

## AFRICA RISK CONSULTING

### Gabon Monthly Briefing September 2019

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#### Gabon Summary 19 September 2019

*The Cour d'Appel Judiciaire de Libreville (Libreville court of judicial appeal) rules it is not competent to assess the request to appoint a medical expert to assess whether President Ali Bongo Ondimba (2009-present) is fit to carry out presidential duties. Gabon wins an international arbitration case against Spain-based construction firm Eurofinsa in which Eurofinsa accused it of breaching contractual obligations. France-based waste and water management company Suez Group may be stepping in to take over the assets of water and electricity production and distribution firm Société d'Énergie et d'Eau du Gabon (SEEG) as well as waste management activities in the Gabonese capital, Libreville.*

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#### Court ruling fails to kill speculation about Bongo's health

Speculation persists about President **Ali Bongo Ondimba's** (2009-present) fitness to carry out presidential duties, despite the **Cour d'Appel Judiciaire de Libreville** (Libreville judicial appeal court) ruling on 2 September that it is not competent to assess a request to appoint a medical expert to determine Bongo's ability to perform his presidential duties.<sup>1</sup> **Appel à Agir** (call to action), a pressure group composed of 12 opposition and civil society members and supported by 2016 presidential election runner-up **Jean Ping**, lodged the application for the assessment of Bongo's health on 28 March (see *ARC Briefing Gabon April 2019*). However, after several delays and dramatic turns of events, including the suspension of judicial appeal court president **Paulette Ayo Mba Akolly**, judicial appeal court presiding judge **Jean-Paul Moubembe** on 2 September refused to hear **Appel à Agir's** appeal and dismissed the case.<sup>2</sup> Moubembe's judgement was based on the ruling of the **Cour de Cassation** (court of cassation) in July that the court of appeal should divest itself from the case on the grounds that Bongo is the head of state.<sup>3</sup> Bongo's lawyer, **Aimery Bhongo Mavougou**, had argued that Article 78 of the Gabonese constitution stipulates that only the **Haute Cour de Justice** (higher court of justice) has the jurisdiction to prosecute the president and this can only occur on charges of high treason or violation of the presidential oath.<sup>4</sup>

While failing to end speculation about Bongo's health and capacity to perform presidential duties, Moubembe's ruling caps several months of legal challenges over Bongo's fitness to hold office. **Appel à Agir** first lodged a request at the **Tribunal de Première Instance de Libreville** (Libreville court of first instance) on 28 March for the presiding judge to order President Bongo to undergo a medical examination (see *ARC Briefing Gabon April 2019*).<sup>5</sup> **Appel à Agir** lawyer **Anges Nzigou** said the aim of the medical test would be to determine whether President Bongo possesses the intellectual and physical capacity to carry out executive duties.<sup>6</sup> Interior minister **Lambert Mbatha** called on judicial authorities, especially the state prosecutor, to take action against **Appel à Agir**, accusing the group of being involved in "*acts of destabilisation*".<sup>7</sup> On 5 May, the Libreville court of first instance rejected the application of **Appel à Agir** on the grounds that only the two legislative chambers can approach the constitutional court to assess if the head of state can pursue presidential duties and declare definitive

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<sup>1</sup> Jeune Afrique, 2 Sep 2019

