

Kenya: Temporary Ceasefire or Lasting Peace?

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Executive Summary

In December 2007, Kenya’s disputed presidential election erupted into two months of brutal violence, leaving at least 1,000 dead and 350,000 people displaced. Underlying the election crisis were deep-seated conflicts over inequality, land, poverty, ethnicity, and political power, as well as high levels of youth unemployment.

In a remarkable demonstration of rapid response diplomacy, the international community united behind an African-led mediation effort, which produced a power-sharing agreement between the presidential contenders and their political parties. Many Kenyan civil society groups mobilized to help contain and halt the violence in their communities, while calling for a political resolution to the crisis.

The international diplomatic response to help broker a peace agreement, along with the grassroots peacemaking efforts that saved lives and helped push Kenya’s leaders to the negotiating table, prevented what could have been more widespread violence or even the country’s collapse into civil war.

Yet more than a year and a half after the successful signing of a peace agreement, Kenya teeters between the path toward stable peace and a fall back into deadly violence. The government coalition is ineffective; perpetrators of violence have not been brought to justice; corruption continues with impunity; armed militias are on the rise; and steps toward electoral, economic, constitutional, security, and land reform have shown few substantive results. The peace agreement is now seen by many as little more than a cease-fire.

With Kenya’s 2012 elections fast approaching, sustained attention and concerted peace-building efforts are needed to prevent the collapse of the fragile agreement, a return to violence, or even state collapse. The bulk of this work must be done by Kenyans. However the United States and the rest of the international community have a substantial interest in providing sustained support for the difficult work of reform and peace-building to help prevent more deadly conflict in the future.



source: CIA, *The World Factbook*

Key Recommendations:

- Undertake a comprehensive review of U.S. policy toward Kenya by the end of 2009, with the goal of establishing coherent, sustained engagement that can help prevent another outbreak of violence and support long-term reform and peacebuilding.
- Halt military aid to Kenya and condition other security assistance on strict human rights standards and rule of law reform.
- Support initiatives to increase government accountability, including constitutional reform and civic education programs. Provide technical support for the 2012 elections.
- Press for prosecution of the worst perpetrators of violence and support society-wide reconciliation.
- Focus U.S. development assistance strategically to help address root causes of conflict and strengthen peace-building and conflict transformation.

The Politics behind Kenya's Crisis

Kenya has long been seen as a relatively stable and peaceful country, nestled amongst volatile neighbors—Somalia, Ethiopia, Uganda, and Sudan. Kenya has a sophisticated civil society, a relatively strong economy with an emerging middle class, a professional media, and comparatively strong institutions. Kenya is also a key U.S. ally in Africa.

The East African nation has also played a pivotal role in regional peace-building, helping establish Sudan's Comprehensive Peace Agreement and Somalia's Transitional Federal Government. Surrounding nations depend heavily on Kenya's economy, and it is the staging ground for humanitarian operations in the region.

Despite its reputation for stability, Kenya faces deep-rooted conflicts. The country includes over 40 different ethnic groups. Preferential government policies along ethnic lines were instituted during colonial rule, and continued after independence in 1963. Each of Kenya's three presidents since independence has favored his own ethnic group for government positions, social service provisions, and infrastructure development.¹

In 2002, Kenya ended the 25-year rule of Daniel arap Moi under a largely one-party system. At the time, the election of Mwai Kibaki, running on an anti-corruption ticket, elicited enormous hope in the country. Unfortunately, little change was actually enacted in Kibaki's first term, which continued centralized presidential power and privileged status for Kibaki's ethnic group, the Kikuyu.

In 2007, Raila Odinga and the Orange Democratic Movement (ODM) emerged as challenger to Kibaki, capitalizing on the frustration of many Kenyans, promising radical change, and appealing particularly to young people. Kibaki and the Party of National Unity

(PNU) attempted to campaign on Kibaki's achievements. Both sides played up ethnic divisions, with the ODM insinuating Kibaki's entire ethnic group—the Kikuyu—was responsible for corruption and exclusionary politics, while the PNU used inflammatory speech to affirm the Kikuyu ethnic claim to national leadership.

