

A REPORT OF THE CSIS  
AFRICA PROGRAM

# Kenya

## ASSESSING RISKS TO STABILITY

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CSIS | CENTER FOR STRATEGIC &  
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# CONTENTS

<b>An Introduction to the Series</b>	<b>v</b>
<b>Key Stress Points</b>	<b>1</b>
<b>Overview</b>	<b>1</b>
<b>Background</b>	<b>3</b>
Fault Lines of Conflict	3
Demographics, Economic Performance, and Civil Society	4
The Colonial Legacy	4
Kenyan Politics before 1992: The One-Party State and the Rise of Ethnic Politics	5
Kenyan Politics after 1992: Multiparty Politics and the Struggle for Democracy	6
<b>Country Assessment</b>	<b>9</b>
The 2010 Constitution and Beyond	9
The International Criminal Court: The Wild Card in Kenyan Politics	10
<b>Kenya's Politics Today</b>	<b>12</b>
<b>Scenarios</b>	<b>14</b>
<b>Conclusion</b>	<b>15</b>





## AN INTRODUCTION TO THE SERIES

This report is part of a series examining the risks of instability in 10 African countries over the next decade. The 10 papers are designed to be complementary but can also be read individually as self-standing country studies. An overview paper draws on common themes and explains the methodology underpinning the research. The project was commissioned by the U.S. Africa Command (AFRICOM).

The recent upheavals and revolutions in the Middle East and North Africa reinforce the value of taking a hard look at underlying social, economic, and political conditions that have the potential to trigger major change and instability. Few observers predicted the events that have unfolded with such speed in Egypt, Tunisia, and Libya since the turn of 2011. But a close analysis of the underlying fault lines in those countries may have offered some clues, uncovering a range of possibilities that would have given U.S. policymakers a head start in framing responses and devising contingency plans. Similarly, an examination of political crises and conflicts in sub-Saharan Africa, such as postelection violence in Kenya in 2007–2008 and the presidential standoff in Côte d'Ivoire in 2010–2011, uncovers patterns of behavior, common grievances, and social dynamics that can help inform assumptions about other countries on the continent. The purpose of these papers is to delve below the surface of day-to-day events and try to identify the underlying structural vulnerabilities and dynamics that help to drive and explain them.

The papers in this study are not meant to offer hard and fast predictions about the future. While they sketch out some potential scenarios for the next 10 years, these efforts should be treated as thought experiments that look at how different dynamics might converge to create the conditions for instability. The intention is not to single out countries believed to be at risk of impending disaster and make judgments about how they will collapse. Few, if any, of the countries in this series are at imminent risk of breakdown. All of them have coping mechanisms that militate against conflict, and discussions of potential “worst-case scenarios” have to be viewed with this qualification in mind.





# KENYA

Joel D. Barkan<sup>1</sup>

## Key Stress Points

- The implementation of Kenya's 2010 Constitution will present a number of challenges during the coming years. A spate of reforms to the executive, judiciary, legislative, and electoral structures will challenge entrenched power structures and test the commitment to reform on the part of Kenya's political class.
- The indictments of six prominent Kenyans by the International Criminal Court (ICC) are a potent salvo in the battle to restore accountability to the political system. Some have already tried to undermine the judicial process; more serious rifts could derail the wider reform effort. The outcome of the likely ICC trial of the six beginning in September will in turn shape the outcome of the 2012 elections.
- The 2012 elections are the most conspicuous potential trigger of conflict in the near term. Shifting ethnic coalitions are already introducing uncertainty. A successful election would solidify the gains of the previous three years, but a contested election outcome cannot be ruled out.
- In the longer term, rising economic inequalities, unemployment among urban dwellers, and the failure of Kenya's new structure of devolved government to mitigate ethnic conflicts are the most likely sources of instability. Insecurity on the Somali border, including the continuing influx of refugees from Somalia, would exacerbate these sources—as would climate change.

## Overview

The violence that erupted in Kenya following the disputed outcome of the 2007 presidential election shook the country to its core and challenged the complacent view of many in the international community that Kenya, at least in African terms, was not a country to “worry about.” The extent of the bloodshed—more than 1,500 were killed and nearly a third of a million were displaced—came as less of a surprise to close observers of Kenya's political scene. For them, the pent-up animosity that exploded following the announcement of Mwai Kibaki's victory was the direct result of decades of irresponsible behavior by Kenya's political class, which cynically exploited the country's ethnic divisions for its own benefit.

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For the past two decades, political life in Kenya has been characterized by a long-term struggle between two opposing forces: the “dinosaurs” who wish to cling to the old style of identity politics, rooted in ethnic appeals, patronage, and the division of power and resources among a privileged elite; and the “modernizers” who wish to break out of that mold, establishing a more inclusive and accountable political system that enables Kenya to reach its full potential as a modern democratic state and member of the international community

Since the violence of late 2007 and early 2008, this battle has assumed more urgency. Victories have been won by each side, but the most important one—the passing of a new Constitution, as well as the strengthening of key democratic institutions including civil society, the press, and the national legislature—was claimed by the modernizers. Kenya’s new Constitution, which was strongly endorsed in a national referendum in August 2010, unequivocally points the country in the direction of reform. This ambitious document correctly identifies the most potent causes of instability in Kenya and seeks to neutralize them. Among other things, it aims to bolster human and group rights, dilute the influence of the executive, boost the National Assembly, restore the credibility of the judiciary, and devolve more power to the local level. Passing a Constitution is one thing, however; implementing it is another thing entirely. The fate of this document will go a long way toward determining Kenya’s stability in the coming decade.