<sup>2</sup> Jeune Afrique, 2 Sep 2019

<sup>3</sup> Jeune Afrique, 2 Sep 2019

<sup>4</sup> Jeune Afrique, 29 Aug 2019

<sup>5</sup> Gabon Review, 28 Mar 2019

<sup>6</sup> Gabon Review, 28 Mar 2019

<sup>7</sup> Jeune Afrique, 30 Mar 2019

incapacity.<sup>8</sup> Appel à Agir appealed this ruling at the Libreville court of appeal, but on 15 July, Moumbembe disallowed the case on the grounds that the court registrar had not informed President Bongo about the court proceedings and adjourned the case until 29 July.<sup>9</sup> The case was dismissed on 29 July after President Bongo's defence team asked the Cour de Cassation to withdraw the case files from the appeal court on the grounds that Bongo is the head of state.<sup>10</sup> The case came before then judicial appeal court president **Paulette Ayo Mba Akolly** on 12 August, who, in a surprising display of judicial independence, ruled against the motion by Bongo's legal counsel and said the court was competent to judge the case (see *ARC Briefing Gabon August 2019*).<sup>11</sup> In her ruling, Mba Akolly said the request from Bongo's legal team was "*pure malice and against the law*" and requested both parties to appear before the court on 26 August.<sup>12</sup> However, on 19 August, a week before the court date, the interior and justice ministry suspended Mba Akolly from her duties as a judge.<sup>13</sup> The ministry claimed that Mba Akolly had breached the honour and dignity of magistracy by ignoring the ruling of the Court of Cassation, and instead ruling the appeal court competent to judge the merits of Appel à Agir's case on 12 August.<sup>14</sup> Judicial appeal court proceedings were set to take place on 26 August but were postponed until 2 September, as the college of judges was not present.<sup>15</sup>

While the 2 September judgement favoured Bongo, significant speculation persists regarding his health. **France**-based news outlet **La Lettre du Continent** reported that Bongo went to **London (United Kingdom)** on 25 August – at the same time as the legal battle over the assessment of his health was taking place – for a medical evaluation.<sup>16</sup> Bongo's trip took place a few days after he had presided over mid-August national day celebrations in which he made his first live public appearance since suffering a stroke in October 2018 (see *ARC Briefing Gabon August 2019*). Bongo appeared physically weakened during the national day celebrations, despite attempts by the presidency and government communication agencies to give the impression that he was in good shape.<sup>17</sup> His trip to London, the third since his definitive return to Gabon in March, was followed by a rumour on social media that he was in a coma.<sup>18</sup> His wife, **Sylvie Ondimba Bongo**, quickly dispelled the news by publishing a picture of Bongo on social media, and the presidency issued a communiqué denying Bongo's hospitalisation, noting that he was undertaking a private visit and undergoing a routine medical visit.<sup>19</sup> The presidency also accused **United States**-based news agency **Bloomberg** of propagating false news about the president's health.<sup>20</sup> In an interview with the UK-based **British Broadcasting Corporation (BBC)**, forestry and environment minister **Lee White** said Bongo was fully in charge, while acknowledging that he had been physically weakened by his stroke.<sup>21</sup>

Bongo's former prime minister, **Raymond Ndong Sima**, suggests that continued speculation about the president's health is bad for internal dynamics, and is also discouraging investors from making certain commitments because they do not know who is actually running the country.<sup>22</sup>

### Gabon wins case against Spain-based Eurofinsa

Gabon has won an international arbitration case against **Spain**-based construction firm **Eurofinsa**, in which Eurofinsa accused the government of breaching contractual obligations and requested it to pay

<sup>8</sup> Jeune Afrique, 5 May 2019

<sup>9</sup> Gabon Review, 15 Jul 2019

<sup>10</sup> Gabon Review, 12 Aug 2019

<sup>11</sup> Gabon Review, 12 Aug 2019

<sup>12</sup> Gabon Review, 12 Aug 2019

<sup>13</sup> Gabon Review, 21 Aug 2019

<sup>14</sup> Gabon Review, 12 Aug 2019

<sup>15</sup> Jeune Afrique, 2 Sep 2019

<sup>16</sup> Bloomberg, 2 Sep 2019

<sup>17</sup> Bloomberg, 5 Sep 2019

<sup>18</sup> Gabon Review, 27 Aug 2019

<sup>19</sup> Gabon Review, 2 Sep 2019

<sup>20</sup> Gabon Review, 2 Sep 2019

<sup>21</sup> Bloomberg, 2 Sep 2019

<sup>22</sup> Bloomberg, 5 Sep 2019

€67m (\$74m) in unpaid invoices.<sup>23</sup> The judgement may affect Gabon's attractiveness as an investment destination, as several foreign firms have experienced difficulties with respect to the Gabonese government honouring its contractual obligations in the past few years.

