



Kenya: Current Conditions and the Challenges Ahead

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Summary

Kenya, a nation of about 36.9 million people, has been an important ally of the United States for decades. Kenya moved from a one-party state to a multi-party democracy in 1992. Kenyans voted in record numbers in the country's first multi-party election in almost 26 years. President Daniel arap Moi defeated opposition candidates by a small margin. In 1997, Kenya held its second multi-party elections, at the height of tensions between the opposition and the ruling party. President Moi was re-elected with 40% of the votes cast, while his nearest rival, Mwai Kibaki, won 31%. In the 2002 presidential and parliamentary elections, the opposition National Rainbow Coalition (NARC) defeated the ruling Kenya African National Union (KANU). In the presidential election, NARC leader Kibaki defeated Uhuru Kenyatta, the leader of KANU.

On December 27, 2007, millions of Kenyans went to the polls in Kenya's fourth multi-party elections, with the hope of strengthening the institutions of democracy and, most importantly in the view of many observers, of bringing change. An estimated 14.2 million (82% of the total eligible voters) Kenyans were registered to vote, while 2,547 parliamentary candidates were qualified to run in 210 constituencies, according to the Electoral Commission of Kenya (ECK). Nine candidates competed in the presidential election. The opposition reportedly made significant gains in the parliamentary elections. The ECK, however, hastily declared President Kibaki as the winner of the elections. Kibaki was quickly sworn in as president, while international and domestic election observers declared the elections as rigged and deeply flawed.

Following the announcement of the election results, violence erupted in many parts of Kenya. More than 1,000 people have been killed and an estimated 350,000 reportedly displaced. In August 2008, the Kenya National Commission on Human Rights (KNCHR) released a report on the post-election violence. In early February, the opposition and the government began negotiations under the leadership of former U.N. Secretary General Kofi Annan. The two parties agreed to work together to end the violence, improve humanitarian conditions, and write a new constitution within a year. In late February, the government and the opposition reached a power-sharing arrangement. On March 18, 2008, the Kenya parliament unanimously approved the agreement. On April 3, 2008, the parties agreed on a 40-member cabinet. But important reforms agreed to by the parties have yet to be implemented. The initial United States government reaction to the December elections was considered by some international observers as contradictory and seen by some Kenyans as being one-sided in favor of President Kibaki. On December 30, the United States government reportedly congratulated President Kibaki. Senior Bush Administration officials visited Kenya in an effort to resolve the crisis and provided support to Kofi Annan's mediation efforts. The Obama Administration has repeatedly pressed the government of Kenya to implement reforms agreed to by the parties in 2008. In September 2009, Assistant Secretary of State for Africa Johnnie Carson sent a letter to 15 Kenyan officials warning them that reforms must be implemented. In April 2010, the Kenyan parliament passed a new draft constitution, and on August 4, 2010, Kenyans approved the new constitution. The next general elections are scheduled for 2012.

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Most Recent Developments

The International Criminal Court (ICC) Cases

In December 2010, ICC Chief Prosecutor Luis Moreno-Ocampo alleged that six senior Kenyan officials had instigated the post-election violence in 2007-2008. The six are: Finance Minister Uhuru Kenyatta, former Minister of Higher Education William Ruto, former Minister of Industrialization Henry Kosgey, former Police Chief and current Chief Executive of the Postal Service Mohamed Hussein Ali, Head of the Public Service Francis Kirimi Muthaura, and Head of Operations of KASS FM Joshua Arap Sang. In a statement released by the White House, President Obama urged “all of Kenya’s leaders, and the people whom they serve, to cooperate fully with the ICC investigation.” The Government of Kenya initially pledged to cooperate with the ICC investigation, but it reversed its position weeks later. In January 2011, the Government of Kenya received the support of the African Union (AU) for a deferral of the ICC prosecution of the accused. In a statement, the AU stated that the ICC process “threatens the on-going national efforts in peace building, national reconciliation and political transition.” In early April 2011, the United Nations Security Council set aside Kenya’s request for deferment of the ICC cases. Britain, France, and the United States are reportedly opposed to deferment. In early April 2011, the six suspects appeared in court to face charges. Some of the suspects are represented by British and Canadian lawyers.

The New Constitution

In April 2010, the Kenyan parliament passed a new draft constitution. On August 4, 2010, Kenyans approved the new constitution by a large margin, with 67% in favor and 31% against. The new constitution establishes a Supreme Court and an upper house of parliament (the Senate). The position of the prime minister is abolished and a presidential system with checks and balances is retained. The new constitution contains a Bill of Rights provision. A number of issues included in the new constitution were major sources of debate in Kenya. Some Kenyan churches and American religious groups lobbied members of parliament to include a provision on abortion. After weeks of consideration, the Committee of Experts (CoE) recommended inclusion of an abortion provision. Article 26 in the new constitution includes the following provision:

Abortion is not permitted unless, in the opinion of a trained health professional, there is a need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.

Members of the “No Campaign,” those opposed to the draft constitution, made the abortion provision the focal point of their campaign.¹ Some politicians and business groups also opposed some of the other provisions in the draft constitution. The inclusion of a provision on a Kadhis Court, an existing court for Muslims, was opposed by some groups. The provision in the new constitution limits the jurisdiction of the Kadhis Court to marriage, divorce, and inheritance for Muslims. Another contentious issue was a provision on land reform. The new constitution prevents foreigners from owning land and limits ownership to a 99-year lease.

