

AFRICA RISK CONSULTING

Kenya Monthly Briefing March 2017

Kenya Summary 7 March 2017

A high court ruling nullifies an Independent Electoral and Boundaries Commission (IEBC) contract for ballot papers for the 8 August general election. The IEBC is under-prepared for elections, but the government is unlikely to countenance their delay. Two separate datasets suggest that President Uhuru Kenyatta (2013-present) is well positioned to win election and secure a second term in office. The United States (US) Federal Aviation Administration (FAA) rules that Kenya complies with its International Aviation Safety Assessment standards, paving the way for direct flights between the US and Kenya. Kenya Power & Lighting Co Ltd will not impose power rationing and does not expect price increases during the ongoing drought.

IEBC reopens ballot paper tender

The high court on 13 February nullified an **Independent Electoral and Boundaries Commission (IEBC)** contract for ballot papers for the 8 August general election.¹ The ruling is unlikely to lead to a delay in the election date. The IEBC in November 2016 awarded **Dubai-based Al Ghurair Printing and Publishing Co** the 2.5 billion Kenya shillings (KSh) (\$24.1m) contract to supply 130 million ballot papers.² The opposition **Coalition for Reforms and Democracy (CORD)** claimed that the award of the contract breached the provisions of the revised **Election Laws Act 2016** passed two months before the tender.³ CORD filed a legal challenge against the IEBC and the **Public Procurement Administrative Review Board**.⁴ Justice **George Odunga** upheld CORD's case, and instructed the IEBC to restart the tendering process.⁵ The IEBC confirmed on 1 March that it will not appeal the ruling and will issue a new tender.⁶ Courts are yet to hear two outstanding cases that the opposition has brought: one related to the electoral law amendments that the ruling **Jubilee Party** unilaterally passed in December, and one concerned with the IEBC's award of a contract to **The Netherlands-based** professional services company **KPMG** to audit the voter register.⁷

The ruling will not damage the standing of IEBC chairman **Wafula Chebukati** and the seven new commissioners appointed in January as it was their predecessors who issued the original ballot-printing contract. Nevertheless, reissuing the tender will add to the outstanding tasks that the IEBC needs to complete before August. The IEBC launched its '**Election Operation Plan**' in July 2016, but has not yet procured an election information technology (IT) system, finalised the voter register, or hired sufficient employees to effectively manage the electoral process.⁸ The IEBC closed its last mass-voter registration exercise on 19 February following a legal challenge over the constitutionality of the original date of 14 February.⁹ CORD leader **Raila Odinga** criticised the IEBC voter registration drive, describing it as "*a major, major mess*".¹⁰ Odinga alleged that multiple voters were able to register using

¹ Capital FM, 13 Feb 2017.

² Standard, 13 Feb 2017.

³ Capital FM, 13 Feb 2017.

⁴ Capital FM, 13 Feb 2017.

⁵ Standard, 13 Feb 2017.

⁶ Standard, 13 Feb 2017.

⁷ Capital FM, 13 Feb 2017.

⁸ Daily Nation, 14 Feb 2017.

⁹ www.nairobineews.nation.co.ke

¹⁰ Reuters, 16 Feb 2017.

the same identity card.¹¹ The IEBC has publically acknowledged that it has identified 78,000 duplicate registrations.¹² However, the IEBC has claimed that it will identify and remove fraudulent or erroneous entries during the verification of the registration, which it is due to begin on 10 May.¹³

The ruling is unlikely to result in a delay to the election itself. Any change in date to the constitutional timetable requires the backing of two-thirds of the **National Assembly**. Previous efforts in recent years to amend the date have failed to gain sufficient support. The government remains committed to the electoral timetable. President **Uhuru Kenyatta** (2013-present) confirmed on 24 February that the government will move forward the budget approval process to April.¹⁴ The revised calendar is a pragmatic move to mitigate the risk of the general election disrupting public financial management more than is necessary. Members of the **East African Community (EAC)** typically coordinate the simultaneous submission of their budgets in June.¹⁵ Kenyatta said he would officially submit a notification to the EAC that the government plans to publish the budget early.¹⁶

