

AFRICA RISK CONSULTING

Kenya Monthly Briefing December 2017

Kenya Summary 3 December 2017

President Uhuru Kenyatta (2013-present) is inaugurated for a second, and constitutionally final, term. However, Kenya remains politically polarised, with an opposition boycott of parliament posing the first challenge to the new government. Kenyatta can use appointments to his government and to state-owned enterprises to undermine opposition intransigence. The ruling Jubilee Party's parliamentary majority should further ensure Kenyatta is able to deliver his legislative agenda. The economic picture is more mixed and may mean further international borrowing if Kenyatta is to finance his infrastructure and social welfare programmes.

Kenyatta inaugurated as president

President **Uhuru Kenyatta** (2013-present) was inaugurated on 28 November, ending a prolonged election period originally scheduled to conclude in August. The opposition continues to refuse to recognise Kenyatta's victory. Political uncertainty will therefore remain high at the start of Kenyatta's second – and constitutionally final – term as president. **Kenya** is more politically polarised than prior to the election.

*"Kenyatta faces a tough second and last term as he will have the arduous task of uniting a country that is deeply divided along ethnic lines, maintaining party unity and making tough and unpopular decisions without losing votes for [deputy president] **William Ruto**, his heir apparent."¹*

Kenyatta has emerged from the election a politically diminished figure. Kenyatta won 7,483,895 votes (98.27%) in the 26 October re-run presidential election, compared to opposition **National Super Alliance (NASA)** candidate **Raila Odinga's** 73,228 votes (0.9%).² Despite this, Kenyatta lacks the popular mandate that such a margin of victory would typically afford a president. Turnout was only 38%, compared to almost 80% in the first round.³ The low turnout reflected the effectiveness of the NASA boycott.⁴ Kenyatta's vote was concentrated in the counties that make up the former **Rift Valley** and **Central Provinces**, highlighting the failure to build nationwide support.

"Kenyatta bagged votes from his political base and that of his deputy, which has created a legitimacy problem as there are diverse regions within Kenya that have refused to recognise a Kenyatta presidency."⁵

Kenyatta's response to the **Supreme Court** nullification has damaged his standing, both domestically and internationally. Kenyatta appeared to mismanage his response to the original Supreme Court ruling to nullify the election, which did not find him liable for the problems that affected the original presidential election. His subsequent public criticism of the Supreme Court, and attempts to stop the courts sitting before the election by declaring national holidays, have damaged his image. It gave the impression of a politician with scant regard for the 2010 constitution, and a willingness to circumvent it when in his interests to do so.⁶

¹ Source, journalist, Nairobi

² Daily Nation, 30 Oct 2017.

³ Daily Nation, 30 Oct 2017.

⁴ Daily Nation, 27 Oct 2017.

⁵ Source, journalist, Nairobi

⁶ Source, journalist, Nairobi

However, it is unlikely that this criticism will force Kenyatta to amend his governing style. Decision-making will remain centralised in the office of the presidency, with the role of chief of staff particularly influential. Kenyatta's current chief of staff, **Joseph Kinyua**, is expected to retire. His likely successor is Jubilee Party election agent and former energy and petroleum cabinet secretary, **Davis Chirchir**. Chirchir may also accept another influential position, such as cabinet secretary.⁷ Chirchir would be a controversial appointment as Kenyatta suspended him in 2015 after the **Ethics and Anti-Corruption Commission (EACC)** alleged his involvement in corruption.⁸ Chirchir is also a close ally of Ruto, and is therefore likely to be central to internal **Jubilee Party** manoeuvring to succeed Kenyatta.

