

AFRICA RISK CONSULTING

DRC Monthly Briefing January 2019

DRC Summary 10 January 2019

The Democratic Republic of the Congo's (DRC) Commission électorale nationale indépendante (CENI) (independent national electoral commission) declares that Union pour la démocratie et le progrès social (UDPS) leader Felix Tshisekedi has won the presidential election, with Martin Fayulu placing second and Emmanuel Ramazani Shadary third. Sources in the DRC claim it is likely that Tshisekedi made a deal with President Joseph Kabila (2001-2019) to allow Tshisekedi to win the election, which may result in Fayulu filing legal petitions and possible violence over the result. While it is too early to predict Tshisekedi's policies, he is not likely to undo revisions to the mining code, due to Kabila's influence and mining companies' desire for DRC minerals.

Felix Tshisekedi wins the DRC's presidential elections

The Democratic Republic of the Congo's (DRC) Commission électorale nationale indépendante (CENI) (national independent electoral commission) declared on 10 January that **Union pour la démocratie et le progrès social (UDPS)** leader **Felix Tshisekedi** won the December presidential election, while **Lamuku** coalition leader **Martin Fayulu** came second and **Emmanuel Ramazani Shadary** placed third.¹ The result is surprising as many analysts believed President **Joseph Kabila** (2001-2019) would use his power to ensure Shadary, his hand-picked successor, won the vote (see *ARC Briefing DRC December 2018*). The influential **Conférence Episcopale Nationale du Congo (CENCO)** (National Episcopal Conference of Congo) stated in early January that its 40,000 observers found that Fayulu had easily won the election.² At time of writing, the DRC's **Cour Constitutionnelle** (constitutional court) has yet to confirm these results,³ but is likely to do so.

Candidate	Votes received
Felix Tshisekedi	7,051,013 (38.57%)
Martin Fayulu	6,366,732 (34.83%)
Emmanuel Ramazani Shadary	4,357,359 (23.84%)
Participation rate: 47.56%	

The election result is both positive and negative for the DRC. As the first transfer of power via the ballot box, it is a momentous occasion in the DRC's history. While it is still unclear whether this will be a relatively peaceful transition of power, it is nonetheless a democratic transition from a ruling coalition headed by Kabila. Kabila and his father, **Laurent-Désiré Kabila** (1997-2001), have led the DRC since early 1997 after the fall of **Mobuto Sese Seko** (1965-1997). However, many questions remain. Did Tshisekedi legitimately win the election? Has he made a deal with Kabila? Will Fayulu and his sponsors – **Jean-Pierre Bemba** and **Moïse Katumbi** – protest the win, resulting in violence? What will the future be like for DRC with a Tshisekedi government, particularly the mining sector?

¹ Jeune Afrique, 10 Jan 2019

² Africa Confidential, 4 Jan 2019

³ Jeune Afrique, 10 Jan 2019

Who is Felix Tshisekedi and how did he win?

DRC's president-elect, **Felix Tshisekedi Tshilombo**, fulfils a goal that his father, **Étienne Tshisekedi**, was unable to achieve. The elder Tshisekedi died on 1 February 2017 as leader of the DRC's main opposition party, the **Union pour la Démocratie et le Progrès Social (UDPS)**. Étienne Tshisekedi was one of the founders of the UDPS in 1982, making it the oldest continually operating political party in the DRC. The UDPS placed second in the 2011 presidential elections behind Kabila. Felix, while not as popular as his father, has been immersed in politics since he was young and his father's political ambitions have shaped his life. The Tshisekedi family was forced into internal exile after the UDPS' creation and left for **Belgium** in 1985 after Mobuto allowed the children and their mother to leave the DRC.⁴ Felix Tshisekedi has spent the majority of his life in Belgium, working his way up the UDPS ranks. While Felix Tshisekedi was not the main choice to succeed his father as party leader after his death, the UDPS elected him as the new party head in March 2018.⁵ Felix Tshisekedi has visited the DRC sporadically since 1985, only returning in late November to begin his presidential campaign.⁶

During the election campaign, Tshisekedi, aware that he was running on his father's name, readily admitted that he did not have any government experience:

*"It's true that I don't have experience in bad governance or in the pillaging of my country, but I do have experience in the respect for human rights and civil liberties."*⁷