¹ CRS interview with the Deputy Speaker of Parliament and a member of the Committee of Experts in July 2010 in Kenya.

In early June 2010, several people were killed and over a dozen wounded in a grenade attack at a No Campaign rally. In late August 2010, President Kibaki and Prime Minister Odinga appointed the chairmen and members of the Commission on the Implementation of the Constitution (CIC) and the Commission for Revenue Allocation (CRA).

A number of provisions in the new constitution will not take effect for several years. In addition, parliament is required to enact laws in order to bring some of the provisions into effect. The implementation process has been slow and, in some cases, controversial. According to the new constitution, within the first year of its enactment, parliament must pass laws on citizenship, elections, political parties, and establish the Supreme Court and appoint judges. In January 2011, President Kibaki nominated a new Attorney General, a Chief Justice, and Director of Public Prosecutions without proper consultation with Prime Minister Odinga, as required by law. In February 2011, the Speaker of Parliament ruled that “the constitutional requirements are not met if the National Assembly receives a list of nominees to constitutional offices on which there is open and expressed disagreement between his Excellency the President and the Prime Minister.”² Implementation of some provisions of the constitution may become difficult and contentious.

U.S.-Kenya Relations: Issues

Kenya has been a valuable U.S. ally since independence, providing the United States with access to its military facilities and political support in the United Nations. Washington once considered Kenya a model developing country with shared democratic values in a continent where civil wars raged and military and authoritarian governments reigned. In the early 1990s, relations between Kenya and the United States became strained due to deteriorating human rights conditions and the government’s resistance to a multi-party system, though relations improved slightly after the 1992 multi-party elections. Relations have improved significantly in the past several years; however, the United States remains concerned about corruption and human rights conditions. The most recent edition of the State Department *Country Reports on Human Rights Practices*, issued on April 8, 2011, stated that

abridgement of citizens’ right to change their government in the last national election; unlawful killings, torture, rape, and use of excessive force by security forces; mob violence; police corruption and impunity; harsh and life-threatening prison conditions; arbitrary arrest and detention; arbitrary interference with the home and infringement on citizens’ privacy; prolonged pretrial detention; executive influence on the judiciary and judicial corruption; restrictions on freedom of speech, press, and assembly; forced return and abuse of refugees, including killing and rape; official corruption; violence and discrimination against women; violence against children, including female genital mutilation (FGM); child prostitution; trafficking in persons; interethnic violence; discrimination based on ethnicity, sexual orientation, and HIV/AIDS status; lack of enforcement of workers’ rights; forced and bonded labor; and child labor, including forced child labor.

Kenya has been an important U.S. ally in the war against terrorism, especially since the U.S. embassy bombings in Kenya and Tanzania in 1998. In August 2009, Secretary of State Clinton visited Kenya and met with senior Kenyan officials. The Secretary reportedly informed Kenyan officials that the United States expects implementation of political and economic reforms without further delay. Secretary Clinton also stated that the Obama Administration would impose a travel

² Voice of America, February 18, 2011.

ban on some Kenyan officials who are obstructing efforts to implement reforms, according to sources in Kenya and U.S. officials. Assistant Secretary of State for African Affairs Carson, in a letter to Kenyan officials in September 2009, wrote that “your future relationship with the United States is directly linked to the degree of your support for urgent implementation of the reform agenda as well as a clear opposition to the use of violence.” In response, President Kibaki reportedly wrote a letter expressing his government’s disapproval of the criticism. Senior Kenyan government officials maintain that they have taken important steps and will continue to implement reforms consistent with the Power Sharing Agreement reached by the parties in 2008.

Southern Sudan Weapons in Kenya

In October 2008, Somali pirates hijacked a Ukrainian ship loaded with several dozen tanks headed for Kenya, although the final destination was South Sudan. In 2009, the pirates freed the ship, and in late 2009 the governments of Southern Sudan and Kenya loaded the tanks on a train for Southern Sudan. A few days later, the State Department threatened the government of Kenya with sanctions if it delivered the tanks to Southern Sudan. A few months later, South Sudanese and Kenyan officials were informed by U.S. officials that the issue had been resolved and the tanks could be delivered. But U.S. officials reportedly told Kenyan officials again that the tanks should not be delivered until after independence in July 2011. U.S. officials are concerned that delivery of the tanks might complicate Sudanese negotiations.

U.S. Assistance

Kenya has been a major recipient of U.S. foreign assistance in Sub-Saharan Africa for decades, and is an important trading partner with the United States. The United States maintained a robust development assistance program focused on good governance, economic development, education, health care, and rural area development efforts in income generation and the effective use of natural resources (see table below). In regard to the promotion of good governance, the U.S. Agency for International Development (USAID) seeks to promote “full implementation of the political, institutional, and accountability reforms to align Kenyan institutions to the new constitution that are essential to bring true democracy, prosperity, and stability to Kenya.”³ Most of the U.S. funds for Kenya are for health care programs. U.S. support for health care is largely focused on the fight against HIV/AIDS. Kenya is one of the major focus countries of the President’s Emergency Plan for AIDS Relief (PEPFAR) and a major recipient of the Global HIV/AIDS Initiative funding. Security cooperation and support is another area in which Kenya and the United States work closely. In January 2010, the U.S. Peace Corps in Kenya celebrated its 45th anniversary. Since 1964, the Peace Corps has sent an estimated 6,000 volunteers to Kenya. In December 2009, the United States announced a new \$45 million initiative to help the youth in Kenya. The initiative, Yes Youth Can, will be administered by USAID. The initiative is seen by some as a program focused on preparing the next generation leaders of Kenya. Some Kenyan officials have expressed concern about this program and stated that the program undermines government authority and promotes division. In fiscal year 2010, the United States provided \$687.6 million in assistance to Kenya.

