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The High Court nullifies the Independent Electoral and Boundaries Commission (IEBC) contract to supply ballot papers for the 8 August general election. President Uhuru Kenyatta (2013-present) criticises the ruling at an election rally, increasing the risk that the judiciary is politicised ahead of the election. The IEBC says it will appeal the ruling. Kenyatta enters the final weeks of campaigning with a healthy lead in polling. Both Kenyatta and main opposition challenger Raila Odinga receive financial support from prominent businessmen, attracting local scrutiny. Parliament fails to pass the Petroleum (Exploration, Development and Production) Bill before entering recess ahead of the general election, delaying the start of planned oil exports.

Court nullifies IEBC ballot paper contract

The **High Court** on 7 July nullified the **Independent Electoral and Boundaries Commission's (IEBC)** contract for the 8 August general election ballot papers.¹ The IEBC's ability to persuade all parties of its political independence and readiness to hold credible polls will largely determine the risk of violence around the election. The court ruled that the IEBC's tendering process was insufficiently transparent.² The IEBC had originally issued the 2.5 billion Kenya shilling (KSh) (\$24m) contract to supply 130 million ballot papers to **Dubai-based Al Ghurair Print and Publishing Co Ltd** in November 2016.³ However, the High Court cancelled the contract in February after the opposition **Coalition for Reforms and Democracy (CORD)**, part of the opposition **National Super Alliance (NASA)**, filed a case against the IEBC and the **Public Procurement Administrative Review Board** alleging the award of the contract breached the provisions of the revised **Election Laws Act 2016** passed two months before the tender.⁴ The IEBC reissued the contract to Al Ghurair Print and Publishing in early June.⁵

The NASA subsequently increased its criticism of the IEBC contract. NASA constituent party **Amani National Congress (ANC)** leader **Wycliffe Musalia Mudavadi** claimed that President **Uhuru Kenyatta's** (2013-present) younger brother, **Muhoho Kenyatta**, is the local agent of, and a shareholder in, Al Ghurair Print and Publishing.⁶ Mudavadi alleged that Al Ghurair Print and Publishing CEO **Aziz Al Ghurair** is a friend of the Kenyatta family and a frequent guest at the house of Muhoho Kenyatta.⁷ Mudavadi alleged that President Kenyatta met Al Ghurair secretly in **Nairobi** and Dubai, and that the company may provide additional ballot papers to facilitate electoral fraud.⁸ Mudavadi also claimed that Al Ghurair met IEBC CEO **Ezra Chiloba** and voter registration director **Immaculate Kassait**.⁹ Mudavadi alleged that both Kenyatta and Kassait are members of the **Mount Kenya Foundation**, an influential organisation of politicians and businessmen from the **Mount Kenya** region.¹⁰ The NASA called for the IEBC to cancel the Al Ghurair Print and Publishing contract.¹¹

¹ Daily Nation, 7 Jul 2017.

² Daily Nation, 7 Jul 2017.

³ Bloomberg, 15 Jun 2017.

⁴ Capital FM, 13 Feb 2017.

⁵ Bloomberg, 15 Jun 2017.

⁶ Daily Nation, 15 Jun 2017.

⁷ Daily Nation, 15 Jun 2017.

⁸ Daily Nation, 15 Jun 2017.

⁹ Daily Nation, 15 Jun 2017.

¹⁰ Daily Nation, 15 Jun 2017.

