

AFRICA RISK CONSULTING DRC Monthly Briefing December 2018

DRC Summary 18 December 2018

Democratic Republic of the Congo (DRC) voters prepare for elections on 23 December, but lead-up events have increased the risk of conflict before, during and after the elections. Kinshasa electoral officials struggle to organise new electronic voting machines after a fire destroys 80% of Kinshasa's voting materials. The European Union renews sanctions on presidential candidate Emmanuel Ramazani Shadary, while opposition leaders Felix Tshisekedi and Vital Kamerhe form an alliance and officially split the opposition coalition. President Joseph Kabila (2001-present) makes several media statements that he may return to politics in 2023. Canada-based Katanga Mining, a subsidiary of Switzerland-based mining giant Glencore, agrees to pay a \$22m settlement to the Canada-based Ontario Securities Commission (OSC) over allegations that it failed to comply with disclosure requirements, particularly over the risks of doing business with Israel-based businessman Dan Gertler.

All signs point to a Shadary victory in DRC elections ...

Two years after **Democratic Republic of the Congo (DRC)** President **Joseph Kabila's** (2001-present) mandate expired, it appears that the DRC will finally hold elections on 23 December. Although Kabila's name is not on the ticket, his influence unmistakably is, and even the most optimistic analyst would find it hard to say that the DRC will experience any kind of significant political transition. A continually fracturing opposition makes it likely that Kabila's chosen candidate, **Emmanuel Ramazani Shadary**, will win the elections. Casting doubt on whether elections will be able to run smoothly, an arson attack destroyed ballot papers and electronic voting machines in **Kinshasa** on 13 December.¹ The DRC has also firmly rejected any bilateral offers of election observers to monitor the integrity of the electoral process.²

Even if elections turn out to be free and fair, Shadary is almost assured of victory, as the planned opposition coalition has not worked. Opposition leaders met in **Geneva (Switzerland)** in early November to choose a joint candidate in the elections (see *ARC Briefing DRC November 2018*). To the surprise of many, they chose minor party **Engagement pour la citoyenneté et le développement (ECiDé)** leader **Martin Fayulu** as their candidate on 11 November.³ **Union pour la démocratie et le progrès social (UDPS)** leader **Felix Tshisekedi** and **Union pour la nation congolaise (UNC)** leader **Vital Kamerhe** withdrew from the agreement a day later, claiming their supporters had asked them to do so.⁴ Tshisekedi and Kamerhe then formed a joint ticket on 23 November, with Tshisekedi for president and Kamerhe as prime minister.⁵ Tshisekedi reportedly felt "tricked" by Fayulu and other opposition leaders, whom he believed had supported him as the joint candidate during the Switzerland negotiations.⁶ Fayulu, as well as former finance minister **Freddy Matungulu** and former prime minister **Adolphe Muzito**, reportedly switched and backed Fayulu, eliminating Tshisekedi's opportunity.⁷ Fayulu denies this, and it is impossible to know if it is true considering Tshisekedi's statement after the meeting that he withdrew his support due to pressure from his political party, not

¹ Reuters, 13 Dec 2018

² Daily Maverick, 4 Dec 2018

³ Daily Nation, 11 Nov 2018

⁴ Jeune Afrique, 12 Nov 2018

⁵ News24, 23 Nov 2018

⁶ Jeune Afrique, 16 Dec 2018

⁷ Jeune Afrique, 16 Dec 2018

due to trickery. The opposition is now split. The most popular opposition leader, **Jean-Pierre Bemba** – whom the **Commission Electorale Nationale Indépendante (CENI)** (national independent electoral commission) barred from running⁸ – is backing Fayulu against the second most-popular leader, Tshisekedi. The fractured opposition will help Shadary, who can use Kabila’s massive patronage network to find the votes needed, to legitimately win.

In the lead up to the elections, the **European Union (EU)** renewed its sanctions on Shadary, as well as 13 other senior DRC officials, for one year on 10 December.⁹ The EU initially imposed sanctions in May 2017 on Shadary, who was then interior minister, and 15 individuals over the government's violent response to protests over the repeatedly delayed elections.¹⁰ The sanctions freeze all EU-based assets and ban travel to the EU for the sanctioned individuals, which, in regular cases, would be detrimental for a prospective head of state. However, EU-DRC relations have worsened since Kabila refused to step down and are unlikely to improve after the elections with a Shadary victory. However, EU foreign policy chief **Federica Mogherini** said the EU could review its sanctions decision “*in light of and following*” the elections.¹¹ Kabila ratcheted up the rhetoric after the sanctions renewal, stating that