The bigger risk is that delays to IEBC preparations undermine its institutional credibility. The risk of violent protests either side of the election depends on whether the IEBC can reassure all parties of its credibility and impartiality. Odinga, on 16 February, raised the prospect of protests after the general election.¹⁷ Odinga said Kenyans “*will not accept a rigged election*”.¹⁸ In the case of dispute, Odinga said he would first seek legal redress, as he did following IEBC technical challenges during the 2013 election.¹⁹ However, he warned that the government is increasing political pressure on the judiciary, increasing the risk of politicised rulings, and that therefore,

“We have not ruled out what we call mass action ... to ensure the rule of law is respected. Every option is open to us.”²⁰

An underprepared IEBC will not instill political or popular confidence. It increases the risk of defeated candidates or parties refusing to accept results. However, the election will go ahead as scheduled in August. The political and economic implications of a delay mean it is not a viable scenario.

Kenyatta well placed to win

Two separate datasets published in February indicate that Kenyatta is well placed to win the presidential election. Market research company **Ipsos Kenya** published a survey on 13 February showing that Kenyatta has a commanding lead over probable election rival Odinga.²¹ While Kenyatta’s record in office is disappointing, the unity of his Jubilee Party increases the likelihood he will secure another term. Kenyatta recorded a 66% approval rating in the nationwide poll.²² This compares to Kenyatta’s peak approval rating of 78% in November 2014.²³ Kenyatta’s approval has declined in the past quarter, due to concerns about crime (46%), economy (19%), labour relations (8%), poor infrastructure (5%), political leadership (3%) and healthcare (3%). Notably, in the last quarter, three times as many households say their economic conditions have worsened in the past quarter than improved. Those who back Kenyatta cite infrastructure developments (41%), education improvements (14%) and economic conditions (11%).²⁴ Geographically, Kenyatta enjoys the highest

¹¹ Reuters, 16 Feb 2017.

¹² Reuters, 16 Feb 2017.

¹³ Reuters, 16 Feb 2017.

¹⁴ Capital FM, 24 Feb 2017.

¹⁵ Capital FM, 24 Feb 2017.

¹⁶ Capital FM, 24 Feb 2017.

¹⁷ Reuters, 16 Feb 2017.

¹⁸ Reuters, 16 Feb 2017.

¹⁹ Reuters, 16 Feb 2017.

²⁰ Reuters, 16 Feb 2017.

²¹ Standard, 13 Feb 2017.

²² Standard, 13 Feb 2017.

²³ Standard, 13 Feb 2017.

²⁴ Standard, 13 Feb 2017.

support in the **Central** region (88%), **Rift Valley** region (71%), and **Eastern** region (68%).²⁵ He enjoys the lowest support in the **Nyanza** region (68%) and **Western** region (52%). In **Nairobi**, Kenyatta has a 57% approval and 39% disapproval rating.²⁶ Despite Kenyatta's decreasing approval ratings, his support remains higher than all possible opposition **National Super Alliance (NASA)** candidates: Odinga 42%, **Musalia Mudavadi** 41% and **Moses Wetang'ula** 34%.²⁷ Deputy president, and Kenyatta's running mate, **William Ruto** secured a 52% approval rating.²⁸

Separately, preliminary data from the recent IEBC voter registration exercise appears to show that the NASA failed to register sufficient voters in its heartlands to challenge the ruling Jubilee Party.²⁹ Western Kenya, the homeland of NASA leaders Mudavadi and Wetang'ula, saw particularly low numbers of new voters compared to IEBC projected targets. Only 67% of the IEBC's target registered in **Homa Bay County**, 45% in **Busia County**, 44% in **Bungoma County**, 41% in **Kisii County**, 39% in **Kakamega County**, and 28% in **Vihiga County**.³⁰ Jubilee strongholds saw considerably higher levels of new voters. **Kirinyaga**, **Murang'a** and **Kiambu Counties** all recorded above 80% of the IEBC's target.³¹

The numbers indicate that Kenyatta is in a strong position to win, and therefore the Jubilee Party – whose backing in parliament is a prerequisite to making the necessary constitutional amendment – will not countenance a delay to the election (see above).