Kenyatta's first task is to appoint a new government. The timing and make-up of the new cabinet are both unclear. Local media has suggested that Kenyatta will abandon his previous strategy of appointing technocrats as cabinet secretaries, and will instead appoint politicians.⁹ Kenyatta is reportedly concerned that his first government failed to publicise its achievements.¹⁰ There is speculation that new appointments may include ruling Jubilee Party secretary general, **Raphael Tuju**, former **Meru County** governor, **Peter Munya**, and former **Budalang'i** member of parliament (MP), **Ababu Namwamba**.¹¹ There is speculation that Kenyatta might unbundle the energy ministry to create a new petroleum ministry.¹²

Kenyatta is also likely to use appointments to his cabinet and to state-owned enterprises to build support amongst the opposition.

"This however creates a challenge, especially with regard to board appointments to state corporations. To appease voters from opposition strongholds by appointing board members from diverse communities will derail the state-owned enterprise reform programme that seeks to reduce wastage and increase efficiency by merging corporations and privatising others. Merging state corporations will reduce jobs and board appointments that are used in Kenya's pork barrel politics. President Kenyatta first mooted the idea [of state-owned enterprise reform] in 2013 but shelved the idea since it would lead to a reduction in the civil service and therefore cost him the much-needed political capital he needed in 2017. It remains to be seen whether he will implement these reforms in the second term since they would cost Ruto votes ahead of the 2022 elections."¹³

In the longer term, increased manoeuvring within the Jubilee Party to succeed Kenyatta will weaken the president and distract from his legislative agenda. There is long-standing speculation that Kenyatta and deputy president Ruto have an unwritten agreement that Kenyatta will back Ruto to succeed him ahead of the 2022 election.¹⁴ Regardless of whether there is a compact between the two leaders, political manoeuvring ahead of the next election is increasingly likely to jeopardise the stability of the Jubilee Party. Ruto's ethnic **Kalenjin** within the Jubilee Party are increasingly dissatisfied with Ruto's failure to secure government appointments and contracts and perceive that Ruto has made too many concessions to Kenyatta and his **Kikuyu** ethnic group.¹⁵

Opposition continues to refuse to recognise Kenyatta's victory

The NASA continues to refuse to recognise Kenyatta's victory. Its most significant short-term response to Kenyatta's victory is a boycott of parliamentary business.¹⁶ If it continues to do so, this

⁷ Daily Nation, 29 Nov 2017.

⁸ Daily Nation, 29 Mar 2015.

⁹ Daily Nation, 29 Nov 2017.

¹⁰ Daily Nation, 29 Nov 2017.

¹¹ Daily Nation, 29 Nov 2017.

¹² Daily Nation, 29 Nov 2017.

¹³ Source, journalist, Nairobi

¹⁴ Source, western diplomat, East Africa

¹⁵ Source, journalist, Nairobi

¹⁶ Daily Nation, 25 Nov 2017.

will pose a challenge to Kenyatta's legislative agenda. The NASA leadership has instructed its MPs not to participate in the vetting of Kenyatta's cabinet appointees.¹⁷ The NASA also continues to refuse to nominate candidates to the senate and national assembly committees. The boycott is holding up key legislation including the **Division of Revenue Bill** (see below). However, the Jubilee Party's parliamentary majority (see below) will negate the longer-term impact of the boycott on its legislative agenda and should ensure a period of relative political stability. Odinga initially refused to allow the NASA to hold a rival inauguration for him as the 'legitimate' president. However, he has subsequently suggested that NASA will hold its own inauguration ceremony on 12 December, which will coincide with Jamhuri Day marking Kenya's independence from the **United Kingdom (UK)**. Holding an inauguration ceremony could lead to Odinga facing treason charges, which would exacerbate political tensions.¹⁸

The NASA leadership has called for so-called **People's Assemblies** to discuss human rights, and government and constitutional reforms, and for the boycott of companies linked to the ruling Jubilee Party.¹⁹ A number of opposition-controlled counties have passed legislation to create People's Assemblies. However, on 21 November, the **High Court** suspended their creation to hear a judicial case about their legality.²⁰

The proposed opposition actions are unlikely to pose a significant challenge to the stability of Kenya or the Kenyatta administration.

