

AFRICA RISK CONSULTING**Kenya Monthly Briefing November 2019**

Kenya Summary 28 November 2019

The 2010 Constitution of Kenya and its establishment of a National Land Commission have transferred considerable power from Nairobi to country governors, emboldening some to make Zimbabwe-style land grabs. The long-awaited Building Bridges Initiative report is released. The report suggests wide-ranging reforms aimed at reducing political divisions, notably through electing a prime minister. President Uhuru Kenyatta (2013-present) approves a data protection law that complies with European Union legal standards to strengthen Kenya's reputation as the "Silicon Savannah".

A new era of Zimbabwe-style land grabs?

Kenyan and **British** lawyers representing the **Kipsigis** and **Talai** peoples visited **Kericho County** on 30 October on a fact-finding mission. The Kipsigis and Talai peoples have lodged an official complaint with the **United Nations (UN)** in which they are seeking reparations from the **United Kingdom (UK)** government after it forcefully evicted them from the land in 1934 to pave the way for tea plantations owned by multinationals.¹ This high-profile and high-stake case may be part of a new era of land grabs in Kenya, empowered by the **2010 Constitution of Kenya**, and is a concern for existing and prospective foreign investors.²

Land redistribution in Kenya has in the past not been as contentious as in some other **African** countries – particularly **Zimbabwe** and **South Africa**; however, this is changing following the 2010 drafting of the constitution and its establishment of a **National Land Commission (NLC)**. The changing of Kenya's governance from a federal to a devolved system under the new constitution shifted considerable power from **Nairobi** to 47 county governors, enabling them to "*investigate historical land injustices and recommend appropriate redress*" as well as reduce leases from 999-years to 99-years.

Kericho County governor **Paul Chepkwony's** attack on foreign tea plantations is a case in point. Chepkwony is demanding \$20 billion from the British government – equivalent to nearly a quarter of Kenya's annual gross domestic product (GDP) – of reparations to 115,000 Kipsigis and Talai descendants who lost their land in the 1930s, and has warned of Zimbabwe-style farm grabs if the British government does not pay up. Chepkwony is threatening to seize as much as two-thirds of the farmland in Kericho County's tea country. Chepkwony also says that a ruling in February by the NLC allows him to increase land taxes on tea estates. Chepkwony's campaign gained momentum in March this year when the NLC called on the UK to apologise. Tea is crucial to Kenya's economy and firms have long believed that the Kenyan government was unlikely to act in a way that would threaten the industry.

Chepkwony is not the only county governor exercising his new powers. **United States (US)**-based food production and distribution company **Del Monte** has been in a dispute with the **Muranga County** government over the government's renewal of its land lease only for several years. The company occupies over 9,000 hectares of land for pineapple production and argues that it has put up massive investments. The **High Court of Kenya** has delayed the hearing until 6 December.³

¹ The East African, 30 Oct 2019

² Source, investor, Kenya

³ Kenyan News, 25 Nov 2019

Additionally, **Kajiado County** governor **Joseph ole Lenku** issued **India**-based soda-ash miner **Tata Chemicals** with a \$166m land-tax bill in January that the company is contesting.⁴

BBI report is released

The long-awaited **Building Bridges Initiative (BBI)** report was released on 26 November. The report suggests the creation of posts for a prime minister and an official opposition leader, among wide-ranging reforms aimed at ending violent, divisive election cycles.⁵ Politicians and the general public now have a month to read over the report before it is publicly debated. If the suggestions are enacted, which would either come through a bill in parliament or a referendum, there would be major political ramifications – but there is a long way to go still.⁶

The report's most striking suggestion is a change in the structure of the executive. It recommends that the president and prime minister share power in a new political dispensation – the president would be the head of state and government and commander-in-chief, while the prime minister would supervise the execution of day-to-day government affairs. The president would nominate the prime minister but the national assembly would have to approve the appointment. The prime minister would also be the leader of government business in the national assembly and chair of the cabinet sub-committees and would coordinate the affairs of government.

The report also proposes that public officers be barred from doing business with government and be required to publicly declare their wealth. It also proposes that the media be given greater freedom to expose corruption with the role of the controller of budget being strengthened.

