

AFRICA RISK CONSULTING

Country briefing – Kenya

February 2013

1 Summary

Raila Odinga holds narrow lead over Uhuru Kenyatta in opinion polls, but a second round will likely be needed to separate the two leading candidates. ICC delays Kenyatta trial until August following claims of witnesses being bribed and threatened. Sporadic, localised violence likely around polls for governors and senators in Coast, North Eastern, and Nyanza. While the government attempts to portray a case of business as usual, companies should prepare for several weeks of political limbo and business slow-down.

2 Political dynamics

2.1 Odinga edges into lead as campaigning for general election enters last few days

As the March 4 general election approaches, the final opinion polls showed an extremely close race between main presidential contenders **Uhuru Kenyatta** and **Raila Odinga**, with a second round appearing more and more likely. While this would increase the threat of political violence, campaigning in February was, for the most part, peaceful and the **International Criminal Court's (ICC)** decision to delay the trial of Kenyatta (see below) should reduce the risk of anything more than sporadic low level violence.

In polls released on 26 February, **Consumer Insight** showed Odinga's approval at 46.8% compared to Kenyatta at 44.3%. **Musalia Mudavadi** is shown in third place with 4.2%. **Strategic Research** gave Odinga 45.7% with 43.8% for Kenyatta and 5.7% for Mudavadi. **Infotrak** gave Odinga 46%, Kenyatta 44.5% and Mudavadi 4.3%¹. All the polls indicated that Odinga would narrowly win a second round run-off with a margin somewhere between 2.3% and 6%.

The much anticipated televised presidential debates were held on 11 and 25 February. While they both attracted large audiences- the first viewed by as many as 15 million Kenyans- their significance may be limited. The extended panel with its diverse views diluted the main candidates' command of the process, and there was little space for meaningful policy platforms rather than vacuous promises to emerge. There was no mention of either foreign policy, despite Kenya's intervention in **Somalia**,

¹ *Daily Nation*, 26 February

land reform or unemployment, perhaps suggesting a failure to move beyond the politics of ethnicity. There were several good lines. Kenyatta was wounded by the challenge of the other candidates, particularly by a catchy soundbite delivered by Odinga about his ability to govern Kenya via Skype while at **The Hague** during the first debate, while **Alliance for Real Change** candidate, **Mohamed Abduba Dida**, questioned the purpose of the moderator asking each candidate about corruption, respectfully asking during the second, “do you expect a thief to accept that they have stolen?”. With most Kenyans claiming in January to already know who they were voting for, these were more sly jabs than knock out blows.

2.2 ICC prosecution delays Kenyatta trial until August

The prosecution at the ICC agreed to delay the trial of Kenyatta for alleged crimes against humanity following the 2007 election until August². The Court referred another related case against **Francis Muthaura**, former head of Kenya’s civil service, back to a pre-trial chamber after a key witness was withdrawn over the credibility of testimony amidst accusations of attempts to bribe and intimidate witnesses. **Fatou Bensouda**, the chief prosecutor referred in January to an “unprecedented level of witness tampering in the case”, citing attempts to bribe two prosecution witnesses only days after their identities were disclosed. The original trial date of April 11 would have clashed with the likely second round run-off in the presidential election, thus increasing the stakes of winning the first outright. An advisor to Odinga described the decision as a blow to his campaign, “*it was perfect... to have your opponents out of the country completely, with the visual image of them getting on a plane at **Jomo Kenyatta** airport, getting off at **Amsterdam Schiphol** airport and then sitting in the dock*”³. In some ways, the troubles facing Kenya have only been delayed. Should Kenyatta win and refuse to cooperate with the ICC, it could undermine Kenya’s relationship with western states and lead to sanctions affecting those conducting business in the country.

2.3 County elections

Kenya's 2010 Constitution devolves power to 47 counties, each of which will elect a governor, senator and local assembly. This reform, while meant to dilute the power of the central administration, has also sparked new tensions with the prospect of counties disbursing their own budgets.