Despite a potentially explosive campaign, in late December 2007 Kenyans showed up on election day in record numbers, waited in line, and peacefully cast their ballots. Pre-election polls favored Odinga, and initial results showed him leading by nearly a million votes. However, when voting finished, Kibaki was announced the winner by a narrow margin and hastily sworn in as President.

Perceptions of a stolen election quickly erupted into violence. The government banned live media broadcasts and public gatherings, escalating tensions.² In the weeks that followed, armed militias attacked communities of rival ethnic groups. Police also fired indiscriminately and killed many alleged protestors (resulting in over 30 percent of total deaths³). Neighbors attacked neighbors with stones and machetes; sexual violence was widespread; property was looted and destroyed; and hundreds of thousands fled their homes in fear.

Some of the violence seemed to emerge spontaneously from demonstrations by Odinga supporters, some was orchestrated by politicians, and some came as revenge attacks. Some individuals took advantage of the general chaos, adding more attacks and crime to the crisis.⁴ In the end, over 1,000 people lay dead and between 350,000 and 500,000 had fled their homes.⁵

Despite the shockwaves that rippled through the international community, the violence in Kenya was not unpredictable. Most experts on Kenya and Kenyans themselves recognize the pot had been simmering for a

1 Kiai, Maina. "Kenya—Change We Can." Videorecording. Voxcom Production. Accessed at <http://vimeo.com/4839384>.

2 For descriptions of the issues around the election and the specific disputed election process, see: International Crisis Group, 21 February 2008. "Kenya in Crisis;" Nic Cheeseman, 2008. "The Kenyan Elections of 2007: An Introduction." *Journal of Eastern African Studies* 2(2); or Kenya Human Rights Commission, 15 September 2008. "Violating the Vote: A Report of the 2007 General Elections."

3 Commission of Inquiry into Post-Election Violence, 15 October 2008. "Report of the Commission of Inquiry into Post-Election Violence (CIPEV)." Nairobi, Kenya.

4 Human Rights Watch, March 2008. "From Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance." Human Rights Watch 20, 1(A).

5 Commission of Inquiry into Post-Election Violence, 15 October 2008. "Report of the Commission of Inquiry into Post-Election Violence (CIPEV)." Nairobi, Kenya. See also Human Rights Watch, March 2008. "From Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance." Human Rights Watch 20, 1(A).

long time, with many underlying issues contributing to the violence.⁶

Ethnic politics, political violence, and corruption are all already disturbingly common in Kenya. Long-standing grievances over land distribution remain unaddressed. Political and economic inequality pervade, epitomized by Africa's largest slums neighboring areas of excessive affluence. High salaries and tax benefits for the political class deepen the class divide and fuel broad resentment. Meanwhile, a large youth population faces few economic opportunities (at least two million Kenyan youth are unemployed⁷) and feelings of disenfranchisement. Divided and corrupt Kenyan security forces, armed gangs and militias, and increasing availability of small arms add more danger to the mix. The disputed presidential election was merely what made the pot finally boil over.

Rapid Response Diplomacy and Peacemaking

To their credit, when violence broke out Kenyans, regional leaders, and the international community responded quickly. Within a few weeks, African Union (AU) chair John Kufuor travelled to Nairobi to lay the groundwork for outside involvement. The international community expressed great concern and united behind the AU mediation effort. On January 22, 2008, just a few weeks after violence erupted, former UN Secretary General Kofi Annan led a mediation team of elders, acting on behalf of the AU, to Nairobi to begin intense negotiations with Odinga and Kibaki.⁸ On February 28, a power-sharing agreement was signed. It created the position of Prime Minister for Odinga and established a multi-party cabinet. Violence died down, the mediators went home, and the AU's rapid response diplomacy seemed to have been a success.



Odinga, Kibaki, and Annan
source: Boniface Mwangi/IRIN

Kenya does offer an example of how rapid and coordinated diplomacy by the international community can succeed at brokering an end to a violent conflict. The African-led mediation may well have prevented Kenya's collapse into all-out civil war.⁹ Essential to the mediation process were the cohesion of the international backing, the lead taken by the African Union and other regional leaders (with the support of the UN), and the particular personality and experiences of the key mediator.