The litigation between the two parties dates back to 2016, when Eurofinsa's local branch, **Ceddex-Entraco**, stopped work on the **Route Nationale I** because the government had not paid it for work done by the company.<sup>24</sup> Ceddex-Entraco had carried out construction work in Gabon since 2008 and had won a wide variety of public procurement contracts including the rehabilitation of the **Complexe Omnisports Omar Bongo** in Libreville.<sup>25</sup> The Spanish company requested the Gabonese government to honour its contractual obligations and pay for the work done.<sup>26</sup> However, on 8 December 2017, the government decided to terminate all contracts granted to Ceddex-Entraco.<sup>27</sup> Eurofinsa brought a case of breach of contract against the Gabonese government at the **Cour Internationale d'arbitrage** (international court of arbitration) at the **Chambre Internationale de Commerce de Paris (CIC)** (Paris international chamber of commerce), which began in March.<sup>28</sup> The court delivered its verdict on 13 September, ordering the Gabonese government to pay €5.7m (\$6.2m) to Eurofinsa for unpaid services.<sup>29</sup> Eurofinsa was ordered to repay a €5.9m (\$6.5m) start-up loan to the Gabonese government.<sup>30</sup>

The dispute between the state and Eurofinsa led to the dismissal from government of former mines minister **Christian Maganga** in February.<sup>31</sup> Maganga met with Eurofinsa staff in Paris in December and offered to facilitate the withdrawal of charges by Gabon in exchange for 36 billion FCFA (\$69.3 m) and the cancellation of fiscal debt.<sup>32</sup> Maganga received a signed protocol agreement from Eurofinsa in January to follow through with his proposal.<sup>33</sup> However, this was done without prior consultation or notification of budget and justice ministries and thus gave rise to his removal from cabinet.<sup>34</sup>

The CIC ruling in favour of the state of Gabon will be a welcome development for Gabonese authorities. Over the past few years, various foreign-based firms have taken Gabon to international judicial institutions over allegations of failing to comply with various obligations. Late **Italian** businessman **Guido Santullo** took Gabon to the CIC's international court of arbitration accusing the government of owing **Santullo Sericom**, the Gabonese branch of Italy-based Sericom which Santullo owned, €534m (\$665m) for various public works projects undertaken from 2010 to 2016 (see *ARC Briefing Gabon April 2018*). Despite Santullo's death in August 2018, the matter is still under review in various courts. **France**-based water management firm **Veolia** sought legal recourse against the state in March 2018 via the **International Centre for Settlement of Investment Disputes (ICSID)** at the **World Bank**. This followed the termination of its water management contract through its local subsidiary **Société d'Énergie et d'Eau du Gabon (SEEG)** in February 2018 (see *ARC Briefing Gabon March 2018*). Gabon will need to take steps to avoid the frequent occurrence of disagreements between the state and foreign-based firms if it hopes to continue attracting investors. Gabon has dropped from 164<sup>th</sup> place in 2017 to 169<sup>th</sup> place in 2019 in the World Bank's Doing Business rankings and cannot afford to cultivate a bad reputation amongst potential investors (see *ARC Briefing Gabon November 2018*).

<sup>23</sup> Jeune Afrique, 18 Sep 2019

<sup>24</sup> Direct Infos Gabon, 18 Sep 2019

<sup>25</sup> Gabon Review, 18 Sep 2019

<sup>26</sup> Gabon Review, 18 Sep 2019

<sup>27</sup> Direct Infos Gabon, 18 Sep 2019

<sup>28</sup> Jeune Afrique, 18 Sep 2019

<sup>29</sup> Jeune Afrique, 18 Sep 2019

<sup>30</sup> Jeune Afrique, 18 Sep 2019

<sup>31</sup> Jeune Afrique, 18 Sep 2019

<sup>32</sup> Gabon Review, 18 Sep 2019

<sup>33</sup> Gabon Review, 18 Sep 2019

<sup>34</sup> Gabon Review, 18 Sep 2019

## Suez may establish operations in Gabon

France-based waste and water management company **Suez Group** may be stepping in to take over the assets of water and electricity production and distribution firm **Société d'Énergie et d'Eau du Gabon (SEEG)** as well as waste management activities in the Gabonese capital, Libreville.<sup>35</sup> Renewed interest by French investors is good news for the Gabonese government.