A former chief of staff to Etienne Tshisekedi, **Albert Moleka**, stated that

*"...the Tshisekedi's had a difficult life and so for Felix Tshisekedi, these elections are a bit of a revenge, for his family."*⁸

Tshisekedi stated during the campaign that his main goal is to reduce poverty and increase the average income in the country. Prior to the election, he also pledged to set up a truth and reconciliation commission to call Kabila to account.⁹ However, following the announcement of the election results, he stated the need to

*"...pay tribute to President Joseph Kabila, and today we should no longer see him as an adversary, but rather, a partner in democratic change in our country. One day we will even have to think of paying homage to him for agreeing to withdraw. Why, given his experience, not entrust him with special diplomatic tasks, to make him an extraordinary ambassador of the DRC?"*¹⁰

So why the change in heart towards Kabila? Although there has been no definitive evidence of such, the theory in **Kinshasa** is that

*"...Tshisekedi struck a deal with Kabila, giving him the presidency in exchange for amnesty for Kabila and his family."*¹¹

In return, Tshisekedi will be beholden to not prosecute Kabila or his family for any alleged crimes, and Kabila will be able to act as an unofficial adviser to the new president. While Kabila would certainly have preferred the more malleable Shadary to have won the election, there was no doubt among observers that Shadary could not have won the election. If he had done so, it would have resulted in international condemnation and widespread violence.¹² According to a **South Africa**-based journalist,

*"They clearly cooked the books. Felix was least bad of the options as Shadary did so badly not even [Kabila] could ram him through."*¹³

⁴ BBC, 10 Jan 2019

⁵ BBC, 10 Jan 2019

⁶ News24, 28 Nov 2018

⁷ BBC, 10 Jan 2019

⁸ BBC, 10 Jan 2019

⁹ News24, 28 Nov 2018

¹⁰ BBC, 10 Jan 2019

¹¹ Source, lawyer, Kinshasa

¹² New York Times, 9 Jan 2019

¹³ Source, journalist, South Africa

The choice between Fayulu and Tshisekedi would not have been difficult for Kabila. Fayulu would have been more likely to push for charges against Kabila and his regime with the support of the Catholic Church and the international community, as well as Bemba and Katumbi, who are no friends of Kabila. Tshisekedi comes from a more vulnerable and weaker political space, and would thus be more open to Kabila's gestures.

Tshisekedi reportedly met with Kabila on 8 January, prior to the release of any electoral results, to discuss a transfer of power. UDPS secretary-general **Marc Kabund** confirmed the meeting, stating that

*"...as for rumours stating a rapprochement between outgoing President Joseph Kabila and the presumed winning candidate of elections on Dec. 30, 2018, in this case, Felix Tshisekedi Tshilombo, the UDPS wants to clarify that it must be seen in the context of national reconciliation. The two personalities have an interest in meeting to prepare a peaceful and civilised transfer of power."*¹⁴

The meeting took place after the CENCO announced on 3 January that its results, collected on election day, showed there was a clear winner, which it did not identify, but which **Africa Confidential** stated was Martin Fayulu.¹⁵ The meeting also took place on the same day the CENI announced further delays in the release of the provisional results, stating on 8 January that it would announce the results in "24 to 48 hours".¹⁶

There are also doubts as to the legitimacy of the elections. While the **Southern African Development Community (SADC)** stated on 2 January that the elections were "relatively well managed,"¹⁷ France's foreign minister, **Jean-Yves Le Drian**, stated that,

*"...[while] the elections were pretty quiet, which is a good thing, it seems that the results proclaimed are not consistent with the results that we have seen, particularly against the Catholic Church's results that were totally different."*¹⁸

Fayulu has also railed against the result, stating that the results are "an unacceptable electoral fraud".¹⁹ Opinion polls prior to the election gave him 47% of the vote, while CENCO's statement also led to his expectation of winning.²⁰ Fayulu, Bemba and Katumbi are likely to file petitions regarding the election, which may result in violence. The **United States** embassy has already advised its citizens to leave the DRC immediately for safety.²¹ The church and civil society have called for peace, and anti-riot police have been deployed in Kinshasa to quell any potential violence.²² Shadary's camp, on the other hand, was quick to accept the result, stating that

*"...the Congolese people have chosen and democracy has triumphed."*²³

If there is violence, Tshisekedi may offer Fayulu a ministerial position to end the stalemate, though it is unlikely that Fayulu's main sponsors, Bemba and Katumbi, would accept that. It remains to be seen whether Tshisekedi will allow Bemba and Katumbi to return to the DRC, particularly if he knows that he would be likely to lose a fair election to either candidate. While the transfer of power is a positive step in the DRC's history, there are still many questions to answer regarding its future under this new government.