The mediation process was far from perfect, however, and the core causes of the conflict are not resolved. The political settlement was pushed through rapidly, helping halt the immediate violence but leaving little time to develop a working partnership between Kibaki and Odinga. The power-sharing arrangement emerged on paper with very little understanding of how the parties would actually work together or implement real reforms. The agreement did promise the creation of commissions to investigate the violence, review the election process, and establish a truth, justice, and reconciliation process. However, disputes continue over how these efforts will be carried out and what results they will yield.

Too much focus on the high-level political process also risks losing sight of the role of civil society in preventing further spread of the violence and pushing leaders toward a settlement of the crisis.¹⁰ Kenyan academics, women's

6 There are many great resources to understand the underlying causes of the 2007 election violence. Helpful sources include: Jacqueline M. Klopp. Spring/Summer 2009. "Kenya's Unfinished Agendas." *Journal of International Affairs* 62(2):143-158; also: Mwangi wa Githinji and Frank Holmquist. 2008. "Kenya's Hopes and Impediments: The Anatomy of a Crisis of Exclusion." *Journal of Eastern African Studies* 2(2):344-358.

7 Kumba, Samwel. 1 May 2009. "High Unemployment Rate Could Evolve into Revolution, Experts Warn." *The Daily Nation*. Accessed at <http://www.nation.co.ke/News/-/1056/593060/-/view/printVersion/-/rxwjm6/-/index.html>

8 For an in-depth look at the mediation process, see: Elisabeth Lindenmayer and Josie Lianna Kaye. 2009. "A Choice for Peace? The Story of 41 Days of Mediation in Kenya." *International Peace Institute*, forthcoming.

9 Cohen, Roger. 14 August 2008. "How Kofi Annan Rescued Kenya." *New York Review of Books* 55(13).

10 Several expert interviewees confirmed the importance of civil society, including Dorina Bekoe (29 June 2009), Marie Dennis (6 July 2009), Gerald Lemelle (30 June 2009), Jacki Wilson (8 July 2009), Daniel Teweles (8 July 2009), Frank Holmquist (13 July 2009), and Immaculate Shamala (14 July 2009). For a discussion of the strengths of Kenyan civil society, see Gayle Smith. February 2008. "Kenya: Containing a Rebounding Crisis." ENOUGH Project, Strategy Paper #14.

groups, and human rights advocates provided critical analysis and proposals to the mediation effort. The private sector, including major trade unions and manufacturing associations, lobbied for a settlement. International relief organizations and the Kenyan service sector responded quickly to the sudden humanitarian need. And many local community groups and business owners mobilized quickly, formed coalitions, blasted text messages, and found creative ways to help stop the violence.

The U.S. response to the crisis was mixed. Initially the Bush Administration supported the announced election results, damaging its reputation in the region. However, it soon back-tracked and stepped fully behind the AU mediation effort, with a firm statement from then-Secretary of State Condoleezza Rice that there would be no “business as usual” with Kenya until an agreement was reached. The United States then applied pressure on Kenyan leaders through the Annan-mediation team.

A U.S. exit poll also became controversial.¹¹ Conducted by the International Republican Institute, the poll showed Odinga winning by a significant margin. Claiming concerns about the accuracy of the poll, however, the results were not made public until August 2008. The withholding of results, for whatever reason, led to questions over the motives for withholding information and speculation about U.S. intentions.

Since taking office, the Obama Administration has put Kenya relatively high on the U.S. Africa agenda. During their first trips to the continent, both Secretary of State Hillary Clinton and Assistant Secretary of State Johnnie Carson met with leaders in Nairobi and made public statements of concern over the lack of progress on key reforms. Early in 2009 the administration requested \$38 million in funding for democracy and reconciliation programs in Kenya as part of an emergency supplemental funding bill. Congress approved \$19 million.