Reports of Suez Group's imminent establishment of operations in Gabon emerged following presidential chief of staff **Brice Laccruche Alihanga's** visit to **Paris** (France) on 8 September.<sup>36</sup> Laccruche Alihanga held discussions with **Franck Paris, Africa** adviser to French president **Emmanuel Macron** (2017-present).<sup>37</sup> Laccruche Alihanga, together with economy minister **Roger Owono Mba** and mines and hydraulic resources minister **Tony Ondo Mba**, discussed the possibility of Suez taking over the 51% stake in SEEG, which Veolia used to possess.<sup>38</sup> The government purchased Veolia's stake in February after terminating its contract for the production, distribution and commercial sale of electricity and water in February 2018 (see *ARC Briefing Gabon February 2019*). The government first showed interest in Suez in March 2018 when President Bongo met with Suez CEO **Jean-Louis Chaussade** on the sidelines of the **International Solar Alliance** conference in **India**.<sup>39</sup>

Suez also expressed its desire to take over the waste management activities of **United Arab Emirates**-based **Averda**, which has carried out household refuse collection in Libreville since 2014.<sup>40</sup> Averda stopped refuse collection in August on the grounds that the government had failed to honour its contractual obligations, alleging that the government owed it 24 months' payment in arrears, amounting to 25 billion FCFA (\$42.1m), according to Averda deputy director general **Joseph Minko Olenga**.<sup>41</sup> Averda had carried out a work stoppage for the same reason in April, but suspended this action after the government agreed to make certain payments. The government announced that it would not renew Averda's contract when it expires in December.<sup>42</sup>

The termination of Veolia's contract with SEEG and the ensuing saga led **Pierre Gattaz**, head of France-based business syndicate **Mouvement des Entreprises de France (MEDEF)**, to question in February 2018 whether French companies were still welcome to do business in Gabon.<sup>43</sup> **Bouygues Energies & Services SA** left Gabon in October 2017, with state debts to the company reportedly exceeding FCFA 80 billion (\$143.5m) (see *ARC Briefing Gabon October 2017*). The government announced in January 2018 that it would not renew the Libreville airport operating concession of France-based **Egis et Aeroports de Marseille-Provence**.<sup>44</sup> However, the imminent arrival of Suez is a sign that French investors are still welcome in Gabon.

<sup>35</sup> Direct Infos Gabon, 18 Sep 2019

<sup>36</sup> Jeune Afrique, 16 Sep 2019

<sup>37</sup> Direct Infos Gabon, 18 Sep 2019

<sup>38</sup> Jeune Afrique, 16 Sep 2019

<sup>39</sup> La Libreville, 15 Sep 2019

<sup>40</sup> Jeune Afrique, 8 Aug 2019

<sup>41</sup> Jeune Afrique, 8 Aug 2019

<sup>42</sup> Jeune Afrique, 8 Aug 2019

<sup>43</sup> Jeune Afrique, 6 Mar 2018

<sup>44</sup> Le Nouveau Gabon, 21 Mar 2018

## Planner

30 Sep 2019 **Libreville (Gabon)** *Direct Infos Gabon*. Deadline for tender submissions for the 12<sup>th</sup> round of petroleum licences

Late 2020/early 2021: **(Gabon)** Senate elections

2023 **(Gabon)** local and national assembly elections

## Chronology

18 Sep 2019 **Libreville (Gabon)** *Gabon Review*. **Australia**-based miner **Genmin Group** announces that it will commence exploitation of the **Baniaka** iron mine in 2020;

