

## AFRICA RISK CONSULTING DRC Monthly Briefing November 2017

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### DRC Summary 23 November 2017

*The Commission Electorale Nationale Indépendante (CENI) (independent national electoral commission) announces that the long-delayed elections in the Democratic Republic of the Congo (DRC) will be held on 23 December 2018. United States (US)-based non-governmental organisation (NGO), the Carter Center, alleges that close to \$750m paid by international mining companies to DRC's state-owned mining company, Gecamines, is missing from Gecamines' accounts. Leaked information from the Paradise Papers alleges that Switzerland-based Glencore Plc made secret loans to Dan Gertler, to secure mining rights in the DRC.*

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### Election commission states that elections to be held in December 2018

The president of the **Commission Electorale Nationale Indépendante (CENI)** (independent national electoral commission), **Corneille Nangaa**, stated on 5 November that the long-delayed elections in the **Democratic Republic of the Congo (DRC)** will be held on 23 December 2018.<sup>1</sup> The CENI said it would hold presidential, legislative and provincial polls on the same day.<sup>2</sup> The announcement comes just weeks after the CENI said the earliest it would be able to hold an election was in April 2019 (see *ARC Briefing DRC October 2017*). International donors had balked at delaying elections until 2019 and **United States (US)** envoy to the **United Nations (UN)**, **Nikki Haley**, stated in a meeting with DRC President **Joseph Kabila** (2001-present) that elections will have no international support unless they take place in 2018.<sup>3</sup> Haley said,

*"...we will work closely with the DRC, the UN, and our partners to ensure President Kabila and his government stick to this timeline, encourage full peaceful participation and freedom of speech, and do not permit any further delay."*<sup>4</sup>

**Jason Stearns**, a DRC expert and head of the **Congo Research Group**, said that pressure by international donors such as the US appears to have influenced the change, although this change comes without guarantees:

*"We knew elections would not be held this year. What is more surprising is the relatively arbitrary change in dates: the commission had initially said it would take them exactly 504 days after voter registration to hold elections. Then suddenly, after Nikki Haley asked them to hold elections in 2018, they somehow cut that period down to 300 days. It appears they made that change just to satisfy donor pressure, with few guarantees whether this schedule will be respected."*<sup>5</sup>

Local opposition parties have stated that they accept the new election date, but only if Kabila steps down at the end of 2018 as per the December 2017 agreement (see *ARC Briefing DRC December 2017*), and is replaced by a transitional government.<sup>6</sup> The opposition coalition, the **Rassemblement**, and opposition leader **Felix Tshisekedi**, have refused further dialogue unless it involves discussions on

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<sup>1</sup> EWN, 5 Nov 2017.

<sup>2</sup> IOL, 6 Nov 2017.

<sup>3</sup> EWN, 5 Nov 2017.

<sup>4</sup> News24, 7 Nov 2017.

<sup>5</sup> Al Jazeera, 9 Nov 2017.

<sup>6</sup> IOL, 6 Nov 2017.

when Kabila will step down.<sup>7</sup> Opposition leader **Moïse Katumbi**, who was due to return to the DRC in December to contest the presidential elections, said that

*“...the predatory regime wants to prolong the instability and misery of the people. We do not accept this fantasy calendar.”<sup>8</sup>*

Katumbi has not stated whether he still plans to return to the DRC from **Brussels** in December.<sup>9</sup> It is also unclear whether Kabila will attempt to remain in power until the scheduled elections or step down at the end of 2018. Kabila and his government have been silent on the issue and have also stayed silent on regional efforts to come to an agreement. The **Southern African Development Community (SADC)** has attempted to send a special envoy for peace, former **Namibian** president **Hifikepunye Pohamba** (2005-2015), to DRC to aid the peace process, but regional media report that Kabila has stated he is not willing to meet with Pohamba.<sup>10</sup>

Locally, a DRC pro-democracy group, **Lutte Pour La Changement (Lucha)** (struggle for change), has asked the DRC population to stop paying “*taxes, fees, royalties and licences of all the state services*” in an attempt to force Kabila to step down.<sup>11</sup> The group is also planning a ‘final assault’ on 28 November where people will “*completely block the country, and keep it up until the fall of the Kabila regime.*”<sup>12</sup> However, it is unlikely that this initiative will gain traction as the DRC security services have proven they are willing to fire on civilians, as evidenced on 18 November when police opened fire on an opposition rally in **Kikwit**, injuring six people.<sup>13</sup>

If all goes to plan, the electoral results would be published on 9 January 2019 and the president sworn in on 13 January 2019.