³ Congressional Budget Justification, Fiscal Year 2012.

South Sudan Weapons in Kenya

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U.S. Assistance

Kenya has been one of the major recipients of U.S. foreign assistance in Sub-Saharan Africa for decades, and is an important trading partner with the United States. Despite Kenya's years of poor economic performance and serious corruption problems, the United States maintained a robust development assistance program focused on good governance, economic development, education, health care, and rural area development efforts in income generation and the effective use of natural resources (see **Table 1** below). In regard to the promotion of good governance, the U.S. Agency for International Development (USAID) "continues to promote transparent and accountable governance by improving the balance of power among the various branches of government."⁴ U.S. support for health care is largely focused on the fight against HIV/AIDS. Kenya is one of the major focus countries of the President's Emergency Plan for AIDS Relief (PEPFAR) and a major recipient of the Global HIV/AIDS Initiative funding. Security cooperation and support is another area in which Kenya and the United States work closely. In October 2006, the Bush Administration removed restrictions on IMET funding for Kenya. The restrictions were imposed because of Kenya's refusal to sign an agreement with the United States to provide immunity to U.S. personnel from prosecution by the International Criminal Court (ICC). In January 2010, the U.S. Peace Corps in Kenya celebrated its 45th anniversary. Since 1964, the Peace Corps has sent an estimated 6,000 volunteers to Kenya. In December 2009, the United States announced a new \$45 million initiative to help the youth in Kenya. The initiative, Yes Youth Can, will be administrated by the U.S. Agency for International Development (USAID). In fiscal year 2010, the United States provided \$148.6 million in humanitarian assistance to Kenya.

⁴ USAID's Strategy in Kenya. <http://www.usaid.gov>.

Table I. Kenya: U.S. Assistance

(\$ in thousands)

Account	FY2009 Actual	FY2010 Estimate	FY2011 Request	FY 2012 Request
Total	829,441	797,889	713,951	751,414
DA	49,577	79,395	86,191	89,691
Global Health & Child Survival (State)	530,850	528,760	528,760	544,623
ESF	63,000	4,000		
FMF	250	1,500	1,000	2,200
Food for Peace Title II	133,723			
IMET	915	959	1,000	1,000
NADR-ATA	5,500	9,750	8,000	2,000
INCLE		2,000		2,000
P.L. 480		101,975		
Global Health & Child Survival (USAID)	45,626	71,550	87,000	103,000

Source: Department of State. DA: Development Assistance; ESF: Economic Support Fund; FMF: Foreign Military Financing; IMET: International Military Education and Training; NADR-TIP: Nonproliferation, Anti-Terrorism, Demining, and Related programs; NADR-CTF: Counter Terrorism Financing; NADR-ATA: Anti-Terrorism Assistance; NADR-EXBS: Export Control and Related Border Security Assistance; P.L. 480: food assistance; International Narcotics Control and Law Enforcement (INCLE).

HIV/AIDS in Kenya

HIV prevalence rate in Kenya is estimated at around 6.3%, according to the Kenya Demographic and Health Survey 2008-2009 (KDHS) data. HIV prevalence rate is much higher among adult women compared to men. An estimated 1.6-1.9 million people live with HIV/AIDS and according to the KDHS data, an estimated 38% of HIV-infected people receive antiretroviral treatment. In FY 2009, the United States provided \$328.6 million for HIV/AIDS programs in Kenya. Kenya is one of the major focus countries of the President's Emergency Plan for AIDS Relief (PEPFAR) and a major recipient of the Global HIV/AIDS Initiative funding.

Economic Conditions

The economy of Kenya, which was stagnant in the 1990s, has shown growth in recent years. The Gross Domestic Product (GDP) grew by an estimated 5% in 2010 and is expected to grow slightly faster at 5.4% in 2011. In January 2011, the IMF approved a three-year extended credit facility (ECF) program of \$509 million. In 2010, inflation was estimated at 5% and likely to grow

somewhat to 8% in 2011, according to the Economist Intelligence Unit (EIU). Poverty remains widespread, however.

Terrorism Threat

The threat of terrorism in Kenya remains very serious. Since the late 1990s, Kenya has been targeted by international terrorist groups. The current war in Somalia is another major threat to Kenyan security. In July 2010, Al Shabaab, the Somali terrorist group with ties to Al Qaeda, carried out suicide attacks in Kampala, Uganda, killing 76 people and injuring many more. Since February 2011, Kenya has increased its security force presence near the Kenya-Somalia border.

Background: Post-Elections Developments

Members of the Truth, Justice, and Reconciliation Commission were sworn in on August 3, 2009. The commission is not mandated to address the post-election violence or prosecute perpetrators of the violence. Instead, the commission is expected to deal with “historical injustices and bringing about national reconciliation.” In early October 2009, Prime Minister Raila Odinga stated that the Kenyan government will cooperate with the International Criminal Court (ICC) to try suspected perpetrators of the post-election violence. Odinga argued that since parliament failed to agree on a special tribunal, the government will work with the ICC. However, the Government of Kenya reversed its position weeks later. In January 2011, the Government of Kenya requested and received the support of the African Union (AU) for a deferral of the ICC prosecution of the accused.

