

## AFRICA RISK CONSULTING

### Country briefing – Uganda

29 August 2014

## 1 Summary

*The constitutional court strikes down the Anti-Homosexuality Act and the reappointment of chief justice Benjamin Odoki as the judiciary attempts to assert its independence. The parliamentary appointments committee completes vetting names for the boards of the National Petroleum Authority (NPA) and National Oil Company (NOC). NPA board member Kiriyowa Kiwanuka and NOC chairman Emmanuel Katongole have close ties to president Yoweri Museveni (1986 – present). The Uganda Bureau of Statistics (UBS) starts an overdue national census.*

### 1.1 Constitutional court rules twice against government

Uganda's constitutional court issued two separate rulings against the government in August as the judiciary attempts to assert its independence, especially over judicial appointments. In the first ruling, the constitutional court declared the **Anti-Homosexuality Act** void on 1 August, ruling that parliament had lacked a quorum when it passed it in December 2013 (see *ARC Uganda March 2014 Briefing*).<sup>1</sup> The judges and acting chief justice **Steven Kavuma** (see below) were particularly critical of speaker **Rebecca Kadaga**, ruling that she acted illegally in forcing through the legislation without following parliamentary procedure. The ruling came two days before President **Yoweri Museveni** (1986 – present) headed to **Washington DC** for the **US-Africa Leaders Summit** from 4-6 August. Museveni denied that there was any connection between his visit to the **United States (US)** and the court ruling. While the US has led international criticism of the Anti-Homosexuality Act and imposed limited targeted sanctions, donors had already started resuming support to Uganda. **Sweden** resumed direct support in July.

The ruling has undermined the standing of Kadaga, a potential presidential candidate in 2016. Kadaga was the “*driving force*” behind the legislation in part to promote her own visibility and presidential ambitions.<sup>2</sup> Polls show that Kadaga is an increasingly popular candidate (see *ARC Uganda May 2014 Briefing*). A **Musoga** from Uganda's **Busoga** region, Kadaga is the ruling **National Resistance Movement (NRM)** vice chair for eastern Uganda and might pose an electoral threat to Museveni if she

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<sup>1</sup> Daily Monitor, 1 Aug 2014.

<sup>2</sup> Source, former western diplomat

could ally with a **Baganda** candidate to offer an ethnically balanced ticket. Kadaga continues to raise her political and popular profile and started weekly media briefings in August. Kadaga criticised the government for ignoring her requests to expedite constitutional reform processes.<sup>3</sup>

There is political momentum for parliament to reintroduce the bill or similar legislation when it returns from recess at the end of August. While it is likely that the NRM will reintroduce the bill to parliament, Museveni will no doubt check its progress and may defer its signing until after the 2016 election.<sup>4</sup> Museveni has already slowed down the process by forming a committee chaired by vice president **Edward Kiwanuku Ssekandi** to look into the constitutionality of the Anti-Homosexuality Act in its current form. The government has also filed an appeal against the ruling at the Supreme Court.

In a separate ruling, the constitutional court barred the reappointment of chief justice **Benjamin Odoki** on 4 August as the judiciary looked to give Museveni a “*bloody nose*” over the issue of judicial appointments.<sup>5</sup> Kavuma will serve as the acting chief justice until a permanent appointment is in place. As the government considers constitutional reform, an independent judiciary with the authority to scrutinise the legality of its provisions and implementation will be crucial to Uganda’s political stability. The judiciary may also need to issue rulings on the conduct of the 2016 election, with observers linking “*Museveni stuffing the benches with loyalists*” to attempts to prepare the way for electoral fraud.<sup>6</sup> In June 2013, Museveni swore in 25 new judges, including two at supreme court level. Odoki retired in March 2013 but Museveni reappointed him in August despite Odoki being older than the mandatory retirement age of 70, and in the face of opposition from the judicial service commission.<sup>7</sup> The Odoki ruling is significant as it shows the judiciary’s increasing resistance to Museveni’s unilateral decision making in judicial appointments. The constitutional court cited Article 142 of the constitution that states that the judicial service commission should present the president with a list of nominees. The president should then make an appointment from the list, before parliament approves it. Museveni has increasingly chosen his own nominees leading to an increasingly politicised judiciary.