For now, the outcome is uncertain. There are dangers ahead, not least the 2012 election, which will be a critical test of how far Kenya has come. But in the longer term, wider trends in Kenyan society suggest that history is on the side of the modernizers. Kenya has a growing and vibrant middle class of entrepreneurs, technocrats, and business leaders who understand what it takes to make Kenya competitive in the global economy. This predominantly young, urban, and educated class has little time for old-style politics. For this reason, there are hopes that the ethnic fault lines of division in the country may one day lose their potency. The challenge for the country’s leaders will be to ensure they are not replaced by new ones. Growing economic inequalities, the influx of Somali refugees, the impact of climate change and environmental degradation, and rampant urbanization are all emerging issues that have the potential to destabilize the country in the long term.

## Kenya at a Glance

GDP per capita	\$1,600 (2010 estimate)
Unemployment	40% (2008 estimate)
Life expectancy	59.48 years (2011 estimate)
Population	41,070,934 (July 2011 estimate)
Population growth rate	2.462% (2011 estimate)
Median age	18.9 years (2011 est.)
Urban population	22% of total population (2010 estimate)
Urbanization rate	4.2% annually (2010–2015 estimate)
HIV/AIDS adult prevalence rate	6.3% (2009 estimate)
Literacy rate	85.1% (2003 estimate)

Source: U.S. Central Intelligence Agency, *The World Factbook 2011* (Washington, D.C.: U.S. Central Intelligence Agency, 2011).

## Background

Following the disputed presidential election of December 2007, in which President Mwai Kibaki retained office through a fraudulent tabulation of the vote, Kenya was plunged into six weeks of violence that brought the country to the brink of civil war. More than 1,500 Kenyans were killed, and more than 300,000 were driven from their homes. Peace was ultimately restored on February 28, 2008, by the formation of a government of national unity, known as the Grand Coalition. Brokered by former UN secretary-general Kofi Annan and backed by the international community, including the African Union and the United States, the Grand Coalition is a power sharing arrangement that brought Raila Odinga, Kibaki's principal rival for the presidency, into the government by appointing him prime minister. The size of the Cabinet was also doubled to accommodate other leaders of Odinga's party, the Orange Democratic Movement, which won a majority of seats in the National Assembly.

Despite continuing tensions between the two principals and their respective parties (and within their parties), the Grand Coalition scored a historic achievement by negotiating a new Constitution for Kenya, and then securing its adoption in a special referendum on August 8, 2010. If fully implemented, the new Constitution will bridge the fault lines that have triggered past political conflicts in the country, and lay the basis for it to become a modern democratic state. The Grand Coalition government also appears likely to hold together until the next round of national elections in August 2012.

## Fault Lines of Conflict

The violence of January 2008 laid bare the principal fault lines of Kenyan politics. These fault lines break mainly along ethnic lines and are the product of the convergence of three factors: first, the number and relative size of Kenya's principal ethnic groups, particularly the fact that Kenya's politics are driven by shifting coalitions amongst the largest groups; second, a highly uneven geographical pattern of economic development which has divided the country into rich and poor areas, and which has meant that several ethnic groups, particularly the Kikuyu, are relatively rich while others are relatively poor; and third, the fact that since independence, Kenya's political leaders have invariably sought to mobilize electoral support on the basis of ethnic appeals.

Kenya's principal ethnic groups, their historic province of origin, and their respective percentage of the country's estimated 41.1 million citizens are as follows:<sup>2</sup>

- Kikuyu, Central Province, Nairobi; 17.2 percent
- Luhya, Western Province, 13.8 percent
- Kalenjin, western Rift Valley Province, 12.9 percent
- Luo, Nyanza Province, 10.5 percent
- Kamba, Eastern Province, 10.1 percent
- Kenyan Somali, North Eastern Province, 6.2 percent
- Kisii, Nyanza Province, 5.7 percent

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2. Republic of Kenya, "2009 Population & Housing Census Results," presentation, August 31, 2010, <http://www.knbs.or.ke/Census%20Results/Presentation%20by%20Minister%20for%20Planning%20revised.pdf>.

- Mijikenda, Coast Province, 5.1 percent
- Meru, Eastern Province, 4.3 percent
- Turkana, northern Rift Valley Province, 2.6 percent
- Maasai, Rift Valley Province, 2.2 percent
- Other (all less than 1 percent each), 9.3 percent.

## Demographics, Economic Performance, and Civil Society

Kenya is a young country in terms of the median age of its population. More than half the population is under 19 years old. It is also one of the most urbanized nations in Africa. Official estimates suggest that 22 percent of the population lives in urban areas, but the real figure is likely to be much higher. The UN projects an urban growth rate of 4.2 percent a year for Kenya.<sup>3</sup> This urban population, fueled by Nairobi's history as the largest and most cosmopolitan city in East Africa, has given rise to an emergent and dynamic middle class of businesspeople and professionals, which has in turn has given rise to a well-organized civil society. Civil society in Kenya is arguably one of the most extensive in Africa. Since 1990, it has played a major role articulating the demand

**Civil society in Kenya...has played a major role articulating the demand for democracy and economic reform.**

for democracy and economic reform in Kenya. During the past decade, as Kenya's annual rate of economic growth rose to between 5 and 7 percent, the importance of the business community, professionals, and civil society has expanded greatly as it has both fueled and been fueled by the country's economic performance and steps toward political reform.

Kenya's economic growth, young population, and high level of urbanization also pose a combustible mix that could fuel future violence. Income inequality has risen in recent years, and the country's urban unemployed constitute a lumpen class whose members are prone to violence or illegal activities, such as running protection rackets and providing muscle for prominent political leaders.

## The Colonial Legacy

Although Kenya became independent in 1963, its politics is still shaped by the legacy of the colonial era. Three important factors stand out. The first is that in marked contrast to Britain's colonies elsewhere in Africa (except Southern Rhodesia), Kenya was identified as a territory for European immigration. This gave rise to a system of racial segregation similar to that in Rhodesia and South Africa. Large tracts of land, particularly in the area immediately north and northwest of Nairobi, were taken from the indigenous inhabitants and reserved for white settlers. The British then concentrated infrastructural and economic development in the settler areas and in Nairobi to support the settler economy. The same was true with the provision of social welfare services, particularly education.