18 Sep 2019 **Libreville (Gabon)** *Direct Infos Gabon*. **France**-based **Suez** has reportedly taken over the assets of water and electricity production and distribution firm **Société d'Énergie et d'Eau du Gabon (SEEG)** as well as waste management activities in the Gabonese capital **Libreville** from **United Arab Emirates**-based **Averda**;

18 Sep 2019 **Libreville (Gabon)** *Jeune Afrique*. Gabon wins an international arbitration case against **Spain**-based construction firm **Eurofinsa**, in which it was accused of breaching contractual obligations and requested to pay Eurofinsa €67m (\$74m) in unpaid invoices;

15 Sep 2019 **Libreville (Gabon)** *Gabon Review*. Opposition parties call for an evaluation committee to be established to oversee the implementation of decisions taken during the September 2017 **Angondje** political dialogue;

13 Sep 2019 **Libreville (Gabon)** *Direct Infos Gabon*. The Gabonese government is negotiating to increase its share in mining company **Comilog**, a branch of **France**-based **Eramet**, from 29% to 35%;

11 Sep 2019 **Libreville (Gabon)** *Direct Infos Gabon*. The economy ministry says the Gabonese government paid off 107 billion FCFA (\$181.4m) in public debt during the second semester of activities, compared to 89 billion FCFA (\$150m) during the same period in 2018;

8 Sep 2019 **Libreville (Gabon)** *Gabon Direct Infos*. The **African Development Bank (AfDB)** has allocated a 77 billion FCFA (\$129.4m) loan to the Gabonese government in order to increase the water supply in Libreville;

5 Sep 2019 **Libreville (Gabon)** *Gabon Review*. **Marie Madeleine Mborantsuo** is reappointed for a nine-year term to head the **Cour Constitutionnelle** (constitutional court);

5 Sep 2019 **Libreville (Gabon)** *Direct Infos Gabon*. The **District of Columbia Court of Arbitration** orders the Gabonese government to pay \$1.25m to **United States**-based lobby firm **Bryan Cave & Associates**, for failing to honour contractual obligations;

2 Sep 2019 **Libreville (Gabon)** *Direct Infos Gabon*. The presidency denies that President **Ali Bongo Ondimba** fell into a coma or is in **London (United Kingdom)** for medical treatment as reported by **United States**-based media organ **Bloomberg**, but says he is undertaking a private visit;

2 Sep 2019 **Libreville (Gabon)** *Jeune Afrique*. The **Cour d'Appel de Libreville** (Libreville court of appeal) refuses to hear the case requesting that a medical examination be carried out to assess whether President **Ali Bongo Ondimba** is fit to hold office;

1 Sep 2019 **Libreville (Gabon)** *Gabon Review*. Forestry and environment Minister **Lee White** announces that Gabon intends to lift the ban on the exploitation of kevaingo hardwood by 2020;

30 Aug 2019 **Libreville (Gabon)** *Gabon Review*. **Total Gabon**, a subsidiary of **France**-based **Total**, announces a 46% drop in first half results for 2019 compared to 2018, with the company generating \$25m in net results;

28 Aug 2019 **Libreville (Gabon)** *Agence Ecofin*. **China**-based **Fulin Taihe** says it hopes to construct a 366 billion FCFA (\$620m) bioethanol plant that will produce 300,000 tonnes of ethanol upon completion;

28 Aug 2019 **Libreville (Gabon)** *Gabon Review*. President **Ali Bongo Ondimba** reportedly left Gabon on 25 August, to undertake medical treatment in **London (United Kingdom)**;

28 Aug 2019 **Libreville (Gabon)** *Gabon Review*. **Malaysia**-based **Petronas** will pay the Gabonese state \$63m as a result of bonuses related to the exploration contract signed between both parties in August;

28 Aug 2019 **Libreville (Gabon)** *Direct Infos Gabon*. **Morocco**-based **Maroc Telecom** aims to take full control of **Gabon Telecom**, in which it already holds a 51% stake;

### About Africa Risk Consulting:

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