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Opposition National Super Alliance (NASA) leader and defeated presidential candidate Raila Odinga is 'sworn in' as the 'people's president', triggering a government crackdown on the opposition. Two opposition members of parliament (MPs) are arrested, and NASA lawyer Miguna Miguna is deported. The government fails to comply fully with a court order to lift a television blackout imposed before the 'swearing in' ceremony. The government restarts effort to privatise five state-owned sugar millers in a move that has county-level and East Africa-wide implications. Kenya Airways Ltd is to begin direct flights to the United States (US) on 28 October.

Government crackdown follows Odinga's 'swearing in' ceremony

Opposition **National Super Alliance (NASA)** leader and defeated presidential candidate **Raila Odinga** was 'sworn in' as the 'people's president' on 30 January.¹ The unofficial swearing in ceremony will compound the continuing political standoff following last year's presidential election. Odinga was sworn in at a short ceremony in **Uhuru Park** in **Nairobi**.² There was a heavy security presence at Uhuru Park but, despite the use of teargas to disperse some opposition supporters, no reports of significant violence.³ The event was most notable for the absence of other NASA leaders: Odinga's running mate, **Kalonzo Musyoka** (leader of the **Wiper Democratic Movement**), **Musalia Mudavadi** (leader of the **Amani National Congress**) and **Moses Wetang'ula** (**FORD-Kenya** leader).⁴ There is speculation that this is indicative of increased tension within the opposition over the appropriateness of its response to last year's presidential election.⁵ The event came four days after NASA officials **James Orengo** and **Geoffrey Osotsi** released NASA's own results from the August 2016 presidential election – which the **Supreme Court** subsequently nullified – appearing to show that Odinga had won more votes than President **Uhuru Kenyatta** (2013-present).⁶ However, Kenyan politics and compliance expert **Charles Hornsby** said NASA's numbers were inherently flawed.⁷ Hornsby highlighted discrepancies between county-level polling data and the NASA's figures for voter turnout and the votes Odinga received.⁸

The government effectively imposed a media blackout on the 'swearing in' ceremony, blocking **Citizen TV**, its partner channel **Inorro** and **Kenya Television Network News** entirely, and **KTN** and **Nation TV** from free-to-air networks.⁹ The only precedent for the broadcast blackout was during the 2007 political crisis that led to the post-election violence, when there was a ban of a few hours followed by a mandatory seven-minute delay on live broadcasts.¹⁰ The live broadcast delay remains in place. The government appears to have disregarded a 1 February **High Court** order to suspend its ban on television stations imposed in the run-up to Odinga's 'swearing in' ceremony.¹¹ The High Court

¹ Daily Nation, 30 Jan 2018.

² Daily Nation, 30 Jan 2018.

³ Daily Nation, 30 Jan 2018.

⁴ Daily Nation, 30 Jan 2018.

⁵ Daily Nation, 30 Jan 2018.

⁶ Daily Nation, 26 Jan 2018.

⁷ Africa Confidential, 2 Feb 2018.

⁸ Africa Confidential, 2 Feb 2018.

⁹ FT, 30 Jan 2018.

¹⁰ Source, Kenya analyst, UK

¹¹ FT, 2 Feb 2018.

ordered the government to allow channels to resume coverage pending a full hearing into their alleged offences.¹² Both the **United States (US)** and the **European Union (EU)** issued statements on 31 January criticising both the media restrictions and Odinga's continuing refusal to recognise Kenyatta's victory in the October presidential election rerun.¹³

In the days following the 'swearing in' ceremony, security forces detained three opposition officials, including two members of parliament (MPs), between 31 January and 3 February in an apparent escalation of political tensions. On 31 January, interior cabinet secretary **Fred Matiang'i** announced that government agencies had launched investigations into the 'swearing-in' of Odinga, and had proscribed NASA's **National Resistance Movement (NRM)** as a criminal organisation.¹⁴ The NASA formed the NRM one day before the 26 October presidential election rerun to organise civil disobedience and economic boycotts should Odinga lose. The aims and membership of the NRM are poorly defined, and it is unclear how effective the ban will prove.¹⁵ The NASA has also claimed that it is the target of political violence. On 31 January, Musyoka alleged that unknown individuals had thrown a stun grenade and fired shots in what he claimed was an assassination attempt at his personal residence in **Karen (Nairobi)** hours after the 'swearing in' ceremony.¹⁶