From the beginning of Kenya's history as a state, the country's territory was marked by a pattern of uneven development that over time favored some ethnic groups over others. Among the

3. See <http://unstats.un.org/unsd/demographic/products/socind/hum-sets.htm>.

most favored were the Kikuyu, Kenya's largest ethnic group, who reside in closest proximity to Nairobi in the highland areas to the north and northwest. Over time, the Kikuyu became the most educated group, a position they have never relinquished and that has been protected and encouraged by Kikuyu leaders throughout the postindependence period. Not surprisingly, the Kikuyu today dominate Kenya's emergent middle class. Equally unsurprising are the efforts by non-Kikuyu to limit the Kikuyu's political and economic power and to gain parity with this most advantaged group in the country.

A second and continuing legacy from the colonial era is Kenya's preeminence as the economic "hub" and anchor state of East Africa. In the same way that the British concentrated their investments within Kenya in the areas populated by the European settlers, so too did they concentrate their attention and resources on Kenya at the expense of Tanzania and Uganda, the two other territories that made up British East Africa. Kenya's geographic location between Tanzania and Uganda also encouraged this policy. This combination of factors explains Nairobi's regional importance today, and why Nairobi has become an important platform for the growth of Kenya's middle class and civil society.

The third legacy is the long-term impact of Britain's policy of indirect rule. As elsewhere in its empire, Britain established its colonial bureaucracy in Kenya on a group-by-group basis, which accounts in large measure for the salience of ethnicity in contemporary Kenyan politics. The boundaries of administrative districts were drawn along ethnic lines. In the period before independence, electoral politics was also introduced on a group-by-group basis, thus heightening the distinctions between groups and especially the perceptions that some, namely the Kikuyu, had benefited more than others from colonial rule.

## **Kenyan Politics before 1992: The One-Party State and the Rise of Ethnic Politics**

Given their position in Kenyan society, Kikuyu leaders were at the forefront of the nationalist movement in Kenya. At the same time, the community split between those who took up arms in the early 1950s to mount the so-called Mau Mau insurgency against the British, and those who remained loyal to the crown. Though widely regarded as a leader of the former, Kenya's first prime minister, and later its first president, Jomo Kenyatta, straddled these two groups. Though he was jailed for his alleged participation in Mau Mau, he nonetheless became head of the Kenya African National Union (KANU), which won two key elections during the period before independence in 1961 and 1963. He was released by the British in 1962, and became head of government six months before Kenya's independence in 1963.

KANU was an ethnic coalition of the "big" and the "haves" consisting of the Kikuyu and their cultural cousins, the Embu and the Meru, plus the Luo from Western Kenya and ultimately the Kamba. Together, these groups account for roughly 53 percent of Kenya's population. They were opposed by the Kenya African Democratic Union (KADU)—a coalition of the "small" and the "have nots"—Kenya's poorer and fragmented tribes. The second in command of KADU was Daniel arap Moi, a Tugen, one of the subgroups that the British lumped together as the "Kalenjin," whose homeland is in the western Rift Valley. Being outnumbered almost two to one in the National Assembly, KADU dissolved itself a year after independence to join KANU in 1964. Key to the merger was Kenyatta's appointment of Moi as his vice president, a post he held until Kenyatta's death in 1978.

Under Kenyatta, and following the merger of KADU into KANU, Kenya became a one-party state under a leader who centralized power in the Office of the President. It was a pattern repeated across Africa during this period. In the period before independence, KADU had negotiated a federal system of government with KANU to protect the interests of the smaller and poorer groups. Following the merger, federalism was dead. The issue of how to protect the interests of the disadvantaged tribes—the group rights issue—remained unaddressed. For the remainder of Kenyatta’s presidency, the dominance of the Kikuyu became increasingly entrenched—in business, in the civil service, and other aspects of society. Not surprisingly, this did not sit well with the other groups.

Moi became Kenya’s second president upon Kenyatta’s death and immediately began to reduce Kikuyu dominance while boosting the fortunes of the other ethnic groups, particularly the Kalenjin. Notwithstanding his prior support for a federal form of government, he continued Kenyatta’s policy of centralization to carry out his policy of redistribution. Senior Kikuyu in the civil service and army were systematically replaced. Expenditures on infrastructure and secondary education were disproportionately directed toward the groups and areas that had supported the former KADU. Regional quotas were established for admission to Kenya’s universities.

By the early 1980s, Moi had completely reversed Kenyatta’s approach to governance, which, though favoring the Kikuyu, had valued performance. In 1981, Moi changed the Constitution to make Kenya a *de jure* one-party state. From that point onward, his presidency became a classic example of African “big-man” rule. Formal power was concentrated in the Office of the President backed by the increasing use of patronage and repression to maintain presidential authority. The level of corruption steadily rose. Indeed, toleration of corruption by Moi became a major form of patronage during his presidency. And when patronage did not work to buy off his opponents, he resorted to repression.

The net result was a decline in governance, systematic violations of human rights, and the slowdown of the economy. Whereas under Kenyatta economic growth had averaged more than 5 percent a year, under Moi the economy ground to a halt. By the mid-1980s, per capita income was declining. The decline in governance and the economy ultimately gave rise to protests in the streets in 1990, when several prominent Kenyan leaders who had run afoul of Moi declared that it was time for reform. With the end of the Cold War and the apartheid regime in South Africa, growing demands for democracy and pressure from the United States and other providers of economic assistance to Kenya, the country was swept along by the collapse of one-party regimes across the continent.

