

## AFRICA RISK CONSULTING

### Botswana Monthly Briefing 21 September 2015

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#### Botswana Summary 21 September 2015

*President Ian Khama (2008-present) suspends four high court judges on allegations of fraud. The judges have a record of ruling against the government in court cases. Botswana signs a new two-year power rental contract with APR Energy Plc. National power utility Botswana Power Corp (BPC) is relying on temporary power rental to manage acute power shortages. Botswana will get its first uranium mine, following A-Cap Resources Ltd's application for a mining licence. This will diversify the mining profile, which is also ramping up coal and nickel production to complement diamond exports.*

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#### Khama suspends four judges

President **Ian Khama** (2008-present) has suspended four high court judges over fraud allegations involving government housing allowances.<sup>1</sup> Khama suspended **Key Dingake, Modiri Letsididi, Mercy Garekwe** and **Ranier Busang** on 1 September in order to allow an investigation into their receipt of housing allowances while they occupied state housing.<sup>2</sup> Chief Justice **Maruping Dibotelo** requested that Khama suspend the judges following the fraud allegations, in line with the constitution.<sup>3</sup> The judges deny fraudulently receiving allowances, saying that the justice ministry's accounting officer did not stop the payments despite their requests that they end.<sup>4</sup> The four judges are involved in a power struggle with Dibotelo, which reportedly led to his decision to hand them over to the police for a criminal investigation over the administrative issue.<sup>5</sup>

Several other judges also allegedly receive housing allowances despite occupying state housing, but have neither been reported to the police nor suspended.<sup>6</sup> The four suspended judges have threatened to sue Dibotelo for criminal defamation for escalating the matter, which the justice department could have resolved internally.<sup>7</sup> However, the registrar and master of the high court, **Michael Motlhabi**, indicated that the matter deserved referral to the police due to the large amount of money involved (BWP 800 000, or \$76,900).<sup>8</sup> Khama has since established a tribunal to investigate the suspended judges' conduct.<sup>9</sup> Section 97 (5) of the country's constitution empowers the president to dismiss the judges from office if the tribunal recommends it.<sup>10</sup> Retired **South African** Supreme Court of Appeal judge **Craig Howie** will chair the tribunal, assisted by local justices **John Foxcroft** and **Isaac Letesedi**.<sup>11</sup>

The suspended judges, through their lawyer **Patient Thuto**, have demanded that Khama reverse their suspension because it was based solely on the chief justice's claims, and not on proven charges of

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<sup>1</sup> Business Day, 4 Sep 2015

<sup>2</sup> Botswana Gazette, 3 Sep 2015

<sup>3</sup> Business Day, 4 Sep 2015

<sup>4</sup> Botswana Gazette, 3 Sep 2015

<sup>5</sup> Business Day, 4 Sep 2015

<sup>6</sup> Botswana Gazette, 3 Sep 2015

<sup>7</sup> Business Day, 4 Sep 2015

<sup>8</sup> Business Day, 4 Sep 2015

<sup>9</sup> Botswana Gazette, 3 Sep 2015

<sup>10</sup> Botswana Gazette, 3 Sep 2015

<sup>11</sup> Mmegi, 11 Sep 2015

misconduct.<sup>12</sup> Thuto also asked Khama to replace the tribunal's committee with judges who have no connection to the country's judicial system to ensure their independence.<sup>13</sup> However, attorney general **Athalia Molokomme** indicated that Khama would neither rescind his decision nor change the tribunal members since his actions were based on constitutional provisions.<sup>14</sup> Thuto disagreed, interpreting the constitutional provisions as providing for judges' suspension only when their continued function would prejudice the effective functioning of the judiciary.<sup>15</sup>