Security forces detained opposition MP **Tom Kajwang**, a member of Odinga's **Orange Democratic Movement (ODM)** on 31 January.¹⁷ Kajwang was originally meant to administer the oath in Odinga's 'swearing-in'.¹⁸ However, Odinga ended up reading the oath from a sheet of paper. However, Kajwang made a reference to his original role during a court appearance on a separate matter on 31 January when he requested the court refer to him as "*chief justice Kajwang*".¹⁹ The next day, security forces raided the home of opposition lawyer **Miguna Miguna**, using teargas to disperse a crowd that had gathered at the site.²⁰ Miguna is the leader of the NRM, and played a leading role in the 'swearing-in' ceremony.²¹ Miguna was a senior adviser to Odinga when prime minister between 2009 and 2011, and was defeated during the August Nairobi governorship election. Miguna was deported to **Canada**, where he holds citizenship, on 6 February.²² On 3 February, security forces arrested ODM MP **George Aladwa** for his alleged involvement in Odinga's 'swearing-in' ceremony.²³

Authorities charged Kajwang with "*being present and consenting to the administration of an oath to commit a capital offence, namely treason*".²⁴ Whether Odinga has committed an act of treason is debatable. The government describes the event as an "*attempt to subvert or overthrow the legally constituted government*".²⁵ However, Odinga was careful not to claim to be the president of Kenya but the "*people's president*".²⁶ It is notable that security forces are yet to detain or question Odinga himself.

The government's mishandling of Odinga's 'swearing-in' ceremony is inexplicable as it had plenty of warning to come up with a measured and appropriate response. The arrest of the NASA officials will only exacerbate political tensions and deepen the polarisation that threatens to undermine the effectiveness of the Kenyatta government. Neither side appears willing to compromise, but meaningful discussion is the only way to stop the situation escalating further.

¹² FT, 2 Feb 2018.

¹³ Daily Nation, 1 Feb 2018.

¹⁴ Daily Nation, 31 Jan 2018.

¹⁵ Source, political analyst, Nairobi

¹⁶ Daily Nation, 31 Jan 2018.

¹⁷ Daily Nation, 31 Jan 2018.

¹⁸ Daily Nation, 31 Jan 2018.

¹⁹ Daily Nation, 31 Jan 2018.

²⁰ FT, 2 Feb 2018.

²¹ FT, 2 Feb 2018.

²² The Standard, 6 Feb 2018.

²³ The Star, 3 Feb 2018.

²⁴ FT, 2 Feb 2018.

²⁵ FT, 2 Feb 2018.

²⁶ FT, 2 Feb 2018.

Government relaunches privatisation of state-owned sugar millers

The government's planned sale of five state-owned sugar millers is proving difficult as county governments from the sugar belt angle for control of the struggling millers.²⁷ The national government plans to privatise the **Muhoroni, Miwani, South Nyanza, Chemelil** and **Nzoia** sugar factories as it looks to address the budget deficit. The government held a consultative forum in **Kisumu City** in late January that brought together agriculture and finance ministry officials, including the **Privatisation Commission**, the state agency mandated with the responsibility of finding strategic investors for the millers, as well as farmers, politicians from the region, and employees from the public millers.²⁸ There were, however, disagreements at the forum that have essentially put the brakes on the privatisation process:

*"The main issues that are derailing the privatisation include the thorny issue of community land, fears that the process is being driven by cartels, and suspicion over the process, which is being handled under the [ruling] Jubilee government, whereas the factories are located in NASA strongholds."*²⁹

Under the proposed plan, the Privatisation Commission intends to secure strategic investors to acquire 51% shareholding in each of the five state-owned sugar mills.³⁰ In exchange the government will write off the \$650m debt that the millers owe it.³¹ The arrangement also includes the use of tens of thousands of acres of the sugar companies' estates. Additionally, a trust for farmers and employees will receive a 24% stake in the mills with the government keeping a 25% stake.³² The government's stake can later be offloaded through an initial public offering (IPO).³³ The strategic investor is expected to bring in financial, operation and technical resources and must be a company that has successfully run sugar operations for at least 10 years.

