

**Short-Term Risk Assessment Analysis**

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# **Political Risk Assessment**

## **Navigating Political Risk in the Democratic Republic of Congo**

Prepared by the Leadership & Democracy Lab, Western University

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The Leadership and Democracy Lab publishes democratic analysis and leadership profiles throughout the year. The Lab is focusing on industry, regional, and leadership democratic transitions and will reporting short but substantial publications relating to key areas of issue with a specified approach. These reports are intended to give corporations and individuals a short-term risk assessment by exploring the probability of a variety of outcomes to a variety of political conflicts.



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# Executive Summary

The Democratic Republic of the Congo (DRC) is the second largest country in Africa and one of the richest in the world in terms of natural resources. With 197 million acres of usable land and 1,100 minerals and precious metals, the DRC has the resources to achieve prosperity for its people, and serve as a driver for African economic growth.<sup>1</sup> Despite its potential, however, growing uncertainty over elections and the country's political climate continues to deter foreign direct investment.

To a greater or lesser degree, all infrastructure projects are at risk from governments legitimately changing regulations or policies which may increase the operating costs of a business, reduce the attractiveness of an investment decision, or change the competitive landscape of an industry. However, the growing global demand for gold means that mining companies cannot shy away from challenging operating environments amid political risk.

Therefore, as the largest gold producing mining company in the world, it is not only important for Barrick Gold to be fully aware of the political risks that they face in the DRC, but they should also understand what causes these risks and how they can be mitigated. In particular, Barrick Gold operates the Kibali gold mine which is located in northeast DRC, approximately 220 kilometres east of the capital of the Haut Uele province, Isiro.<sup>2</sup>

Consequently, this report highlights the political risk resulting from electoral corruption that faces Barrick Gold in the DRC.



Figure 1: Mine/Project Location Map

# Background

On December 30<sup>th</sup>, 2018 the Congolese people took to the polls for the long-awaited elections that would decide the successor of President Joseph Kabila, who has held the country's top office since 2001. Though many had high hopes for a free and democratic election that would bring stability to the Central African nation, the election was ultimately fraught with irregularities and suspected political interference.<sup>3 4</sup> In a largely unexpected turn of events, the country's electoral commission (CENI) announced opposition leader Felix Tshisekedi as the winner of the presidency on January 10<sup>th</sup>; almost two weeks after the elections took place.<sup>5</sup>

Unsurprisingly, a wide range of national and international observers are disputing the results. Martin Fayulu, who many believe was the election's true winner, openly rejected the results and is calling for a recount.<sup>6</sup> Fayulu had a clear lead in popularity polls heading into the election and leaked data from the CENI and the respected Catholic Church support the idea that he won the election.<sup>7</sup> The African Union (AU) has urged the DRC to refrain from releasing official results until a high-level AU envoy arrives in the country to analyze the situation and advise them on how to move forward.<sup>8</sup>

Nevertheless, the decision to trigger a recount was at the hands of the DRC's top court, which is stacked with Kabila-appointed judges. On January 19<sup>th</sup>, the DRC's top court confirmed Tshisekedi as the DRC's next president.<sup>9</sup> Any change in how this situation develops will likely come from Fayulu's response and involvement going forward, as he counts with the support of the country's highly influential Catholic Church. Since further destabilization in the country

is an important threat to the general region's stability, the involvement of the AU and other international actors could also play an important role in shaping the post-election panorama.<sup>10</sup>

Even though Kabila's Common Front for Congo (FCC) coalition lost the presidency, some of the most important results from this election actually came from the legislature, Senate and provincial assemblies. The FCC won a sweeping majority in all of these bodies, which has key implications for the political future of the DRC. As a former President, Kabila has an automatic, life-time seat in the Senate, which he will likely preside over during Tshisekedi's term due to the FCC's majority.<sup>11</sup> In the DRC, the President of the Senate is the most powerful political figure after the President. Moreover, the FCC will also have the ability to name both the Prime Minister and provincial Governors as the party won the most seats in the National Assembly and the 26 Provincial Assemblies.<sup>12</sup>

If the election results stand, it is foreseeable that the DRC will experience a significant power shift from the executive to the legislature. The end result of such a shift is a marginal loss of government power and influence for Kabila and an extremely weak presidency for Tshisekedi.<sup>13</sup> Many observers believe that the delay in releasing election results was a deliberate move by Kabila so that his party could reach an unofficial power-sharing agreement with the Senate.<sup>14</sup> As the President of the Senate, Kabila will likely retain power over the country's military as well as the mining sector.<sup>15 16</sup>

# Political Risk

## ELECTORAL CORRUPTION

Political corruption in the Democratic Republic of the Congo (DRC) continues to hinder business operations in the country.<sup>17</sup> A prominent source of corruption relates to the country's most recent general election that occurred on December 30, 2018.

