

AFRICA RISK CONSULTING

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Kenya Summary 11 June 2021

President Uhuru Kenyatta (2013-present) faces a political crisis after the High Court deems the Constitution of Kenya (Amendment) Bill, 2020 unconstitutional. The bill was to ratify the Building Bridges Initiative, a hallmark policy of Kenyatta's second term in office. The Central Bank of Kenya (CBK) Monetary Policy Committee (MPC) keeps the interest rate stable at 7%. A further 60-day extension to the nation-wide curfew is announced. Burundi's President Evariste Ndayishimiye (2020-present) undertakes a two-day state visit to Kenya, further highlighting that his country is moving away from its isolationist policies towards regional integration and fostering friendly relations with regional neighbours.

Building Bridges Initiative in the air ...

President **Uhuru Kenyatta** (2013-present) suffered a major political setback with a five-judge panel of the **High Court** ruling that the **Constitution of Kenya (Amendment) Bill, 2020** is not constitutional. The bill is more commonly referred to as the **Building Bridges Initiative (BBI)** and has been one of Kenyatta's flagship policy pieces. The court's rejection of the BBI is a significant challenge for Kenyatta and his allies, with the BBI a key tenet of Kenyatta's second term in office.

The BBI evolved from a 2018 handshake between President Kenyatta and opposition party **Orange Democratic Movement (ODM)** leader **Raila Odinga** (see *ARC Briefing Kenya April 2018*). In a bid to decrease political tensions following the 2017 elections, the two leaders agreed on a number of political reforms, BBI being one of them. The constitution amendment bill was seeking to further devolve power by creating 70 extra parliamentary constituencies, bring back the role of the prime minister (abolished in 2013) and create up to 300 non-constituency seats in parliament.¹ The **National Assembly** passed the Constitution of Kenya (Amendment) Bill, 2020 on 6 May with an overwhelming majority: 235 members of parliament (MPs) voted in support of the bill, 83 against and two abstained from the vote.² The bill subsequently passed through the senate with 51 senators voting in support, 12 against and one abstaining from the vote.³

Following the routine parliamentary vote, five activists – economist **David Ndi**, **Jerotich Seii**, **James Ngondi**, **Wanjiku Gikonyo** and **Ikal Angelei** – petitioned Kenya's High Court to determine, *inter alia*, whether the BBI satisfied the constitutional interpretation of a popular initiative, whether the referendum should have one question or multiple questions, and whether the bill, if passed, could create more constituencies.⁴ The court ruled on 13 May that the bill was unconstitutional, declaring that the BBI commission is not an official government body and therefore unconstitutional, and that attempts to allocate funds to new constituencies are likewise unconstitutional. The high court further ruled that the **Independent Electoral and Boundaries Commission (IBEC)** does not have a quorum (there are currently only three commissioners whereas five are required for quorum) and does not have the ability to verify the voter registration and signature process, therefore voiding the process. Based on these findings, the high court ruled that the IBEC is not able to call a referendum to formalise the changes to the constitution outlined in the bill.⁵ The court noted:

¹ BBC, 14 May 2021

² The Standard, 6 May 2021

³ The Standard, 11 May 2021

⁴ Jurist, 16 May 2021

⁵ The Nation, 13 May 2021

“In taking initiatives to amend the constitution other than through the prescribed means in the constitution, the president failed to respect, uphold and safeguard the constitution and, to that extent, he has fallen short of the leadership and integrity threshold.”⁶

The office of the attorney general filed an appeal of the high court’s ruling, however to date the ruling stands. President Kenyatta likewise filed a notice of appeal with the high court on 25 May, the outcome of which is pending.⁷

The court’s rejection of the BBI raises questions about potential overreach by the judicial system. Similar questions were asked in 2017 when the **Supreme Court** overturned Kenyatta’s electoral victory.⁸ The Supreme Court nullified the August 2017 presidential election saying it was “*neither transparent nor verifiable*” (see *ARC Briefing Kenya October 2017*).⁹

Demonstrating that the battle is not over, and retaliating with what may be viewed as executive overreach into the judiciary, President Kenyatta on 4 June blocked the appointment of six judges nominated to various courts in the country. The judges had been nominated by the **Judicial Service Commission**. Presidential assent is normally automatic, however two of the judges Kenyatta rejected had recently voted that the BBI was unconstitutional, leading many to question whether these issues are linked.¹⁰ The political and legal battle continues, with political tensions likely to increase in the short to mid-term.

