BUSINESS RISKS AND THE DEMOCRATIC REPUBLIC OF THE CONGO

What happens when Kabila steps down?

A2 Global Risk

Introduction

Long-sitting autocrats are due to step down across Africa over the next few years. The first in line is Joseph Kabila, the president of the Democratic Republic of the Congo (DRC). While political transitions always carry risk of uncertainty, the 23 December presidential election will be a litmus test for the country. As in most post-authoritarian political contexts, the stability of the country will depend on the legacy of the leader. Nowhere in the world is this more evident than in the African context, and in the DRC in particular where the legacy is far from ideal, and the risks to stability remain high.

While the DRC's political and security problems are well-known, few are privy to the stranglehold Kabila and his immediate family and friends have over the economy and business environment since taking power in 2006. Kabila's growing business interests and wealth over the past 12 years, along with the promotion of a staunch Kabilist as his successor, could indicate that Kabila is intent on remaining untouchable even after 23 December.

This, in addition to Kabila's influence of the Congolese economy indicates that multinational companies looking to conduct operations in the DRC and the surrounding region could continue to face very similar political and security risks, as well as problems relating to corruption and money-laundering, in the medium- to long terms.

A family affair

Since 2006, President Joseph Kabila and his immediate family have allegedly amassed huge wealth since he came to power in 2006. Little is known about Kabila's actual wealth or businesses interests. However, over the past three years several investigations into the networks surrounding him have brought some hints as to the scope of the president's wealth. Several of these investigations have been prompted by whistleblowers within networks close to the government. Furthermore, these investigations have suggested how complex elite networks permeate the Congolese economy to the point that seemingly legitimate payments could have ended up in the hands of the Kabilas. The extent to those business interests could also explain the repeated delays and refusal to hand over power at the end of his term.

> ***'Investigations into the networks surrounding him have brought some hints as to the scope of the president's wealth'***

Shortly before Kabila's constitutional mandate ran out in December 2016, Bloomberg news agency published an investigative report into the business interests held by Kabila and his immediate family. According to the report, Kabila's 15 immediate family members own more than 70 companies, with stakes in mining (including in diamonds, copper, cobalt, and gold), banking, logistics, agribusinesses and farms, hotels and travel agencies, and a fuel distributor. Although the total value of those entities is unknown, public records for two entities show that they have a value of USD30 million. Documents from another Kabila-linked company indicates revenue of more than USD350 million. While some of the entities are directly controlled by the Kabilas, others are set up as joint ventures (JVs) and offshore shell companies, making them more difficult to track. Many of those companies are run by Jaynet, the president's twin sister, who figures as a shareholder in at least 28 companies, according to Bloomberg. However, because the Congolese economy remains widely informal and cash-based, and public records are difficult to access and often non-transparent, the exact value of Kabila family assets is hard to quantify.

Many of the family's mining interests are managed through a company called Acacia, which owns and operates diamond mines along the Angolan border, as well as copper-and-cobalt mines in the south-eastern province, formerly known as Katanga[1], which holds tremendous deposits of copper and cobalt, of which 60 per cent of global reserves is believed to be in the DRC. Together with Kwango Mines, a company in which his daughter Sifa and sister Cecylia hold shares, Acacia holds 96 mining permits across the DRC. Given the tremendous growth of cobalt prices in 2017, it is safe to say that the Kabila-linked entities will make a lot of money from the activity.

The president's interest in the diamond mining industry is better documented by his close relationship with Dan Gertler, an Israeli businessman, who the U.S. Department of Treasury targeted with sanctions in April this year, accusing him of acting as a middleman of the sale of Congolese mining assets. According to the Paradise Papers – a major trove of documents leaked from Bermuda-based law firm Appleby in December 2016, revealing how wealthy business elites and companies diverted billions of U.S. dollars into accounts in offshore tax havens – Gertler helped the world's largest mining trading group Glencore plc., which is headquartered in Switzerland, to negotiate lucrative mining licences with the Congolese authorities in exchange for huge loans. Both Gertler and Glencore have denied wrongdoing.

Other aspects of the wealth and dominance of the Congolese business community have been highlighted by other more recent leaks, including the Lumumba Papers and more recently, the Banana Port Papers.