¹⁴ Bloomberg, 8 Jan 2019

¹⁵ Africa Confidential, 4 Jan 2019

¹⁶ Sowetan Live, 9 Jan 2019

¹⁷ Al Jazeera, 2 Jan 2019

¹⁸ Jeune Afrique, 10 Jan 2019

¹⁹ Quartz, 10 Jan 2019

²⁰ Congo Research Group, 29 Dec 2018

²¹ Quartz, 10 Jan 2019

²² BBC, 10 Jan 2019

²³ The Guardian, 10 Jan 2019

Tshisekedi's election unlikely to lead to a change in mining reforms

Although the constitutional court has yet to officially recognise the election results and address any opposition claims of fraud, it is highly likely that Tshisekedi will be the DRC's president for the next five years. While too early to predict Tshisekedi's plans to increase income and repair the economy, it is important to look at the DRC's major economic sector, mining.

Mining companies in particular will be pushing to reform, or replace, legislative changes in the mining sector in March 2018 that increased royalties on cobalt and copper (see *ARC Briefing DRC March 2018*). However, any changes under Tshisekedi's new government are unlikely. Tshisekedi will not inherit all DRC power and is still beholden to Kabila's regime, which will not approve the changes. With Tshisekedi as president, Kabila will continue his powerful hold on the military and security services and in this way keep the patronage networks for himself and the elite. Many of these networks are linked to the mines, and the new mining code will help to increase revenue collection. This would have been less likely and more difficult with Fayulu in power, as he would have sought to break down the corruption networks that have enriched Kabila and the elite. Tshisekedi may have decided to cut a deal with Kabila after Fayulu reportedly tricked him in **Geneva (Switzerland)** when DRC's opposition leaders chose a joint candidate in November (see *ARC Briefing DRC December 2018*), eliminating Tshisekedi's chance to become the joint candidate.²⁴ Tshisekedi's desire to become president in honour of his father may also have been a factor in his decision to deal directly with Kabila. In addition, any changes that lower mining taxes would be politically unpopular in the DRC and would open Tshisekedi up to criticism that he is a puppet of international mining companies.

Tshisekedi will need foreign support, but more than anything, he needs domestic popularity to be able to govern successfully. Tshisekedi will also see that the international mining companies will voice their concerns and criticism, but is unlikely to act on them. The situation in DRC differs from that in **Zambia**, where increased mining taxes have led companies to close mines and lay off employees, which may force Zambia to re-structure its mining code.²⁵ Foreign mining companies in DRC, while vocal, have not taken a hard stand against the new reforms. They have continued to mine and will not close projects for fear that the DRC will move projects to mining companies that are willing to pay the higher taxes, such as **Chinese** companies. China-based **Zhejiang Huayou** announced on 25 December that it would invest \$147m in a copper project in **Lukuni** region, despite the higher taxes.²⁶

Mining in DRC will not be any easier under a Tshisekedi government. While little is known about Tshisekedi's policy ideas, a DRC-based mining executive states:

*"The UDPS party that he leads has long been opposed to privatisation. If Felix has control of both the presidency and of parliament, things will be brutal for the mining industry. It is certain that there has been some sort of an agreement between Felix and Joseph. In that deal there will be people who will be protected and people who will be sacrificed."*²⁷

Planner

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

Chronology

9 Jan 2019 **Kinshasa (DRC)** *Jeune Afrique*. The **Commission électorale nationale indépendante** names **Felix Tshisekedi** as the winner of the December presidential elections;