### *Events Prior to the Election*

Prior to the election, the most prominent source of corruption involved the Former-President, Joseph Kabila. President Kabila has been accused of voter fraud in the DRC's 2011 election, has extended his term as President two years past its constitutional limit and has increased taxes on mining firms to increase government royalties. Prior to the election, Kabila announced that he would not run for a third term as president in the upcoming election. Despite this, there were accusations against President Kabila that he was trying to remain in power. This was

emphasized by the fact that DRC elections were postponed twice.

Due to the corruption surrounding elections, one risk that arose in the country involved internal violence between the government and its citizens. For example, in August 2018, teargas and live ammunition were used by government security forces during some peaceful political opposition rallies during the registration of new candidates. According to Ida Sawyer, the deputy Africa director at Human Rights Watch, these actions were committed by the Congolese authorities in an attempt to control the electoral process. The alleged motive behind these actions were to repress the opposition party and to prevent a fair, inclusive and free electoral process. This corruption was suspected to continue in the upcoming election because of the Kabila family's financial interests.



*Figure 2: Former DRC President, Joseph Kabila, casting his vote along with his family in the December 2018 elections. "*

The corruption involving the financial interests of the Kabila family – and other government elites in the DRC – may lead to problems in the mining industry. In January 2018, a law was passed that would double government royalties on all minerals. This law also removed contract stability for country’s being guaranteed for ten years, down to five years. Furthermore, the President of the DRC has the power to exercise declassification and classification authority relating to prohibited areas for mining activities and in relation to all minerals in the DRC. This could be problematic for mining companies because it gives the President the authority to change regulations in regard to the mining industry that may benefit their personal interests.

### *Events After the Election*

The results of the most recent election have declared that Felix Tshisekedi is the new President of the DRC.<sup>18</sup> Controversies regarding these results arose when the Congo opposition leader Martin Fayulu challenged the results, claiming that he should have won the election.<sup>19</sup> Independent observers of the election claimed that there were many issues with electoral process, including polling stations where some people could not vote and faulty voting machines.<sup>20</sup> It was later decided by the DRC

constitutional court that Tshisekedi was the winner of the election<sup>21</sup> and would become president. Comments from the opposition government claim that Tshisekedi will be colluding with former President Kabila and made a deal to ensure he would become president.<sup>22</sup> Due to this, it is possible that the new government will operate in a similar way as the Kabila administration, but this will be further proven or disproven as Tshisekedi makes future decisions as president. No matter the outcome of Tshisekedi and his alleged corruption, Kabila won a majority in the National Assembly during his time as president,<sup>23</sup> meaning that it is possible for him to still have some control over this new regime.

Additionally, some violent demonstrations have occurred in protest of the results of the presidential election.<sup>24</sup> For example, on January 10, at least 10 protestors were killed during a post-election demonstration – contesting Tshisekedi’s victory – by security forces.<sup>25</sup> In response to this event, the United States sent over 80 military personnel to the country’s capital, Kinshasa, to protect the United States’ diplomatic facilities in the area and any of its citizens.<sup>26</sup> This kind of violence may showcase similar trends to events relating to corruption that occurred in 2018.