Kenya on the Brink

Despite the initial success of brokering an agreement and preventing more widespread deadly conflict, Kenya now wobbles on the edge of an unsettled peace. More than a year and a half later, perpetrators of the violence have not been held accountable and the coalition government struggles to maintain the shared power arrangement. Kenyans are frustrated with a lack of tangible results on a long list of necessary reforms, and ethnic tensions remain high. Fears are rising of a return to violence before or during the next presidential elections, set for 2012.



Youth with weapons
source: Julius Mwelu/IRIN

With regard to political power-sharing, the coalition government lacks any form of meaningful cohesion and seems unable to cooperate. While jostling to form alliances for the next election and, in some cases, defending themselves against allegations of direct participation in the violence, political leaders are unable to devote adequate attention to real reform.¹² Corruption persists unchecked.

While active political violence has generally stopped, gang activity and armed militias are on the rise, some with continued ties to politicians and some infiltrating the public security sector. A recent report from the UN Secretary General on Extrajudicial Killings found police killings continue with impunity.¹³ The Kenyan police was recently named the most corrupt institution in East Africa.¹⁴

- 11 See an exchange between NYT and IRI: Mike McIntire and Jeffrey Gettleman, 30 January 2009. “A Chaotic Kenya Vote and a Secret U.S. Exit Poll.” *The New York Times*; and International Republican Institute, 30 January 2009. “IRI Response to The New York Times Piece ‘A Chaotic Kenya Vote and a Secret U.S. Exit Poll.’”
- 12 Expressed by experts Makau Mutua and Maina Kiai at “Kenya on the Brink: Democratic Renewal or Deepening Conflict”, a conference held at the National Endowment for Democracy on 22 July 2009. See also Amnesty International, 16 June 2009. “Kenya: Statement on the conclusion of the mission led by Amnesty International’s Secretary General.” AI index: AFR 32/007/2009.
- 13 United Nations, 26 May 2009. “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; Addendum; Mission to Kenya.” United Nations, General Assembly, Human Rights Council A/HRC/11/2/Add.6.
- 14 Transparency International, 2 July 2009. “East African Bribery Index 2009: The Kenya Police is the Most Corrupt Institution in East Africa.” Nairobi, Kenya.

Public frustration also persists over the lack of accountability for those most responsible for the violence. Although Kenya was advised to create a local tribunal to prosecute perpetrators, little progress was made. To increase pressure, Kofi Annan then passed a list of accused perpetrators, which likely include high-ranking government officials, onto the International Criminal Court. Despite continued corruption and lack of a truly independent judiciary, the Kenyan government decided in July 2009 that prosecutions would be pursued through Kenya's own courts.¹⁵

The human suffering caused by the violence also continues. While some effort has been made to address the plight of internally displaced persons (IDPs), many still live in dire conditions. IDP camps were officially closed prematurely without preparation for those who had fled to return to their communities. Many people moved to transit camps, which receive little support and, in some cases, even worse services than the original displacement camps.¹⁶ The government has done little to help prepare both the communities and those who fled for return.

Finally, the underlying issues that led to the violence have yet to be addressed.¹⁷ While commissions and taskforces have been appointed, few substantive results have emerged on constitutional, land, security sector, or judicial reform.

In fact, the peace agreement is now seen by many as little more than a cease-fire. The country is unstable and, without real progress on fundamental reforms, any number of contentious events in the coming years could spark a new wave of violence. Among the many potential triggers: the results of the 2009 census, a constitutional referendum, the prosecution (or lack thereof) of perpetrators of violence, competition over scarce resources in a worsening drought, or, most ominously, the 2012 elections.

Recommendations for U.S. Policy

With Kenya's 2012 elections fast approaching, sustained attention and concerted peace-building efforts are needed to prevent further deadly violence, or even state collapse, in Kenya. Much of the work needed—from reigning in corruption to reforming the constitution, police and judiciary, and from prosecuting perpetrators to rebuilding trust and community—must be led by Kenyans themselves. However, the U.S. and the international community can and should provide much-needed support.