## **Kenyan Politics after 1992: Multiparty Politics and the Struggle for Democracy**

In response to the mounting pressure, Moi instituted constitutional changes in November 1991 that allowed multiparty elections, set presidential term limits, and required the winning candidate to garner at least 25 percent of the vote in five of Kenya’s eight provinces. These were steps in the right direction, but Moi had no intention of stepping down. The 1992 elections were the first to be held on a multiparty basis in Kenya in 23 years, but Moi proved that he could retain power by tilting the playing field in his favor while splitting the opposition. His approach became a model for other African “big men” facing the necessity of accepting the transition to multiparty politics, but without democracy. Instead, a “semiauthoritarian” or “competitive authoritarian” model preserved

many of the features of the old one-party state. This model has since been implemented in various forms by Paul Biya in Cameroon, Joseph Kabila in the Democratic Republic of the Congo, Meles Zenawi in Ethiopia, Paul Kagame in Rwanda, and Yoweri Museveni in Uganda.

Moi's strategy played out as follows. Opposition parties were allowed to form and nominate candidates but were systematically harassed by the authorities through such tactics as delays in registering the new parties, withdrawal of permits for campaign rallies, police raids of the media, and control of the airwaves. Most important, Moi nominated all members of the Electoral Commission to ensure that it was an agent of the president rather than a truly independent body. The results were predictable. Moi and KANU were faced by three major opposition parties and a dozen small ones that split the opposition vote. Though he won only 36 percent of the vote, he was reelected by a plurality. KANU also garnered a majority of seats in the National Assembly with only a plurality. The 1992 elections were accompanied by "ethnic clashes" fomented by the security forces as Moi sought to confirm his prediction that the transition to multiparty politics would lead to disunity and violence. In a precursor of what would eventually occur following the 2007 poll, a similar number of Kenyans lost their lives and were driven from their homes. Most of the victims were Kikuyu who had settled in Kalenjin areas after independence on lands previously owned by Europeans.

The 1997 elections were a replay of 1992 as the opposition again split its vote, while Moi raised his plurality to 41 percent. KANU again captured a majority in the National Assembly, but its margin dwindled to three seats. The elections were preceded by outbreaks of attacks, this time on the Kenyan coast, where Kikuyu, Luo, and other "migrants" from "up country" were attacked by local thugs at the behest of KANU and local political leaders. In response, the opposition threatened to boycott the election unless "mini" constitutional reforms were adopted, including the expansion of the Electoral Commission to include members acceptable to the opposition, and the allocation of 12 seats in the National Assembly previously named by Moi, to be appointed on the basis of proportional representation. Faced with a dwindling majority in Parliament and a more assertive opposition, Moi's power began to ebb.

Notwithstanding Moi's tactics and intent, the 1992 and 1997 elections marked a significant advance from the 1980s and were the beginning of a 20-year struggle to transform Kenya's political system into a modern democratic state. That struggle continues today, but Kenya is a very different polity than it was in the early and middle 1990s. Each year brought new advances while retaining vestiges of the old system. For example, in 2001, the National Assembly asserted its independence by passing legislation that formally separated the legislature from the executive branch. The Assembly would henceforth set the salaries of its members and recruit its own staff. The legislature was no longer a rubber stamp of the president, with the result that Moi did not try to repeal the constitutional limit of two elected terms but retired in 2002 after 24 years in power.

In a landmark election to determine Moi's successor, Mwai Kibaki defeated Uhuru Kenyatta (son of Kenya's first president, and Moi's handpicked candidate for KANU), winning 62 percent of the vote. Kenya's economy had continued to stagnate during the 1990s, and Kibaki's candidacy held out the prospect for a return to economic growth. A member of the Kikuyu establishment, Kibaki had served as the minister of economic affairs and planning and minister of finance under President Kenyatta, and promised a return to the prudent economic management and governance of that era. Kibaki's vision (and that of leading Kikuyu businessmen who were and remain his chief supporters) was not so much democracy but a return to competent government staffed by Kenya's best bureaucrats and professionals—many of whom were Kikuyu. In marked contrast to the elec-



tions of 1992 and 1997, the opposition banded together to form a loose alliance called the National Rainbow Coalition (NARC). Key to the alliance was the popular Luo leader, Raila Odinga. In a recreation of the nationalist alliance that constituted the original KANU in the early 1960s, Kibaki and Odinga stitched together a coalition that included the Kikuyu, Embu, Meru, the Luo, and the Kamba, plus substantial support on the Kenyan coast.

It was a coalition fraught with tensions from the start. Odinga expected to be appointed prime minister for campaigning tirelessly on Kibaki's behalf, but he was not. Colleagues in his Liberal Democratic Party, a constituent group within NARC, also expected half the appointments in the new Cabinet, but received far less. What had been a broad-based coalition that secured victory at the polls morphed into a government of squabbles in which the most powerful posts—finance, defense, justice, internal security—were held by Kikuyu, Embu, and Meru ministers. Kibaki's government was soon dubbed the “Mount Kenya Mafia” in reference to the three groups that live around the mountain's base.

Kibaki and Odinga also disagreed over key provisions for a promised new Constitution. Odinga wanted a return to a parliamentary system of government or, at a minimum, the establishment of the post of prime minister to share executive authority with the president. Kibaki did not. Odinga also wanted a measure of devolution to protect the interests of smaller tribes and non-Kikuyu, but Kibaki and those around him did not. The split between the two intensified when Kibaki and his cohorts unilaterally submitted a new constitutional plan for approval in a special referendum held in November 2005. Leading the opponents, Odinga and his allies, who consisted mainly of non-Kikuyu (i.e., Luo, Kalenjin, and Luhya), defeated Kibaki with a 58 percent “no” vote. The vote was widely interpreted as a rejection of perceived Kikuyu hegemony. The referendum also set the stage for a head-to-head contest between Kibaki and Odinga for the presidency in 2007.