In May 2009, the Interim Independent Electoral Commission and the Interim Independent Boundaries Commission were established. Moreover, in May 2009, the Task Forces on Police Reforms and Judicial Reforms were established.

In September 2009, Kenya Anti-Corruption Commission Director Aaron Ringera resigned under pressure. Moreover, in September 2009, President Kibaki fired the controversial police chief, Mohamed Hussein Ali. Ali was replaced by Mathew Kirai Iteere, the former head of the General Service Unit (GSU). The Kenyan police, under the leadership of Ali, were blamed for the assassinations of some human rights advocates and brutality during the post-election violence.

The coalition government in Kenya is experiencing serious problems since President Kibaki’s and Prime Minister Odinga’s parties reached a power-sharing agreement in April 2008. In March 2009, two human rights advocates, Kamau King’ara and John Paul Oulu, were assassinated by unknown gunmen. The government of Kenya has yet to address some of the important reforms agreed to by the parties in 2008. According to Kenyan observers and officials, the constitutional review process is stalled, while serious disagreement remains over the special tribunal. The government has not taken measures to fight corruption. In May 2009, a new electoral commission, the Interim Independent Electoral Commission (IIEC), was formed. The previous Electoral Commission of Kenya was disbanded in December 2008.

Also in August 2008, Kenyan authorities came close to arresting the mastermind in the bombings of the U.S. embassies in Kenya and Tanzania, Fazul A. Mohammed. According to press reports, Kenyan authorities raided a house that was being used by Fazul and took into custody passports

allegedly used by Fazul and a computer hard disk. Several people were arrested, allegedly for giving Fazul a safe haven. Fazul was in the Indian Ocean resort of Malindi.

In August 2008, United Nations officials informed a congressional delegation⁵ that the Dadaab refugee camp for Somalis and Ethiopians is full of refugees and that they have no space for new refugees. Kenyan authorities have suggested that perhaps some of the refugees can be moved to another camp.

In August 2008, the Kenya National Commission on Human Rights released a report on the post-election violence. The commission accused five cabinet members, 13 members of parliament, some members of the security force, and a number of individuals of financing and fueling the violence. The 300-page report was reportedly submitted to President Kibaki and Prime Minister Odinga.

In June 2008, Prime Minister Raila Odinga visited Washington and met with senior Bush Administration officials and Members of Congress. Odinga stated that, although the post-election crisis is largely over, many challenges remain.⁶ Hundreds of thousands of people are still in need of assistance. Unknown numbers of Kenyans accused of taking part in the post-election violence remain in prison, and some have called for amnesty, while others continue to demand justice and accountability.

In June 2008, Kenya held by-elections for five parliamentary seats. The opposition Orange Democratic Party (ODM) won three seats, while the Party for National Unity (PNU) won two seats.

In late February 2008, the Kibaki government and the opposition reached a power-sharing agreement, after weeks of negotiations. The agreement calls for the creation of a prime minister and two deputy prime minister positions. The agreement, known as the National Accord and Reconciliation Act of 2008, calls for a new coalition government. On March 18, 2008, the Kenya parliament unanimously approved the agreement. On April 3, 2008, the parties agreed on a 40-member cabinet. Key provisions of the agreement are as follows:⁷

- There will be a prime minister of the government of Kenya, with authority to coordinate and supervise the execution of the functions and affairs of the government of Kenya.
- The prime minister will be an elected member of the National Assembly and the parliamentary leader of the largest party in the National Assembly, or a coalition, if the largest party does not command a majority.
- Each member of the coalition shall nominate one person from the National Assembly to be appointed a deputy prime minister.
- The cabinet will consist of the president, the vice president, the prime minister, the deputy prime ministers and the other ministers. The removal of any minister of the coalition will be subject to consultation and concurrence in writing by the leaders.

⁵ Congressman Donald Payne led a delegation in August 2008 to Kenya.

⁶ Ted Dagne interview with Prime Minister Odinga in June 2008 in Washington.

⁷ The National Accord and Reconciliation Act of 2008.

- The prime minister and the deputy prime ministers can only be removed if the National Assembly passes a motion of no confidence with a majority vote.
- The composition of the coalition government will at all times take into account the principle of portfolio balance and will reflect their relative parliamentary strength.
- The coalition will be dissolved if the Tenth Parliament is dissolved; or if the parties agree in writing; or if one coalition partner withdraws from the coalition.
- The National Accord and Reconciliation Act shall be entrenched in the Constitution.

The December 2007 Elections

On December 27, 2007, millions of Kenyans went to the polls in Kenya's fourth multi-party elections, with the hope of strengthening the institutions of democracy and, most importantly in the view of many observers, of bringing change. Several months before the December elections, a number of polls indicated that the incumbent president trailed behind opposition candidate Raila Odinga. Many observers, including key President Mwai Kibaki advisors, acknowledged that President Kibaki and his party would lose in December.⁸ An estimated 14.2 million (82% of the total eligible voters) Kenyans were registered to vote, while 2,547 parliamentary candidates were qualified to run in 210 constituencies, according to the Electoral Commission of Kenya (ECK). A total of 15,331 candidates were approved to compete in the 2,498 local wards. Nine candidates competed in the presidential election. According to the European Union Election Observation Mission preliminary report, the ECK deployed an estimated 245,000 staff to 27,555 polling stations. These polling station staff members were reportedly well trained.