US paves way for direct flights with Nairobi

The **United States (US) Federal Aviation Administration (FAA)** on 24 February ruled that **Kenya** complies with its **International Aviation Safety Assessment** standards.³² FAA ratification paves the way for direct flights, which will significantly ease operational challenges facing US-based companies in Kenya, with national airline **Kenya Airways Ltd** well placed to benefit.³³ The FAA determined that Kenya complies with **International Civil Aviation Organization** standards, granting **Jomo Kenyatta International Airport (JKIA)** a category 1 rating.³⁴ In 2009, **Delta Air Lines Inc** planned to begin a direct service between **Atlanta (US)** and Nairobi with a stop in **Dakar (Senegal)**. However, US **Federal Aviation Authority (FAA)** officials withdrew clearance for the route one day before its scheduled start date, citing security concerns in Nairobi. The FAA initially conducted a critical technical review of Kenya's safety oversight system in October 2014. The government has subsequently addressed the 81 corrective actions it prescribed, including passing a new **Civil Aviation Law**, establishing a **Civil Aviation Tribunal** and investing in the expansion of JKIA's infrastructure.³⁵

*"Years of lobbying and investing in upgrading the Jomo Kenyatta International Airport had paid off."*³⁶

The category 1 certification means Kenyan air carriers are now able to secure US transportation department authority to establish direct services to the US, and to carry the code of US carriers.³⁷ Kenya transport cabinet secretary **James Macharia** said Kenya Airways will begin direct flights once

²⁵ Standard, 13 Feb 2017.

²⁶ Standard, 13 Feb 2017.

²⁷ Standard, 13 Feb 2017.

²⁸ Standard, 13 Feb 2017.

²⁹ Standard, 19 Feb 2017.

³⁰ Standard, 19 Feb 2017.

³¹ Standard, 19 Feb 2017.

³² Daily Nation, 27 Feb 2017.

³³ Business Daily, 1 Oct 2016.

³⁴ Daily Nation, 27 Feb 2017.

³⁵ Daily Nation, 27 Feb 2017.

³⁶ Source, journalist, Nairobi

³⁷ Daily Nation, 27 Feb 2017.

it has secured the requisite approvals and last point of departure (LPD) rights.³⁸ The **Kenya Civil Aviation Authority (KCCA)** has estimated this process might take eight months.³⁹ The KCCA has also said that the **US Transport Safety Authority** must still complete a security audit before direct flights can begin.⁴⁰

Currently, passengers looking to travel through the US need to transit through **Addis Ababa (Ethiopia)**, which takes approximately 30 hours and costs around \$1,620; **Lagos (Nigeria)**, which takes 23 hours and costs around \$2,600; or **Johannesburg (South Africa)**, which takes 20 hours and costs around \$1,800.⁴¹ Once operational, direct flights will reduce cargo transport times from seven days to one day.⁴² However, direct flights tend to be more expensive than connecting ones, and with few airlines expected to operate the route, prices are not expected to decrease.

Kenyan businesses have welcomed the potential start of direct flights.

“Kenya’s flower and fruit exporters and investors in the tourism sector are expecting better times ahead. They are showing confidence that direct flights will open up the mega American market to local industries, opening a new lucrative revenue stream.”⁴³

The **Kenya Flower Council**, a lobby group for cut-flower exporters, has projected that direct flights will open up a \$600m industry whose penetration has been hindered by the long time it takes to connect between Nairobi and major US cities.⁴⁴

“The lack of a direct route means that goods take as much as seven days before reaching a US-based destination and makes exportation of certain perishables goods not feasible. Direct flights will make it possible to ship cargo within a day which is a big advantage for Kenyan flower and fruit exports.”⁴⁵

The tourism sector also stands to benefit.

“Looking at traffic flowing from America to Kenya, the biggest impact of direct flights will be on the tourism industry that is increasingly looking to the US market which in recent months has become the chief source of tourists. Government statistics indicate that as at the end of the third quarter of 2016, America was the biggest source of tourist visitors, dethroning the [United Kingdom] UK, which has traditionally been the biggest source of arrivals. Investors in the sector are also giddy at the prospect of increased tourist inflows from the North America region over other areas such as East Asia, as the former are bigger spenders over the latter.”⁴⁶

The economic benefits are likely to be diverse. In the longer term, direct flights will benefit real estate, information communication technology (ICT), and other service sectors.