Notwithstanding the domination of his government by the Mount Kenya Mafia, Kibaki's administration delivered on its promises. Economic growth resumed, reaching 7 percent in 2007. The quality of public administration was substantially restored, as was the performance of state-owned corporations such as Kenya Airways and the marketing boards for coffee and tea. Personal incomes rose for the first time in two decades. Tourism and investment, which had deserted Kenya under Moi, returned. Kibaki's government also established a popular program of free and universal primary education. Although corruption continued at unacceptably high levels, Kibaki's reelection should have been assured. It was not. Odinga led every public opinion poll during the period before the election as he and his party, the Orange Democratic Movement (ODM), reassembled the coalition that had defeated Kibaki in the 2005 referendum. Odinga led in the count during the first two days following the election by 400,000 votes, but Kibaki regained the lead in the final and disputed tabulation. Kenya erupted in flames that were not extinguished until the formation of the Grand Coalition two months later.

Like the violence of 1992, clashes were concentrated in ethnically mixed (Kalenjin/Kikuyu) areas in the central and western Rift Valley. Some violence (most notably Kikuyu/Luo) occurred in the densely populated and ethnically heterogeneous Kibera slum in Nairobi and in Kisumu in western Kenya. Following the initial attacks by Kalenjin on Kikuyus around the town of Eldoret in the western Rift Valley, elements within the Kikuyu elite allegedly mobilized the Mungiki, a predominantly Kikuyu criminal organization, to counterattack Kalenjins and to a lesser extent Luos residing in and around Nakuru and Naivasha.

Although the country teetered at the brink of civil war, the principal protagonists eventually recognized that it was in their mutual interests to enter into a power-sharing agreement. Kenya did not become another Sudan or Rwanda. Instead, its political elite addressed the short-term aspects of the crisis while agreeing to procedures that would deal with its long-term causes, specifically the negotiation and ratification of a new Constitution that would bridge the country's historic fault lines of conflict.

## Country Assessment

Two recent developments have the potential to dramatically shape Kenya's political environment in the coming decade and beyond: the passage of a new Constitution in August 2010 and the indictment by the International Criminal Court of accused ringleaders of the 2007–2008 postelection violence. How these two developments play out during the next several years will have profound impact on the enduring struggle between forces for reform and the lingering drag of old-style Kenyan politics.

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### The 2010 Constitution and Beyond

The 2010 Constitution, promulgated on August 27, 2010, is the culmination of nearly two decades of discussion and negotiation, and is arguably the most significant political development in Kenya since the resumption of multiparty politics in 1992. Despite their differences, both President Kibaki and Prime Minister Odinga campaigned hard for the Constitution's ratification in a national referendum on August 8, 2010. A total of 69 percent of the electorate voted for the new basic law, giving it wide legitimacy in the eyes of most Kenyans. The new Constitution was, however, vigorously opposed by William Ruto, a prominent ODM and Kalenjin leader who aspires to become president of Kenya. The key provisions of the new Constitution are as follows:

- *An extensive bill of rights* including new and expanded rights for women, to prevent the human rights violations of the past.
- *A redefinition of the office of president* to prevent the reemergence of the imperial presidencies that characterized the Kenyatta and, especially, the Moi years. The new Constitution retains the provision for term limits instituted by Moi, but significantly reduces presidential power vis-à-vis the National Assembly. The president can no longer suspend or dissolve the National Assembly, nor make senior appointments without the ratification by the legislature. These include the chief justice, the attorney general, ambassadors, permanent secretaries of the civil service, and the heads of leading commissions such as the Kenya Anti-Corruption Commission and the Electoral Commission.
- *The enhancement of the formal powers of the National Assembly*, a change that is likely to increase the level of horizontal accountability of the executive to the legislative branch. Members



of the National Assembly shall henceforth be elected for fixed five-year terms. The legislature has been given enhanced powers vis-à-vis the executive, especially with its ability to scrutinize presidential appointments and hold hearings.

- *Devolution.* For the first time since independence, the Constitution provides for a devolved system of governance consisting of a single subnational tier of 47 counties. Each county will have its own elected assembly, and each will directly elect a governor who will be responsible to the executive branch. To guarantee adequate finance of these subnational units, the Constitution requires that 15 percent of Kenya's annual budget be allocated automatically to the counties. Establishment of the counties will provide each ethnic group, particularly those that are not part of the governing coalition of the national government, with a measure of control over its own affairs. Creation of the counties will also result in the breaking up of the largest ethnic blocs, particularly the Kikuyu in Central Province and the Kalenjin in the western central area of Rift Valley Province, because the counties will on average serve populations smaller than these groups.
- *Reconstitution of the judiciary and criminal justice system.* The sitting chief justice, attorney general, and director of public prosecutions will all be replaced by August 2011. All senior members of the judiciary including members of the High Court will be vetted by an independent commission before they can continue in office. The changes hold out the prospect for a reduction of corruption in the operation of the judiciary and more vigorous prosecution leading to conviction of those senior officials who break the law.
- *An independent Electoral and Boundary Commission* to ensure free and fair elections and more equal representation. A new and completely independent commission will be appointed to avoid a repetition of the irregularities that followed the 2007 elections.

As expected, those who opposed the new Constitution and those seeking to block reform have now refocused their efforts on its implementation. At the time this report was being drafted, a struggle had erupted between Kibaki and Odinga over Kibaki's attempt to unilaterally name the new chief justice, the new attorney general, and the new director of public prosecutions. Kibaki was ultimately forced by the National Assembly to withdraw his nominees from consideration. Twenty-one pieces of legislation must also be passed to implement the Constitution, especially the Independent Electoral and Boundaries Commission Bill, before the next round of presidential and parliamentary elections can be held in August 2012. The pressure is building as members of the political class committed to reform and those opposed battle over the required legislation. Most, if not all of the required legislation, will probably be passed.