Mudavadi provided no evidence to substantiate the allegation. However, the IEBC took the potential implications of the allegations sufficiently seriously to convene a meeting of the presidential candidates, including ruling **Jubilee Party** secretary general **Raphael Tuju** representing Kenyatta, and NASA candidate **Raila Odinga**.¹² IEBC chairman **Wafula Chebukati** told the candidates that the IEBC had undertaken sufficient due diligence into Al Ghurair and would directly oversee the printing of the ballot papers in Dubai.¹³

The IEBC has said that it will not reissue the tender but will instead appeal the most recent High Court ruling.¹⁴ Beyond the logistical challenge of securing the necessary ballot papers within a month, there is concern that the political response to the ruling may damage the authority of the judiciary ahead of the election. Kenyatta criticised the ruling at an election rally in **Baringo County** on 9 July:

*"[The judiciary] are taking us for fools. I want to tell those in courts, we have respected you. But do not think respect is cowardice. And we will not allow our opponents to use the courts and to intimidate the IEBC, thinking they will win using the back door."*¹⁵

In a statement in response, Chief Justice **David Maraga** warned that political criticism will undermine the authority of the judiciary.¹⁶ The independence of the judiciary is key to increasing the likelihood of defeated candidates accepting rulings on election-related disputes.¹⁷

While concerns about the preparedness of the IEBC may increase the risk of election violence, a substantial victory by either presidential candidate would mitigate the risk. Nairobi-based polling company **Infotrak Research & Consulting Ltd** published a poll on 30 June showing that Kenyatta enjoys a lead over main challenger Raila Odinga ahead of the 8 August general election.¹⁸ According to the Infotrak data, 48% of voters intend to vote for Kenyatta.¹⁹ This gives Kenyatta a five-point lead over opposition NASA candidate Odinga, with 43% of Kenyans intending to vote for him.²⁰ Of the remaining voters, 8% are still undecided and fewer than 1% plan to vote for other candidates, with the majority of those backing **Alliance for Real Change** candidate **Mohamed Abduba Dida**.²¹ Kenyatta's support is concentrated in the counties that make up the former **Central** and **North Eastern Provinces** where he received 90% and 75% of intended votes respectively.²² Kenyatta also has support in the counties of the former **Eastern Province** (58%), **Rift Valley** (56%), **Nairobi** (41%) and **Coast** (29%).²³ Odinga's support is concentrated in the counties that make up the former **Nyanza Province** (83%), **Coast** (61%), **Western** (53%) and **Nairobi** (51%).²⁴ With implications for the legislative and county-level elections, the survey indicated that 47% of voters align themselves with the Jubilee Party and 43% NASA.²⁵

The preparedness of the IEBC is a concern with less than a month until the general election. It is highly unlikely that the ballot paper dispute will result in delays to the election. Nevertheless, logistical challenges will increase the risk that defeated candidates resort to allegations of electoral fraud. Allegations that the judiciary is politicised will further increase the risk that candidates will not accept judicial rulings in subsequent election disputes.

¹¹ Daily Nation, 15 Jun 2017.

¹² Daily Nation, 15 Jun 2017.

¹³ Daily Nation, 15 Jun 2017.

¹⁴ Daily Nation, 12 Jul 2017.

¹⁵ Citizen TV, 9 Jul 2017.

¹⁶ Citizen TV, 9 Jul 2017.

¹⁷ Citizen TV, 9 Jul 2017.

¹⁸ Standard, 30 Jun 2017.

¹⁹ Standard, 30 Jun 2017.

²⁰ Standard, 30 Jun 2017.

²¹ Standard, 30 Jun 2017.

²² Standard, 30 Jun 2017.

²³ Standard, 30 Jun 2017.

²⁴ Standard, 30 Jun 2017.

²⁵ Standard, 30 Jun 2017.

Kenyatta appoints Matiang'i acting interior cabinet secretary

Kenyatta appointed **Fred Matiang'i** as acting interior cabinet secretary on 8 July.²⁶ The appointment followed the sudden death of Matiang'i's predecessor, **Joseph Nkaisery**, on the same day and mitigates the risk of a political vacuum ahead of the 8 August general election. Nkaisery died of a suspected heart attack after being admitted to **Karen Hospital** in Nairobi.²⁷ Following a meeting of the **National Security Council**, Kenyatta announced Matiang'i's appointment in a televised address, saying it was necessary to ensure security in the run-up to the election.²⁸ Prior to his appointment, Matiang'i was education cabinet secretary (2015-2017), interim lands cabinet secretary (2015) and information and communications cabinet secretary (2013-2015).²⁹