Central Bank holds rate at 7% as Kenyatta extends curfew

The **Central Bank of Kenya (CBK) Monetary Policy Committee (MPC)** decided at its bi-monthly meeting on 26 May to once again keep the central bank’s rate at 7%, having held the country’s interest rate at this mark for over a year.¹¹ As part of its decision to keep the rate stable, the MPC noted that Kenya saw some economic recovery in the first quarter of 2021, buoyed by strong performance in the insurance, finance, real estate, information and communication, construction and agriculture sectors:

“Inflation expectations remained well anchored within the target range, and the economy continued to operate below its potential level.”¹²

The MPC’s assessment came just before the reading of the proposed 2021/2022 budget that was presented to parliament on 10 January. In the proposal, treasury cabinet secretary **Ukur Yatani** noted that the country was anticipating GDP growth of 6.6%, buoyed by stimulus efforts to encourage growth.

The MPC committee expects that the more stringent lockdowns on five counties, including **Nairobi**, between 26 March and 1 May, will be reflected in future analysis but the impact is anticipated to be moderate. Month-on-month inflation is at 5.8%, a small decrease from 5.9% in March. The CBK noted that foreign exchange reserves were sufficient for 4.55 months import coverage, an amount that does not cause alarm, and that the rate of non-performing loans stood at 14.2%, a slight decrease from 14.5% in February, which is a moderate change, but still a positive indicator for the health of businesses.¹³ Sources note that the next milestone for tracking the country’s economy will be the annual budget, scheduled to be announced in June.

Leading up to the bi-monthly MPC meetings, the CBK undertakes a **Market Perceptions Survey** of private sector respondents. The CBK added a survey specifically of CEOs in March 2021. The May CEO survey found that respondents, when asked to share their feelings about the status of their companies and the global economy, were optimistic around growth prospects for the next 12 months. This

⁶ The Guardian, 27 May 2021

⁷ The Nation, 25 May 2021

⁸ CNBC, 1 Sep 2017

⁹ The Guardian, 20 Sept 2017.

¹⁰ Nairobi News, 4 Jun 2021

¹¹ Central Bank of Kenya, 26 May 2021

¹² Central Bank of Kenya, 26 May 2021

¹³ Central Bank of Kenya, 26 May 2021

optimism was largely grounded in a post-**Covid** recovery and increased digitisation with positive knock-on effects for business. CEO respondents were most concerned about the business and regulatory environment's impact on their business operations. There was also a sense that additional coronavirus variants could result in further lockdowns that would in turn negatively affect business. Recent reports that Kenya has run out of vaccines will not inspire confidence.

The pandemic continues to impact business in Kenya. President Uhuru Kenyatta announced on 30 May that the country's 10pm – 4am curfew would be extended for an additional 60 days.¹⁴ This comes after confirmed Covid-19 deaths in Kenya's population of roughly 55 million surpassed 3,000 and total cumulative confirmed cases exceeded 165,000.¹⁵ Until additional vaccines are sourced and/or case numbers dissipate, the current bans on political gatherings and overnight events and vigils are likely to remain.

There has been some reprieve for the government with the **International Monetary Fund (IMF)** announcing that it will continue with plans to disburse \$410m to Kenya as part of an aid package approved in April.¹⁶ Concern persists over the amount of debt the country is taking on and its ability to repay it, as well as the risk of potential misappropriation of funds. The government continues to balance curbing the spread of the virus, while giving businesses the opportunity to function.

Kenya and Burundi build relations

Kenya continues its push for enhanced regional cooperation. President Uhuru Kenyatta welcomed **Burundi's** President **Evariste Ndayishimiye** (2020-present) for a state visit on 31 May.¹⁷ During the two-day visit the two countries signed bilateral agreements on trade and investment to strengthen economic ties between the two **East African Community (EAC)** members.¹⁸ Kenyatta and Ndayishimiye made commitments to work together on enhancing cooperation in key sectors including livestock and fisheries, agriculture and public services. Commitments were also made to decrease barriers to trade. The two leaders also signed a memorandum of understanding to promote political and regional cooperation. President Uhuru Kenyatta noted:

"The cooperation between our countries is built on a solid foundation of shared values and principles – to foster sustained socio-economic development and transformation, a vibrant and united East African Community and an integrated and prosperous Africa."¹⁹

Burundi's commitment to regional integration is promising. Under the late former president, **Pierre Nkurunziza** (2005-2020), the country appeared to shun regional integration. During the presidencies of Nkurunziza and **Tanzania's** President **John Magufuli** (2015-2021), the two countries were more likely to align together against further regional integration, advocating for policies focused on protecting their own economic and political interests. This approach often put Burundi and Tanzania at odds with other EAC members, particularly Kenya, **Uganda** and **Rwanda**. Burundi's lacklustre approach to promoting regional integration also caused challenges during the five years (2016-2021) in which Burundian **Liberat Mfumukeko** was EAC secretary general. Mfumukeko received criticism for his lacklustre efforts at promoting the organisation; however, he was up against domestic pressure from the Burundian government, which was actively prioritising protectionism over regional integration.