*NB Percentage turnout figures are number of voters registered as a percentage of the number of voters targeted by **Independent and Electoral Boundaries Commission (IEBC)**.*

Central

- Counties: **Kiambu, Kirinyaga, Muranga, Nyandarua, and Nyeri;**

² Financial Times, 27 February 2013

³ Financial Times, 27 February 2013

- Central has three of the counties where voter turnout has been highest, Kiambu (113.7%), Nyeri (110.4%) and Kirinyaga (106.7%);
- The population is largely Kikuyu and therefore firmly behind Kenyatta. Kikuyu candidates are expected to win in all five counties;
- Politicians have been mobilising criminal gangs, and residents have reported intimidation, with gangs moving from house to house telling residents who to vote for. If Odinga wins the presidential election, most residents believe that he will ensure the ICC jails Kenyatta and he will then begin to target the Kikuyu as a community. Kenyatta thus needs victory to save himself and the Kikuyu as a people. Among the gangs active in Central is the notorious **Mungiki**. The Mungiki, known for beheading and sometimes skinning their victims, enjoyed patronage from individuals in government from the 1990s to 2005, when the relationship started to go sour and the state began a crackdown.

Coast

- Counties: **Kilifi, Lamu, Malindi, Mombasa, Taita Taveta and Tana River;**
- In Mombasa county, the two frontrunners are **Ali Hassan Joho (Orange Democratic Movement, ODM)** and **Suleiman Shahbal (Wiper Democratic Movement of Kalonzo Musyoka)**. Both are Muslim and well-off. Joho, a local MP, has the backing of a lot of women voters because of health and education projects he has implemented. Joho has a younger brother widely reputed to be a large-scale drug dealer⁴. Joho has no visible means of financing the lifestyle he enjoys. Suleiman Shahbal, owner of a successful trucking business, has received the endorsement of Mombasa's Somali community.
- In Tana River, vying for the county governor seat are **Danson Mungatana (The National Alliance, TNA)**, outgoing MP for **Garsen** constituency, **Hussein Dado** (Wiper), who has in the past contested unsuccessfully for the Garsen parliamentary seat, **Adam Dhidha Barisa** (ODM), a former ally of Mungatana, and **Mandara Barisa Badiribu (Narc Kenya)**.
- The issues dominating the ballot in **Coast** have been land and religion. On February 12 two officials from a Muslim organisation **Council of Imams and Preachers of Kenya** addressed a meeting of some 300 imams and madrasa teachers and said they were endorsing Uhuru Kenyatta as presidential candidate. This led to some Kikuyu claiming that Muslims would vote en masse for Kenyatta as they were angry with Odinga over his alleged failure to deliver on promises made to the Muslim community and to regions where the population is largely

⁴ Source, journalist, Mombasa

Muslim⁵. A week later leaders from three Muslim organisations made a joint declaration distancing themselves from the earlier statement and saying Muslims were free to vote for their preferred candidate⁶. Over the past months tension has increased over land. Those acquiring prime beachfront acreage are mostly outsiders, many of them politicians. Squatters have recently occupied at least two large tracts of land owned by absentee landlords⁷.

- The two most tense are likely to be Mombasa and Tana River, due to the separatist group, the **Mombasa Republican Council (MRC)** which has called for a boycott of the election, and recent ethnic unrest respectively. Violence has hit **Coast** hardest in the months ahead of these polls, although the province was largely calm in 2007. Islamist militants are allegedly responsible for attacks on Coast, while a. The MRC, formed in the wake of the last polls, complains that the government has marginalised Coast province and its indigenous peoples. It says there should be no elections until the government allows the region to hold a referendum on self-determination. Rights groups say the MRC has intimidated residents who want to defy the boycott and that violence is possible against those who do vote. Survivors of militia attacks in the **Tana River Delta** described the attacks as coordinated and highly organised, involving MRC members and ethnic **Pokomo**⁸. In 2012 a court overturned the status of the MRC as an outlawed organisation but members of the security forces by and large still treat the group as if it were illegal⁹. This has led to fears that the police, already accused of using excessive force against MRC members, will employ the same tactics during the elections¹⁰.

Nairobi

- The region with by far the greatest number of registered voters;
- Vying for the governor's seat are **Ferdinand Waititu** (TNA), **Evans Kidero** (ODM) and **Jimnah Mbaru** (jumped to **Alliance Party of Kenya** after losing to Waititu in the primaries). Waititu is seen as the frontrunner. He has massive support in Nairobi's slum areas, largely because he stands up for slum dwellers every time the government tries to demolish their homes. Kidero, who served as CEO/MD of two large corporations, is popular among the middle class and the elite. Mbaru, also a businessman and former two-times head of the **Nairobi Stock Exchange**, draws his support from the business community.
- Vying for the senator seat are **Mike Mbuvi** (TNA), better known as **Sonko**, an MP, businessman and serial litigator with huge support in the slums (very similar profile to that of

⁵ Source, journalist, Nairobi

⁶ *The Standard*, 19 February 2013

⁷ Source, journalist, Mombasa

⁸ AFP, 14 September 2012

⁹ Source, journalist, Mombasa

¹⁰ Human Rights Watch, February 2013

Waititu). Kenyatta has endorsed him during recent rallies, and **Margaret Wanjiru** (ODM), a bishop and founder of the **Jesus is Alive Ministries**. Wanjiru is also an MP and assistant minister for housing. She is capitalising on the support of her congregation.