Jubilee Party parliamentary majority to push through Kenyatta agenda

The Jubilee Party emerged from the 8 August parliamentary election with a larger majority than it had during Kenyatta's first term, but is four seats short of an outright majority.²¹ This means that Kenyatta, despite his diminished standing, remains relatively well placed to push through his policy agenda. His second term of office will be characterised by policy continuity, with Kenyatta remaining committed to pro-market, broadly liberal policies. Kenyatta's priority is likely to be addressing Kenya's large deficit, through attempts to rein in recurrent spending, although spending on infrastructure will remain high.

"Kenyatta also faces the balancing act of building his legacy, which is hinged on massive infrastructure projects, against an economy that is losing steam. A high cost of living, falling government revenues, a rapacious appetite for debt and a decline in private sector growth may halt the brakes on these massive projects."²²

The Jubilee Party won 171 seats in the 349-seat national assembly in the 8 August parliamentary election, leaving it four short of an outright majority.²³ However, the support of affiliated parties means it effectively controls 213 seats, giving it an effective majority.²⁴ Previously, it held 167 seats in the national assembly.²⁵ The NASA's constituent parties – **Orange Democratic Movement (ODM)**, **Wiper Democratic Movement (WDM)**, **Amani National Congress (ANC)**, and the **Forum for the Restoration of Democracy-Kenya (Ford-Kenya)** – won 125 seats and, as the second largest grouping, is the official opposition. In the senate, the Jubilee Party increased its seats from 30 to 38, out of a total of 67.²⁶

¹⁷ Daily Nation, 25 Nov 2017.

¹⁸ Reuters, 28 Nov 2017.

¹⁹ Daily Nation, 25 Nov 2017.

²⁰ The Nation, 21 Nov 2017.

²¹ EIU, 20 Nov 2017.

²² Source, journalist, Nairobi

²³ EIU, 20 Nov 2017.

²⁴ Reuters, 1 Sept 2017.

²⁵ Reuters, 1 Sept 2017.

²⁶ Reuters, 1 Sept 2017.

The Jubilee Party's effective majority in parliament mitigates the impact of the opposition's boycott of the legislature. It will allow it to fast-track key legislation, including economic reforms.²⁷ As parliamentary business resumes post-election, the legislative agenda over the next couple of months will notably include moves to lift the cap on commercial interest rates, and to revise the **Mining Law**.

Political polarisation poses challenge ...

The Kenyatta administration will face several challenges to its stability and effectiveness. The most notable is that Kenya is more divided than it was before the election. The security forces' heavy-handed response to opposition activities has created divisions that Kenyatta will struggle to overcome, proving detrimental to the authority and effectiveness of his administration. The exact number of dead remains contested, but **Amnesty International** and **Human Rights Watch** claim security forces killed 50 people in the wake of the 8 August general election.²⁸

"Reconciling the already polarised country will be one of the hardest tasks that await the re-elected president. The state-sanctioned police violence in Nairobi's informal settlements and other predominantly NASA strongholds is also creating a sour relationship between these communities and the Jubilee administration. The Jubilee administration is also being cited for using state machinery to bully vocal opposition leaders, activists and pro-NASA businessmen. The continued use of these tactics may set up the administration for failure and embarrassment especially in light of a progressive constitution and a judiciary that is not afraid to exert its independence."²⁹

On the day of Kenyatta's inauguration, security forces used teargas to violently disperse the convoy of Odinga as NASA supporters gathered to attend a memorial service for victims of alleged security force violence in the **Embakasi** neighbourhood in Nairobi.³⁰ Odinga alleged that security forces shot five opposition supporters, killing one.³¹ The opposition has suggested the violence indicates that the government has not learned its lessons from the election campaign.