The Lumumba Papers is an investigation by Platform to Protect Whistleblowers in Africa (PPLAAF), an international non-governmental organisation, launched after Jean-Jacques Lumumba blew the whistle on suspicious transactions between BGFI DRC, a subsidiary of Gabonese financial services organisation BGFI Group, and a company that is owned by Kabila, plus the electoral commission, Céni. BGFI DRC, is partly owned by private equity fund BGFI Holding, as well as Gloria Mteyu (Kabila's sister), and several other Congolese individuals who own 40 per cent of shares between them. In 2012, Lumumba was promoted to head the credit department of BGFI DRC, giving him privileged access to the bank's internal information. In 2016, he started noticing suspicious transactions, including to the electoral commission, Céni, and a private company: *Entreprise Générale d'Alimentation* (commonly referenced as EGAL). EGAL has multiple links to the Kabila family and close associates. The Lumumba papers allege that it was central in diverting millions of U.S. dollars of public funds to offshore accounts.

EGAL was officially created as an agribusiness specialising in the production, transformation, transport, and conservation of food products, including fish. The idea was to purchase food at reduced prices, especially fish, so that food prices in the DRC could remain low, a laudable objective in a country were 63 per cent of the population lives on less than USD1.9 per day.

It was probably to this end that the government completely exempted the company from paying taxes on imported goods, while products from nearby Namibia would be considered as originating from the DRC thereby avoiding any customs duties. However, many of the goods imported from Namibia do not appear in line with the company's stated purpose of providing cheap food. Instead, the company has apparently imported wild animals, such as giraffes, Burchell's zebras, blue wildebeest, waterbuck, oryx, and more. The animals are likely destined for *Ferme Espoir* – a company that is wholly owned by Joseph Kabila and aims to become a protected area for wildlife hunting in south-eastern DRC, similar

[1] Katanga province was one of 11 provinces until the government dissolved it in 2015, dividing it into four provinces: Haut-Katanga, Haut-Lomami, Lualaba, and Tanganyika.

to those in South Africa. The invoices for some of these animals have been signed and stamped by Namibian officials.

The case becomes somewhat suspicious when examining EGAL's bank statements, which indicate that the company has no income bar a loan provided by BGFI DRC and the Congolese central bank. In 2013, the central bank transferred USD42.9 million in three instalments. Such a transaction would be in violation of Congolese law, as central banks are not allowed to provide loans to private entities in any circumstances. Rather, central banks are responsible for regulating the banking industry, setting monetary policy, and issuing banknotes and coins. In the same year, the company also received USD42.9 million from BGFI's Congolese outlet.

> ***The common denominator for these entities is their links to Kabila and his immediate family***

Meanwhile, EGAL bank statements indicate a series of transactions to offshore bank accounts, as well as companies that are run by or linked to Kabila's entourage. Between July 2013 and July 2015, EGAL transferred approximately USD22 million to Samaki (PTY) LTD, a company that is based in Windhoek, the capital of Namibia. The board of directors includes influential Namibian businesspeople, as well as individuals from EGAL or Kabila's inner circle. Samaki's registration document indicates that they were all appointed on 17 July 2013, the same month that EGAL was created. During the same period EGAL also transferred more than USD9 million to African Trading Maintenance and Development Ltd., a company that has been based in Hong Kong since 2012. Another company, All Ocean Logistics, is based in the Faroe Islands – a Danish dependency which the European Union in December 2017 placed on its watchlist for tax havens – also received transactions during this period totalling USD4.9 million dollars.

The common denominator for these three entities is their links to Kabila and his immediate family. The board members of Samaki include influential Namibian businesswoman and politician Martha Namundjebo-Tilahun and her husband, Haddis Tilahun, as well as Eric Monga (formerly at EGAL), Albert Yuma, and Marc Henri Piedboeuf, who is the director general of EGAL. Piedboeuf also appears as a director and shareholder of African Trading Maintenance and Development, along with Alain Wan and Raphael Jean-Philippe Piedboeuf (link to Marc Henri is unknown). All Ocean Logistics also carries links to the Kabila entourage, with the manager of the company being André Grégory Wan, Alain's son.