The Kenya government established the BBI in March 2018 as a peace pact between President **Uhuru Kenyatta** (2013-present) and his long-time political adversary-turned ally, **Raila Odinga**, to resolve political societal divisions that were laid bare during the 2007 election violence. The initiative was symbolised by a handshake – which became known as *'The Handshake'* – between the two, which restored peace and stability in the bitterly divided nation. Deputy president **William Ruto** is not a supporter of the BBI as he fears it could lead to a deal between Kenyatta and Odinga under which Kenyatta would back Odinga over Ruto in the 2022 elections (see *ARC Briefing Kenya August 2019*).

Data protection law for Silicon Savannah

President Uhuru Kenyatta on 8 November approved a data protection law that complies with **European Union (EU)** legal standards.⁷ The passing of the law is a big step in the country's tech development that will attract more investments in its information technology centre. With a \$1 billion tech scene and home to over 200 start-ups, Kenya is being described as the new *"Silicon Savannah"*.⁸

Information, technology and communication minister **Joe Mucheru** said Kenya has now joined the global community in terms of data protection standards by adopting the new regulations. The EU's **General Data Protection Regulations** came into effect in May last year. Its main purpose is to give control to individuals over their personal data and to simplify the regulatory environment for international business by requesting that they comply with EU guidelines. Any country that wishes to conduct business with the EU should consider that businesses that handle personal data must be built around these guidelines.

The new law will benefit local and foreign tech companies. Kenya marked its place on the tech map with **Safaricom's M-Pesa** mobile money service. However, investors were discouraged by the fact that Kenya did not have any regulations on data protection. Under the new law, violation of data privacy law will result in a maximum fine of \$29,283 or two years in jail and will be investigated by an independent office.

⁴ Standard Media, 21 Jan 2019

⁵ Daily Nation, 26 Nov 2019

⁶ ARC's Kenya analyst

⁷ Finextra, 14 Nov 2019

⁸ ARC's Kenya analyst

Amazon Web Services (AWS), part of US-based **Amazon**, announced plans on 8 November to set up a part of its cloud infrastructure in Kenya.⁹ AWS president **Andy Jassy** said the new law paves the way for the company’s investment in Nairobi. This could be a fresh start for Kenyan tech communities and an opportunity to enhance the customer experience as well. US-based **Microsoft** announced in May that it would be investing \$100m to open an **Africa Technology Development Center** with sites in Kenya as well as **Nigeria**.¹⁰ Microsoft has hired more than 100 local engineers to work in the new facility while also customising its applications for the African market.

Kenya in August was ranked as the second leading innovation hub in **sub-Saharan Africa** in the **Global Innovation Index (GII) 2019** report, coming second only to **South Africa**.¹¹ The report suggests that a part of why Kenya’s start-ups are so successful is that they have easy access to credit and microfinance loans. The country has been outperforming on innovation relative to GDP for nine consecutive years.

Kenya’s tech sector has also benefitted from the country’s regionally top-ranking business environment. Kenya improved five positions to 56 globally on attractiveness to investors in the **World Bank’s Doing Business 2020** report,¹² Kenya ranked best in “*protecting minority investors*” and “*getting credit*” where it ranked 1st and 4th respectively (see below). Kenya’s score in “*resolving insolvency*” improved 5% from last year; its score in “*paying taxes*” improved 4.6% and its score in “*dealing with construction permits*” improved 4.1%. Overall, Kenya is ranked 3rd in sub-Saharan Africa behind **Rwanda** (2nd) and **Mauritius** (1st).



Source: World Bank Doing Business 2020

Innovation in the tech scene has also led an improvement in election monitoring and security in Kenya. Nairobi-headquartered election monitoring company **Ushahidi** allows observers to report

⁹ Reuters, 8 Nov 2019

¹⁰ Microsoft, 13 May 2019

¹¹ Global Innovation Index 2019, Aug 2019

¹² World Bank Doing Business 2020

instances of violence easily through mobile phones. Its first application was during the 2011 post-election violence.

