

AFRICA RISK CONSULTING

Country briefing – Kenya

19 December 2013

Summary

Kenya celebrates fifty years of independence from Britain. Tensions increase in Jubilee coalition as both the national assembly and the judiciary stand up to President Uhuru Kenyatta. The government commits to improving the business environment following a critical World Bank report that reduced growth estimates for 2013 to 5.0%. The defence ministry deploys the Kenya Defence Forces (KDF) to Moyale following heavy clashes between rival ethnic groups. Grenade attacks in Mombasa and Nairobi highlight the threat from Islamist militants.

1.1 Political setbacks highlight growing cracks in coalition

On 12 December, Kenya celebrated fifty years of independence from **Britain** amid signs that the 2010 constitution is encouraging a maturing political culture. Healthy tension between the branches of Kenya's government and office holders will contribute to Kenya's long-term political stability, but in the short-term undermine cohesiveness in the ruling coalition.

- President **Uhuru Kenyatta** suffered his first legislative defeat since entering office in April¹ when on 1 December, parliament rejected an omnibus bill seeking among other things to amend the **Public Benefits Organizations (PBO) Act** and limit funding for non-governmental organisations.
- The judiciary asserted its independence and authority and stood up to the executive when the High Court on 3 December barred Kenyatta from suspending six Judicial Service Commissioners as part of a long-running dispute over the sacking of chief registrar of the judiciary, **Gladys Boss Shollei** in August. The High Court also blocked parliament swearing in a Kenyatta-appointed tribunal to investigate their conduct.² Judge **George Odunga** struck out the gazette notice that announced that Kenyatta suspended the six commissioners. He ruled that according to the 2010 constitution, the investigating tribunal cannot sit and that no

¹ AP, 5 Dec 2013

² Africa Review, 5 Dec 2013

investigations should begin. The judiciary also threatened to sue speaker of the national assembly **Justin Muturi** for disobeying a previous court order barring MPs from debating the justice committee report that had originally recommended the suspension of the commissioners.³

These checks on government show that Kenya's political institutions are increasingly referring to, and following, the 2010 constitution. However, they have contributed to the breadth and depth of the fault lines inherent within the ruling **Jubilee** coalition.⁴ The coalition is ethnically divided; the **Kikuyu** are aligned behind Kenyatta and the **Kalenjin** behind deputy president **William Ruto**. It was clashes between the Kikuyu and the Kalenjin that fuelled the 2007-2008 violence in **Eldoret** in the **Rift Valley** (see *ARC Kenya February 2013 Briefing*). In December Senator **Charles Keter** of **Kericho** dismissed reports that Rift Valley MPs are rebelling against the deputy president, Ruto.⁵ Keter's statement failed to refute recent reports that members of Ruto's **United Republic Party (URP)** are frustrated that they have not been awarded the jobs promised to them in the coalition agreement. The URP is also reputed to be unhappy that the office of the deputy president is not financially independent, and that expenditure needs to be signed off by Kenyatta's office. Simultaneously, Kenyatta has appointed senior Rift Valley leaders, including notably the senior URP official **Joshua Kutuny**, as political advisers in an attempt to develop his own power base in the Kalenjin heartland. This has raised questions about whether the coalition can survive or whether Kenyatta will decide to go it alone.

The pressures of government raise questions about the ruling coalition's stability and therefore the probable arrangement whereby Ruto will follow Kenyatta as president at the end of Kenyatta's two terms.⁶ There is no official succession agreement between Kenyatta and Ruto, but it is likely that the two reached some agreement as part of their pragmatic alliance to win the 2013 elections.⁷

*“There is a compact between Kenyatta and Ruto agreed before the elections: the president will serve two terms and then support his deputy succeeding him. It is in neither of their interests to jeopardise this. If Kenyatta did decide to 'divorce' Ruto, politically, it would be courageous but incredibly stupid. Kenyatta is far too astute. He will know that you don't change a winning combination, especially when presenting a united front against the **International Criminal Court (ICC)**. What the new constitution did not*

³ Africa Review, 5 Dec 2013

⁴ Source, investment banker, Nairobi

⁵ Standard, 9 Dec 2013

⁶ Source, investment banker, Nairobi

⁷ Source, political analyst, Nairobi; Source, investment banker, Nairobi



*change is the need to get electoral support right the way across Kenya and this means no one individual can win alone. Kenyatta's support base would have to increase exponentially before he considers replacing Ruto and that means 2015 at the earliest."*⁸