*"This case is symptomatic of the long standing contestation within the judiciary, which is divided between pro-Khama conservatives and anti-Khama liberals, who have a trail of anti-government rulings which have repeatedly embarrassed the president, despite seemingly proving the judiciary's independence from the executive. The political environment engendered by Khama since he took office has not typically allowed political dissenters to operate without repercussions. Khama has already made public statements expressing his concern with the judges' conduct, and it is very unlikely that they will return to the bench. As legal practitioners, the judges would have known that receiving and using the allowances while residing in government housing was fraudulent, despite the administrative factors contributing to this scenario. This points to an established practice of financial irregularities within the judiciary. Khama will thus use this case to flex his muscles and warn other judges of the consequences of making rulings against the government."*<sup>16</sup>

The suspended judges have a history of animosity with the government primarily through delivering judgments that contradicted its stance on various issues. For instance, Dingake ruled against the government in a case where it had denied foreign inmates access to antiretroviral medication in August.<sup>17</sup> He also ruled in favour of the **Lesbians, Gays, and Bisexuals of Botswana (LEGABIBO)**, which the government had prevented from registering as a non-governmental organisation (NGO) in November 2014.<sup>18</sup> Dingake also ordered the government to reinstate all government employees fired after a strike in 2011.<sup>19</sup> Motsididi dismissed a highly publicised case where the government had charged journalist **Outsa Mokone** with sedition, after he authorised a story alleging that Khama had tried to cover up a late-night vehicle accident in December 2014.<sup>20</sup>

### APR Energy commissions new Botswana project

**Alstom Power Rentals Energy Plc (APR)** has signed a two-year contract with **Botswana Power Corp (BPC)** to supply 35MW of electricity.<sup>21</sup> The company's relationship with Botswana dates back to 2009, when BPC contracted APR to install a 70MW temporary power station to supplement its electricity imports.<sup>22</sup> At its installation, the plant was the largest temporary power station of its kind in the **Southern African Power Pool**.<sup>23</sup> The new project increases APR's total energy supply to Botswana to 105MW.<sup>24</sup> BPC expansion and project chairperson **Franklin Modisenyane** said the additional plant is part of government efforts to alleviate the country's current electricity shortages.<sup>25</sup>

<sup>12</sup> Mmegi, 11 Sep 2015

<sup>13</sup> Mmegi, 11 Sep 2015

<sup>14</sup> Mmegi, 11 Sep 2015

<sup>15</sup> Mmegi, 11 Sep 2015

<sup>16</sup> Source, analyst, Botswana

<sup>17</sup> The Patriot, 31 Aug 2015

<sup>18</sup> BBC, 14 Nov 2015.

<sup>19</sup> The Patriot, 31 Aug 2015.

<sup>20</sup> The Patriot, 31 Aug 2015.

<sup>21</sup> APR Energy press release, 18 Sep 2015

<sup>22</sup> Market Watch, 18 Sep 2015

<sup>23</sup> Yahoo Finance, 27 May 2015

<sup>24</sup> Mmegi, 18 Sep 2015

<sup>25</sup> Market Watch, 18 Sep 2015

APR will install and operate the power plant next to BPC's existing power generator located outside **Francistown**, Botswana's second largest city.<sup>26</sup>

The plant will consist of diesel power generators that the company redeployed from a previous project in **Libya**, and will be operational by the end of September.<sup>27</sup> Its power supply will be a temporary measure to address power shortfalls during peak demand periods.<sup>28</sup>

*"Temporary power suppliers like APR provide an efficient and reliable electricity supply that Botswana desperately needs. They also provide operational staff and spares, which ensure a continual and uninterrupted service that matches demand."*<sup>29</sup>

BPC has also secured 50MW of power from the **Democratic Republic of Congo (DRC)**'s national power utility, **Société nationale d'électricité (SNEL)**, and 40MW from **Mozambique's Electricidade de Moçambique (EDM)** since January.<sup>30</sup> However, BPC spokesperson **Tihomamiso Selato** cautioned that power supply remains constrained, with power outages still possible.<sup>31</sup> Botswana has experienced acute power shortages due to technical failures at its **Morupule B** power plant and a reduction of imports from South Africa's state-owned power utility **Eskom**, which also faces power shortages.<sup>32</sup>