The elections were administered by the ECK, a government body established by the Kenyan Constitution. The ECK has 22 commissioners; 19 of the commissioners were appointed by President Kibaki last year, consistent with the authority provided under the Kenyan Constitution. However, the appointment of the new commissioners was reportedly done without proper consultation with opposition parties, according to the EU and Kenyan observers. The appointments also violated the Inter-Parliamentary Parties Group (IPPG) Agreement of 1997 that calls for consultation with opposition parties. Moreover, the newly appointed commissioners reportedly lacked experience in effectively carrying out their electoral administrative responsibilities, according to Kenyan sources and EU officials.

State media coverage of the elections was reportedly one-sided, with the president's party, the PNU, getting significantly more attention than the opposition. According to the EU Electoral Observation Mission (EU EOM) report, the government-controlled Kenya Broadcasting Corporation (KBC) Radio coverage gave the PNU 76% share of coverage, compared to the opposition ODM 13% and ODM-Kenya 5%. The KBC-TV gave PNU 71% of the share of coverage, ODM 11%, and ODM-Kenya, a splinter party that broke from ODM, 5%. Private media provided a larger share of coverage to opposition groups, although the PNU received more coverage than the opposition parties, according to the EU EOM. The December 2007 elections

⁸ Ted Dagne interviewed a senior Kibaki campaign advisor in August 2007 in Kenya.

were monitored by international and local election observers, according to press reports and Kenyan officials.

The opposition reportedly made significant gains in the parliamentary elections, and early election results showed Odinga ahead of Kibaki. The Electoral Commission of Kenya, however, hastily declared President Kibaki as the winner of the elections. President Kibaki was quickly sworn in as president, while international and domestic election observers declared the elections as rigged and deeply flawed. Several members of the ECK openly declared shortly after the election results were announced that they did not agree with the decision to declare Kibaki as the winner of the election and that there were serious problems in vote tallying, according to press reports. The chairman of the commission also admitted that he was under intense political pressure from powerful political leaders and the ruling party. According to current and former Kenyan government officials, even before the Electoral Commission announced the results, the spouses of senior government officials were preparing for the swearing-in ceremony. The Kenya Electoral Commission chairman, Samuel M. Kivuitu, was quoted in a press report that the day he went to deliver the certificate declaring Kibaki the winner, he saw the chief justice already at State House reportedly waiting to swear in Kibaki. The swearing-in ceremony was said to be so rushed that the organizers forgot to include the national anthem in the program.⁹

Election observers, ECK commissioners, and ECK staff reported serious irregularities, especially in vote tallying by the ECK and staff in Nairobi, Kenya. In Maragua District, a Kibaki stronghold, the document received by the ECK showed turnout at 115%, but was later changed by the chairman of the ECK to 85%. Moreover, according to one press report, “results were announced even when documents were missing, incomplete, unsigned by officers or party representatives.”¹⁰ Moreover, in Molo, a small town in the Rift Valley of Kenya, the vote tally results document reportedly showed 50,145 votes for President Kibaki, but the ECK chairman publicly announced that Kibaki won 75,261 votes, over 25,000 more votes than documented. In addition, a number of the tallying centers in the provinces were closed early before they finished work, and observers were not allowed in the central tallying station in Nairobi for two days. According to a report by EU observers, “a lack of adequate transparency and security measures in the process of relaying the results from local to national level questioned the integrity of the final results.”¹¹ The EU report concluded that “the 2007 General Elections have fallen short of key international and regional standards for democratic elections. Most significantly, they were marred by a lack of transparency in the processing and tallying of presidential results, which raises concerns about the accuracy of the final results of this election.” Election observers from the East African Community also raised serious concerns about the December 2007 elections.

The initial United States government reaction to the December elections was considered by some international observers as contradictory and seen by some Kenyans as being one-sided in favor of President Kibaki. On December 30, the United States government reportedly congratulated President Kibaki. Shortly after the election results were announced, an official statement from the U.S. declared that “those alleging vote tampering may pursue legal remedies and should be able, consistent with respect for freedom of speech, to make their case publicly.”¹² This was a position supported by President Kibaki, but rejected by the opposition and seen by many Kenyans as a

⁹ Ted Dagne interview with several Kenyan opposition and government officials. January 2008 in Nairobi, Kenya.

¹⁰ Shashank, Bengali. *How Kenya's Election Was Rigged*, the McClatchy Newspapers. January 31, 2008.

¹¹ European Union Election Observation Mission. Kenya General Election Preliminary Statement.

¹² Press Release issued on December 31, 2007 by the U.S. Embassy in Kenya.

mechanism that has failed to resolve past political disputes. The judiciary is seen by the opposition as an institution controlled by Kibaki loyalists. President Kibaki appointed a number of senior judges just before the elections. In addition, Kenyans point out that President Kibaki announced his new cabinet shortly after he concluded a meeting with the U.S. Assistant Secretary of State for African Affairs Jendayi Frazer. In January 2008, the Assistant Secretary declared that “serious flaws in the vote tallying process damaged the credibility of the process.”¹³