“...there will be [retaliatory] measures, definitely, because we believe those sanctions are politically motivated. We are not talking about expelling anyone but definitely we will have to pay back in kind one way or another.”¹²

Two individuals removed from the EU sanctions list are now on a **United Nations (UN)** sanctions list.¹³ DRC foreign minister **Raymond Tshibanda N’Tungammulongo** had asked Mogherini to lift or suspend the sanctions, although human rights NGOs **Human Rights Watch** and the **New York City Bar**¹⁴ pressured her to renew and even expand the sanctions.¹⁵

The risk of electoral fraud is high. A **Commission électorale nationale indépendante (CENI)** official confirmed on 26 November that no EU monitors will be present for the presidential elections.¹⁶ The DRC also rejected in August **South Africa's** offer to send former president **Thabo Mbeki** (1999-2008) as a “*special envoy*”, although it has allowed the **Southern African Development Community (SADC)** and the **African Union (AU)** to monitor “*the veracity of the process*”.¹⁷

There is now some doubt that elections will be able to run smoothly at all after an arson attack in Kinshasa destroyed ballot papers and electronic voting machines. An unknown arsonist set fire to a Kinshasa warehouse on 13 December, destroying 80% of the 10,000 voting machines to be used in Kinshasa elections as well as other election materials.¹⁸ The fire destroyed all materials for 19 of Kinshasa’s 24 districts, representing about 11% of the DRC’s 4.4 million registered voters.¹⁹ CENI affirmed that the elections would continue as scheduled and that it would now use untested tablet-like voting machines.²⁰ This may create even more opportunity for fraud. Opposition parties and foreign nations claim that the electronic voting machines – purchased from **South Korea** in February – carry a high risk of fraud.²¹ Both the government and opposition parties accuse each other of causing the fire, but police have made no arrests other than those of the security guards who were supposed to be guarding the warehouse.²²

⁸ EWN, 20 Sep 2018

⁹ Reuters, 10 Dec 2018

¹⁰ Reuters, 10 Dec 2018

¹¹ Washington Post, 10 Dec 2018

¹² Reuters, 10 Dec 2018

¹³ Reuters, 10 Dec 2018

¹⁴ NYC Bar, 13 Nov 2018

¹⁵ Al Jazeera, 11 Dec 2018

¹⁶ Jeune Afrique, 26 Nov 2018

¹⁷ Daily Maverick, 21 Aug 2018

¹⁸ Reuters, 13 Dec 2018

¹⁹ Punch Nigeria, 14 Dec 2018

²⁰ AllAfrica, 13 Dec 2018

²¹ News24, 3 Apr 2018

²² The Guardian, 13 Dec 2018

A fractured opposition and untested electronic voting machines may have been enough for Kabila's protégé to win, but government authorities have also used force against opposition supporters to spread a layer of fear over the electoral campaigns. Police reportedly used live ammunition to disperse supporters of Martin Fayulu during a campaign visit in **Lubumbashi** on 11 December, killing two people in the crowd.²³ Added together, it appears very likely that Shadary will emerge victorious, which will be followed by opposition accusations of electoral fraud and post-electoral conflict.

It appears, however, that Kabila is not ready to leave the political limelight. Kabila stated on 9 December during several media interviews that he is stepping down for now, but may come back in 2023.²⁴ Kabila hosted several major foreign media outlets, stating to each one that he does not rule out a return to politics. Many of his comments were that he would not rule out anything in life, including a return to politics, but he stated to **Reuters** that his future role will be

"...to make sure that we don't go back to square one, square one meaning where we found the DRC 22 years ago."²⁵

Kabila's statement appears to confirm theories that Shadary is just a placeholder to get around the DRC's constitutional term limits (see *ARC Briefing DRC August 2018*). According to former Kabila adviser **Manya Riche**, Kabila's choice of Shadary is because he is loyal and not a threat to Kabila's power.²⁶ Kabila has watched what has happened in **Angola**, where the riches and power of the **Dos Santos** family have been diminished as President **João Lourenço** (2017-present) consolidates his own power and cracks down on corruption.

Kabila appears once again to have politically outmaneuvered everyone else. He has agreed to step down as president – a veneer of constitutionality – but has installed a placeholder president who will keep his seat warm until 2023. There will be opposition court cases and there will be violence after the election, but ultimately things will return to normal. Large mining companies, such as **Switzerland**-based **Glencore** and **Canada**-based **Barrick Resources**, will continue to do business in the DRC, and Kabila will control Shadary's strings before returning to his presidential palace in 2023.