8 Jan 2019 **Kinshasa (DRC)** *Al Jazeera*. Observer mission **SYMOCEL** states that it witnessed 52

²⁴ Jeune Afrique, 16 Dec 2018

²⁵ Multiple sources: Reuters, 15 Dec 2018; Seeking Alpha, 8 Jan 2019

²⁶ Reuters, 25 Dec 2018

²⁷ Source, mining executive, DRC

major irregularities in 101 vote-counting centres, including people tampering with votes;

6 Jan 2019 **Kinshasa (DRC)** *Jeune Afrique*. The **Commission électorale nationale indépendante** states it has compiled 53% of the results, but cannot yet release preliminary results;

4 Jan 2019 **Kinshasa (DRC)** *Africa Confidential*. The **Catholic Church** reportedly claims that **Martin Fayulu** is the winning opposition candidate of the December presidential elections;

3 Jan 2019 **Kinshasa (DRC)** *Reuters*. The **Catholic Church** states it is clear that one candidate won the presidential election, and demands a transparent count;

2 Jan 2019 **Kinshasa (DRC)** *Reuters*. The **Commission Electorale Nationale Indépendante** states that presidential election results could be delayed past the 6 January deadline;

2 Jan 2019 **Kinshasa (DRC)** *Al Jazeera*. **Southern African Development Community (SADC)** electoral monitors state that the **Democratic Republic of the Congo (DRC)** vote went “relatively well”;

1 Jan 2019 **Kinshasa (DRC)** *Reuters*. The government cuts internet and SMS services, reportedly to avert chaos before presidential election results are announced;

31 Dec 2018 **Kinshasa (DRC)** *Reuters*. Both the ruling coalition and opposition parties claim victory in presidential elections;

30 Dec 2018 **Kinshasa (DRC)** *Reuters*. Opposition parties claim there are widespread irregularities in the presidential poll due to broken voting machines, torrential rain and long queues;

28 Dec 2018 **Kinshasa (DRC)** *Al Jazeera*. Opposition parties denounce reports that 20% of **Kinshasa’s** polls will not open on 30 December for the presidential elections due to a lack of voting machines;

27 Dec 2018 **Kinshasa (DRC)** *Reuters*. The **Democratic Republic of the Congo** plans to expel **European Union (EU)** ambassador **Bart Ouvry** ahead of the presidential elections due to the EU’s continued sanctions against presidential candidate **Emmanuel Ramazani Shadary**;

27 Dec 2018 **Kinshasa (DRC)** *Al Jazeera*. President **Joseph Kabila** insists elections will happen on 30 December as planned;

26 Dec 2018 **Kinshasa (DRC)** *Jeune Afrique*. Heads of state from the **Southern African Development Community** and the **International Conference of the Great Lakes Region** express deep concern over violence and the delay of the **Democratic Republic of the Congo’s** presidential election;

26 Dec 2018 **Kinshasa (DRC)** *Jeune Afrique*. The **Commission Electorale Nationale Indépendante** delays voting in **Beni, Butembo** and **Yumbi** until March 2019 due to the **Ebola** epidemic;

25 Dec 2018 **Kinshasa (DRC)** *Reuters*. **China**-based **Zhejiang Huayou** plans to invest \$147m in a copper project in **Lukuni** region;

21 Dec 2018 **Kinshasa (DRC)** *Al Jazeera*. Opposition supporters protest over the delay of the election;

20 Dec 2018 **Kinshasa (DRC)** *Al Jazeera*. The **Commission Electorale Nationale Indépendante** postpones elections until 30 December citing lack of preparation after a fire destroyed election equipment;

19 Dec 2018 **Kinshasa (DRC)** *Al Jazeera*. **Kinshasa** governor **Andre Kimbuta** bans election campaigning for security reasons;

19 Dec 2018 **Mai-Ndombe Province (DRC)** *Reuters*. More than 100 people have died in ethnic clashes in **Mai-Ndombe Province** prior to 23 December elections;

19 Dec 2018 **Kinshasa (DRC)** *BBC*. The **Commission Electorale Nationale Indépendante** spokesman, **Jean-Pierre Kalamba**, states that delaying the elections cannot be ruled out if elections cannot be run properly;

18 Dec 2018 **Tshikapa (DRC)** *Jeune Afrique*. Presidential candidate **Emmanuel Ramazani Shadary** cancels a visit to **Kasai Province** after clashes;

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**.