## The International Criminal Court: The Wild Card in Kenyan Politics

The agreement that established the current Grand Coalition government in February 2008 also established four independent commissions to probe the causes of the postelection violence and lay the groundwork for democratic reforms. The Commission of Inquiry established to probe the violence was known as the Waki Commission, because it was chaired by Judge Philip Waki. The commission identified at least eight individuals who had committed gross violations of human rights, but expected little follow-up by the Grand Coalition government or by the National Assembly. The commission therefore forwarded the names of those who should be prosecuted to Kofi Annan, the mediator of the agreement, with instructions to turn the names over to the International Criminal Court if the government did not establish procedures for trying the suspects within one year. As

a signatory to the Rome Statute that established the ICC, Kenya is obligated to cooperate with its investigations. As anticipated by the Waki Commission, the government failed to establish a local tribunal, and Annan turned over the names. In the meantime, the ICC prosecutor Luis Moreno Ocampo opened his own investigations into the postelection violence.

Following a year of rumors, during which the names of prominent political figures circulated across Kenya, Ocampo announced in December 2010 that he was issuing summonses for six individuals—three from the ODM and three from President Kibaki’s Party of National Unity (PNU)—for the purpose of securing formal indictments of the six by the pretrial chamber of the ICC. As expected, the three from the ODM included William Ruto, an ambitious Kalenjin politician who, as noted, aspires to become president. The other two are Henry Kosgei, also a Kalenjin and the chairman of the ODM, and Joshua Sang, a Kalenjin announcer on KASS-FM, a vernacular-language radio station known to have broadcast hate speech urging violence against the Kikuyu at the time of the elections. On the PNU side, Ocampo named Uhuru Kenyatta, Moi’s anointed successor in 2002, and currently the minister of finance; Francis Muthaura, the head of the civil service; and Hussein Ali, the former commissioner of police. They are suspected of financing and orchestrating the counterviolence of the Kikuyu against Kalenjins and Luo along with subsequent extrajudicial killings of members of the Mungiki sect involved in the violence.<sup>4</sup>

Ocampo’s announcement hit Kenya like a bombshell. Though the naming of Ruto and Kenyatta were widely expected, the naming of Muthaura was not. A close confidant of President Kibaki, and a Kikuyu hard-liner who resisted any compromise with Odinga during the postelection crisis (and who has worked grudgingly with the prime minister ever since), Muthaura in his position as head of the public service is the president’s right-hand man. His inclusion in what has become known as “the Ocampo Six” threatens Kibaki’s own authority, and greatly complicates the functioning of the Grand Coalition. Equally important is who Ocampo did not summon, namely, Raila Odinga or any prominent Luo members of ODM.

The result has been the realignment of Kenya’s ethnic coalitions. Ruto has led the Kalenjins out of the ODM and into a potential “KKK alliance” (Kalenjin, Kikuyu, Kamba) led by himself, Kenyatta, and Kalonzo Musyoka, Kenya’s vice president, who came in a distant third during his own run for the presidency in 2007. The members of the KKK alliance have been dubbed the “coalition of sinners” for their alleged involvement in the postelection violence, and the ethnic arithmetic behind such an alliance for the 2012 elections is clear. Though no ethnic bloc, especially the Kamba, has voted in lockstep with their purported leaders, a KKK alliance in theory covers approximately 40 percent of the Kenyan electorate (see the list above).

Whether Kenyatta and Ruto will participate in the 2012 elections, however, and whether they can craft a viable alliance with Musyoka remains to be seen. This depends in large part on the outcome of Ocampo’s efforts to secure formal indictments from the ICC, and commence trials *before*

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4. The Mungiki sect and its significance are a major unknown factor in Kenyan and especially Kikuyu politics. Led by Maina Njenga, and composed of upward of 1 million mostly male and unemployed youth, the sect has morphed from a simple shakedown protection racket that has made Njenga and intermediate leaders rich, to a religious movement with evangelical leanings, to a cadre used by prominent Kikuyu politicians for their own ends, including allegedly, the postelection violence. The Mungiki, are at the same time a threat to the old guard Kikuyu elite having accused that elite of deserting traditional Kikuyu values. Knowledgeable observers view Mungiki as the historical successor to those who fought for Kenya’s independence against the British-backed home guards during Mau Mau, but who never benefited from the fruits of independence.

the elections. On the one hand, if the indictments are brought and the trials scheduled, it is doubtful whether either Kenyatta or Ruto can remain viable candidates for the presidency. But on the other hand, if the pretrial chamber of the ICC rejects Ocampo's case, the two will return home as heroes in the eyes of their respective ethnic communities. In the meantime, Musyoka, with Kibaki's blessing, has been traveling around Africa seeking support from governments and the African Union for the ICC to defer the case for a year so that Kenya can establish its own local tribunal to try those who perpetrated the violence. The objective is to cement his leadership of a KKK alliance in the eyes of the public, even if Ruto and Kenyatta may not be on the scene. Deferral of the case by the ICC, however, must be requested by the UN Security Council. The African Union supports the move, but the United States, Britain, and France have blocked consideration of deferral by the Security Council. Those summoned by Ocampo appeared before the pretrial chamber in early April 2011. The formal trials of "the Ocampo Six" are now scheduled for September.

The move by the ICC also poses problems for Raila Odinga, who now leads a reduced ODM in the final 18 months of the Grand Coalition government and the pre-election period before 2012. Minus the Kalenjins, Odinga is faced with the challenge of crafting a viable coalition for a successful run for the presidency. With Kibaki retiring from office and no other Kikuyu leader likely to unite the group behind a single candidate, Odinga hopes to obtain a significant minority of the Kikuyu vote—perhaps as much as 20 percent, particularly among urban Kikuyus residing in Nai-

robi. He must, however, broaden his appeal if he is to win the presidency, most likely across Eastern Kenya, where he may partially block the ambitions of Musyoka among the Kamba and on the Kenyan coast. At the same time, he must retain the support of the Luhya in Western Kenya. He is presently the acknowledged front-runner for 2012, but many observers agree that if he cannot win the election in the

**Ethnic alliances have been the basis of Kenya's electoral politics in the multiparty era and are likely to remain so during the next 5 to 10 years.**

first round, he will lose in the runoff given the intense, indeed visceral, opposition he provokes in some quarters—especially among old guard Kikuyu leaders who back Kibaki—who will coalesce behind an "ABR" (anybody but Raila) candidate.

