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The Commission Electorale Nationale Indépendante (CENI) [national independent electoral commission] delays elections of provincial governors two months from 13 August to 6 October. The opposition fears that this is the first of many delays to the electoral timetable that CENI agreed in February. A new hydrocarbons code includes a 35% capital gains tax on producers and a minimum 20% government stake in all projects. It also includes mandatory public procurement processes for all concessions. Martin Kobler, head of the Mission de l'Organisation des Nations Unies pour la Stabilisation en RD Congo (MONUSCO), reports on progress to the United Nations (UN). After a difficult year and poor relations with the government, there are concerns over how effective MONUSCO can be in stabilising the country.

CENI postpones governor elections from August to October

The **Commission Electorale Nationale Indépendante (CENI)** (national independent electoral commission) has delayed elections for provincial governors from 31 August until 6 October.¹ CENI made the announcement on its website on 28 July citing a lack of electoral infrastructure in some regions.² The **Democratic Republic of the Congo (DRC)** government is in the process of splitting its 11 provinces into 26, of which 21 will be newly defined provincial areas.³ In some provinces the transition is progressing slowly. This has complicated the process of electing governors as many of the new regions lack the infrastructure to hold elections.⁴

*"The new timetable compressed many things [including the governor elections]...CENI needs more time to carry these elections out...many [new] provinces don't have electoral administrators appointed."*⁵

The delay is the first deviation from the fixed electoral timetable that CENI set in February 2015 (see *ARC Briefing DRC February 2015*). Observers are divided over whether the delay is a sensible measure to ensure that appropriate infrastructure is in place to hold an election or whether it is the first step in postponing the presidential elections currently scheduled for 27 November 2016. Opposition figures are vocal in condemning CENI's move as the start of a creeping delay of the 2016 presidential election:

*"If CENI cannot meet its own timetable the door is open for the 'sliding' of the presidential election back past December 2016 deadline."*⁶

The fixed electoral timetable is hard won. As recently as December 2014 there was considerable doubt over whether Kabila would allow elections to go ahead.⁷ There is still doubt whether Kabila will attempt to stand for a third term.⁸

¹ CENI press release, 28 Jul 2015

² CENI press release, 28 Jul 2015

³ Radio Okapi, 22 Jul 2015

⁴ Radio Okapi, 22 Jul 2015

⁵ Source, government MP, Kinshasa

⁶ Source, opposition MP, Kinshasa

⁷ See ARC Briefing DRC January 2015

⁸ Jeune Afrique, 28 Jul 2015

The governor elections are important in signalling the results of next year's general elections. They serve as a poll of public opinion for and against the many parties that make up the government and opposition in DRC. **Katanga** province, Kabila's home state, will be particularly closely watched. Katanga will divide into four new provinces: **Tanganyika, Haut-Lomani, Lualaba** and **Haut-Katanga**.⁹ Former governor **Moise Katumbi** is widely regarded as a potential replacement for Kabila if he steps down in 2016.¹⁰ Katumbi will not stand for any of the new provincial governorships; however, local media reports that many of his deputies, who are reportedly loyal to Katumbi, will stand. Katanga is also home to the country's extensive reserves of copper and cobalt. It also has security risk: the secessionist **Bakata Katanga 'Mai-Mai'** militia active in the **Pweto** region, are fighting to make Katanga a separate country: they have displaced 180,000 people since 2012.¹¹

The date for submission of candidacy for provincial governor was previously 27 July and is now 28 August. The start of campaigning has moved from 27 August to 2 October.¹²

New hydrocarbons law: 35% capital gains tax but mandatory public tenders

Parliament has passed the new petroleum code which now awaits Kabila's signature.¹³ The government promised that the long-awaited legislation, passed on 25 June, would increase government oversight and profitability in the sector. The hydrocarbons ministry has not released the full text of the code but **Assemblée Nationale** president **Aubin Minaku**, has confirmed a number of details. The new law includes:

- a 35-40% capital gains tax (CGT) on producers
- a minimum 20% stake by the state in all projects
- mandatory public tenders for all concessions and exploitation permits
- provision for the government to publish the names of all bidders for these permits.