Alain Wan and Marc Henri Piedboeuf have been linked to the management and ownership of several companies that have links to Kabila. For instance, the former runs Kabila's *Ferme Espoir*. In turn, *Ferme Espoir* is 'the sole owner of *Société des Grands Elevages'* after Piedboeuf and Wan sold it to Kabila. This demonstrates inter-linkages between the various companies and their respective owners.

The DRC of the Kabilas

After a long wait, on 8 August, the minister for communications, Lambert Mende Omalanga, announced Emmanuel Ramazani Shadary as presidential candidate for the *Front commun pour le Congo* (Common Front for Congo; FCC) – a coalition of 12 political parties, including the ruling *Parti du Peuple pour la Reconstruction et la Démocratie* (People's Party for Reconciliation and Democracy; PPRD). With this, Kabila's resignation from the presidency was effectively confirmed after two years of uncertainty.

Although this will reduce political uncertainty, and consequent instability in the DRC in the six-month outlook, the business environment is likely to continue to bear the hallmarks of the long-sitting authoritarian regime. And the promotion of Shadary, who is targeted by both E.U. and U.S. sanctions, including travel bans, suggests that business is likely to go on as usual after Kabila steps down.

The only thing stopping them would be an unlikely loss in the single-round vote against one of four opposition candidates: Félix Tshisekedi, Vital Kamerhe, Freddy Matungulu and Martin Fayulu. However, none appears to have wide enough popular appeal as opposition leaders Jean-Pierre Bemba – who was recently acquitted of war crime charges at the International Criminal Court in The Hague, Netherlands – and Moïse Katumbi, a former governor of the former Katanga province[2] who lives in exile and was refused entry into the country in early August to file his bid for the presidency. Tshisekedi is the son of Etienne Tshisekedi – a long-time opposition figure and main challenger to Kabila, who despite his advanced age was able to mobilise thousands upon thousands of supporters who could bring the capital Kinshasa to a standstill until he died. It was perhaps with this in mind that a mob of security officers allegedly poured petrol over the Tshisekedi's UDPS party headquarters and threw some of its supporters into the burning building in December 2016.

In addition to preventing opposition candidates from challenging the FCC at the polls, the authorities have repeatedly been accused by the opposition of undermining the transparency of the poll. A particular sticking point has been the use of electronic voting machines, imported from South Korea. The opposition says their use will increase the chances of voter fraud, arguing that in a country where connection to the power grid is patchy, there is high risk of the machines not working, preventing some of the electorate from casting their votes. Meanwhile, international donors are facing the dilemma of funding potentially flawed elections, or withholding support which, in turn, could further delay the elections and again threaten the stability of the country.

Issues like these, as well as the fact that a staunch Kabila loyalist has been promoted as the FCC's presidential candidate, give some credence to the opposition's claims that Kabila is not intent on handing over power. At least not entirely.

Given the significantly weakened opposition and continued influence of Kabila, the FCC appears as the most likely winner at the December polls. This means that Kabila and his entourage are likely to remain influential in the DRC, particularly within the business community, even after he steps down.

Recent precedents

Although Kabila has announced he would step down, recent examples of long-sitting governments reluctantly handing over power could give an indication of where the DRC is heading. A number of governments across the continent have held a tight grip on power or have attempted to prolong their tenures through constitutional machinations beyond their legislative mandates, often in the name of stability. In 2014, Blaise Compaoré of Burkina Faso was ousted in a popular revolt after attempting to change the constitution that would allow him to seek another term in office. These days, Compaoré enjoys a comfortable retirement in Abidjan, Côte d'Ivoire. Equally, in The Gambia long-sitting Yahya Jammeh was forced to step down by a military intervention, led by Senegal and other regional forces, after the leader refused to recognise Adama Barrow's legitimate victory in the presidential election in December 2016. Jammeh eventually exiled himself to Equatorial Guinea, where Teodoro Obiang

Nguema Mbasogo has governed a tight regime since 1979. About one month after Jammeh's departure, The Gambia's newly sworn-in President Barrow announced that the state coffers had been emptied in the days before Jammeh left power. The Gambia was broke.

Similar stories ring out from Robert Mugabe's Zimbabwe, where the long-sitting dictator's wife and children were often lambasted in the media for their lavish lifestyles. The former liberation leader is suspected of having assets worth USD1 billion, including an opulent villa in the Zimbabwean capital, Harare, and some accuse him of having a role in the disappearance of USD15 billion in lost diamond sales under his watch.