Canada and Glencore agree on sanctions over DRC relationship with Gertler

Canada-based **Katanga Mining**, a subsidiary of Switzerland-based mining giant Glencore, agreed on 18 December to pay a \$22m settlement to the Canada-based **Ontario Securities Commission (OSC)** over allegations that it failed to comply with disclosure requirements, particularly over the risks of doing business with **Israel**-based businessman **Dan Gertler**.²⁷ Gertler is a close associate of President Kabila, and the **United States** government sanctioned Gertler in 2017 for his allegedly corrupt deals in the DRC (see *ARC Briefing DRC June 2018*).²⁸

The OSC focused on alleged secretive payments from Katanga Mining to Gertler which were originally meant for DRC's state-owned mining company, **Gecamines**.²⁹ The OSC, in particular, found that Glencore officials, including former head of copper **Aristotelis Mistakidis**, were involved in conduct that undermined the company's corporate governance, internal controls and culture of compliance.³⁰ Mistakidis, as well as two other Glencore executives named in a 2017 Katanga Mining internal audit due to the OSC probe, stepped down from the Katanga Mining board in November 2017.³¹ Mistakidis was a rising star at Glencore and was expected to succeed current CEO **Ivan Glasenberg** at some point.³² Mistakidis was head of copper trading and a large shareholder, but the legal pressure from the

²³ France24, 13 Dec 2018

²⁴ FT, 10 Dec 2018

²⁵ Reuters, 17 Dec 2018

²⁶ Reuters, 17 Dec 2018

²⁷ Wall Street Journal, 18 Dec 2018

²⁸ Global Witness, 18 Dec 2018

²⁹ Global Witness, 18 Dec 2018

³⁰ Global Witness, 18 Dec 2018

³¹ Global Witness, 18 Dec 2018

³² Business Day, 9 Oct 2018

OSC and potential for **United Kingdom Serious Fraud Office** and **US Department of Justice** investigations forced his retirement from Glencore on 3 December.³³

According to media reports, Mistakidis and other Glencore directors on the Katanga Mining board relied on Gertler to be their main negotiator with the DRC authorities. Gertler negotiated with the DRC, on behalf of the Katanga Mining board, from 2007-2009 for Katanga's joint venture agreement (JVA) and revisions with Gecamines, until the final JVA was signed 25 July 2009.³⁴

Glaserberg reportedly plans to retire in the next three years and hopes for the younger generation to take over from him.³⁵ The current shake up due to lax compliance principles may be the warning any new leader needs to make sure the company follows the necessary rules to prevent dealings that do not comply with disclosure requirements. However, it could be argued that Glencore has done so well in the DRC due to its relationships with people like Dan Gertler, who could get things done quickly in the DRC to the benefit of Glencore and its subsidiaries. Looking forward, any future Glencore dealings in the DRC and other jurisdictions will be placed under a microscope and future boards, and businesses looking to invest in the DRC and other high-risk countries, would be well advised to perform the necessary due diligence investigations before agreeing to any investments.

Planner

23 Dec 2018 **(DRC)** President, legislative and provincial elections scheduled

9 Jan 2019 **(DRC)** Electoral results published

13 Jan 2019 **(DRC)** President to be sworn into office

Chronology

16 Dec 2018 **Kinshasa (DRC)** *Al Jazeera*. The **United States** orders all non-emergency staff out of the **Democratic Republic of the Congo** ahead of the presidential election;

16 Dec 2018 **Kinshasa (DRC)** *Reuters*. The **Canada-based Ontario Securities Commission** and **Canada-based Katanga Mining Ltd**, a subsidiary of **Glencore Plc**, agree to a \$22m settlement over its activities with **Israeli national Dan Gertler**;

13 Dec 2018 **Kinshasa (DRC)** *News24*. A fire destroys thousands of voting machines and ballot boxes which were to be used for the 23 December elections;

12 Dec 2018 **Kalemie (DRC)** *Reuters*. Police fire live bullets and kill three people during a rally for opposition candidate **Martin Fayulu**;

11 Dec 2018 **Lubumbashi (DRC)** *News24*. Opposition coalition leader **Martin Fayulu** states that the government barred him from staging a rally in **Lubumbashi**;

10 Dec 2018 **Kinshasa (DRC)** *EWN*. The **European Union** officially renews sanctions against **Democratic Republic of the Congo (DRC)** presidential candidate **Emmanuel Ramazani Shadary** and 13 other officials;

9 Dec 2018 **Kinshasa (DRC)** *Al Jazeera*. President **Joseph Kabila** does not rule out running for president again in 2023;

