

AFRICA RISK CONSULTING

Kenya Monthly Briefing December 2015

Kenya Summary 1 December 2015

President Uhuru Kenyatta (2013- present) reshuffles his cabinet, following the resignation of devolution cabinet secretary Anne Waiguru. Political and ethnic considerations shape nominations ahead of 2017 elections. The ruling Jubilee Coalition prepares to unite into the Jubilee Alliance Party (JAP) in December. Kenyatta introduces structural reforms to curb corruption, notably establishing a new budgetary office under chief of staff Joseph Kinyua. Africa Oil Corp enters a farm-out agreement with Denmark-based A.P. Moller-Maersk Group subsidiary Maersk Oil & Gas AS. Helios Investment Partners acquires Orange SA's 70% stake in Telkom Kenya Ltd.

Kenyatta reshuffles cabinet

President **Uhuru Kenyatta** (2013- present) on 25 November reshuffled his cabinet in an attempt to reinvigorate the government and consolidate his own power base.¹ Kenyatta replaced six ministers, moved four others and increased the size of the cabinet by one. Kenyatta notably nominated appointees to fill cabinet positions vacant following the resignation or suspension of ministers accused of graft back in March of this year (see *ARC Briefing Kenya April 2015*). Acting cabinet secretaries had headed key ministries including energy (in place of the suspended **Davis Chirchir**), land (**Charity Ngilu**), transport (**Michael Kamau**), labour (**Kazungu Kambi**) and agriculture (**Felix Koskei**). None of the suspended cabinet secretaries has been convicted on corruption charges. Kenyatta retained key security and economic office holders including finance cabinet secretary **Henry Rotich**.² Additionally, Kenyatta created a new position public service cabinet secretary, appointing former civil servant **Sicily Kariuki**.

Kenyatta continued his policy of balancing politicians and technocrats. He nominated **Kericho** senator **Charles Keter** energy cabinet secretary and current health cabinet secretary **James Macharia** transport and infrastructure.³ Appointees from the private sector include the information and communication technology nominee **Joe Mucheru**, who was the **Google** country manager for **Kenya**, and agriculture nominee **William Bett**, managing director of the **Kenya Seed Co**.⁴

"Kenyatta has decided to include senior managers from top firms, who are seen to be better performers than career civil servants or politicians."⁵

The trigger for the reshuffle was the resignation of devolution cabinet secretary **Anne Waiguru** on 21 November.⁶ While Waiguru cited poor health for her resignation, it came amid persistent allegations of corruption at the devolution ministry (see below).⁷ Waiguru testified on 4 November in front of the parliamentary public accounts committee about allegations of systemic fraud in her ministry.⁸

¹ Source, journalist, Nairobi

² Daily Nation, 25 Nov 2015.

³ Daily Nation, 25 Nov 2015.

⁴ Daily Nation, 25 Nov 2015.

⁵ Source, journalist, Nairobi

⁶ Standard, 21 Nov 2015.

⁷ Standard, 21 Nov 2015.

⁸ Standard, 4 Nov 2015.

“Pressure from the public for the president to take more action increased especially after the devolution ministry lost KSh791m (\$7.9 million).”⁹

Constitutional Article 152 requires the cabinet to have no fewer than 14 cabinet secretaries. Waiguru’s resignation and suspensions related to **Ethics and Anti-Corruption Commission (EACC)** investigations means the cabinet currently only has 13 cabinet secretaries. The opposition had questioned the constitutionality of the current cabinet, potentially forcing Kenyatta to replace the suspended cabinet secretaries.