- In **Kisumu** county, both the governor and the senator seat look sure to go to ODM heavyweights, respectively to **Jack Ranguma** and to **Anyang Nyong'o** (ODM secretary general). Elections for MPs in some constituencies in Kisumu could cause trouble.
- In **Kisii** county, often seen as a swing area, foreign affairs minister **Sam Onger** (TNA), a career diplomat and professor of medicine is up against ODM's **Chris Obure**.

Rift Valley

- Counties: **Baringo, Bomet, Elgeyo Marakwet, Kajiado, Kericho, Laikipia, Nakuru, Nandi, Narok, Samburu, Trans Nzoia, Turkana, Uasin Gishu, West Pokot;**
- The picture in Rift Valley is quite varied with Nakuru the centre of political tension and some other more outlying counties, such as West Pokot and Samburu, much more apolitical.
- In **Nakuru**, the provincial capital, locals say the former commandant of the **Administration Police, Kinuthia Mbugua** (Kikuyu, TNA), is certain to win the election for governor.

*"Mbugua is tipped to win because his tribe makes up the majority of voters in the county and he has received massive support from the Kalenjin too after he named a Kalenjin (**Joseph Ruto**) as his running mate"¹¹.*

- The senatorial race is the most competitive as there are 13 candidates competing for the seat. The most notable is former **Naivasha** legislator **Jayne Kihara** (mentioned in the **Waki Commission** report on post-election violence as having participated, funded and coordinated retaliatory attacks in Naivasha at the height of the 2007/2008 violence). The senate election is also creating rifts within the **Jubilee Coalition** which brought together The National Alliance (TNA) of Kenyatta and Ruto's **United Republican Party (URP)**. URP members have accused Kenyatta's TNA party in Nakuru of reneging on an alleged deal whereby TNA would not field candidates for certain positions across the Rift Valley and specifically, Nakuru¹². The Kalenjin claim that the Nakuru senate seat was supposed to go to them while a Kikuyu takes the governor's seat (Mbugua). They further claim that in the deal, TNA was not to field candidates in several constituencies (**Kuresoi North, Nakuru West, Rongai and Kuresoi South**) on the understanding it would get seats in the rest (**Nakuru East, Bahati, Subukia, Gilgil, Naivasha, Njoro and Molo**). The Kalenjin claim the TNA disregarded this deal and has fielded candidates for the senate, Nakuru West and Kuresoi North seats. The TNA on the other hand has denied

¹¹ Source, journalist, Nakuru

¹² Source, journalist, Nairobi

that such a deal ever existed. This could be a source of conflict in the polls. Human rights groups also report that government measures to rehome displaced people have favoured Kikuyu over Kalenjin.

- In **Siaya**, Odinga's home county, there have been power struggles within his ODM party¹³. Odinga has backed **Cornel Rasanga** as ODM candidate for Siaya governorship.

*"Instead most voters are inclined towards **William Oduol**, widely believed to have won the ODM primaries but who was denied the party ticket. He has since decamped to the **Federal Party of Kenya**"¹⁴.*

Nyanza

- Counties: **Homa Bay, Kisii, Kisumu, Migori, Nyamira, Siaya;**
- Roughly half of the 21 constituencies here are Luo while tribes such as the **Kisii** occupy the others.
- Violence hit **Nyanza** hard in the wake of the 2007 polls. In the Luo part of Nyanza, recent violence has mostly affected **Kisumu**, a town with two main gangs, the **American Marine** and the **China Group**. The American Marine reportedly backs Odinga and its members are largely minibuses and moto-taxi drivers. The **China Group**, whose membership consists of property owners, backs Kenyatta. The two gangs clashed after Kenyatta visited Nyanza in September 2012. Police at first failed to act to quell the violence and then used excessive force. There are reports that Kenyatta's allies have been offering money to voters in Luo Nyanza if they relinquish their voter cards¹⁵.