### **DRC unable to account for close to \$750m in mining revenue**

US-based non-governmental organisation (NGO), the **Carter Center**, alleges that close to \$750m paid by international mining companies to DRC’s state-owned mining company, **Gecamines**, is missing from Gecamines’ accounts.<sup>14</sup> The Carter Center stated that royalties, signing bonuses and asset-sales proceeds from over 20 copper deals with Gecamines between 2011 and 2014 cannot be accounted for.<sup>15</sup> Some of the missing funds can reportedly be tracked to

*“...specific destinations, including debt repayments, asset acquisitions, and modest infrastructure investing, [though] the bulk of the missing revenue could not be traced.”<sup>16</sup>*

Gecamines acts as the gatekeeper to the DRC mines, rather than a mining registry. It has retained its permits on the mines which it then sells in part or in whole to international mining companies.<sup>17</sup> From these transactions, Gecamines has collected more than \$1.5 billion from 2009 to 2014, though the Carter Center alleges that only 5% of these funds was deposited into the DRC’s treasury.<sup>18</sup>

The Carter Center report also alleges that **Sicomines**, a **China**-DRC joint venture in a copper mine, received \$1.163 billion in loans between 2008 and 2014 to spend on infrastructure, but that it disbursed just \$478m.<sup>19</sup> Chinese institutions provide the loans to Sicomines to develop the mine and

<sup>7</sup> News24, 31 Oct 2017.

<sup>8</sup> CNBC Africa, 6 Nov 2017.

<sup>9</sup> ENCA, 7 Nov 2017.

<sup>10</sup> Southern Times, 17 Nov 2017.

<sup>11</sup> News24, 7 Nov 2017.

<sup>12</sup> News24, 7 Nov 2017.

<sup>13</sup> News24, 20 Nov 2017.

<sup>14</sup> Bloomberg, 3 Nov 2017.

<sup>15</sup> Bloomberg, 3 Nov 2017.

<sup>16</sup> Bloomberg, 3 Nov 2017.

<sup>17</sup> Bloomberg, 3 Nov 2017.

<sup>18</sup> Bloomberg, 3 Nov 2017.

<sup>19</sup> Business Live, 13 Nov 2017.

surrounding areas and the profits from Sicominex are used to repay the debt.<sup>20</sup> The mining project does not pay any tax until the debt, which is capped at \$3 billion, is repaid in full.<sup>21</sup> The DRC government department that oversees the loan programme, the **Bureau de Coordination et de Suivi du Programme Sino-Congolais (BCPSC)** (Office for Coordination and Monitoring of the Sino-Congolese Programme), rejected the Carter Center's findings.<sup>22</sup> The Carter Center maintains that the BCPSC,

*"... did not provide an explanation of the discrepancy or the allocation of the remaining \$685m."*<sup>23</sup>

BCPSC executive secretary, **Moïse Ekanga**, said that Sicominex had limited its first phase of infrastructure costs to just \$1.05 billion, so he was surprised that the Carter Center had stated that it received \$1.163 billion, adding that he

*"... [doesn't] know where the center pulled this information, but it has no foundation."*<sup>24</sup>

The Carter Center's allegations of corruption shed more light on the potentially large revenue which could be used by the DRC government for infrastructure and social services, but is instead transferred to local and international elite in the mining industry.

### Glencore alleged to have made secret loan to secure DRC mining rights

Switzerland-based **Glencore Plc** is alleged to have made secret loans to **Israeli** businessman **Dan Gertler** to secure mining rights in the DRC, according to reports on 5 November.<sup>25</sup> Documents in the **Paradise Papers**, a leaked cache that includes documents from leading off-shore law firm **Appleby**, appear to show that Glencore loaned Gertler's company, **Lora Enterprises**, \$45m in shares in 2009 with a caveat that the loan would be repayable only if a mining agreement with the DRC was not reached.<sup>26</sup> Gertler is reportedly close with President Kabila.<sup>27</sup> The \$45m loan was part of a larger \$265m loan to the struggling **Katanga** mine, which was later converted into equity and gave Glencore majority shares in the mine.<sup>28</sup> Gertler's lawyers reject the allegations, stating that

*"... to the extent such agreement is alleged to relate to Mr. Gertler, it did so without any participation by him or any opportunity to provide any comment whatsoever... Mr. Gertler rejects absolutely any allegations of wrongdoing or criminality by him."*<sup>29</sup>

The Paradise Papers reveal that Glencore asked Gertler to assist with negotiations with DRC officials in 2008 and 2009 to enter into a joint venture with Gecamines for the Katanga copper mine in southeastern DRC.<sup>30</sup> Glencore took control of the Katanga mine in 2009, and Gertler retained his \$45m in shares in the company. Glencore states that the loan "*was made on commercial terms negotiated at arm's length*," while Lora Enterprises states that the loan was fully repaid by 2010. Glencore bought Gertler's assets in the Katanga mine in February 2017 for \$534m.<sup>31</sup> The buyout was seen as a move to distance Glencore from Gertler.<sup>32</sup>

<sup>20</sup> Business Live, 13 Nov 2017.

<sup>21</sup> Business Live, 13 Nov 2017.

<sup>22</sup> Business Live, 13 Nov 2017.

<sup>23</sup> Business Live, 13 Nov 2017.

<sup>24</sup> Business Live, 13 Nov 2017.

<sup>25</sup> The Guardian, 5 Nov 2017.

<sup>26</sup> The Guardian, 5 Nov 2017.

<sup>27</sup> Daily Maverick, 13 Nov 2017.