Electoral and ethnic considerations shaped the identity of Kenyatta’s selections. A number of the nominees are from the **Kamba, Kisii and Coastal** communities.¹⁰

*“Voters from these communities mostly voted for the opposition **Coalition for Reforms and Democracy (CORD)** coalition and the new appointments are meant to create pockets of influence in these areas. Kenyatta and his deputy **William Ruto** have pacified ethnic blocs, whose support they will need in 2017 when they seek re-election. The appointments are additionally designed to buttress the duo’s political turf where there is a growing feeling that there is still a lack of representation. Former legislator **Mwangi Kiunjuri**, an ethnic **Kikuyu** like Kenyatta, has replaced Waiguru, another Kikuyu. Kiunjuri comes from **Laikipia** while Waiguru comes from **Kirinyaga**.”¹¹*

Jubilee Alliance Party prepares to form in December

The joining of the ruling coalition into a single **Jubilee Alliance Party (JAP)** will provide a more effective platform ahead of the 2017 election. In November, Ruto’s **United Republican Party (URP)** agreed to dissolve and join the JAP.¹² The URP’s decision will encourage other members of the ruling **Jubilee Coalition** to do the same, with smaller parties including those belonging to the **Amani Coalition** yet to announce their intentions. The Jubilee Coalition had given its members a deadline of 7 November to dissolve and merge into a single party before the new party’s official launch on 18 December as the JAP. The JAP has said that at least eight members of the Jubilee Coalition have agreed to unite as a single party. This includes Kenyatta’s **The National Alliance** and Ruto’s URP, which hold 89 and 75 parliamentary seats respectively. The JAP will likely hold a sizeable parliamentary majority in the national assembly. One of the key aims of the merger is to minimise the risk of tension in the build up to the 2017 elections. The JAP is expected to nominate Kenyatta as its presidential candidate, as he seeks a second – and constitutionally final – term in office. Ruto’s ongoing trial at the **International Criminal Court (ICC)** poses an ethnic fault line in the coalition that electioneering might exacerbate. The coalition would find it easier to mitigate the risk of fracturing along ethnic lines as a single party with one leadership responsible for all appointments and strategy.

Kenyatta introduces anti-corruption reforms

Kenyatta on 23 November presented a series of measures to curb corruption.¹³ While Kenyatta has repeatedly spoken out against corruption, concrete measures are rarer. The announcements will only go some way to assuaging popular and political concerns that Kenyatta’s anti-corruption drive has stalled.

“Kenyans are not yet about to open the champagne since they are sceptical on whether the tough talking president will actually clean the murk in his government. Despite millions of shillings in investigations, commissions of enquires etc. no senior official has been convicted for the theft of public funds.”¹⁴

⁹ Source, journalist, Nairobi

¹⁰ Source, journalist, Nairobi

¹¹ Source, journalist, Nairobi

¹² Daily Nation, 6 Nov 2015.

¹³ Daily Nation, 23 Nov 2015.

¹⁴ Source, journalist, Nairobi

The most significant policy is that the budget office will assume the budgetary functions of the treasury, which “*is a big game changer*”.¹⁵ Kenyatta said he had instructed chief of staff **Joseph Kinyua** to establish an independent budget office within the presidency.¹⁶ Separating the design of the budget from its implementation will reduce the risk of political interference.¹⁷

*“Previously ministries would design projects and estimate budgets and then take them to the treasury. The treasury would then decide which projects to fund. The budget would then be taken to parliament for debate and approval. Kenyatta argued that there were cartels who were influencing projects at various ministries and at the treasury.”*¹⁸

Kinyua heads the office of the presidency and has a positive reputation.

*“Kinyua has over the years earned a reputation as one of the most disciplined public officers. Kinyua and Kenyatta worked together while the latter was the finance minister and the transfer of the critical role means that the president can keep tabs on government spending as his office will have the final say.”*¹⁹

Kenyatta also moved to fill the vacant leadership of the EACC, nominating former **PricewaterhouseCoopers Africa** chairman **Philip Kinisu** EACC chair.²⁰ The EACC has accelerated its own anti-corruption efforts. On 16 November the EACC arrested 20 individuals on corruption charges.²¹ The arrested individuals include **Geothermal Development Co** managing director **Silas Simiyu**, acting CEO **Godwin Mwawongo**, and members of the company’s tender committee.²² The EACC also arrested **Charles Tanui**, the suspended managing director of the **Kenya Pipeline Co**, and **Evans Ngibuini**, managing director of the **National Water Conservation and Pipeline Corp**.²³ International diplomats on 12 November said they will increase efforts to prevent illicit funds leaving Kenya, and impose travel bans on officials suspected of corruption.²⁴

Kenyatta additionally announced that banks that fail to meet anti-money laundering and counter terrorism financing legislation will risk losing their licences.²⁵ Under the new system, executives are liable for their bank’s failure to comply with relevant regulations.²⁶ The **Central Bank of Kenya (CBK)** on 18 November imposed an indefinite moratorium on the licensing of new banks.²⁷ The suspension is reportedly linked to the receivership of **Imperial Bank Ltd** and **Dubai Bank Kenya Ltd** (see *ARC Briefing Kenya November 2015*).²⁸ The suspension does not cover ongoing mergers and acquisitions.