Kenya continues to push for enhanced regional cooperation and will no doubt be capitalising on the dispositions of both Ndayishimiye and Tanzania's new president, **Samia Suluhu Hassan** (2021-present), to continue to advocate for enhanced cooperation on matters relating to economic, political and security matters.

¹⁴ The Nation, 30 May 2021

¹⁵ The Nation, 18 May 2021

¹⁶ The Nation, 18 May 2021

¹⁷ The East African, 1 Jun 2021

¹⁸ Business Daily, 31 May 2021

¹⁹ The East African, 1 Jun 2021

Planner

July 2021 **Nairobi (Kenya) Central Bank of Kenya** Monetary Policy Committee meeting (TBA);
2022 **(Kenya)** General elections

Chronology

10 Jun 2021 **Nairobi (Kenya) Business Day**. Finance minister **Ukur Yatani** presents to parliament budget proposals for 2021/2022, which entails GDP growth of 6.6% in 2021, a slight cut in the budget deficit and a stimulus effort to boost economic growth;

10 Jun 2021 **Nairobi (Kenya) The East African**. **India's** external affairs minister, **Subrahmanyam Jaishankar**, to visit **Nairobi** on 12 June for a series of meetings to strengthen **India-Kenya** relations;

10 Jun 2021 **Nairobi (Kenya) The East African**. **Kenya** reverses its three-month ban on flights to and from **Somalia**;

8 Jun 2021 **Nairobi (Kenya) The East African**. President **Uhuru Kenyatta** visits **Ethiopia** for an official government visit;

7 Jun 2021 **Nairobi (Kenya) The Standard**. **Kenya**-based company **Fertiplant East Africa (FEA)** has committed to building a factory worth KSh 3 billion (\$27.8m) in **Nakuru**;

7 Jun 2021 **Nairobi (Kenya) Nation**. The **High Court** suspends a case against former governor of **Nairobi, Mike Sonko** until 23 June following allegations of an unfair trial;

4 Jun 2021 **Nairobi (Kenya) Nairobi News**. President **Uhuru Kenyatta** blocks the appointment of six out of the 40 nominated judges recommended by the judicial commission service; two of the rejected judges recently voted that the **Constitutional Amendment Bill 2020** was unconstitutional;

31 May 2021 **Nairobi (Kenya) Business Daily**. **Kenya** and **Burundi** sign bilateral agreements on trade and investment to strengthen economic ties between the two **East African Community** members;

30 May 2021 **Nairobi (Kenya) Nation**. President **Uhuru Kenyatta** announces the extension of the nation-wide curfew from 10pm – 4am for a further 60 days;

27 May 2021 **Nairobi (Kenya) Nation**. The **High Court** overturns President **Uhuru Kenyatta's** appointment of 129 parastatal heads, noting there was no transparency or competition in the selection process;

26 May 2021 **Nairobi (Kenya) Central Bank of Kenya**. The **monetary policy committee** of the **Central Bank of Kenya** holds the central bank rate at 7%;

25 May 2021 **Nairobi (Kenya) Business Daily**. **Kenya**-headquartered **Safaricom** announces it has been awarded a licence to enter the **Ethiopian** telecommunications market;

25 May 2021 **Nairobi (Kenya) Nation**. President **Uhuru Kenyatta** files a notice of appeal with the **High Court** to appeal the judgement that found the **Building Bridges Initiative** unconstitutional;

21 May 2021 **Nairobi (Kenya) Nation**. **Absa Bank Kenya Plc** reports 23% growth in net profit in the first quarter of 2021, buoyed by an increase in interest income;

18 May 2021 **Nairobi (Kenya) Nation**. Confirmed **Covid-19**-related deaths surpass 3,000 and confirmed cases reach 165,000;

18 May 2021 **Nairobi (Kenya) Nation**. The **International Monetary Fund (IMF)** announces it will progress with plans to disburse \$410m to **Kenya** as part of an aid package approved in

April;

13 May 2021 **Nairobi (Kenya)** *Daily Nation*. **High Court** rules that President **Uhuru Kenyatta's** planned constitutional reforms are illegal and that he is liable to legal action over the move which has raised tensions in recent months;

12 May 2021 **Nairobi (Kenya)** *Business Daily*. **Kenyan** supermarket chain **Quickmart** announces that it is opening four more stores in **Kiambu, Nairobi, Kilifi and Trans Nzoia** counties;

12 May 2021 **Nairobi (Kenya)** *Nation*. President **Uhuru Kenyatta** arrives in **Uganda** for the inauguration of President **Yoweri Museveni**;

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