<sup>28</sup> The Telegraph, 6 Nov 2017.

<sup>29</sup> The Guardian, 5 Nov 2017.

<sup>30</sup> The Guardian, 5 Nov 2017.

<sup>31</sup> The Guardian, 5 Nov 2017.

<sup>32</sup> The Telegraph, 6 Nov 2017.

The Paradise Paper allegations led the **Canada-based Ontario Securities Commission (OSC)** to begin investigations into **Toronto Stock Exchange (TSE)**-listed **Katanga Mining**.<sup>33</sup> The OSC is investigating the accuracy of Katanga's financial reporting, the adequacy of its corporate governance practices and the conduct of some of its directors and officers.<sup>34</sup> The investigation also led to a Glencore internal review, which found that Katanga had failed to disclose compensation paid to some executives and overstated copper output in 2014, as well as examples where senior management were responsible for overriding control processes.<sup>35</sup> The OSC is also reportedly investigating \$100m in payments that were supposed to be paid to Gecamines, but were allegedly paid to **Africa Horizons Investment Ltd**, a firm controlled by Gertler's **Fleurette Group**.<sup>36</sup> Four executives have voluntarily stepped down following this review: Glencore's head of copper, **Aristotelis Mistakidis** and executives **Liam Gallagher** and **Tim Henderson**, as well as Katanga Mining's chief financial officer (CFO), **Jacques Lubbe**.<sup>37</sup> Glencore appointed several new executives to Katanga Mining's board on 20 November, including Glencore CFO, **Steven Kalmin**.<sup>38</sup>

Despite the allegations, Glencore's share price dropped only slightly, followed by a regain.<sup>39</sup> Glencore's stock price is likely to remain high as long as demand continues for the minerals needed for rechargeable batteries, such as cobalt and lithium, of which the DRC has a huge supply.<sup>40</sup> Glencore has attempted to distance itself from Gertler, but has likely made connections within the Kabila regime. However, it is as yet unclear if Kabila will step down at the end of the year, and if he does, whether the transitional government will be as friendly to Glencore as the Kabila regime.

### Planner

13 Jan 2019 **(DRC)** President to be sworn into office;  
 9 Jan 2019 **(DRC)** Electoral results published;  
 23 Dec 2018 **(DRC)** President, legislative and provincial elections scheduled;  
 31 Dec 2017 **(DRC)** Final date for elections to be held as per the December 2016 agreement;  
 28 Nov 2017 **(DRC)** Proposed country-wide strike in the DRC

### Chronology

18 Nov 2017 **Kikwit (DRC)** *News24*. DRC police open fire, injuring six people, at an opposition rally;  
 17 Nov 2017 **Kasai/Lomani (DRC)** *CajNews*. More than 800 people are reported dead in a cholera epidemic in the Kasai and Lomani provinces;  
 15 Nov 2017 **Toronto (Canada)** *Mining MX*. Canada-based **Banro Corp** reports that it needs liquid capital to service its debt and provide working capital for its DRC operations;  
 14 Nov 2017 **Kinshasa (DRC)** *News24*. **Amnesty International** reports that leading technology and electric car companies are not doing enough to ensure that minerals are not mined using child labour;  
 13 Nov 2017 **Johannesburg (South Africa)** *IOL*. South Africa and the DRC agree to remove

<sup>33</sup> Fin24, 20 Nov 2017.

<sup>34</sup> Fin24, 20 Nov 2017.

<sup>35</sup> IOL, 21 Nov 2017.

<sup>36</sup> The Telegraph, 6 Nov 2017.

<sup>37</sup> Fin24, 20 Nov 2017.

<sup>38</sup> IOL, 21 Nov 2017.

<sup>39</sup> www.markets.ft.com

<sup>40</sup> FT, 2 Mar 2017.

trade hurdles that hinder business interactions between the two countries;

11 Nov 2017 **Kinshasa (DRC)** *News24*. DRC government spokesperson **Lambert Mende** says that international pressure for elections is due to greed for DRC's "immense strategic natural resources";

6 Nov 2017 **South Kivu (DRC)** *Times Live*. Clashes begin in **Bukavu** as DRC troops attempt to disarm **Colonel Abbas Kayonga**, who was dismissed from his post;

5 Nov 2017 **Kinshasa (DRC)** *News24*. CENI sets 23 December 2018 as the scheduled election date;

5 Nov 2017 **(DRC)** *The Guardian*. The **Paradise Papers** reveal that **Glencore** made a secret loan to an **Israeli** businessman in return for assistance in negotiating an agreement for the **Katanga** mine;

30 Oct 2017 **Goma (DRC)** *ENCA*. Four civilians and one DRC policeman killed in clashes in anti-Kabila demonstrations;

28 Oct 2017 **Kinshasa (DRC)** *ENCA*. US Ambassador Haley states that the DRC must hold elections by the end of 2018

23-28 Oct 2017 **(DRC) United States (US)** ambassador to the **United Nations, Nikki Haley**, travels to **Ethiopia, South Sudan** and the DRC;

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