“Kenya’s property boom of the last few years has partly been fuelled by expatriate tenants who have been streaming in to set up their regional offices in Nairobi. The increase in expatriate tenants was as a direct result of Kenya Airways increasing its African and Asian routes which in turn enhanced Nairobi’s prominence as a hub.”⁴⁷

³⁸ Daily Nation, 27 Feb 2017.

³⁹ Daily Nation, 27 Feb 2017.

⁴⁰ Daily Nation, 27 Feb 2017.

⁴¹ Daily Nation, 27 Feb 2017.

⁴² Daily Nation, 27 Feb 2017.

⁴³ Source, journalist, Nairobi

⁴⁴ Source, journalist, Nairobi

⁴⁵ Source, journalist, Nairobi

⁴⁶ Source, journalist, Nairobi

⁴⁷ Source, journalist, Nairobi

The benefits will also be regional. Other **East African Community (EAC)** governments including **Rwanda** and **Burundi** have said they will look to take advantage of flights from Kenya to the US to reduce their own cargo transport times.⁴⁸

*“Benefits are expected to trickle down to other markets in the **East African** market and in effect cement Nairobi’s position as the regional hub. Just as in Kenya, tour operators and horticulture exporters from **Uganda, Tanzania** and Rwanda will now have an easier route to the American market once direct flights begin.”⁴⁹*

Much still needs to be done before direct flights between Kenya and the US begin. It is in the commercial interests of Kenya Airways to quickly sign code-sharing agreements, though there is the potential for management disagreements to increase the risk of delays.

Kenya Power rejects power rationing or price increases

Nairobi Securities Exchange-listed electricity distributor **Kenya Power & Lighting Co Ltd** said on 16 February that it will not impose power rationing and does not expect price increases during the ongoing drought.⁵⁰ Rationing or price increases would curb business activities, notably in the manufacturing sector. The ongoing drought has decreased hydroelectricity’s contribution to Kenya Power’s energy mix from 40 to 29% since December 2016.⁵¹ Kenya Power has offset this by resorting to more expensive diesel-fired thermal generators. Diesel’s contribution to the energy mix has increased from 11% to 21% during the same period.⁵² Geothermal, unaffected by the weather, has remained constant at 44%.⁵³ The recovery in the price of global oil prices has increased the price of diesel. The fuel cost charge has increased during the past two months from KSh2.21 (\$0.021) to KSh2.84 (\$0.027) per kilowatt hour due to the additional expense of thermal generation.⁵⁴ The energy ministry in January had projected the fuel cost charge could increase to KSh3.52 (\$0.034).⁵⁵ Interim CEO **Ken Tarus** told the **Kenya Manufacturers Association** that Kenya Power is in negotiations with the government for the state, rather than the consumer, to cover the additional cost.⁵⁶ Tarus, however, acknowledged that Kenya Power does not have the authority to determine tariffs, and that tariffs may significantly increase if the drought persists to July.⁵⁷ According to the state **Kenya Meteorological Department**, Kenya will continue to receive poor rainfall in the main March to May rainy season, exacerbating the already acute drought.⁵⁸

The outlook is more positive. The **Kenya National Bureau of Statistics** published data on 21 February showing that power generation increased 5.6% in 2016 to 9,913 GWh, the seventh consecutive year of growth.⁵⁹ Kenya will add substantial wind power to its energy mix for the first time when the \$670m 310MW **Turkana** wind farm, Africa’s largest, comes online in mid-2017.

⁴⁸ Daily Nation, 27 Feb 2017.

⁴⁹ Source, journalist, Nairobi

⁵⁰ Standard, 16 Feb 2017.

⁵¹ Standard, 16 Feb 2017.

⁵² Standard, 16 Feb 2017.

⁵³ Standard, 16 Feb 2017.

⁵⁴ Standard, 16 Feb 2017.

⁵⁵ Standard, 16 Feb 2017.

⁵⁶ Standard, 16 Feb 2017.

⁵⁷ Standard, 16 Feb 2017.

⁵⁸ Reuters, 16 Feb 2017.

⁵⁹ www.KNBS.or.ke

About Africa Risk Consulting:

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