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<sup>3</sup> The Observer, 22 Aug 2014.

<sup>4</sup> Source, journalist, Kampala

<sup>5</sup> Source, financier, Kampala

<sup>6</sup> Source, lawyer, Nairobi

<sup>7</sup> East African, 4 Aug 2014.

## 1.2 Parliament appoints key petroleum boards

The parliamentary appointments committee has completed vetting names for the boards of the **National Petroleum Authority (NPA)** and **National Oil Company (NOC)**.<sup>8</sup> While establishing these bodies is a long overdue step towards commercial oil production, there is concern about the opaque nature of the nomination process. Several of the appointments have close connections to Museveni.<sup>9</sup>

The 2013 **Petroleum (Exploration, Development and Production) Act** and the **Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act** set out the framework for the establishment of the NPA and NOC. Delays in the establishment of the two bodies triggered industry concerns about the effectiveness of the institutional regulation and governance of the nascent oil sector. The NPA's functions include:

- monitoring and regulating exploration, development and production activities;
- advising the minister in the negotiation of petroleum agreements and in the granting and revocation of licences;
- administering petroleum agreements.

The vetting process started on 7 July and the committee, chaired by Rebecca Kadaga, scheduled two days for the process which in fact took weeks.<sup>10</sup> There is still anxiety about the lack of a competitive nomination process due to uncertainty about who was ultimately responsible for the nominations.<sup>11</sup>

*"With all nomination processes in Uganda, there are these questions. The NPA and NOC were no different – and certainly no worse – than other appointments. The only question is where did Museveni get these names? They are not particularly well known. People in the sector say that they know only one third of them. But then there are no **Uganda People's Defence Force (UPDF)** generals or former ministers so it is better than I expected."*<sup>12</sup>

The board members appear to have the relevant experience and qualifications to regulate the sector. NPA board member **Reuben Kashambuzi** was a commissioner at the energy ministry between 1990 and 2009 and advises on the establishment of the NPA, NOC and **Petroleum Directorate**.

Kashambuzi led government efforts to attract international investors to the sector and is a highly respected technocrat.<sup>13</sup>

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<sup>8</sup> The Independent, 10 Aug 2014.

<sup>9</sup> Source, oil sector analyst

<sup>10</sup> The Independent, 10 Aug 2014.

<sup>11</sup> The Independent, 10 Aug 2014.

<sup>12</sup> Source, oil sector analyst

<sup>13</sup> Source, oil sector analyst

Another member is **Kiryowa Kiwanuka** who served as legal counsel to **Heritage Oil and Gas** between 2003 and 2010.<sup>14</sup> Kiwanuka's law firm **Kiwanuka & Karugire Advocates** still provides legal services to companies in the oil sector.<sup>15</sup> Kiwanuka is connected to Museveni through the law firm:<sup>16</sup> partner **Edwin Karugire** is married to Museveni's daughter **Janet Museveni** and has handled legal cases for the president.<sup>17</sup>

The chairman is **Immaculate Ssemanda Nakimera**, an academic at **Makerere University**. The other NPA nominees include **Doreen Kabasindi Wandera** and **Sande Stevens Tickodri Togboa**. The NPA members will hold office for four years and be eligible for re-election only once.

The functions of the NOC are:

- handling the state's commercial interests in the petroleum sector and administering joint ventures through a 15 – 20% stake, including **Hoima Oil Refinery**;
- managing state participation in petroleum activities including a petroleum retail network;
- investigating and proposing new upstream, midstream and downstream ventures.

The NOC board chairman is **Emmanuel Katongole**, a close associate of Museveni.<sup>18</sup>

*"Museveni wants the NOC to run as a successful business so he did exactly the right thing in appointing a successful international businessman. Katongole's **Cipla Quality Chemicals** has a number of large international and government contracts and is well run. Katongole is definitely a close friend of the president though I don't know their exact relationship. Museveni opens his plants and attends celebrations for all the company's milestones in a way he doesn't with other businessmen. Katongole is definitely in the president's camp."*<sup>19</sup>

The Ugandan public has questioned the appropriateness of appointing someone with no experience of the oil sector.