Analysts are concerned that the bill will allow the secrecy that typifies many natural resources deals in DRC to continue. The new law will not require the government to reveal the ultimate beneficiaries of bidding companies.¹⁴ It also contains no provisions describing what criteria companies bidding for concessions might need to fulfil, or provisions that compel the government to reveal what these might be.¹⁵ This allows government officials to continue to operate in an opaque way, raising the risk of corruption:

*"The new regulations, if they were implemented well, could make a big difference to this sector...but there are many ways to get around their provisions so corruption will continue."*¹⁶

Lack of transparency is an ongoing risk to investors in the natural resources sectors in DRC. The new law replaces the current 1981 code which is widely considered to be obsolete. The old law allowed the government to grant concessions through production sharing agreements negotiated between local individual officials, state-owned enterprises and resources companies. This has allowed pockets of corrupt officials to operate without oversight in the resources sector.¹⁷

The process of revising the code has also been non-transparent. The government reportedly did not consult oil companies¹⁸ and there are reports that neither opposition MPs nor the hydrocarbons ministry had seen a copy of the bill when it was debated in parliament.¹⁹ A further concern is that

⁹ Jeune Afrique, 28 Jul 2015

¹⁰ Jeune Afrique, 28 Jul 2015

¹¹ MONUSCO security briefing, Dec 2014

¹² CENI press release, 28 Jul 2015

¹³ Reuters, 16 Jul 2015

¹⁴ Africa Report, 18 Jul 2015

¹⁵ Reuters, 16 Jul 2015

¹⁶ Source, think-tank director, Kinshasa

¹⁷ Reuters, 16 Jul 2015

¹⁸ Reuters, 16 Jul 2015

¹⁹ Radio Okapi, 16 Jun 2015

Kabila will use his mandate to adjust the bill to significantly alter the legislation, as he did with the agriculture code in 2011.²⁰

The DRC currently produces 25,000 barrels of oil per day, making it one of Africa's smallest producers. Oil production contributes \$500m to the budget per year, and a significant proportion of gross domestic product (GDP).²¹ Only one oil company is currently producing: **United Kingdom (UK)** and **France-based Perenco** that operates oil wells in the **Congo River** delta.²² However, France-based **Total**, **South Africa-based SacOil**, and **Oil of DR Congo**, a company owned by **Israeli** businessman **Dan Gertler**, are exploring concessions around **Lake Albert** in the north of DRC.²³ Oil of DR Congo reported in August 2014 that there could be 1.5 billion barrels of oil reserves in their region (see *ARC Briefing DRC August 2014*). However more conservative estimates place oil output from DRC in 5 years' time between 200,000 and 300,000 barrels per day.²⁴

MONUSCO's role in DRC: what does the future hold?

Mission de l'Organisation des Nations Unies pour la Stabilisation en RD Congo (MONUSCO) chief **Martin Kobler** reported to the **United Nations (UN) Security Council (UNSC)** on 15 July on MONUSCO's progress in increasing the DRC's stability over the past year.²⁵ Kobler is moving on to the head of the **UN Office for the Coordination of Humanitarian Affairs (OCHA)** later this year, and this is his final assessment of DRC for the council.²⁶

The year covering 2014/2015 has been difficult for MONUSCO. It has been unable to follow the success of the 2013/2014 joint operation with the **Forces Armées de la RDC (FARDC)** against the **M23** rebel group:

- The amnesty for members of the **Forces démocratiques de libération du Rwanda (FDLR)** lasted 11 months and resulted in only a few hundred of the **Rwandan Hutu** insurgency turning themselves in.²⁷
- MONUSCO did not participate in joint military operations in February with the FARDC against the FDLR in **South Kivu** province because the FARDC appointed two generals that allegedly carried out war crimes during the **Second Congo War** (1998-2003).²⁸ The government has declared the FARDC's unilateral action against the FDLR a success;²⁹ however, security observers in the region report the army has not managed to kill or apprehend the rebels in significant numbers.³⁰
- The security situation around the city of **Beni** in **North Kivu** has deteriorated as militants of the **Ugandan** insurgency, the **Allied Democratic Forces (ADF)**, have carried out night-time raids against towns and villages in the area, killing hundreds of people.³¹ MONUSCO has been unable to improve the security situation, although recent reports suggest that MONUSCO forces are 'informally' aiding FARDC security forces.