It appears unlikely in the medium term that the coalition will collapse but much will depend on the impact of Kenyatta's ICC trial in February 2014. It is also far from a universal view, with a senior oil executive arguing:

*"Jubilee was never anything but a pragmatic arrangement to get into office. That one desire covered so many political differences between the two that I hesitate to even call it an alliance. They disagree on fundamental constitutional issues, namely devolution, which means there is an inherent weakness at the heart of government. Once the ICC trials begin in earnest, Kenyatta will begin to maneuver Ruto out the door in 2014."*⁹

1.2 Government commits to reforming business sector

A **World Bank** report criticising Kenya's business environment has spurred the government into action in improving Kenya's business and investor environment. The World Bank reduced growth estimates for 2013 and 2014 to 5.0% and 5.1% respectively, undercutting its previous forecasts.¹⁰ In June the World Bank said Kenya would grow by 5.7% in 2015 and 6.0% in 2014. The World Bank explained its downward revision by citing low levels of government spending and high interest rates charged by commercial banks, and warned that short term inflows are not sufficiently reliable to encourage sustainable economic growth. The World Bank also described a weakening investment climate amid increased state borrowing to finance the demands of devolution. In an indication of how devolution is putting pressure on the government's finances, county assembly members continued their strike, ongoing since September, over pay after they rejected the most recent offer by the **Salaries and Remunerations Commission (SRC)**. The **Union of Kenya Civil Servants** has threatened to follow suit in January 2014 after the government imposed a wage freeze at the end of November.¹¹

⁸ Source, investment banker, Nairobi

⁹ Source, senior oil executive, Nairobi

¹⁰ Reuters, 10 Dec 2013

¹¹ The Star, 2 Dec 2013

Kenya has relatively little foreign direct investment (FDI) considering its economic prospects. According to **Moody's** rating agency, FDI is at approximately 1.7% of GDP, significantly lower than the average of 4.2% for Kenya's B rated peers.¹² The government has, however, committed to improving its business regulatory environment in order to attract greater FDI.¹³ Ruto said that he would encourage the National Assembly to debate and pass the Companies and Insolvency bills of 2012 when it returns from its December recess, with the relevant legislation expected to pass early in 2014. In December the government said it hoped the National Resources (County Royalties) Bill 2013¹⁴ would forestall disputes with the devolved counties over revenue sharing in the resource sector. This aims to divvy up mining royalties with 20% going to the counties, 75% to the national government and 5% to the local communities. The national treasury, however, said that a proposed capital gains tax will not be introduced until March as work continues on its draft regulations.¹⁵

1.3 Government deploys military in restive northeast

The government deployed the **Kenya Defence Forces (KDF)** to **Moyale** following heavy clashes between rival ethnic groups.¹⁶ While relative peace has since returned, the violence, as with the tensions in the Rift Valley, is indicative of how devolution has increased the value of control over local political offices. In Marsabit, the **Gabra, Rendille** and **Burji** communities are united against the **Borana** in retaliatory cycles of violence, looting and arson. The local MP, now charged with inciting the violence, is a Borana but the wider district is dominated by the Gabra. Thousands have fled the town while dozens have died. KDF soldiers have opened fire on militia from helicopters but seemed reluctant to intervene on the ground, allowing gunmen to flee into **Ethiopia**.¹⁷ Parliament also allowed the KDF to deploy in **Turkana, West Pokot** and **Samburu** counties. In West Pokot sporadic clashes continue between the Turkana and the **Pokot** over border disputes. The deployment will be a test of the capacity of the KDF to ensure stability. The KDF is not geared to fighting a counter-insurgency war. The invasion of southern **Somalia** was carried out along conventional warfare lines and was deemed a success.¹⁸ Analysts believe Kenya's success in recovering territory and capturing the port of **Kismayo** has obscured its tactical failures.¹⁹ KDF successes must be viewed alongside the fact that **al Shabaab** largely ceded control of territory rather than be drawn into set-piece battles. On the occasions when militants adopted classic insurgent/terrorist tactics of IED and ambush, Kenyan

¹² Moody's, October 2013

¹³ East African Business Week, 16 Dec 2013

¹⁴ East African Business Week, 16 Dec 2013

¹⁵ The Star, 18 Dec 2013

¹⁶ Standard, 6 Dec 2013

¹⁷ AFP, 10 Dec 2013

¹⁸ Source, East African security analyst

¹⁹ *ibid*

troops were often slow to respond and unsure of their tactics.²⁰ This is unsurprising given the KDF had no experience of warfare (other than previous internal ethnic clashes) to draw upon.