U.S. Engagement

The Obama Administration should undertake a comprehensive review of U.S. policy on Kenya, to be completed no later than the end of 2009. The U.S. lacks coherent policy toward Kenya that can effectively address the current reality. U.S. policy has been driven largely by counter-terrorism cooperation and short-term political interests. Different U.S. agencies operate in Kenya with different missions and insufficient coordination. A comprehensive policy review should be conducted without delay, recognizing the urgency of the instability in Kenya and the need for sustained peacebuilding. As part of the review, the Interagency Conflict Assessment Framework (ICAF) should be utilized to develop a better understanding across U.S. government agencies of the dynamics fueling conflict in Kenya and how U.S. policy and resources might be better directed to help mitigate potential violence and strengthen long-term reform processes.

The United States should support reinvigorated diplomatic engagement by the international community to monitor and press for implementation of the peace agreement. This could include encouraging and contributing resources to support a senior level international diplomat, backed by the AU, to take the

15 International Criminal Court. 16 July 2009. "Waki Commission List of Names in the Hands of ICC Prosecutor." Press Release. Accessed at <http://www.icc-cpi.int/NR/exeres/8395163B-58C4-4DE6-9A3D-01AEA5361FBD.htm>. See also Jeffrey Gettleman. 15 July 2009. "Kenya's Bill for Bloodshed Nears Payment." *The New York Times*. Accessed at http://www.nytimes.com/2009/07/16/world/africa/16kenya.html?_r=2&h.

16 Klopp, Jacqueline and Nuur Mohamud Sheekh. December 2008. "Can the Guiding Principles Make a Difference in Kenya?" *Forced Migration Review*, Special Issue GP 10: 19-20.

17 The Kenya National Dialogue and Reconciliation Monitoring Project. May 2009. "Status of Implementation of Agenda Items 1-4." Draft.

lead in re-invigorating the reform process and conducting sustained follow-up with Kenya. Over the long-term the U.S. should help strengthen the AU's rapid response diplomatic capacities and its Elders mediation teams.

The Obama Administration and Congress should establish an Emergency Crises Fund of at least \$100 million, as proposed by Senate appropriators. The internationally supported, African-led mediation effort in Kenya demonstrated the ability of rapid response diplomacy to prevent emerging crises from becoming full blown wars. Unfortunately, U.S. support to the African mediation team in the wake of violence in Kenya was complicated by the State Department's lack of flexible funds to respond to unforeseen crises. State Department officials scrambled for weeks to find money to help purchase plane tickets for the mediation team. Congress should approve the Senate proposal for a \$100 million Emergency Crises Fund in the FY2010 State and Foreign Operations Appropriations bill.

Security

Extensive security sector reform is needed in Kenya. Human rights violations by Kenya's police were documented during the post-election violence, and continue today with impunity.¹⁸ Extensive corruption pervades the security sector and the Kenyan police were recently classified as the most corrupt institution in East Africa.¹⁹

The United States should halt military aid and condition other security assistance to Kenya on strict human rights standards and rule of law reform. Given the unstable political situation and the egregious track record of Kenyan security forces, the U.S. should not add more weapons to the situation. The proliferation of military aid programs already makes accountability difficult, and U.S. military aid ends up supporting paramilitary and the police in Kenya as well.²⁰ Kenyan military, paramilitary, and police forces are receiving at least \$6.5 million worth of weaponry, training, and other security assistance from the U.S. this year (FY

2009) and may be receiving as much as \$10–15 million. Kenyan military, paramilitary, and police forces will receive at least \$9.5 million worth of weaponry, training, and other security assistance from the U.S. next year (FY 2010) and may receive as much as \$15–20 million. The documented abuses by police during the election violence suggest that the Leahy law, which restricts aid to units that commit human rights violations, should be invoked.

The United States should support efforts to demobilize and disarm militias in Kenya and reduce the proliferation of small arms in the region. Kenyan youth need economic and social alternatives that offer more promise than joining armed gangs. Congress should increase funds to support programs that help disarm and demobilize militias while providing alternative paths for youth. The ICAF process and comprehensive policy review should seek to address the problem more robustly.