*Figure 3: Current DRC President, Felix Tshisekedi, casting his vote along in the December 2018 elections. <sup>III</sup>*

# Significance

The post-election situation in the DRC is still very much developing. As noted previously, the force with which Fayulu, the Church and the international community respond to the allegedly rigged election will play a significant role in shaping the extent to which the elections destabilize the country. In the immediate term, Barrick should increase spending in private security for its DRC mine, Kibali. This mine is situated close to the DRC's northeastern border, an area has been fraught with armed conflict and rebel militias for years.<sup>27</sup> Many rebel groups are involved in the operation of illegal mines and could attempt to overtake Barrick's mine while the country deals with a larger crisis.<sup>28</sup> If electoral instability intensifies in the coming months, it could be difficult for Barrick to get government or military support in the case of a rebel attack on Kibali. Their limited resources will likely be spent on suppressing dissent in order to avoid any major threats to their ability to retain power. It is imperative that Barrick is able to ensure the security of its assets at a time when the state might not be able to provide immediate assistance.

Going forward, the DRC's new power structure, combined with the evolving electoral instability, will have other key implications for Barrick Gold and the rest of the mining sector. Though Kabila currently controls the mining

sector, there are other important actors involved. In particular, strong political dissent, or even a political uprising, could completely change the balance of power. Thus, it is key that Barrick is able to maintain relations with the Kabila regime, while also not alienating Tshisekedi, Fayulu or the Congolese people. To ensure this, Barrick should strengthen its relationship with the Haut-Uele provincial government, and particularly, its new, likely FCC-loyal Governor. Forming a relationship with the provincial Governor will ensure that Barrick is able to have a direct line to Kabila's Senate and the military, while also providing a layer of separation from them in the case of any political and social changes resulting from a major uprising.

Undoubtedly, the post-electoral situation leaves Barrick at a vulnerable position. However, adopting the proposed measures will give Barrick the ability to continue operating Kibali until the post-electoral situation begins to clear up and the political landscape takes a more concrete direction. In the coming months, it is imperative that Barrick monitors this dynamic situation closely so that it is able to appropriately respond to new developments.



Figure 4: Kibali gold mine in the DRC. <sup>iv</sup>



# Mitigation Strategies

Even with the corruption in the DRC, Barrick Gold could succeed financially in this country if it uses the political corruption present in the country to their advantage. This has been done before by other mining companies in the DRC. In 2001 – when former President Kabila first came to power – mining regulations were changed to attract foreign investors to the DRC.<sup>29</sup> This change in legislation was beneficial for both the companies and Kabila because the companies profited financially while he gained political benefits.<sup>30</sup> Although this course of action can be beneficial, there is a possibility that it becomes costly for foreign investors – like Barrick Gold – if the President or government want to change regulations in the mining industry to benefit themselves, instead of the foreign investor(s). An example of this can be seen in June of 2018 when the former President signed a mining code into law without making any changes that the mining companies demanded.<sup>31</sup> From the perspective of the mining companies, they believed that they had the advantage in negotiations due to the contested legitimacy of the former President extending his Presidential term in 2016.<sup>32</sup> Even with these political factors, Kabila still did not accommodate for the companies. This showcases that even if the mining companies have leverage over the government, there is still a risk associated with the unpredictability of the government or its President's actions.

As well, because the DRC is a semi-presidential republic, it gives the President the power to appoint both the Prime Minister and the Ministers of State.<sup>33</sup> This gives further control to the President of the DRC because of the power these officials have in the mining industry. For example, The Minister of Mines has the jurisdiction and

power to refuse, grant or cancel mining rights in the DRC.<sup>34</sup> Furthermore, due to the DRC's reputation for a lack of transparency in their government policy,<sup>35</sup> the powers of these state officials can be viewed as a costly risk for companies like Barrick Gold.

With the election that just occurred, if a company like Barrick Gold is able to befriend the new President – in the same way foreign companies did in 2001 with President Kabila – it is possible that the new President could provide financial benefits to Barrick Gold to invest in the DRC. There are also considerable risks involving violence in the country to consider. Although it is likely that this violence is mainly related to contesting the legitimacy of the government or its election process, Barrick Gold should still be cautious about the impact it may have on company officials' that may be in the country. To avoid this, Barrick Gold should develop positive relationships with the DRC government in the case that any other violent demonstrations occur. This would ensure that the DRC government would not harm any officials related to Barrick Gold.

Overall, due to the lack of transparency, uncertain legal framework and corruption<sup>36</sup> in the DRC, there will be political risks associated with doing businesses in the DRC. The best way to overcome these risks would be to use the corruption that occurs in the country to the advantage of the company. If this is not suitable, it could be better to avoid conducting business in the DRC.

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