Kenyatta noted that the majority of corruption occurs during procurement. He said a new private sector-drafted bribery law will require companies seeking to do business with the national or county level governments to sign up to a **Business Code of Ethics**.²⁹ The government will blacklist for five years companies that violate the code.

¹⁵ Source, journalist, Nairobi

¹⁶ Business Daily, 23 Nov 2015.

¹⁷ Business Daily, 23 Nov 2015.

¹⁸ Source, journalist, Nairobi

¹⁹ Source, journalist, Nairobi

²⁰ Daily Nation, 23 Nov 2015.

²¹ Daily Nation, 16 Nov 2015.

²² Daily Nation, 16 Nov 2015.

²³ Daily Nation, 16 Nov 2015.

²⁴ Africa Review, 13 Nov 2015.

²⁵ Daily Nation, 23 Nov 2015.

²⁶ Daily Nation, 23 Nov 2015.

²⁷ Reuters, 18 Nov 2015.

²⁸ Global Banking News, 18 Nov 2015.

²⁹ Daily Nation, 23 Nov 2015.

Kenyatta announced the vetting of **Kenya Revenue Authority** officials, and tasked the **National Intelligence Service** to detect and investigate corruption.³⁰ Kenyatta blamed inefficient bureaucracy for the poor implementation of previous anti-corruption measures.³¹

Africa Oil and Maersk agree farm-out agreement

Canada-based **Africa Oil Corp** has entered a farm-out agreement with Denmark-based **A.P. Moller-Maersk Group** subsidiary **Maersk Oil & Gas A/S** for oil fields in Kenya and **Ethiopia**.³² The deal shows the willingness of international oil companies to invest in low risk and low cost acreage in **East Africa** despite ongoing uncertainty about the route of the oil export pipeline.

In Kenya, Maersk acquired 50% of Africa Oil's interests in **Blocks 10BB, 13T and 10BA**.³³ Under the new ownership structure for all three blocks, Africa Oil holds 25%, Maersk 25% and operator **Tullow Oil Plc** 25%.³⁴ In Ethiopia, Maersk acquired 50% of Africa Oil's interests in the **Rift Basin and South Omo** blocks.³⁵ Under the new ownership structure for Rift Basin, operator Africa Oil holds 25%, Maersk 25% and **Marathon Oil Corp** 25%.³⁶ Under the new ownership structure for South Omo, Africa Oil holds 15%, Maersk 15% and operator Tullow Oil 50%.³⁷

Under the terms of the agreement, Maersk will pay Africa Oil \$350m for approximately 50% of past costs incurred.³⁸ Maersk will carry up to \$75m of development expenditure upon confirmation of resources, and \$15m of exploration expenditure.³⁹ Following the final investment decision, Maersk will carry up to \$405m of Africa Oil's working interest share of development expenditure. Maersk said the fields had relatively low technical costs and were therefore resilient to low oil prices.⁴⁰ In November, Maersk Oil announced a third quarter profit of \$32m compared to \$222m during the same period in 2014 encouraging a conservative strategy, which the East Africa acquisition fits into.

Government to increase stake in Telkom Kenya

The government may use private equity company **Helios Investment Partners'** acquisition of **Orange SA's** 70% stake in **Telkom Kenya Ltd** as an opportunity to increase its own holding.⁴¹ An increased stake would give the government greater influence at board level as Telkom Kenya looks to challenge the dominance of **Safaricom Ltd** which accounts for over 60% of the market.⁴² Orange (formerly **France Telecom SA**) has had a tense relationship with the government since it acquired a 51% stake in Telkom Kenya in November 2007 over its failure to run Telkom Kenya at a profit and an additional \$96m shareholder cash injection in 2011. The government ceded 9% of its shareholding in December 2012 in exchange for France Telecom writing off \$322m worth of loans to Telkom Kenya.⁴³ The government further decreased its holding in Telkom Kenya by 10% in 2013 in a rights issue. The parliamentary public investment committee criticised the government for doing insufficient due diligence ahead of the rights issue and ceding too much control over Telkom Kenya.⁴⁴ In July 2013, the government missed a deadline to inject \$27m into Telkom Kenya and increase its shareholding back to 40%.