"At his inauguration speech, Kenyatta stated that he would embark on healing and uniting the country but a few hours after his speech the NASA rally was violently disrupted by the police. Pundits fear that the state will continue this pattern of using force to quell dissent and in the process radicalise Kenyans from opposition strongholds who will in turn continue with more protests that will be countered with greater force and thus creating a vicious cycle."³²

The election and the government's response to it have encouraged secessionist sentiments, concentrated in the opposition-dominated western and coastal regions. **Homa Bay MP Peter Kaluma** has drafted a bill seeking a constitutional amendment to allow the secession of 40 of the 47 counties.³³ On 3 November, **Mombasa County** governor, **Hassan Ali Joho**, said the coastal region had started a "consultative process towards secession".³⁴ While secession remains a distant prospect during the next five years – constitutional amendments require the backing of the majority of counties, the majority of MPs, and popular backing in a referendum – the prospect highlights the depth of Kenya's political polarisation.

... as does corruption

Corruption and public financial mismanagement will also remain persistent during the second Kenyatta administration, with continued high-profile scandals proving particularly politically

²⁷ Reuters, 31 Aug 2017.

²⁸ The Standard, 16 Oct 2017.

²⁹ Source, journalist, Nairobi

³⁰ Reuters, 28 Nov 2017.

³¹ Reuters, 28 Nov 2017.

³² Source, journalist, Nairobi

³³ Bloomberg, 16 Nov 2017.

³⁴ Bloomberg, 16 Nov 2017.

embarrassing for the government. Corruption activists noted that Kenyatta failed to mention the issue during his inauguration speech. There is also concern that corruption might worsen due to the race to succeed Kenyatta:

*"It is unlikely that the level of graft will reduce since for the Jubilee Party to retain power in 2022 they will need a heavy war chest if they are to retain loyalty from party stalwarts as well as make further inroads into opposition strongholds. Unlike President Kenyatta, who comes from one of Africa's wealthiest families, his deputy Ruto is not as privileged and will have to marshal substantial resources to attain a formidable campaign machinery for 2022."*³⁵

Economy may hamper Kenyatta agenda

The economic outlook for the second Kenyatta administration is mixed. With regard to economic policy, Kenyatta will remain committed to pro-market reforms and stronger fiscal management, and to the gradual disengagement of the state from most productive sectors. Monetary policy will be prudent, helping to contain inflation risks, and the fiscal and current-account deficits, although persistent, will narrow.

It is expected that real growth will average 5.7% a year under the second Kenyatta administration.³⁶ Driving factors include urbanisation, the growth of the middle class and the related increase in disposable incomes, investment in infrastructure, pro-market reforms and regional integration.³⁷ Key infrastructure projects include the start of freight services on the new standard-gauge railway (SGR) in December 2017, and work on the second phase of the **Mombasa Port** second container terminal in 2018.³⁸ Commercial oil production may begin in 2022, with the Kenyatta administration benefiting from investment in enabling infrastructure and service sectors, if not direct revenue from production.³⁹ Kenya's role as a key transportation and financial hub means it is well placed to benefit from increased integration within the **East African Community**. Kenya will also remain vulnerable to global economic conditions, including Brexit and increased turbulence in the **Eurozone**, monetary tightening in the **United States (US)**, and a slowdown in **China**.⁴⁰

It is likely that this level of growth will be insufficient for the government to deliver all its plans. Fiscal consolidation will help to keep public debt at a manageable level, but upwards pressure will continue on the back of massive debt-financed infrastructure projects. The most notable of these will be the SGR, the railway project that will connect the port city of **Mombasa** to **Kisumu** at a cost of \$10 billion. The first phase, connecting Mombasa to Nairobi has been completed at a cost of \$3.1 billion, covering 485 kilometres. Now that the election period is over, negotiations are expected to begin with the **Export-Import Bank of China (China Exim)** over financing the last leg of the SGR at a cost of \$3.85 billion.⁴¹ During his inauguration, Kenyatta said that the government would increase spending on generous social programmes including free day secondary school beginning in 2018, increasing health coverage, and reforming the **National Hospital Insurance Fund (NHIF)**.⁴²

There is however doubt on how Kenyatta will achieve these ambitious pledges, considering the turbulent economic environment. There is also concern that this administration will be driving **East Africa's** largest economy into headwinds given the high debt levels and limited loan uptake by the private sector. Under the first Jubilee administration, Kenya's debt more than tripled to stand at KSh 4.4 trillion (\$43 billion) and is fast approaching 60% of GDP, higher than the recommended international benchmark of debt-to-GDP at 50%⁴³ China has also emerged as the top lender to Kenya

³⁵ Source, political analyst, Kenya

³⁶ EIU, 22 Nov 2017.

