality can come by either of two routes. In the first, the new government accepts liability and seeks debt rescheduling or write-offs as a reward for good behaviour. In the second, the new government refuses this liability, as a punishment for the past behaviour of the creditors. The doctrine of odious debt provides a legal foundation for the latter strategy.

This strategy has three merits. First and foremost, it would free the people of Congo from a heavy and unjust debt burden. A director of the African Development Bank underscored this point at a 1993 conference:

It is morally unfair for the strong and powerful institutions to continue to demand unbearable economic sacrifices from the poor as a condition for debt rescheduling from the London or Paris Clubs when we all know that there is money out there somewhere that can be used to lift the burden off the people's shoulders. (N. N. Susungi, quoted by Askin and Collins, 1993: 84)

Given the enormous price already paid by the people of Congo during Mobutu's rule, they should not need to ask the creditors to 'forgive' the debt; rather, it is for them to forgive the creditors who knowingly financed the regime.

Second, the strategy would enhance the incentive for the private and official creditors to seek to identify and recover the flight capital of Mobutu and his associates, as this could be used to repay odious and otherwise irredeemable debts. Much of the wealth looted from Zaire will never be recovered, having been well-hidden or dissipated on consumption and on efforts to shore up Mobutu's rule. In his final months in power, for example, Mobutu reportedly spent US\$ 50 m of 'his own money' to purchase weapons and mercenaries (Dellios, 1997). As a gesture of goodwill, however, the Congo government could offer to assist the creditors in locating private assets which are the counterpart of odious debts, just as some creditors have recently offered to help the new government in this search.

Finally, Congo's repudiation of its odious debts would have a chastening effect on creditors in future years, should they contemplate fresh loans to corrupt and oppressive regimes. If so, the Mobutu era will have yielded at least one positive legacy.

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