*"This is meant to weed out ineffective firms and cartels that would have another agenda including asset stripping."*³⁴

However, the privatisation process has divided stakeholders as the process drags on.³⁵ Governors, senators, parliamentarians and county representatives argue that the government should not handle the privatisation process since agriculture is a devolved function under the constitution and should therefore be handled at the county level.³⁶

*"This is a debate that national government is avoiding as it would set a dangerous precedent. Whereas agriculture is a developed function, the sugar millers were in existent before county governments were set up and all Kenyan taxpayers have contributed (and still contribute) towards their development and maintenance. Transferring such assets to county governments could trigger other counties demanding that facilities and companies located in their turf similarly be transferred. The fear is what it would mean for assets or facilities that are strategic to the whole country such as the **Port of Mombasa**."*³⁷

County governments also argue that the land surrounding the sugar mills is communal or ancestral land. The national government on its part argues that the land was bought from farmers at market

²⁷ Source, journalist, Nairobi.

²⁸ Source, journalist, Nairobi.

²⁹ Source, journalist, Nairobi.

³⁰ Source, journalist, Nairobi.

³¹ Source, journalist, Nairobi.

³² Source, journalist, Nairobi.

³³ Source, journalist, Nairobi.

³⁴ Source, journalist, Nairobi.

³⁵ Daily Nation, 6 Feb 2018

³⁶ Source, journalist, Nairobi.

³⁷ Source, journalist, Nairobi.

prices on a “willing-buyer-willing-seller” basis decades ago and the leases transferred to the factories.³⁸

*“Transferring the land over to county governments would also act as a disincentive for investors who would want a constant supply of cane delivery which is made easier by having access to large tracts of land. Another argument is the failure of **Mumias Sugar Co**, a private company that was once government owned but is now in financial straits and is knocking on the Treasury’s door for bailouts. There are case studies that politicians are using in their bid to have the sale of firms to strategic investors stopped.”³⁹*

Farmers are worried that Kenya will not get another extension from the **Common Market for Eastern and Southern Africa (COMESA)** free trade area.⁴⁰ The extensions allow Kenya to limit the amount of sugar that can be imported from COMESA member states. Kenya’s sugar costs up to \$800 per tonne to produce compared to its competitors whose cost is \$400 per tonne. Since Kenya cannot produce enough sugar, it has to import to bridge the deficit. Under COMESA rules, Kenya is required to open up its market, which would result in cheaper sugar flooding the market and decimating local production.⁴¹ The **Sugar Directorate** published data on 5 February showing that sugar imports increased 196% in 2017, from 334,109 tonnes to 989,619 tonnes.⁴² COMESA has granted extensions on condition that Kenya improves its sugar industry, making it efficient enough to withstand external competition. Privatisation of the state-controlled sugar millers is one of the measures the national government has undertaken to this end. The extensions are currently set to expire in February 2019.⁴³

The Privatisation Commission last advertised for expression of interest (EOI) in 2015 in a process that would have attracted bids from local and international sugar millers. However, the bids were not opened as **Kisumu County** Senator (now governor) **Anyang’ Nyong’o**, **Migori County** governor **Okoth Obado** and the **Council of Governors** moved to court to have the process stopped.⁴⁴ The **High Court** ruled in November 2017 that the move to go to court was premature as the parties had not exhausted all dispute resolution mechanisms. As a result, the consultation process resumed in January.⁴⁵

The sugar sector is symptomatic of the wider challenges facing the government as it looks to reduce its deficit. If the consultation process leads to an amicable solution, it will provide a template for the government to follow in the liberalisation of other sectors. It, however, remains to be seen whether all stakeholders can reach consensus before the expiry of the COMESA safeguards.