³⁷ EIU, 22 Nov 2017.

³⁸ Source, analyst, UK

³⁹ Source, analyst, UK

⁴⁰ EIU, 22 Nov 2017.

⁴¹ Source, journalist, Nairobi,

⁴² Daily Nation, 28 Nov 2017.

⁴³ Daily Nation, 28 Nov 2017.

with debts now standing at \$4.7 billion.⁴⁴ The debt figures do not take into account unfunded pensions for public servants and guaranteed debt for state-owned enterprises. Fulfilling some of these pledges will mean additional borrowing and the fear is that debt payments will continue taking up a larger portion of government revenue if tax collection agencies do not increase their collections and therefore limit development expenditure.⁴⁵

This appetite for debt has created the perfect financial storm as it is happening under the 14% commercial interest rate cap. To attract subscriptions for Treasury bills and bonds, the government has had to offer attractive rates that are close to the interest rate cap, thereby crowding out the private sector. Commercial banks have increased their investment in government securities at the expense of lending to the private sector and today consumers, mortgage borrowers, small and medium enterprises, and even large companies are finding it more difficult to access credit, leading to many companies shutting down and laying off thousands of workers.⁴⁶ While data is scarce for how many people have been laid off and the number of companies that have shut down, the decrease in tax collection from payroll/salaries, there is a record number of companies issuing profit warnings and a spike in non-performing loans, primarily driven by micro and small businesses point to a challenging commercial situation.⁴⁷

*“Even if the rate cap law is repealed there will be a lag before private sector activity returns to pre-interest rate cap levels. Therefore, to fulfil all these pledges, the Jubilee government will be forced to borrow more and perpetuate the debt cycle, increase taxes, and/or the **Kenya Revenue Authority (KRA)** will have to become more aggressive at collecting taxes.”⁴⁸*

The government is already preparing to go to the international market to raise another Eurobond but after technically defaulting on a syndicated loan repayment in October, coupled with political risk heightening, it may find it more expensive to raise funds. For investors, Kenya will remain a relatively high-cost business environment due to relatively high profit taxes, inefficient bureaucracy, uncertainty over land ownership, skills shortages, corruption and crime, and infrastructure bottlenecks.⁴⁹

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**;
 Jun 2018 **(Kenya)** *Daily Nation*. Direct flights with **United States** expected to begin;
 12 Dec 2017 **Nairobi (Kenya)** *Daily Nation*. **Raila Odinga** to hold rival inauguration ceremony.
 Dec 2017 **Nairobi (Kenya)** *Standard*. Parliament to consider lifting cap on commercial interest rates.

Chronology

30 Nov 2017 **Nairobi (Kenya)** *Reuters*. The government plans to raise \$1 billion by listing the **National Oil Corp** in **London** and Nairobi to buy stakes in oil blocks;
 29 Nov 2017 **Nairobi (Kenya)** *Business Daily*. The **African Development Bank (AfDB)** approves a \$160m loan to Kenya to finance a second runway at the **Jomo Kenyatta International Airport (JKIA)**;

⁴⁴ Daily Nation, 28 Nov 2017.

⁴⁵ Daily Nation, 28 Nov 2017.

⁴⁶ Daily Nation, 28 Nov 2017.

⁴⁷ Daily Nation, 28 Nov 2017.

⁴⁸ Daily Nation, 28 Nov 2017.