APR Energy is a **United States (US)**-based mobile turbine power business.<sup>33</sup> The company has been expanding its Africa contracts in recent years, with projects in **Senegal, Angola, Mali** and **Egypt**.<sup>34</sup> It currently provides approximately 300MW of generating capacity to national utilities and commercial clients across Africa.<sup>35</sup> APR is part of a growing electricity rental economy, used for events, construction projects, mining, post-disaster emergency relief, and providing seasonal supply to national power grids during periods of distress or peak demand.<sup>36</sup>

Temporary power generators often become semi-permanent due to governments' failure to speedily resolve electricity shortages.<sup>37</sup>

*"Only policy failure would explain why a country with substantial revenue like Botswana would rent mobile electricity supply to meet national demand. This is costly in the long term, and the government would be unable to make long term policies based on temporary energy. It may also delay the establishment of long-term solutions, which is what is happening in Botswana."*<sup>38</sup>

Temporary power plants can adjust to varying levels of demand in different contexts, thus increasing their utility in countries with distressed power grids.<sup>39</sup> They take relatively short times to set up, from a few days to a few weeks depending on the size of the project. Sector analysts forecast that the global power rental market will grow to \$17 billion in 2017, from \$7.8 billion in 2012.<sup>40</sup>

Rising industrialisation and urbanisation will drive demand for power rental, especially in Africa and Asia-Pacific.<sup>41</sup>

<sup>26</sup> International Rental News, 27 May 2015

<sup>27</sup> International Rental News, 27 May 2015

<sup>28</sup> Mmegi, 18 Sep 2015

<sup>29</sup> Source, analyst

<sup>30</sup> Mmegi, 18 Sep 2015

<sup>31</sup> Mmegi, 18 Sep 2015

<sup>32</sup> Mmegi, 18 Sep 2015

<sup>33</sup> Yahoo Finance, 27 May 2015

<sup>34</sup> APR Energy press release, 18 Sep 2015

<sup>35</sup> ESI Africa, 18 Sep 2015

<sup>36</sup> Power Mag, 7 Jan 2014

<sup>37</sup> Power Mag, 7 Jan 2014

<sup>38</sup> Source, analyst

<sup>39</sup> Power Mag, 7 Jan 2014

<sup>40</sup> Power Mag, 7 Jan 2015

<sup>41</sup> Whatech, 27 Aug 2015

*"[The government] has been granting licences to companies that are expanding mining projects beyond diamonds. Temporary power will not sustain this vastly increased demand for electricity. Now, economic expansion will either have to remain stalled until the government establishes sufficient domestic electricity generation, or it will increase the amount of power that it rents from APR."*<sup>42</sup>

### Botswana to have its first uranium mine

Botswana will have its first uranium mine following **A-Cap Resources Ltd's** application for a licence from the department of mines.<sup>43</sup> The **Australia**-based mining company conducted technical studies which showed that its **Lethlakane Uranium Project** in the country's north eastern region would produce up to 3.75 million pounds of ore in the first five years of an estimated 18-year mine life.<sup>44</sup> Botswana holds a total estimated 1.04 billion tonnes of uranium reserves.<sup>45</sup> The government has issued prospecting licences since 2006, when prospectors first discovered uranium in Botswana, although mining companies delayed production mainly due to depressed global uranium prices in the last decade.<sup>46</sup> However, uranium prices revived to a five-month high of \$37.35 per pound in September.<sup>47</sup> In a statement, A-Cap said that it would establish the mine with a capital expenditure worth \$351m.<sup>48</sup> It plans to export the uranium to international markets through **Walvis Bay Port in Namibia**.<sup>49</sup> The mine will provide jobs to local residents surrounding the mine, especially the town of **Selebi Phikwe**.<sup>50</sup> The Lethlakane mine site is ideal because of its location close to roads, a railway network and power lines.<sup>51</sup>