Kenyatta views Matiang'i as a political fixer.³⁰ During his former permanent government posts, Matiang'i pushed through contentious reforms despite internal opposition. In the education sector, Matiang'i moved to dismiss the corrupt **National Examinations Council** and restructured the administration of examinations and the school calendar, which resulted in an arson campaign against schools.³¹ At the lands ministry, Matiang'i embarked on land reform despite the opposition of the **National Lands Commission**.³² At the information and communications ministry, Matiang'i oversaw the transition from analogue to digital despite opposition that resulted in a Supreme Court case.³³ Critics describe Matiang'i as uncompromising.³⁴ One of his first actions on becoming interior cabinet secretary was to impose a curfew in **Lamu, Tana River** and **Garissa Counties** after suspected **al Shabaab** militants beheaded nine men in Lamu.³⁵

Matiang'i's uncompromising stance suggests he will not hesitate to deploy security forces during the last weeks before the election. This is likely to encourage opposition claims of intimidation and harassment.

Businessmen look to secure support of next government

The election campaign has increased popular scrutiny of the links between Kenya's political and business elites. The scrutiny highlights the risk to investors of doing business with politically exposed persons in Kenya. Local attention has focused on the identities of businessmen financing the Jubilee Party and the NASA. Kenyatta held a fundraising dinner for his re-election campaign in June,

*"The guest list of those who attended the fundraising dinner read like a list of prominent businessmen who have benefited from national government infrastructure projects. The dinner reportedly raised at least \$10m."*³⁶

The guests included Kenyan businessmen **Paul Ndungu** and **Richard Ngatia**, who are connected with **Megascope Kenya Ltd**, a Nairobi-based healthcare equipment supplier that is a major player in the health ministry's \$366m medical leasing equipment programme.³⁷ Also in attendance was businessman **Peter Munga**, the former chairman of Nairobi-based **Equity Group Holdings Ltd**, who has interests in the agriculture and energy sector.³⁸ Munga's companies are suppliers of concrete polls to **Nairobi Securities Exchange**-listed electricity distributor **Kenya Power & Lighting Co Ltd**.³⁹

²⁶ Standard, 8 Jul 2017.

²⁷ The Star, 10 Jul 2017.

²⁸ Standard, 8 Jul 2017.

²⁹ Standard, 8 Jul 2017.

³⁰ Daily Nation, 10 Jul 2017.

³¹ Daily Nation, 10 Jul 2017.

³² Daily Nation, 10 Jul 2017.

³³ Daily Nation, 10 Jul 2017.

³⁴ Daily Nation, 10 Jul 2017.

³⁵ Citizen TV, 9 Jul 2017.

³⁶ Source, journalist, Nairobi

³⁷ Source, journalist, Nairobi

³⁸ Source, journalist, Nairobi

³⁹ Source, journalist, Nairobi

“Kenya Power then announced that it would switch to concrete poles from wooden poles in electricity distribution, giving the supplier a boost.”⁴⁰

John Njiraini, the head of the **Kenya Revenue Authority**, and other senior civil servants also attended the dinner.

“Their presence is more worrying than that of the businessmen. This is contrary to the spirit of the constitution which discourages public officials from aligning themselves with political parties.”⁴¹

The opposition NASA campaign has also received strong financial backing, including from “controversial”⁴² businessman **Jimmy Wanjigi**. Wanjigi was named in the **Anglo-Leasing** scandal of the mid-2000s involving corrupt government procurement.⁴³ In 2006, the **United States (US)** government imposed targeted sanctions on Wanjigi for his involvement in Anglo-Leasing, and prohibited his entry to the US.⁴⁴

*“Wanjigi cut his teeth by brokering infrastructure and security deals for the government. His modus operandi is to design projects and find financing, especially from **Chinese** companies. Once the government enters into the contracts he gets a commission from the contractor.”⁴⁵*

Wanjigi was a “major financier”⁴⁶ of Kenyatta before the 2013 election.