Transparency and Accountability

The Obama Administration should support efforts to end corruption. Ensuring transparency and accountability should be central to the mandate of the senior diplomat working with Kenya. The U.S. should engage with and support Kenyan groups working to expose and stop corruption, such as the Kenya Anti-Corruption Commission. The U.S. could also increase support for civic education campaigns designed to give ordinary citizens access to information about national political, economic, and social issues that has previously been lacking, equipping them to hold their leaders more accountable. Efforts such as USAID's promotion of a book about corruption in Kenya politics offer one example.²¹

The U.S. should support electoral reform and provide technical assistance for the 2012 elections. Extensive work is required on the electoral process before 2012. The commission that investigated the 2007 election

18 Human Rights Watch. March 2008. "From Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance." Human Rights Watch 20, 1(A).

19 Transparency International. 2 July 2009. "East African Bribery Index 2009: The Kenya Police is the Most Corrupt Institution in East Africa". Nairobi, Kenya. Accessed at http://www.transparency.org/news_room/latest_news/press_releases_nc/2009/2009_07_02_kenya_index.

20 Interview with Daniel Volman, African Security Research Project, 8 July 2009.

21 OTI has supported five grants to distribute Michela Wrong's 2009 book, *It's Our Turn to Eat: The Story of a Kenyan Whistle-Blower*, which has sparked discussions about governmental impunity on radio stations, television, and in newspapers.

found the process so fundamentally flawed that they could not determine who had actually won, let alone whether or not the election results were manipulated.²² Kenya's new constitution should lay the groundwork for an independent electoral commission to oversee elections, from the party primaries to the final national vote. The United States can contribute to international assistance and monitoring for the 2012 elections. Technical expertise is important, as is active independent monitoring before, during, and after the elections.

Justice and Human Rights

The United States should call for timely prosecutions of those most responsible for the election violence, including any individuals currently holding leadership positions in Kenya. Ultimately, Kenyans should decide on the justice mechanisms they prefer, and the United States should support any tribunal that meets international standards, whether it is the International Criminal Court (ICC), a local tribunal, or some combination. The ICC might provide a more impartial venue to fairly try those who, because they are in positions of power, would likely be out of reach to a Kenyan tribunal. A local tribunal, however, has the advantage of proximity in accessing evidence, developing the capabilities of Kenyan institutions, and being able to deal with a larger number of perpetrators. Without considerable reform, Kenya's current judicial system seems unlikely to provide an effective mechanism of accountability.

The recommendations made by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston,²³ should also be supported. Particularly, a strong system of witness protection should be instituted to protect those who testify in the trials. Without an effective process for establishing both accountability for crimes and a path toward reconciliation for the society as a whole, tensions could easily reignite into violence.

Community Peace-Building and Conflict Transformation

The U.S. should invest more in community peacebuilding and conflict transformation. Rebuilding trust and community, and addressing the underlying causes of conflict in Kenya will not be easy. As it undertakes a review of U.S. policy, the administration should consider how to direct U.S. development and other economic assistance in ways that can better support efforts to address land reform, reduce inequality and reach underserved areas (particularly rural areas and urban slums), encourage interethnic cooperation, strengthen vocational and life skills training for youth, promote peace messages through the media,²⁴ and help displaced people return home safely. Such initiatives should focus on addressing core causes of conflict, building more resilient communities, and fostering reconciliation across ethnic and political divides.

Conclusion

While international and Kenyan peacemaking efforts succeeded in halting a horrific outbreak of violence, a concerted effort to prevent deadly conflict and lay a durable foundation for peace in Kenya is still needed. The Obama Administration and Congress should reshape U.S. policy to more effectively support much-needed political reforms, end abuse and corruption, and promote peacebuilding and reconciliation.



Kenyans wait to vote in 2007.

source: Allan Gichigi/IRIN

22 Independent Review Commission. 17 September 2008. "Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007." Nairobi, Kenya.

23 United Nations. 26 May 2009. "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; Addendum; Mission to Kenya." United Nations, General Assembly, Human Rights Council A/HRC/11/2/Add.6.

24 BBC World Service Trust. April 2008. "The Kenyan 2007 Elections and their Aftermath: The Role of Media and Communication." Policy Briefing.

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