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Preparing for a ‘fresh’ election: implications of the Supreme Court’s nullification of Kenya’s presidential election results

Unprecedented move

In an unexpected turn of events, the Supreme Court on 1 September overturned the results of the 8 August presidential election, in which President Uhuru Kenyatta of the ruling Jubilee Party of Kenya (JPK) had been re-elected for a second term. The electoral commission (IEBC) announced that a court-mandated ‘fresh’ presidential poll will be held on 17 October. While there may be a delay by a week to appease the leaders of the opposition National Super Alliance (NASA) coalition who have rejected the date, the IEBC will likely stick to the announced plans.

Campaign season, part II

During the original campaigning period (29 May – 6 August), the majority of the security incidents reported tended to be infighting between members of the constituent parties of the two main NASA and JPK coalitions. This time however, infighting is no longer an option as the IEBC has stated that there are no requirements for new nomination processes, and all the other presidential candidates who contested the 8 August poll will not appear on the ballot. The election is therefore limited to two presidential candidates, Kenyatta and opposition leader Raila Odinga. To succeed, their coalitions must work seamlessly to mobilise the voters to turn out in higher numbers than before. On that basis alone, Kenyatta has the upper hand with his party dominating the populous Central and Rift Valley regions.

The opposition’s main struggle has always been turnout on polling day. However, this time Odinga supporters will have more faith in the success of their leader which will probably lead to a much higher turnout in NASA’s strongholds (western and coastal Kenya). The candidates must now convince the rest of the country that they are the right man for the job: NASA is painting Odinga as the only truly democratic candidate, while JPK is portraying Kenyatta as the already-elected president who will demonstrate this to the world by winning an even greater majority in the October poll.

The potential for violent unrest is greater in these second polls given the higher stakes and higher expectations on both sides of the political divide. While the campaign period is likely to be peaceful, Control Risks expects to see violent protests and clashes with the security forces in the weeks following the announcement of the results. Although these are unlikely to be widespread or sustained for long periods, they can cause disruption to business operations. This is not only the case for Kenya, but also for countries such as Uganda and South Sudan which rely heavily on Kenya’s transport corridors for vital supplies including food and fuel.

Preparing for a new president?

Control Risks expects Kenyatta to win the October election and many investors believe they are well informed on what a Kenyatta presidency looks like. The JPK 2017 manifesto does not look markedly different from what Kenyatta’s party proposed and carried out in the previous five years. The focus on infrastructure (including roads, dams and electricity generation) is planned to continue, as is a pro-business policy and a focus on job creation.

These promises are supplemented by higher social spending with the incumbent promising to introduce free secondary education. Regional integration also remains high on their agenda as indicated by the defiant launch of the Kenyan version of the East African Community (EAC) e-passport in September despite a lack of display of similar willingness from other member states.

While Kenyatta is likely to win the presidential election, the opposition has a better chance of seeing Odinga elected on his fourth attempt. This forces all Kenya- and East Africa-focused investors to seriously consider what an Odinga presidency would mean for their individual operations. Odinga rattled large landowners during the May-June campaign period by calling for the redistribution of large tracts of land. He has also promised to review contracts signed by the JPK administration, bring down Kenya's debt burden which has more than doubled under Kenyatta, and to scale down the army's activities against the terrorist group Al-Shabab in Somalia claiming that these have only served to increase Kenya's attractiveness as a target. He strongly believes to do all of this while also increasing social safety nets including subsidies for essential goods such as milk, and placing caps on rent for low-income individuals.

JPK holds a significant majority in both the National Assembly (lower house) and the Senate (upper house) and 30 of the 47 county governors and their assemblies (local parliaments) are also pro-JPK. This means that even if Odinga won the October poll, and barring any annulments of the other elections, pushing through any form of legislation is going to be nearly impossible. This raises the spectre of a stalled government bureaucracy where set policies will be incredibly hard to be implemented due to the lack of a legislative framework. Meanwhile, the counties, which have a degree of autonomy in setting laws and policies, may well choose to chart their own JPK-allied courses, leaving businesses with a plethora of rules and regulations to navigate.

Economic impact

While the country watches the politics fixatedly, economic growth has slowed in the past year. Kenya's growth which had averaged over 5% annually had been fuelled in a large part by government spending and increases in foreign investment. But with the current political stasis that the country has found itself in, investment has slowed. Bank lending has decelerated in part due to uncertainty in the political environment as well as a 2016 interest rate cap which was a populist move by JPK to win votes in the elections. Meanwhile, any rumoured political unrest always precipitates a drop in tourism arrivals, one of Kenya's main foreign exchange earners. Agriculture, the economy's largest employer which has already been hard-hit by a region-wide drought, finds itself brought in to the middle of political battles over land and over which coalition can provide better services to small holder farmers. With all the politicking, vital government funding for agriculture rarely finds its way to non-campaign related expenditure.

Many investors are currently taking a wait-and-see approach and more still are questioning the ease of doing business in a country where elections have essentially taken up an entire year. However when put into a wider context, Kenya remains the more stable investment destination in comparison with its autocratic, state-centric and/or conflict-prone neighbours. Investors must now balance on one hand the potential for significant returns in a more diversified economy with an educated, entrepreneurial workforce and on the other hand, a political system which while outwardly more democratic remains dominated by ethno-regional concerns. Businesses should seize the chance in these weeks before the new polls to evaluate their plans and really consider whether they are prepared for any eventuality and a potential change of president. Those with the right strategic plans and local relationships will find that they are able to maximise opportunities even amid all the political uncertainty.

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