## Kenya's Politics Today

The foregoing analysis has stressed five drivers of Kenya's politics, some of which raise the potential for conflict and others of which mitigate it. These are:

- *The continued saliency of ethnicity in the minds of most Kenyan voters, and the preoccupation by the leading members of Kenya's political class with mobilizing the electorate along ethnic lines.* As stated above, "the story" of national politics has historically been the constant configuration and reconfiguration of ethnic alliances to control power at the center. These alliances have been the basis of Kenya's electoral politics in the multiparty era and are likely to remain so during the next 5 to 10 years.
- *Rising economic inequality*—between and within ethnic groups, particularly the Kikuyu. Such inequality may eventually result in the emergence of class-based politics in Kenya and erode the salience of ethnic politics. However, in the near term (i.e., during the next five years and the

next two election cycles), rising inequality is more likely to exacerbate ethnic distinctions, and fuel outbreaks of interethnic violence, as it did following the 2007 elections.

- *The emergence of a rising middle class of young urban professionals, businesspersons, and bureaucrats below the age of 45.* This is Kenya's principal force for political and economic reform, particularly the consolidation of democracy, and the management of the major fault lines of conflict. This group is far more sensitive than its elders to international norms of good governance and economic practice. Its members are also more willing to seek "win-win" solutions to bridge what have been the historical fault lines of conflict in Kenya, for example, their support for devolution and the recognition that all groups must obtain a share of the country's resources if there is to be peace.
- *Kenya's tortuous and protracted two-decade struggle for democracy*—between individuals and interests that wish to continue the politics of the past versus those who wish to transform Kenya into a modern democratic society based on the rule of law that can compete in the global economy. The promulgation of the new Constitution in 2010 marked a major achievement by the latter. It also holds out the prospect of bridging the ethnic fault lines that have driven political conflict in the past. The question now is whether the new Constitution can be fully implemented to realize reforms that at this stage exist mainly on paper.<sup>5</sup>
- *The disposal of the cases against the "Ocampo Six" by the International Criminal Court*—whether those who have been summoned to appear before the ICC will be indicted, and if indicted whether they will be convicted or freed. The cases will have a profound impact on the outcomes of the 2012 elections.

In addition to these five drivers of Kenyan politics, Kenya faces other serious challenges briefly mentioned here. Chief among these is the situation in Somalia, which has spilled over into Kenya in the form of increasing numbers of refugees along the Kenya–Somalia border, and the large Somali enclave in the Eastleigh section of Nairobi. Although not significantly involved in Kenyan politics, the presence of both, especially the population in Eastleigh, many of whom are armed, constitutes a security threat requiring constant monitoring by the Kenya army and police.

Kenya has also become a major transit location for international drug trafficking and money laundering, which are of concern to the United States. Drug trafficking could eventually pose a major challenge for Kenyan law enforcement, as it has done in Mexico, and exacerbate the already high levels of corruption among senior members of the government. Drug money may also ultimately fund political campaigns and attacks by terrorists seeking haven in Kenya. Neither the Somali presence nor drug trafficking is a major factor in Kenya's politics or triggers of conflict at this time, but could become so during the next five years.

The same cannot be said for drought and environmental degradation—problems that are increasingly likely to trigger conflict, though limited to specific geographic areas (e.g., over grazing rights among pastoralists in the northern Rift Valley) during the next decade. Kenya's growing population, though much lower than the annual rate of population growth in neighboring countries (e.g., 2.4 percent in Kenya, vs. 3.7 percent in Uganda), is already resulting in food shortages

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5. In one notable example of implementation, the Kenya National Assembly rejected President Kibaki's unilateral nominations for a new chief justice, attorney general, and director of public prosecutions in February 2011, because he violated provisions set forth in the new Constitution and the power-sharing agreement that is the basis for the Grand Coalition. After several weeks of trying, the president withdrew the nominees.

and a significant loss of grazing areas when the rains fail. Deforestation, including logging on public lands, has severely reduced the country's water catchment areas. Political conflicts over environmental issues are likely to rise.

## Scenarios

Given the history and demographic trends outlined above, three potential scenarios arise that may shape Kenya's politics during the next 5 to 10 years. Each revolves around the question of whether Kenya will continue to make progress with respect to democratic consolidation and the competitiveness of its economy. These alternatives, in descending order of probability, are the continuation of the politics of the old guard; governance by a coalition of reformers and opportunists intent on both modernizing Kenya's economy and consolidating democracy; and a breakdown of political order in the period before or immediately after the 2012 elections similar to that which occurred following the 2007 elections, but without the negotiated settlement, followed by the intervention of the Kenyan army or police.

*The continuation of the politics of the old guard.* Under this scenario, the politics of ethnicity continues to be the dominant force for at least one or two election cycles; the prosecution of the main perpetrators of the 2008 violence fails or ends with mixed results, and the KKK (Kalenjin, Kikuyu, Kamba) alliance wins both the presidency and the control of the National Assembly in the 2012 elections, with Kalonzo Musyoka as president. Under this scenario, implementation of the new Constitution will be less aggressive than what would be likely if a coalition of reformers (or more accurately, a coalition of reformers and opportunists) comes to power. Kenya will be governed in a manner similar to Kibaki's first term—that is to say, far more competently than under former president Moi, but with an overhang from the past. Progress toward democratic consolidation will be slower, but provisions of the new Constitution will serve as a major check on executive power (as they are already serving as a check on Kibaki), while devolution will begin to break up the historical power centers developed around the leaders of the largest ethnic groups. Kenya will become a more stable polity, though high levels of corruption in government will persist.