“He backed Kenyatta to the point of successfully negotiating for other candidates to drop their presidential campaign in 2013.”⁴⁷

Wanjigi’s backing of Kenyatta was allegedly in the hope of securing political backing for railway, pipeline and energy infrastructure projects.⁴⁸ Wanjigi reportedly fell out with Kenyatta after he was excluded from significant infrastructure deals.⁴⁹ Reportedly, Wanjigi feels he missed out on a commission from the standard gauge railway.⁵⁰ Wanjigi also reportedly lost out on commission when the government cancelled the contract it awarded to **China National Aero-Technology International Engineering Corp (CATIC)** for a \$650m airport expansion project at Nairobi’s **Jomo Kenyatta International Airport (JKIA)** in April 2016 (see *ARC Briefing Kenya April 2016*). Wanjigi is allegedly connected to CATIC.⁵¹

There is popular concern about what pledges these businessmen have secured in return for their backing with both parties putting high levels of investment in large infrastructure projects at the centre of their manifestos.

“There is a clear trend of influential businesspeople who have benefited from government contracts supporting the two main parties... it is clear that there are big gains to be made by Kenyan ‘tenderpreneurs’. Whether Kenyan taxpayers will get value for money is another question.”⁵²

The close links between Kenya’s political and business elite raise investor risks around contract sanctity. There is a significant risk of contracts being cancelled or renegotiated when another party secures government.

⁴⁰ Source, journalist, Nairobi

⁴¹ Source, journalist, Nairobi

⁴² Source, journalist, Nairobi

⁴³ Africa Confidential, 26 May 2006.

⁴⁴ Africa Confidential, 26 May 2006.

⁴⁵ Source, journalist, Nairobi

⁴⁶ Africa Confidential, 26 May 2006.

⁴⁷ Source, journalist, Nairobi

⁴⁸ Africa Confidential, 26 May 2006.

⁴⁹ Source, journalist, Nairobi

⁵⁰ Source, journalist, Nairobi

⁵¹ Source, journalist, Nairobi

⁵² Source, journalist, Nairobi

Election delays start of oil exports

The government suspended the planned start of oil exports on 29 June after parliament failed to pass the **Petroleum (Exploration, Development and Production) Bill** before it entered recess ahead of the general election.⁵³ Exports are now unlikely to begin before the fourth quarter at the earliest. Oil exports from **Turkana County** were due to begin on 30 June.⁵⁴ The senate, however, failed to pass the Petroleum Bill because of a dispute over the division of revenue.⁵⁵ The Petroleum Bill originally provided for local communities to receive 5% of revenues, before parliament increased the share to 10%.⁵⁶ Kenyatta rejected the new proportion, and called on parliament to reinstate the 5%.⁵⁷ The national assembly agreed to the original 5%, but the senate rejected the revision.⁵⁸ The amount of crude involved was relatively limited, with only 2,000 barrels per day (bpd) transported by road to the **Port of Mombasa**.⁵⁹ The government had previously acknowledged that the exports would generate little profit due to the high cost of road transportation.⁶⁰ However, the government saw the exports as a test of market appetite for Kenyan crude ahead of full-scale production and the planned construction of an export pipeline in 2021-2022.⁶¹

With the Petroleum Bill now in limbo until after the election, the next administration will determine the future of oil exports.

⁵³ Daily Nation, 29 Jun 2017.

⁵⁴ Daily Nation, 29 Jun 2017.

⁵⁵ www.president.go.ke

⁵⁶ www.president.go.ke

⁵⁷ www.president.go.ke

⁵⁸ www.president.go.ke

⁵⁹ Daily Nation, 29 Jun 2017.

⁶⁰ www.president.go.ke

⁶¹ www.president.go.ke

About Africa Risk Consulting:

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