⁴⁹ Source, private sector executive, UK

- 28 Nov 2017 **(Kenya)** *Daily Nation*. President **Uhuru Kenyatta** and deputy president **William Ruto** are sworn into office, with Kenyatta saying he will prioritise bridging Kenya's political divisions;
- 27 Nov 2017 **(Kenya)** *Daily Nation*. Data shows non-tax revenue increased 78% during the 2016/2017 financial year as the government diversified its income sources;
- 25 Nov 2017 **(Kenya)** *Daily Nation*. The NASA leadership instructs its members of parliament (MPs) not to participate in the vetting of Kenyatta's cabinet appointees, or to nominate names to the senate and national assembly committees;
- 22 Nov 2017 **(Kenya)** *Standard*. The **International Monetary Fund (IMF)** warns that Kenya's rising debt to GDP ratio increases its exposure to exogenous economic shocks;
- 21 Nov 2017 **Mombasa (Kenya)** *Business Daily*. **Kenya Ports Authority (KPA)** data shows that cargo handled at **Mombasa Port** increased 10.6% to 22.7 million tonnes in the first nine months of 2017;
- 20 Nov 2017 **Nairobi (Kenya)** *Standard*. **Supreme Court** unanimously rejects petitions seeking to nullify Kenyatta's victory in re-run presidential election;
- 20 Nov 2017 **(Kenya)** *DPA*. The opposition NASA continues to refuse to recognise Kenyatta's victory;
- 18 Nov 2017 **Nairobi (Kenya)** *Capital FM*. Odinga rules out third presidential election;
- 17 Nov 2017 **Nairobi (Kenya)** *Nairobi News*. Demonstration to mark Odinga's return from the **United States** turns violent, with clashes with security forces resulting in five deaths along **Mombasa Road**;
- 15 Nov 2017 **Nairobi (Kenya)** *Business Daily*. **Kenya Airways** completes restructuring of \$2 billion of debt, with shareholders including government converting debt into shares, increasing government's stake from 29.8% to 48.9%;
- 11 Nov 2017 **Nairobi (Kenya)** *Reuters*. Proposed oil bill increases local community's share of oil revenue to 30%;
- 8 Nov 2017 **Nairobi (Kenya)** *Standard*. The NASA calls for interim government to run Kenya for six months;
- 7 Nov 2017 **Nairobi (Kenya)** *The Star*. The finance cabinet secretary, **Henry Rotich**, forecasts growth of 6% in 2018 and 7% in the medium term;

About Africa Risk Consulting:

Africa Risk Consulting (ARC) is a pan-African consulting company that provides timely, relevant information and advice that enables its clients to take informed investment decisions and to safeguard their reputations.

ARC's core consulting services include integrity due diligence and corporate investigations, political advisory and country assessments, opportunity monitoring and reputation risk management. Most relevant to private equity firms is ARC's integrity due diligence and corporate investigations capability. Specifically, ARC offers pre-deal integrity checks to highlight red flags before negotiations start; full detailed multi-jurisdictional reputation due diligence; and supplier and senior hire vetting and repeat due diligence for compliance programmes. ARC is unique in that it offers a 10-day delivery for a routine integrity due diligence. ARC also offers a suite of corporate investigations services from immediate investigation, evidence gathering, e-discovery, forensic accounting and whistleblower support on one end to crisis media management and regular monitoring on the other.

www.africariskconsulting.com

About ARC Briefing:

ARC Briefing is ARC's essential online business information service.

Companies at any stage in their Africa expansion, whether building or communicating an Africa strategy, investing directly, expanding current operations, financing other investors, doing the legal leg-work or researching the Africa growth trend, need ARC Briefing.

ARC Briefing is an online information service keeping you:

- Up to date with Country Chronologies of business-critical events
- In the know via Country Briefings on political, economic, business and operating trends. Written in-country, ARC experts analyse and comment
- Ahead with Country Planner which details future elections, budgets, regulatory changes etc.

www.africariskconsulting.com

Getting in touch

Please contact us by email info@africariskconsulting.com or call + 44 (0) 20 7078 4080

Follow us on Twitter: [@ARCBriefing](https://twitter.com/ARCBriefing)