Table 2. Electoral Commission of Kenya: Official National Results

Other Names	First Name	Votes	Party Abbrev.	Party
Mwai	Kibaki	4,578,034	PNU	Party of National Unity
Raila Amolo	Odinga	4,352,860	ODM	Orange Democratic Movement
Stephen Kalonzo	Musyoka	879,899	ODM-K	Orange Democratic Movement - Kenya
Joseph Ngacha	Karani	21,168	KPTP	Kenya Patriotic Trust Party
Pius Muiru	Mwangi	9,665	KPP	Kenya People’s Party
Nazlin Omar Fazaldin	Rajput	8,624	WCP	Workers Congress Party of Kenya
Kenneth Stanley Njindo	Matiba	8,049	SSA	Saba Saba Asili
David Waweru	Ngethe	5,976	CCU	Chama Cha Uma Party
Nixon Jeremiah	Kukubo	5,926	RPK	Republican Party of Kenya

Table 3. Electoral Commission of Kenya: Official Parliamentary Results

Party	Name	Symbol	Seats
ODM	Orange Democratic Movement	Orange	99
PNU	Party of National Unity	Two Torches with Flames	43
ODM-K	Orange Democratic Movement - Kenya	Oranges	16
KANU	Kenya African National Union	Cockerel	14
SAFINA	Safina Party	Safina	5
NARC KENYA	Narc Kenya	Flower	4
NARC	National Rainbow Coalition	Traditional African Torch (Mwenge)	3
FORD-P	Forum for the Restoration of Democracy for the People	Pen	3
NFK	New Ford Kenya	Cup	2
PICK	Party of Independent Candidates of Kenya	Child	2
CCU	Chama Cha Uzalendo	Whistle	2
SKSPK	Sisi Kwa Sisi Party of Kenya	Train	2

¹³ BBC News. *USA Urges Political Settlement to Kenya’s Post-Electoral Crisis*. January 13, 2008.

Party	Name	Symbol	Seats
DP	Democratic Party of Kenya	Lantern	2
PDP	Peoples Democratic Party	Traditional African Banjo	1
MGPK	Mazingira Greens Party of Kenya	Tree	1
PPK	Peoples Party of Kenya	Trumpet	1
NLP	National Labour Party	Bull (Ndume)	1
KADDU	Kenya African Democratic Development Union	Fruit Basket (Mavuno)	1
KENDA	Kenya National Democratic Alliance	Bell	1
KADU-ASILI	Kenya African Democratic Union Asili	Coconut Tree	1
FORD-K	Forum for the Restoration of Democracy - Kenya	Lion	1
UDM	United Democratic Movement	Milk Can	1
FORD-A	Forum for the Restoration of Democracy - Asili	Two Fingers Raised	1

Source: Electoral Commission of Kenya.

Post-Election Violence

Shortly after the election results were announced, supporters of the opposition took to the streets in what many observers described as spontaneous demonstrations of anger and engaged in violent attacks targeting pro-government districts and properties. More than 1,000 people have been killed since late December and an estimated 350,000 have been displaced, including 80,000 children under five years of age, according to U.N. and Kenyan sources. Many protestors were reportedly shot and killed by police, while many others died in mob violence, according to Kenyan sources and international observers. Protestors also burned houses and properties, especially in Eldoret, Kisumu, Naivasha, and Nairobi, as well as in other parts of Kenya. Thousands of Kenyans, mostly children and elderly, were displaced in Nairobi and many of them sought refuge in Jamhuri Show ground. In Jamhuri, Kenyans from different backgrounds, including church leaders, individuals, the Red Cross Society of Kenya, and others came together to help thousands of displaced people. More than 500 volunteers offered their help, while Kenyans donated food, money, toys, and blankets.¹⁴ The number of registered adults and children in Jamhuri fluctuates, although in early January there were 6,000 registered people from Kibera, the poorest neighborhood in Kenya, with an estimated 1.5 million people.

The Kenyan military did not engage in riot control functions for most of January, while the Kenyan police and security were given authority to use lethal force, according to press reports and Kenyan sources. According to some reports, Kenyan security forces targeted opposition supporters, provided assistance to pro-government gangs, and failed to protect the civilian population in some places. Two opposition members of parliament were killed in late January, one reportedly by a police officer. The police officer reportedly killed the MP and his girlfriend, who was in the same car, according to press reports. Moreover, opposition leaders accuse the security forces and pro-government gangs of targeting their supporters and family members.¹⁵

¹⁴ In January 2008, Congressman Donald Payne led a delegation to Kenya. As a member of that delegation, Ted Dagne visited the Jamhuri Showground and Kibera.

¹⁵ Ted Dagne interviewed a number of opposition leaders and human rights advocates in Kenya.

The government also initiated a number of media restrictions and banned demonstrations, although opposition supporters launched another three-day protest in mid-January. On January 16, the opposition took to the streets in over a dozen locations throughout Kenya. Several people were killed and many more injured. Opposition supporters have also engaged in targeted attacks against government supporters. In a number of communities in Kenya, people have been burned to death and hacked by machetes.

Some observers have described the violence as a tribal conflict between the president's Kikuyu ethnic group and the Luo and Kalenjin ethnic groups. Indeed, Kikuyus were principal targets in some areas, although the Luo and other ethnic groups were also targeted by the security forces and by Kikuyu groups. Kenyan civil society and human rights advocates argue that it is a mistake to simply describe the current violence as a tribal conflict, since the trigger and the reason behind the violence for many Kenyans is the rigged elections and what they fear is a return to dictatorship. Opposition leaders and their supporters strongly believe that the election was stolen from them, and they consider reversing the current trend in Kenya as necessary in order to ensure that the gains made in democracy over the past decade would not be lost. Some Kenyans view the violence in some places as driven by economic factors rather than ethnic or political. The victims of some of the violent attacks have been wealthy or middle class Kenyans from diverse ethnic backgrounds. The last episode of major ethnic violence before an election was in 1992. In that particular case, the violence was triggered over land dispute between the Kalenjin and the Luo.