Kenya Airways to begin daily flights to US in October

Nairobi Securities Exchange (NSE)-listed **Kenya Airways Ltd** CEO **Sebastian Mikosz** announced on 11 January that he expects direct flights to the **United States (US)** to increase annual revenue by 10% in 2019.⁴⁶ Analysts have, however, raised concerns about the commercial outlook for the direct flights to the US. Kenya Airways confirmed that direct flights to the US will start on 28 October.⁴⁷ Kenya Airways must still obtain two final permissions to fly to the US: a **US Transportation Security Administration** security permit and a **US Federal Aviation Administration** technical certificate.⁴⁸ However, the **Kenya Civil Aviation Authority (KCAA)** has said it expects Kenya Airways to secure

³⁸ Source, journalist, Nairobi.

³⁹ Source, journalist, Nairobi.

⁴⁰ Source, journalist, Nairobi.

⁴¹ Source, journalist, Nairobi.

⁴² Daily Nation, 5 Feb 2018.

⁴³ Source, journalist, Nairobi.

⁴⁴ The Standard, 1 Feb 2018

⁴⁵ Source, journalist, Nairobi.

⁴⁶ Standard, 11 Jan 2018.

⁴⁷ Standard, 11 Jan 2018.

⁴⁸ Nairobi News, 10 Jan 2018.

these permits in time to start flights in October.⁴⁹ Kenya Airways will operate a daily non-stop flight from **Jomo Kenyatta International Airport (JKIA)** (Nairobi) to **JFK International Airport (JFK)** (**New York**), departing JKIA at 22:30 and departing JFK at 13.30.⁵⁰ The flight will take 14-15 hours compared to 22 hours, including layovers, currently.⁵¹ The cheapest tickets, at “*early bird prices*”, will be 87,000 Kenyan shillings (KSh) (\$869).⁵²

Kenya Airways’ revenue projection is based on the size of the US source market for tourism, Kenya-based companies looking to take advantage of the **African Growth Opportunity Act (AGOA)**, and US-based companies wanting to use Kenya as a regional business hub.⁵³ However, analysts have questioned the wisdom of daily flights without first starting multiple flights a week to determine market demand.⁵⁴ Both **France-based Société Air France SA** and **Italy-based Alitalia – Società Aerea Italiana** are starting flights to Nairobi in 2019, with both airlines initially doing four weekly flights.⁵⁵ There is also concern that US President **Donald Trump** (2017-present) may continue to make it difficult for **African** nationals to secure US visas.⁵⁶ Kenya Airways had initially planned to operate the flights through a code-share partnership with US-based carrier **Delta Air Lines Inc.**⁵⁷ However, Kenya Airways has temporarily abandoned that plan due to Delta’s continuing merger with **United Kingdom (UK)-based Virgin Atlantic International Ltd** and **France-based Air France-KLM SA**, which is a 7.8% Kenya Airways shareholder.⁵⁸ Additionally, Kenya Airways launched three weekly flights to **Cape Town (South Africa)** on 5 February,⁵⁹ and four weekly flights to **Mauritius** on 6 February,⁶⁰ raising further questions about the sustainability of its expansion.

Kenya Airways provides a cautionary tale that privatisation alone is insufficient to cure the mismanagement and debts of previously state-owned enterprises. The daily US flights are a risky endeavour considering Kenya Airways’ poor recent commercial performance, and the airline risks overexposing itself at a time regional competition in the aviation sector has never been higher.

Planner

2018 **(Kenya)** *Capital FM*. Construction of **Nairobi-Mombasa** express highway due to begin;
14 – 16 March 2018 **Nairobi (Kenya)** *Press release*. **East Africa Oil & Gas Summit 2018**;
28 Oct 2018 **(Kenya)** *Daily Nation*. Daily direct flights to **New York (United States)** expected to begin.

Chronology

6 Feb 2018 **Nairobi (Kenya)** *Standard*. The government deports opposition **National Super Alliance (NASA)** lawyer **Miguna Miguna** to **Canada**;
3 Feb 2018 **Nairobi (Kenya)** *Daily Nation*. Security forces arrest opposition MP **George Aladwa** for his alleged involvement in **Raila Odinga’s** ‘swearing-in’ ceremony
2 Feb 2018 **Nairobi (Kenya)** *Daily Nation*. The **United States, European Union** and **African Union**

⁴⁹ Nairobi News, 10 Jan 2018.