³⁰ Business Daily, 23 Nov 2015.

³¹ Reuters, 21 Nov 2015.

³² Africa Oil statement, 9 Nov 2015.

³³ Africa Oil statement, 9 Nov 2015.

³⁴ Africa Oil statement, 9 Nov 2015.

³⁵ Africa Oil statement, 9 Nov 2015.

³⁶ Africa Oil statement, 9 Nov 2015.

³⁷ Africa Oil statement, 9 Nov 2015.

³⁸ Africa Oil statement, 9 Nov 2015.

³⁹ Africa Oil statement, 9 Nov 2015.

⁴⁰ Aberdeen Press and Journal, 10 Nov 2015.

⁴¹ East African, 14 Nov 2015.

⁴² East African, 14 Nov 2015.

⁴³ East African, 14 Nov 2015.

⁴⁴ East African, 14 Nov 2015.

The government reportedly plans to buy back 12 million shares, approximately 10% of Telkom Kenya, to increase its total holding back to 40%.⁴⁵ Rotich has said that the government will negotiate a share sale-purchase agreement with Helios once the new Telkom Kenya board convenes in January 2016.⁴⁶ The **Communications Authority of Kenya** has said that it will not approve the sale until Orange clears KSh1.5 billion (\$14.7m) arrears.⁴⁷

Implications

Filling the vacant cabinet secretary positions will facilitate more effective decision-making, and reduce the risk of the opposition challenging government policy in the courts. Maintaining key security and finance office holders will ensure policy continuity. The identity of Kenyatta's cabinet nominees and the formation of the JAP signal that thoughts are already turning to 2017. Kenyatta's careful ethnic balancing and large parliamentary majority should ensure greater stability, but may also trigger the defection of smaller members of the Jubilee Coalition to CORD. The JAP will unite the political interests of the Rift Valley and the **Central Province** and make it well positioned to dominate the next two sets of elections. However, the JAP risks being viewed as a Kikuyu and Kalenjin vehicle excluding Kenya's other ethnic groups, raising the longer-term risk of increased popular and political tensions.

Kenyatta understands the scale of the corruption challenge facing Kenya but has struggled to implement the cultural change required across national and county-level government.⁴⁸ Kenyatta appears to have tired of his previous policy of waiting for the EACC to encourage a change in culture through charges and prosecutions and instead has focused on structural reform. Kenyatta's reforms increase the oversight responsibilities of both his own office and the private sector. Private sector executives should make themselves acquainted with the new regulations placed upon them to ensure compliance.

Despite depressed international oil prices and delays to the export pipeline's final investment decision now expected in 2016, East Africa remains attractive due to its highly prospective but unexplored onshore acreage. Kenya is more appealing than neighbouring **Uganda** and **Somalia** due to its more stable regulatory and political environments. It fits the profile of potential acquisitions for companies like Maersk seeking low cost, low risk onshore exploration.

The exit of Orange will ensure smoother shareholder relations at Telkom Kenya. This is positive news for the development and management of the **National Optic Fibre Backbone Infrastructure** project for which Telkom Kenya holds the contract. Nevertheless, Telkom Kenya's future is uncertain. The value of owning Kenya's largest fixed-line network is decreasing as the mobile market expands rapidly. Helios is not an operator and may look to bring in a third party or cede management to the government, perhaps as part of a share sale-purchase agreement.

⁴⁵ East African, 14 Nov 2015.

⁴⁶ East African, 14 Nov 2015.

⁴⁷ Daily Nation, 11 Nov 2015.

⁴⁸ Source, business analyst, Nairobi

About Africa Risk Consulting:

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