*Governance by a coalition of reformers and opportunists intent on both modernizing Kenya's economy and consolidating democracy.* Such a coalition would be led by Raila Odinga and draw support from all ethnic groups except the Kalenjins and a majority of Kikuyus.<sup>6</sup> It would nonetheless obtain significant minority Kikuyu support, particularly from urban professionals and the younger members of the Kikuyu business class as well as other Kenyans with these backgrounds. Stated simply, it is an "ethnicity plus middle class" coalition—one based on ethnicity plus the most dynamic and educated elements of the Kenyan population. One should not have unrealistically high expectations of what is possible should such a coalition come to power, but its leading members, including James Orengo, the current minister of lands and a key lieutenant of Odinga, would be more likely to support the reform of the judiciary, the reestablishment of the rule of law, and a reform of the police, than a coalition led by the successors of the current old guard. It too will be limited by the provisions of the new Constitution.

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6. This scenario is based on Odinga winning an outright majority in the first round of the 2012 elections, something he may not be able to do. Should he be forced into a second-round runoff election, the likelihood of an anyone but Raila ("ABR") coalition to block his election would rise.



*A breakdown of political order in the period before or immediately after the 2012 elections similar to that which occurred following the 2007 elections, but without the negotiated settlement, followed by the intervention of the Kenyan army or police.* Though a repeat of the violence that occurred following the 2007 elections should not be ruled out (especially if the results from the first round of the presidential election are very close and/or if a run-off election is required), the experience of 2007–2008 chastened the political elite and civil society to the point that a repeat is unlikely. The revamping of the Electoral Commission and the establishment of other safeguards, including the prepositioning of security forces, will also reduce this prospect. That said, another political stalemate requiring a second government of national unity is possible. One outcome that is most unlikely is an intervention by the army. Kenya has experienced civilian rule on an uninterrupted basis since independence, and the inclination by the Kenyan military to intervene in the country's politics has been historically low.

A variation of the “breakdown” scenario would be that triggered by the assassination of a high-profile member of the political class, particularly one of the current front-runners for the presidency in 2012. Although Kenya has not endured the assassination of a major political leader since 1990, when the then-foreign minister, Robert Ouko, was shot by one of Moi's lieutenants, at least three other major leaders—Pio Gama Pinto, Tom Mboya, and JM Kariuki—were killed during the 1960s and early 1970s for challenging the ruling establishment. The political murder of Robert Ouko, then minister of foreign affairs in 1990, created a yearlong crisis that arguably contributed to the first public protests against the Moi regime in 1990 and 1991. The assassination of any one of the current front-runners for the presidency—Uhuru Kenyatta, Kalonzo Musyoka, Raila Odinga, or William Ruto—or any close associate of the four, would create an explosive situation that, given Kenya's ethnic divisions, would most likely trigger a repeat of the violence that followed the 2007 elections. Such an event would have an impact on the elections to determine who will govern Kenya through 2017. An assassination before or after the elections would be highly destabilizing and could reverse the substantial progress that has been made toward transforming Kenya into a modern democratic state, but the potential for such a “surprise” should not be discounted.

## Conclusion

Given the likelihood of the first and second scenarios, what are the implications of these for the United States and the U.S. Africa Command (AFRICOM) in particular? The United States has long recognized Kenya's importance as the anchor state of East Africa and has invested considerable resources in establishing its embassy and related missions in Nairobi and the country generally. Its large embassy has attracted some of the best officers of the Department of State's Africa Bureau. The U.S. Agency for International Development (USAID), Centers for Disease Control and Prevention, Department of Agriculture, Department of Defense, Library of Congress, Peace Corps, and other departments of the U.S. government all maintain a presence in the country. With respect to issues of governance and security, the United States has been heavily involved since the beginning of Kenya's struggle for democratic governance in the early 1990s. That presence, which includes exercises such as a 15-year effort by USAID to strengthen the National Assembly and substantial funding for Kenyan civil society, has certainly been worth the investments.

Although members of Kenya's political class sometimes find the U.S. government too prescriptive in its demands for reform, United States–Kenya relations continue to be strong. Reformers particularly appreciate U.S. support for their efforts over the years. That said; Kenya is clearly mov-

ing into a new era. As its community of highly educated middle-class professionals and businesspersons continues to expand, it is essential that the relationship be increasingly one of a partnership where the initiative comes from the Kenyan side. Kenyans know what is required for genuine reform, and do not need constant advice.

The leading members of the Kenyan political class are in a long-term struggle over the content and implementation of reforms. Whether or not they ultimately transform their system depends on which interests their individual members fight to protect. The bottom line is that the process is moving in the desired direction. Indeed, Kenya is arguably the most politically stable and democratic state in the region. The two conditions are directly related. Kenya is becoming more stable precisely because its evolving democracy has enabled the country to address the issues that have threatened its stability in the past. The U.S. government should thus continue to support Kenya's democratic transition, albeit increasingly with a lower profile and softer voice.

With respect to the Kenyan military, AFRICOM should continue the long-term military-to-military relationship that the United States has established parallel to the two nations' civilian relationships over many years. As those who have engaged the Kenyan military know well, its level of professionalism is arguably the highest in Eastern Africa, as is its respect for civilian control. Though elements of Kenya's police and paramilitary units have been implicated in serious human rights violations in recent years, including extrajudicial killings, the military has not.

Notwithstanding periods of authoritarian and sometimes repressive rule, Kenya has also enjoyed an unbroken period of civilian government since gaining independence. Though AFRICOM staff posted to Kenya should be highly knowledgeable of the overall trends of Kenya's political economy, and the command and control of the country's security forces, their efforts should be limited to maintaining the military-to-military relationship and providing conventional military assistance, rather than expanding its mission to include areas already covered by other U.S. agencies. Put simply, "If it ain't broke, don't fix it."









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