⁵⁰ Standard, 11 Jan 2018.

⁵¹ Standard, 11 Jan 2018.

⁵² Standard, 11 Jan 2018.

⁵³ Standard, 11 Jan 2018.

⁵⁴ www.twitter.com/KenyanAviation.

⁵⁵ www.twitter.com/KenyanAviation.

⁵⁶ www.twitter.com/KenyanAviation.

⁵⁷ Nairobi News, 10 Jan 2018.

⁵⁸ Nairobi News, 10 Jan 2018.

⁵⁹ East African, 5 Feb 2018.

⁶⁰ Standard, 6 Feb 2018.

all issue statements criticising Odinga's 'swearing in' ceremony, and government's television blackout;

2 Feb 2018 **Nairobi (Kenya)** *Citizen*. NASA lawyer Miguna is detained due to his role in the so-called **National Resistance Movement**;

1 Feb 2018 **Nairobi (Kenya)** *The Standard*. The **High Court** suspends government shutdown of three television channels;

31 Jan 2018 **Nairobi (Kenya)** *The Star*. NASA leader **Kalonzo Musyoka** is victim of what he claims is an assassination attempt;

30 Jan 2018 **Nairobi (Kenya)** *The Star*. Odinga is sworn-in as the 'people's president', government responds by detaining opposition MP **Tom Kajwang**;

30 Jan 2018 **Nairobi (Kenya)** *Daily Nation*. Prior to Odinga's 'swearing in' ceremony, the government orders blackout of **Citizen TV, Kenya Television Network News and Nation TV**;

26 Jan 2018 **Nairobi (Kenya)** *Citizen TV*. Kenyatta appoints new cabinet secretaries, including land, **Farida Karoney**, and petroleum and mining, **John Munyes**;

23 Jan 2018 **Nairobi (Kenya)** *Reuters*. **Central Bank of Kenya** governor **Patrick Njoroge** publicly acknowledges that interest rate cap is curbing growth which he forecasts at 6.2% in 2018;

22 Jan 2018 **Nairobi (Kenya)** *Daily Nation*. In draft budget policy statement, government aims to reduce budget deficit from 8.9% in last financial year to 6% in next financial year and to 3% by 2022;

22 Jan 2018 **Nairobi (Kenya)** *Daily Nation*. **Nakumatt Supermarkets** goes into administration;

18 Jan 2018 **Nairobi (Kenya)** *Daily Nation*. Odinga says he will form a rival government after his unofficial swearing-in ceremony;

18 Jan 2018 **(Kenya)** *East African*. The **African Development Bank (AfDB)** warns that Kenya may struggle to meet its debt obligations due to long-term loans maturing in 2018;

18 Jan 2018 **Nairobi (Kenya)** *The Star*. Former **Nigeria** president **Olusegun Obasanjo**, under auspices of **United Nations**, meets Odinga to advocate abandoning his planned swearing-in ceremony;

17 Jan 2018 **Nairobi (Kenya)** *Standard*. The energy and petroleum ministry requests proposals for design of crude oil export pipeline from **Turkana County** to **Lamu Port**;

12 Jan 2018 **Nairobi (Kenya)** *Standard*. **Andrew Kamau**, the principal secretary for petroleum at the energy ministry, says revised **Petroleum Bill** will allocate local communities only 20% of oil sector revenues compared to 30% in earlier drafts;

11 Jan 2018 **(Kenya)** *East African*. The **European Union Election Observation Mission** reports electoral malpractice in August general election and October presidential rerun;

10 Jan 2018 **Nairobi (Kenya)** *East African*. **Kenya Airways** begins taking bookings for inaugural direct flights to **United States** beginning in October;

10 Jan 2018 **Turkana (Kenya)** *Daily Nation*. **Tullow Oil** concludes exploration activities in **South Lokichar Basin**.