Eastern

- Counties: **Embu, Isiolo, Kitui, Machakos, Makueni, Marsabit, Meru;**
- Politicians from different clans have been financing the violence, normally by paying fighters from their own clan to demonstrate their protection of the clan. The fighting has often gone on for several days before police intervene. Al Shabaab and its sympathisers have tended to target government officials, the army and the police. The security forces have often responded by arbitrarily beating and arresting civilians who were in the area of the attack.
- Kenya's deployment of forces to Somalia to fight **al Shabaab** militancy as well as inter-clan violence have affected the **North Eastern** and Eastern regions. Clan violence erupted last year in **Isiolo** and **Moyale** in Eastern, and **Mandera** in North Eastern.

¹³ Source, journalist, Kisumu

¹⁴ Source, journalist, Kisumu

¹⁵ Source, journalist, Nairobi

North Eastern

- Counties: **Garissa, Wajir, Mandera**
- In all three counties politics are essentially clan-based.
- Turnout for voter registration was very low in all three counties: 40% for Garissa, 35.7% for Wajir and just 25.3% for Mandera.

Western

- Counties: **Bungoma, Busia, Kakamega, Teso, Vihiga;**
- In Kakamega, considered the centre of Western region, **Moses Opranya** of ODM is tipped to win the governor's seat with **Bonny Khalwale** of **Musalia Mudavadi's** UDF set to take the senator's seat. Opranya is running against UDF's **Paul Olando**. Khalwale is running against ODM's **Cyrus Jirongo**.
- In Busia, ODM has fielded **Amos Wako**, who was the country's attorney general for over two decades, against **Ford Kenya's Chris Okemo** in the race for the senate seat. Recent polls have shown the two as being neck and neck.
- Vihiga county is the home of **Amani Coalition** presidential flag bearer Mudavadi. While Mudavadi is expected to get a chunk of seats, Odinga has been making inroads especially in **Luanda** and **Emuhaya** constituencies.
- Although Mudavadi has never contested for presidency, in 2002 he was Uhuru Kenyatta's running mate while in 2007 he was Odinga's. On both occasions he failed to drum up support for his running mates in his own backyard.
- Last time around it was Nyanza rather than Western that was the centre of violence.

3 Business dynamics

3.1 Impact of elections on business

During the party primaries in January, a number of businesses, particularly in Nairobi, adopted flexible working hours in anticipation of unrest or requested employees to work from home¹⁶, illustrating that pre-election contingency plans are already well-established. In other areas, notably in Nyanza Province, companies report that party activists put pressure on management to close businesses and 'support' the voting exercise¹⁷, indicating the type of business disruption that could occur more widely during the main elections. It would be advisable for companies to continue to

¹⁶ Corporate security managers, Kenya

¹⁷ Regional security manager, East Africa

prepare for a second-round run off scenario. This is likely to entail several weeks of political limbo and business slow-down. Companies should anticipate localised outbreaks of violence in the days around the election. These are likely to be more intense if there are significant logistical problems, as this will fuel rumours of bias and malpractice. A second round presidential vote is almost guaranteed. Should a surprise first round victory for either side be announced, the result is likely to be rejected by the loser and appealed vigorously. This is however an unlikely prospect.

International governments have yet to make any detailed comments regarding the sort of sanctions that could be imposed on Kenya should ICC indictee Kenyatta accede to the presidency. They are unlikely to do so until and unless such an outcome materialises. However, as long as Kenyatta and Ruto maintain full co-operation with the ICC, any sanctions are likely to target politically-connected individuals rather than the country as a whole.

3.2 Kenya announces demarcation of nine new oil blocks

Potential new oil and gas investors are apparently delaying investment decisions pending the outcome of the March elections¹⁸. Amidst this uncertainty and with the financial cost of the 2007 violence fresh in their minds, the Kenyan government is attempting to portray a sense of business as usual. Energy permanent secretary **Patrick Nyoike** on 12 February announced that Kenya is in the process of demarcating up to nine new on and offshore oil blocks to be offered in a new licensing round within the next month. The new round will involve open bidding for the first time, rather than the previous system of bilateral negotiations with government. Nyoike reiterated previous comments that Kenya will begin to demand higher licence fees and impose heavier work requirements, as government believes it is now a proven and attractive hydrocarbons destination. Nyoike commented that "many, many companies have shown interest in coming to Kenya" and singled out **Chevron** and **Eni** as firms looking for more blocks in the near future¹⁹.

4 Implications

The ICC's decision to postpone the trial of Kenyatta until August will reduce the stakes of March's general election, and therefore the risk of systematic political violence. There is, however, likely to be sporadic, localized violence around senatorial and gubernatorial polls, with Coast, North Eastern, and Nyanza particularly at risk.

¹⁸ Reuters, 26 February 2013

¹⁹ Reuters, 12 February 2013