Planner

12 Dec 2019 **(Kenya)** Jamhuri Day national holiday;
 30 Mar-3 Apr 2020 **Nairobi (Kenya)** Annual Summit on Investment Opportunities in Kenya;
 8 Jun 2020 **The Hague (Netherlands) International Court of Justice (ICJ)** hearings for **Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)** case to begin;
 19-21 Aug 2020 **Nairobi (Kenya)** Kenya Financial Services Conference and Expo;
 2022 **(Kenya)** *Daily Nation*. General elections to be held;

Chronology

26 Nov 2019 **Nairobi (Kenya)** *Daily Nation*. The long-awaited **Building Bridges Initiative** report suggests the creation of posts for a prime minister and an official opposition leader, among wide-ranging reforms aimed at ending violent, divisive election cycles;

26 Nov 2019 **Nairobi (Kenya)** *Daily Nation*. **Supreme Court** dismisses a **British American Tobacco** challenge on the implementation of the **Tobacco Control Regulations**;

25 Nov 2019 **Nairobi (Kenya)** *Central Bank of Kenya* The **Central Bank of Kenya** lowers its central bank rate from 9% to 8.5% at its **Monetary Policy Committee** meeting, citing room for accommodative monetary policy to support economic activity;

19 Nov 2019 **Nairobi (Kenya)** *Daily Nation*. **Equity Bank Kenya** says it has entered into a share purchase agreement with **Belgian** entrepreneur, **George Arthur Forrest**, to purchase 66.53% of its shares held in the **Democratic Republic of the Congo**-based **Banque Commercial du Congo**;

18 Nov 2019 **Washington (US)** *NYT*. **United States** imposes sanctions on **Kenya's** former attorney general, **Amos Sitswila Wako**, accusing him of involvement in "significant" corruption;

16 Nov 2019 **Nairobi (Kenya)** *Daily Nation*. The **African Union**, the **United Nations**, the **European Union** and the **United States** welcome Kenya and **Somalia's** agreement to restore bilateral ties after oil rights dispute;

14 Nov 2019 **Nairobi (Kenya)** *Daily Nation*. **Kenyan** and **Somali** authorities agree to restore bilateral agreements that have been frayed by a maritime boundary dispute that is currently before the **Netherlands**-based **International Court of Justice**;

12 Nov 2019 **Nairobi (Kenya)** *The Herald*. Public outcry and four policemen are suspended after a video of police officers beating a student demonstrator at **Jomo Kenyatta University** is widely shared online;

12 Nov 2019 **Nairobi (Kenya)** *The Standard*. Global energy campaign **Power For All** says Kenya needs between \$15-18 billion to achieve all-round electricity access by 2022;

12 Nov 2019 **Nairobi (Kenya)** *The East African*. **Equity Group Holdings** says its nine-month pre-tax profit rose 11% to \$242m, helped by a surge in lending, higher interest and non-funded income;

11 Nov 2019 **Kampala (Uganda)** *The Observer*. **Uganda Airlines** successfully completes a maiden flight to **Moi International Airport** in **Mombasa (Kenya)**;

6 Nov 2019 **Nairobi (Kenya)** *NYT*. A group of Kenyan banks commits \$97m in loans to small and medium businesses under **Stawi**, a new mobile phone-based loan service;

6 Nov 2019 **Nairobi (Kenya)** *Daily Nation*. **Senate** votes to raise the government's debt ceiling

to \$87 billion to unlock \$4 billion worth of loans with foreign development agencies;

5 Nov 2019 **Nairobi (Kenya)** *The Standard*. Parliament passes President **Uhuru Kenyatta**'s bid to remove a cap on commercial lending rates, which was imposed in 2016;

5 Nov 2019 **Nairobi (Kenya)** *Bloomberg*. President **Uhuru Kenyatta** says government is planning legislation to compel the payment of tax bills even if they are being contested in court;

1 Nov 2019 **Nairobi (Kenya)** *Reuters*. Telecommunications operator **Safaricom** plans to bid jointly with **South Africa**-based **Vodacom** for one of two telecommunications licences in **Ethiopia**;

30 Oct 2019 **Nairobi (Kenya)** *Daily Nation*. The **World Bank** says **Kenya**'s economy will grow 6% in 2020, up from projected growth of 5.8% in 2019;

29 Oct 2019 **Nairobi (Kenya)** *Xinhua*. Petroleum ministry strategic advisor **Brian Murikui** says the government will export 500,000 barrels of oil in February 2020;

28 Oct 2019 **Nairobi (Kenya)** *Daily Nation*. **Geoffrey Mwau**, advisor to the finance minister, says the government will reduce borrowing from capital markets to make debt repayments more bearable;

24 Oct 2019 **Mombasa (Kenya)** *Daily Nation*. **Kenya Ports Authority** head **Daniel Manduku** plans to modernise **Mombasa Port**'s four berths at a cost of \$193m;

24 Oct 2019 **Nairobi (Kenya)** *Citizen TV*. Telecommunications company **Safaricom** names **Peter Ndegwa** as its new CEO;

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