*"I thought they would go with someone with oil experience and connections to the international oil majors. Is Katongole the best man for the job? It is yet to be seen, but Kashambuzi would have made more sense to me."*<sup>20</sup>

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<sup>14</sup> The Independent, 10 Aug 2014.

<sup>15</sup> www.kandk.co.ug.

<sup>16</sup> Source, oil sector analyst

<sup>17</sup> www.kandk.co.ug.

<sup>18</sup> www.kandk.co.ug.

<sup>19</sup> Source, oil sector analyst

<sup>20</sup> Source, oil sector analyst

The other NOC board members are:

- **Geoffrey Andama**
- **Francis Nagimesi**
- **Biwaga Stella Marie**
- **Tubwita Grace**
- **Eng. Irene Paulene Batebe**
- **Francis Twinamatsiko**

While the appointment of the boards is a key step,

*“The NPA and the NOC have only started in theory. In terms of incorporating them, finding buildings and hiring technocrats, the real business has only just started. The government wants everything finalised by the end of 2014 and this is feasible. The cash is in place, and all appointments will be from within the energy ministry. At the very latest, the government wants everything finished before the **East Africa Oil and Gas Conference** in March 2015.<sup>21</sup> It will be a pageant of the East African governments showing off what they’ve achieved and Museveni does not want to be left behind.”<sup>22</sup>*

### 1.3 Government begins census

The **Uganda Bureau of Statistics (UBS)** started an overdue national census on 28 August. The exercise will last until 6 September. The results of the exercise may become politicised as Uganda’s ethnic balance becomes increasingly important both in the run up to the 2016 elections and the eventual choice of a successor to Museveni.<sup>23</sup> In the short term, the census will provide businesses, especially fast moving consumer goods companies, with more accurate market information, and the government more accurate data about its rapidly growing youth population for social service delivery planning and benchmark economic data. The government last conducted a census in September 2002, suspending the 2012 census due to the cost of the exercise, which is now \$72m in 2014. A total of 80,000 officials will carry out the nationwide exercise. The UBS census is separate from the national identity card registration process which is continuing. The government started the national identity card project in April with the intention of completing it in early August. It should now finish in September. The **Electoral Commission of Uganda** says that it will use the national identity card during the 2016 election to ascertain the identity of voters and reduce the risk of electoral fraud. The UBS will publish provisional results from the census in October with final results expected in the third quarter of 2015.

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<sup>21</sup> Dar es Salaam, Tanzania

<sup>22</sup> Source, oil sector analyst

<sup>23</sup> Source, former western diplomat

## 2 Implications

The court's ruling against the Anti-Homosexuality Act allows Museveni to continue to portray himself as a religious conservative who defied colonial pressures to codify the act while paving the way for the US to lift the sanctions it imposed in the wake of the legislation. Museveni has used the judiciary as a political tool notably in his attempts to remove **Kampala** lord mayor **Erias Lukwago** from office (see *ARC Uganda December 2014 Briefing*). The Odoki ruling is the judiciary's attempt to demonstrate its independence and resist Museveni's attempts to stuff it with loyalists. Similar rulings against the government may become increasingly frequent. Until there is a replacement for Odoki, there is unlikely to be a significant slowdown in judicial appointments and rulings.

The appointment of the NPA and NOC boards is a symbolic step. It marks the start of a race to get the bodies incorporated before the end of the year. Museveni wants to retain control over the sector and secure appointments from within his camp. The number of low-key, technocratic appointments bodes well for the sector's management.

The 2014 census will improve the accuracy of the government's baseline data and therefore economic projections and forecasts. Politicians are liable to stir up ethnic grievances around the 2016 election. While accurate data should in principle mitigate the risk of this, politicians may manipulate the figures to demonstrate what they want.