A-Cap Resources submitted an environmental and social impact assessment report to the environmental affairs department in May.<sup>52</sup> CEO **Paul Thomson** said that the company is continuing work to improve its understanding of the uranium mining project's economic and technical aspects, and anticipates commencing production during the second quarter of 2016.<sup>53</sup> Thomson said that future estimates show increased global uranium demand will outstrip supply.<sup>54</sup> Demand will emanate primarily from **China, South Korea, India, Japan, Taiwan, Pakistan, Bangladesh, Indonesia, Thailand and Vietnam**.<sup>55</sup> He stated that global uranium demand is growing 3% annually, and that nuclear is the fastest growing energy source globally along with renewable energy.<sup>56</sup> Demand for uranium fell when Japan's **Fukushima Daichi** reactor leaked following an earthquake and tsunami in 2011, increasing international concern about the safety and viability of nuclear power generation.<sup>57</sup> Japan had closed all its nuclear facilities by September 2013, and other countries such as **Germany** and **Switzerland** followed suit.<sup>58</sup> However, Japan, which was also the world's largest nuclear power generator behind the US and **France** before 2011, has since decided to restart all its nuclear

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<sup>42</sup> Source, analyst

<sup>43</sup> Creamer Media, 11 Sep 2015

<sup>44</sup> Creamer Media, 11 Sep 2015

<sup>45</sup> Mining.com 11 Sep 2015

<sup>46</sup> Reuters Africa, 11 Sep 2015

<sup>47</sup> Reuters Africa, 11 Sep 2015

<sup>48</sup> Reuters Africa, 11 Sep 2015

<sup>49</sup> The Voice, 19 Sep 2015

<sup>50</sup> The Voice, 19 Sep 2015

<sup>51</sup> Reuters Africa, 11 Sep 2015

<sup>52</sup> Creamer Media, 11 Sep 2015

<sup>53</sup> Botswana Gazette, 13 Feb 2015

<sup>54</sup> The Voice, 19 Sep 2015

<sup>55</sup> Mmegi, 31 Aug 2015

<sup>56</sup> The Voice, 19 Sep 2015

<sup>57</sup> Market Watch, 18 Sep 2015

<sup>58</sup> Market Watch, 18 Sep 2015

reactors.<sup>59</sup> This has increased expectations for increased long-term demand from Japan and other countries in Asia that use nuclear-generated electricity.<sup>60</sup>

### Implications

Khama's recent suspension of high court judges contributes to Botswana's growing reputation of authoritarianism. Although the judiciary could have resolved the issue internally, Khama is using the dispute to settle political scores, which will intimidate judges and weaken judicial independence. A growing culture of political intimidation may tarnish Botswana's image as the most democratic political system in **sub-Saharan Africa**. The case highlights continued polarisation in Botswana's domestic politics. Khama's rule has accommodated little dissent from opposition political parties, workers' unions, the media, and now the judiciary. Although the judiciary's frequent rulings against the government have increased perceptions of its independence, the recent suspensions will challenge this.

The government's increased use of rented power is a pragmatic response to the current power crisis. It will reduce its dependence on power imports, but would prove costly and unsustainable in the long term, making more permanent domestic power generation imperative. A better investment of government funds would be to contract a reliable engineering company to resuscitate Morupule B. Better still, the government should establish multiple-type electricity generation, using a variety of methods such as coal, diesel, or solar.

Botswana's impending uranium production and exports will open a new revenue channel not related to diamonds. However, the global uranium market is unstable despite positive indicators for demand due to concerns over the safety of nuclear energy. Uranium is a toxic mineral and Botswana will have to implement stringent safety measures to avoid soil, air and water contamination. Botswana is yet to improve its domestic power supply to support increased mining projects and this may inhibit the level of mineral production.

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<sup>59</sup> Market Watch, 18 Sep 2015

<sup>60</sup> Market Watch, 18 Sep 2015

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