8 Dec 2018 **Kinshasa (DRC)** *News24*. The **European Union** plans to extend sanctions against **Democratic Republic of the Congo** presidential candidate **Emmanuel Ramazani Shadary** and 15 other people;

³³ Fin24, 4 Dec 2018

³⁴ The Guardian, 5 Nov 2017

³⁵ Moneyweb, 18 Dec 2018

- 3 Dec 2018 **Kinshasa (DRC)** *Reuters*. The **United States** embassy re-opens in **Kinshasa** after being closed for a week due to a terrorist threat;
- 3 Dec 2018 **Kinshasa (DRC)** *News24*. Government and opposition parties blame each other for violence during campaign rallies;
- 3 Dec 2018 **Kinshasa (DRC)** *Mining Journal*. Prime minister **Bruno Tshibala** declares cobalt a strategic substance, tripling the royalty rate to 10%;
- 30 Nov 2018 **Kinshasa (DRC)** *FT*. State-controlled commodity trading and mining company **Gecamines'** chair, **Albert Yuma**, states he is unhappy that **Switzerland**-based mining company **Glencore** decided to halt cobalt exports without consulting the government;
- 29 Nov 2018 **Beni (DRC)** *Al Jazeera*. The **World Health Organisation** states that the **Ebola** outbreak in the **Democratic Republic of the Congo** is the second largest in history;
- 29 Nov 2018 **Kinshasa (DRC)** *Jeune Afrique*. Opposition leaders **Moïse Katumbi** and **Jean-Pierre Bemba** reaffirm their support for **Martin Fayulu**, but call for a boycott of the electronic voting machines in the DRC's presidential elections;
- 28 Nov 2018 **Kinshasa (DRC)** *FT*. State-owned mining company **Gecamines** blames international mining companies, rather than corruption, for lost funds;
- 28 Nov 2018 **Kinshasa (DRC)** *News24*. The US embassy in **Kinshasa** remains closed for a fourth day due to terrorist threats;
- 27 Nov 2018 **Kinshasa (DRC)** *Al Jazeera*. Presidential candidate **Felix Tshisekedi** arrives in **Kinshasa** to start his presidential campaign;
- 27 Nov 2018 **Kinshasa (DRC)** *Jeune Afrique*. Opposition leader **Moïse Katumbi** states he will still back **Martin Fayulu** in the December presidential elections;
- 26 Nov 2018 **Kinshasa (DRC)** *Jeune Afrique*. A **Commission électorale nationale indépendante (CENI)** official confirmed that no **European Union** monitors will be present for the presidential elections;
- 26 Nov 2018 **Kinshasa (DRC)** *Reuters*. The US embassy in **Kinshasa** extends its closure due to possible terrorist threats;
- 25 Nov 2018 **Kinshasa (DRC)** *Jeune Afrique*. The **United States** closes its embassy in **Kinshasa** for one day due to a possible terrorist threat;
- 24 Nov 2018 **Kinshasa (DRC)** *Al Jazeera*. Opposition candidates **Felix Tshisekedi** and **Vital Kamerhe** form an alliance after withdrawing their support for the joint opposition candidate, **Martin Fayulu**;
- 19 Nov 2018 **Kinshasa (DRC)** *News24*. Presidential candidate **Emmanuel Ramazani Shadary** sets out an \$86 billion five-year development platform ahead of December presidential elections;
- 19 Nov 2018 **Kinshasa (DRC)** *Mining Technology*. **Canada**-based mining company **Barrick Gold** plans to acquire more copper assets in the **Democratic Republic of the Congo (DRC)**;
- 15 Nov 2018 **Kinshasa (DRC)** *FT*. The **Direction Générale des Douanes et Accises** temporarily prevents **Switzerland**-based **Glencore** subsidiary **Katanga Mining** from exporting cobber or cobalt due to failure to declare and pay duties;
- 14 Nov 2018 **Kinshasa (DRC)** *Al Jazeera*. **MONUSCO** head **Leila Zerrougui** warns that violence unfolding in **Tanganyika**, **North Kivu** and **South Kivu** may hamper December's presidential elections;
- 14 Nov 2018 **Kinshasa (DRC)** *Jeune Afrique*. The **Democratic Republic of the Congo** military

and the **United Nations (UN)** conduct a joint campaign against **Allied Democratic Forces** in Uganda;

14 Nov 2018 **Kinshasa (DRC)** *Mining Weekly*. **Australia**-based mining company **Hipo Resources** signs a joint venture agreement for a 60% interest in the **Kamola** lithium project;