Kobler reported to the UNSC that MONUSCO's success rests on "*a continued, constructive, partnership with the Government*".³² Following MONUSCO's refusal to cooperate with the FARDC against the FDLR, the DRC government has tried to negotiate a reduction in the size of the mission. In March the government requested that the UN halve the size of the mission, 22,300 troops at the time. The UNSC

²⁰ Reuters, 18 Jul 2015

²¹ Africa Report, 18 Jul 2015

²² Perenco website, 2015

²³ Africa Report, 18 Jul 2015

²⁴ Reuters, 16 Jul 2015

²⁵ Radio Okapi, 15 Jul 2015

²⁶ African Arguments, 25 Jun 2015

²⁷ See ARC Briefings DRC March 2014-January 2015

²⁸ See ARC Briefing DRC February 2015

²⁹ Reuters, 15 Jul 2015

³⁰ Source, NGO worker, Goma

³¹ Radio Okapi, 21 Jul 2015

³² Radio Okapi, 15 Jul 2015

approved a reduction of 2,000 troops, leaving 20,300 troops in country (see *ARC Briefing DRC March 2015*). Following the ruling, the government and MONUSCO have committed to dialogue in order to overcome their differences. The government's goal remains clear – a reduction of UN forces:

"The government wanted to get through the dialogue what they couldn't get at the Security Council: troop reductions."³³

MONUSCO has little incentive or mandate to reduce troops: there are still 2.8m people displaced in DRC, and they have made little progress in their other key mandate of training police and the armed forces.³⁴ MONUSCO also has a role to play in securing the electoral process, which will run from 2015-2017. It is unclear how MONUSCO will be able to carry out this role. Kobler tried to facilitate a political dialogue in 2014 but Kabila ended the dialogue and publicly reprimanded Kobler for moving into political territory.³⁵ Some observers in DRC believe that the Kabila administration wants MONUSCO out of the country in order to be able to tamper with the electoral process:

"It is no accident that the government asks for fewer MONUSCO troops when they have finally signed up to an electoral timetable."³⁶

There are some signs that greater cooperation could occur. The FARDC and MONUSCO carried out a successful joint operation in **Ituri Province** against the **Forces de Résistance Patriotique d'Ituri (FRPI)** in June and July.³⁷ One of MONUSCO's most successful missions was the 2005/2006 peacekeeping mission in Ituri, so the recent operation took place on familiar ground with friendly local forces. However, there will be no cooperation in the more urgent missions against the ADF and FDLR.³⁸ According to experienced observers of DRC the government remains:

"...fundamentally antagonist to MONUSCO...there is no reason we should believe that they [MONUSCO] will be permitted to police the election campaign or even carry out effective placement of the millions of displaced people...the government remains the prime obstacle to many of MONUSCO's goals."³⁹

Implications

It is unlikely that CENI is delaying the governor elections explicitly to push back the general election. However, in delaying the governor elections it sets a precedent for delays further down the line. The government could have laid much of the groundwork for the new provinces over the past few years. A combination of a lack of political will and inefficiency at the local and national levels has meant that all of the work needs to be done at once. Even if Kabila did not plan this delay, he can turn it to his advantage. However, he is under too much political pressure to avoid the elections entirely.

The new hydrocarbons law has some disconcerting clauses for potential investors, notably the CGT and the 20% government stake. However, low oil prices are likely to be more of a deterrent to exploration than these conditions, especially if there are significant reserves. The requirement for a public procurement process pays lip service to transparency. Who is bidding for a concession can quickly become a matter of public record; how it is awarded is the important point. This process will remain opaque so the corruption risk remains.

MONUSCO has spent most of the past ten years unable to operate effectively. The government's antagonism towards it is nothing new; indeed some analysts believe that the government appointed the offending generals to keep MONUSCO out of the FDLR campaign. It was also the government that delayed the military action that MONUSCO wanted to carry out in March 2014. MONUSCO has made

³³ Source, UN official, from Congosiasa, 15 Jul 2015

³⁴ Congosiasa, 15 Jul 2015

³⁵ Jeune Afrique, 17 Jul 2015

³⁶ Source, opposition MP, Kinshasa

³⁷ Jeune Afrique, 17 Jul 2015

³⁸ Congosiasa, 15 Jul 2015

³⁹ Source, journalist with significant DRC experience, Nairobi

unwise decisions – including the decision not to join the FDLR campaign, which has given the government good reason to try to throw it out. However, since 2013, Kobler has managed to involve MONUSCO in more security operations than any of his predecessors. His successor will have to play a more complex political game if there is any hope of MONUSCO trying to guarantee a peaceful and transparent transfer of power in 2016.

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