Across the border in South Africa, former president Jacob Zuma ran a corruption racket along with his close friends, the Guptas – a wealthy business family who is suspected of wide-ranging corruption and influence-peddling at the highest level of government. The impropriety was so evident and crippling to the government and the economy that South Africans refer to the pillaging and mismanagement of state funds and stark nepotism that went on under Zuma as 'state capture'.

More often than not, these dictators regularly amass huge wealth by pillaging state coffers and dominating the business community through opaque deals and corruption. Despite this, many of them continue to live in opulence, ostensibly immune to any legal consequences, long after leaving power. Mr. Zuma's fate looks relatively gloomy, however, as he is now facing legal charges relating to corruption while he was in office. With Zuma out of office and his liability exposure high, the close relationship between the DRC and South Africa looks set to deteriorate. During the Kabila-Zuma era relations were so close that the two governments diverted formal procedures for state visits. . In the post-Zuma era, however, relations are less rosy with the DRC refusing South Africa's offer of logistics assistance in the organisation of the December election. The question is whether South African new president Cyril Ramaphosa is willing to break from the previous administration's previous close relationship with the DRC.

Why does all this matter to business?

For starters, instability and hostilities in the DRC brought about by expected allegations of voter fraud following December's election are likely to have a global impact, as the country holds over 60 per cent of proven deposits of cobalt. This by-product of copper-mining is essential in the production of lithium-ion batteries (which are widely used in electric vehicles). The DRC also has large deposits of gold.

Beyond the instability risk, if business operations in the DRC are dominated by people close to the Kabila regime, which is accused of wide-ranging abuses of human rights and corruption, foreign companies will face growing compliance risks in the medium term. Given that Western donors' patience with the Kabila regime are increasingly strained, further sanctions on highly placed individuals within the incumbent regime should be expected in the one-year outlook, particularly if hostilities between the myriad of non-state armed actors and government forces resume and escalate in some parts of the country, confirming the fears of some security analysts. Several of these armed groups run protection rackets or charge informal taxes, and make money from informal mining operations.

That would further elevate the compliance risks for multinationals looking to conduct business in the DRC or which are exposed to supply chains that transit the country. Companies will therefore be required to conduct more enhanced due diligence on politically exposed individuals, stakeholder mapping and analysis, as well as audits of supply chains. Compliance officers also need to ensure their dealings in the country do not violate the multitude of national and extra-territorial anti-money-laundering regulations that aim to ensure that Western companies act with propriety in markets where controls are poor and governance is weak.

Companies, such as Glencore, are facing tougher scrutiny from U.S. authorities for their dealings in the DRC. In July the U.S. justice department handed Glencore a subpoena requesting documents and records on compliance with the U.S. Foreign Corrupt Practices Act and money-laundering statutes. More risk-averse companies could refrain from investing in the medium term. They may perceive that business operations are opaque or compromised by elite networks and suspected of facilitating corruption.

More broadly, what does it mean if a wealthy business family has so much control of the local business community as well as privileged access to the government? You need look no further than the example of Zuma's South Africa, a country that is known and praised for the democratic legacy created under the late liberation leader Nelson Mandela. However, as another major leak showed in 2017, the government was not immune to the interests of a wealthy business family who managed to influence the appointment of a finance minister in 2015. That had serious implications for the South African rand, which crashed to an all-time low, thereby damaging the value of the country's trade.

The difference between South Africa and the DRC, however, is that the former has a functioning rule-based economy, where many public institutions, such as the media, remain strong and are able to hold the country's leaders accountable. The DRC's outlook is different. That is the real problem facing the DRC; whether or not Kabila remains at the reins of the country. Most likely, Kabila and his family will remain influential figures after he steps down. That could very well become problematic if businesses linked to the Kabilas begin dominating local markets, presenting other companies with unfair competition.

A key problem in the DRC is the potential profits that companies can make. A World Bank study into corruption risks by sectors in Ethiopia in 2014 highlighted the elevated corruption risks in sectors with high barriers for market entry, as well the potential profits such investments are likely to make. In the DRC, such risks would be huge, considering the rapid growth of cobalt prices last year.

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