The conflict is affecting businesses operating in the region. The **Chinese** construction firm **China Wu Yi** suspended work temporarily on the **Isiolo-Moyale** road.²¹ The company said it had taken the decision after armed militia attacked staff, security vehicles and machinery. The Chinese firm reported incidents of militia using grenades and mortars, and said that car hijackings had increased in the last week of November. On 4 December armed men near Moyale managed to temporarily block access to the Kenya- Ethiopia border crossing.²² The Isiolo-Moyale road is the Kenyan stretch of the **Trans-Africa Highway Corridor**. The **African Development Bank** and the **China Exim Bank** are supporting its renovation.

1.4 Grenade attacks highlight risk of Islamist militancy

A grenade thrown at two **British** expatriates in the **Coast** province failed to detonate as Kenya celebrated 50 years of independence from Britain on 12 December.²³ No group has claimed responsibility but al Shabaab affiliate **al-Hijra** is based in **Mombasa**. The **Westgate Mall** attack, in which at least two al Hijra militants took part, underlines the importance to al Shabaab of Kenyan militants.²⁴ Formerly known as the **Muslim Youth Centre (MYC)**, the group became increasingly radicalised during al Shabaab's bid to overthrow Somalia's transitional government following Ethiopia's military withdrawal from Somalia in 2008. The MYC found a role in this struggle providing finance, refuge for injured fighters and broadcasting militant propaganda through a network of radical mosques.²⁵ This gradually turned into a recruiting network providing al Shabaab with a steady supply of Kenyan youths willing to fight in Somalia. In 2012 the MYC declared it was part of **al Qaeda** and subsequently changed its name to al Hijra.²⁶ In a separate incident an explosion on a mini bus near the **Somali** neighbourhood of **Eastleigh** in **Nairobi** killed six people.²⁷ The grenade attack was the first attack in Nairobi since the Westgate Mall siege in September. No group has claimed responsibility, but the attack mirrors a series of similar incidents carried out by al Shabaab. Security

²⁰ *ibid*

²¹ Xinhua, 2 Dec 2013

²² Sabahi, 4 Dec 2013

²³ Daily Nation, 12 Dec 2013

²⁴ Source, East African security analyst

²⁵ *ibid*

²⁶ Source, East African security analyst

²⁷ Daily Nation, 14 Dec 2013



authorities said they had arrested a number of people in connection with the incident including a foreigner.²⁸

2 Implications

Disputes between the executive, the legislative and the judiciary are signs of a healthy democratic political system and a positive bellwether for Kenya's future stability. The short-term outlook for the coalition may not be quite so positive. The ICC trials, by rehashing the events of 2007-2008, will exacerbate tensions both in the coalition and in the Rift Valley. An agreement about succession, however, means that it is in the interests of both Ruto and Kenyatta to ensure that the coalition doesn't collapse entirely. Cracks in the coalition will result in policy delays. In the Rift Valley increased tensions may lead to sporadic inter community violence which would pose a risk to the region's economically important agribusiness operations. However, it is unlikely that these businesses would be specifically targeted unless they are Kikuyu or Kalenjin owned.

FDI trends are set to improve as political stability increases and as the government follows a pro-private sector approach bringing in new business legislation and overseeing the launch of the **Eurobond** in early 2014.

Anti-colonial rhetoric is on the rise in Kenya as Kenyatta and Ruto portray their trials at the ICC as a foreign plot to undermine Kenya. However, attacks on foreigners are rare. Should militants successfully attack an expatriate, it would be a huge blow to Kenya's tourism industry and therefore economy. Nairobi will continue to see low-level Islamist militant attacks in coming years, especially in low-income areas with poor levels of security.

²⁸ Standard, 15 Dec 2013