Mediation Efforts

International efforts to bring a negotiated settlement failed in the initial phase of the crisis. The African Union, the Kenyans, and the European Union all encouraged a power-sharing arrangement between Odinga and President Kibaki. Odinga, while willing to negotiate with Kibaki, was reluctant to agree to a deal without international guarantees. Kibaki was elected president in 2002 largely due to strong support from Odinga and current opposition leaders. As part of the coalition agreement, Odinga was to become prime minister in the Kibaki government, although Kibaki reportedly reneged in that agreement (see "Background" section for more on this issue).

Initial efforts by the African Union president, President John Kufuor of Ghana, failed to bring the two parties to engage in negotiations. Since the failed AU initiative, former United Nations Secretary General Kofi Annan began to actively engage in mediation efforts since mid-January 2008. He succeeded in getting Kibaki and Odinga to meet for the first time since the crisis erupted in late December. In late January, both sides agreed to start negotiations and later appointed their respective negotiation team members. In early February, the parties also agreed to work together to end the violence, although reportedly more than 70 people were killed a day after the agreement was signed.

In mid-January 2008, the Kenyan parliament met and elected a new speaker. The opposition candidate won with 105 votes, while the president's candidate, former Speaker Francis Kaparo, lost. Opposition leader Odinga called for a negotiated agreement with President Kibaki. He supported the creation of a transitional coalition government, with a mandate to draft a new constitution, new electoral law, and establish a new independent Electoral Commission.¹⁶ The

¹⁶ Ted Dagne spoke to Raila Odinga in late January 2008.

opposition initially called for an investigation of the election results by an independent body and a re-run of the presidential election within two years. In February, the government and the opposition agreed on a wide range of issues, including a power-sharing arrangement and an independent investigation of the December 2007 election disputes.

Background

Kenya, a nation of about 36.9 million people, became independent in December 1963 after a prolonged and bloody uprising against Britain, with over 13,000 casualties. Kenya resisted the Marxist-Leninist ideological tide that swept much of Africa in the 1960s and 1970s and maintained a fairly stable political system in a region marred by civil strife and political violence. Although it was governed under one-party rule until 1992, Kenya had a relatively open political system. Kenya's first president was Jomo Kenyatta, an independence advocate from Kenya's largest ethnic group, the Kikuyu. Kenyatta's successor as president was Vice President Daniel arap Moi, who took over as president upon Kenyatta's death in 1978. Moi, a teacher before entering politics, is a Kalenjin—traditionally a pastoral people based in the western portion of the Kenya highlands. Many non-Kikuyu initially hoped that his presidency would redistribute the benefits that they felt had unfairly accrued to the Kikuyu under Kenyatta. In 1991, President Moi reluctantly and under pressure agreed to move to multi-party politics, eight years after his government had amended the constitution to legalize one-party rule. The move to a multi-party state came after two years of an anti-government political campaign by opposition groups and persistent pressure by donor governments, including the United States.

In 1992, Kenyans voted in record numbers in the country's first multi-party election in almost 26 years. President Moi defeated opposition candidates by a small margin. His party, the Kenya African National Union (KANU), also won a majority in the 210-seat parliament, despite the defeat of several senior KANU officials by little-known opposition candidates. The three major opposition parties, the Forum for Restoration of Democracy-Kenya (FORD-Kenya), FORD-Asili, and the Democratic Party (DP), each received substantial votes, but fell short of expectations. In 1997,

Kenya held its second multi-party elections, at the height of tensions between the opposition and the ruling party. President Moi was re-elected with 40% of the votes cast, while his nearest rival, Mwai Kibaki, won 31%. The ruling party, KANU, won 107 seats in the 222-member parliament (12 seats out of the 222 are appointed by the president), while the opposition secured the remaining 103 seats. International and Kenyan election observers said that while there were some irregularities, the results of the elections reflected the wishes of most Kenyans. The victory by Moi was largely due to divisions within the opposition and the inability of the opposition to back a single candidate against Moi.

Kenya at a Glance

Population: 40 million

Comparative Area: Slightly more than twice the size of Nevada

Ethnic Divisions: Kikuyu 22%, Luhya 14%, Luo 13%, Kalenjin 12%, Kamba 11%, Kisii 6%, Meru 6%, other African 15%, Asian, European, and Arab 1%

Religions: Protestant 45%, Roman Catholic 33%, indigenous beliefs 10%, Muslim 10%, other 2%

Languages: English (official), Swahili (official), numerous indigenous languages

GDP (purchasing power parity) \$65.9 billion (est. 2010)

GDP Per Capita (purchasing power parity): \$1,600 (est. 2010)

Source: The CIA World Factbook 2011

The opposition learned from its mistakes, and in 2002 it succeeded in forming and holding together a coalition, known as NARC (National Rainbow Coalition), that ousted KANU from power by wide margins. NARC won 132 seats in parliament, compared with KANU's 67, while Kibaki defeated Uhuru Kenyatta, son of Jomo Kenyatta, for the presidency with a 62% majority. Moi had designated Kenyatta as the KANU candidate for president in October 2002, prompting Raila Odinga, who had sought the nomination, to leave KANU and, with other defectors, form the Liberal Democratic Party. Kibaki's National Alliance of Kenya (NAK) courted these KANU defectors, and in November 2002, NAK and the LDP agreed to create NARC. NAK is itself a coalition, including Kibaki's Democratic Party and 12 other parties which typically have an ethnic or regional base. President Kibaki announced his cabinet on January 3, 2003, consisting of longtime opposition figures and also senior members of KANU. President Kibaki had to take several factors into consideration in the selection of his cabinet members, including ethnic balance, technical skills, and government experience, as well as rewarding old and new political allies.

The Challenges Ahead

The 24-year rule of President Moi kept Kenya united, but left the East African country in serious economic and political trouble. The most immediate political challenge to President Kibaki is how to deal with the post-election challenges and jointly govern with his coalition partners.

Another challenge is the economy, which was stagnant in the 1990s, but has shown growth in recent years. The GDP grew by an estimated 4% in 2010. According to the Economic Intelligence Unit (EIU) September 2010 report, "a more significant recovery is in prospect in 2011—barring exogenous and political shocks—with real GDP growth accelerating to 5.4 %." The IMF sent a mission in January 2006 to review progress. In April 2007, the IMF resumed lending to Kenya, after a second review of the Poverty Reduction and Growth Facility (PRGF). The IMF also agreed to extend the PRGF until November 2007. The World Bank also began assistance to Kenya, with an estimated \$800 million assistance package for projects through June 2008. Meanwhile, inflation rates reached an average 14.5% in 2006, in part due to 12%-20% pay raises for civil servants and teachers. Inflation rates are estimated at 23% in 2008 and 7% in 2009. Unemployment is high and corruption is still a serious problem, although the Kibaki government has taken a number of measures to deal with this problem.

Tackling corruption is another serious challenge facing a new government in Kenya. Rooting out official corruption may require removing senior members of the government from power and prosecution of former senior government officials. Several ministers were forced to resign in 2006, and the Kibaki administration faced serious allegations of corruption. The resignation of the finance minister in February 2006 for alleged corruption was seen by some as an important step in fighting official corruption in Kenya. However, the clearing of the energy minister from corruption charges raised serious doubt about the government's resolve to fight corruption. In early 2005, the government's anti-corruption chief resigned from his position, arguing that the Kibaki government is not serious about fighting corruption and accusing a number of senior officials of corruption.¹⁷ The United States, Britain, and other donor governments have also made similar accusations.¹⁸ In October 2006, Attorney General Amos Wako declared that he will not

¹⁷ "An Exile Sees Graft as a Piece of Kenya's Social Puzzle." *The New York Times*, March 18, 2006.

¹⁸ "Corruption haunts Kenya's leader." *BBC News Online*, February 2005.

prosecute suspects in the corruption case against Anglo-Leasing, a British firm. According to Wako, successful prosecution will not be possible because of “a number of material and significant gaps.”

Constitutional reform had been the rallying cry for opposition groups prior to the 2002 elections. As part of a pre-election agreement reached among the key players within NARC, a proposed new constitution would create a position of prime minister with executive powers. Reportedly, leaders from the main opposition groups agreed that this position would go to Raila Odinga, one of the major political figures within NARC. The constitutional drafting process was marred by delays, changes, and serious disagreement within NARC. President Kibaki and his supporters managed to get a draft approved in a process seen by some senior members of NARC as undemocratic. These members campaigned against the draft constitution, arguing that the agreement reached earlier was violated, and in November 2005, Kenyans defeated the draft constitution in a national referendum.¹⁹ In late 2005, a number of senior officials left NARC and formed the Orange Democratic Party (ODM). The defeat of the 2005 draft constitution signaled that President Kibaki had lost the support of many Kenyans who once gave strong support to NARC. President Kibaki’s credibility was further shaken in February 2006 by the resignation of three ministers on corruption allegations. Following these events, some observers asserted that President Kibaki would struggle to complete his term. However, the formation of a new party, NARC-Kenya, appears to have altered the Kenyan political landscape. NARC-Kenya, formally launched in June 2006, replaced NARC, and demonstrated its political strength by winning three of the five parliamentary seats in the July 24, 2006 by-elections. In September 2007, President Kibaki announced the formation of a new coalition, the Party of National Unity. The PNU includes KANU, NARC-Kenya, FORD-Kenya, FORD-People, and the Democratic Party.

Despite the enormous challenges facing Kenya, the Kibaki victory in 2002 had a positive impact in Kenya as well as in Africa generally. The smooth transfer of power and the transparency in the conduct of the elections indicated that democracy can flourish in Africa. For example, the power of incumbency and the entrenched clout of a ruling party did not stop an opposition victory in Kenya. The lessons learned from the 2002 Kenyan elections are many and could strengthen democracy movements elsewhere in Africa. Kenya is also a key player in regional affairs, having hosted negotiations on Sudan and Somalia. Kenya is home to many refugees from Uganda, Sudan, and Somalia. In recent months, Kenya has come under criticism from the United Nations and human rights groups for barring additional Somali refugees. The government of Kenya handed over more than 40 Somalis to the Transitional Federal Government of Somalia (TFG) and the Ethiopian government. Human rights groups are concerned that some of these individuals would be tortured or killed. In addition, Kenyan Muslim leaders accuse the Kibaki government of handing over Kenyan Muslims to Ethiopian and Somali security services.

¹⁹ The author interviewed opposition leaders and government officials in Kenya in 2005 and 2006.

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