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Electoral Violence in Kenya

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Electoral Violence in Kenya

INTRODUCTION

Kenya is at risk of repeating the violence that marred its 2007 presidential election, during which 1,133 died and nearly 600,000 were displaced from their homes. Political order in Kenya nearly collapsed. Ending the crisis required two months of negotiations mediated by former UN secretary-general Kofi Annan and supported by the United States and its partners. The negotiations resulted in a power-sharing agreement between the two adversaries in the election, President Mwai Kibaki and Raila Odinga. Known as the National Accord, the deal elevated Odinga to the post of prime minister and provided for the writing of a new constitution to address the causes of the conflict.

Kenya's next elections, to be held on March 4 and April 11, 2013, are arguably the most important and complex since the country's return to multiparty politics two decades ago. If the elections are largely peaceful and viewed as "free and fair," they will bring Kenya's new constitution, adopted in 2010, fully into force and advance the country's progress toward becoming a modern democratic state. Conversely, if the elections are marred by widespread violence and perceived as illegitimate by the Kenyan public, they are likely to plunge the country into a renewed period of political instability and set back Kenya's democratic advance. A breakdown in the electoral process will also do serious harm to Kenya's economy, which has been performing well in recent years.

Since Kenya is the "anchor state" of East Africa, a prolonged political and economic crisis will also harm neighboring countries. In particular, two major U.S. foreign policy goals in the region—preventing Somalia from becoming a safe haven for terrorists and nurturing peace between Sudan and South Sudan—could be compromised. The United States, therefore, should work expeditiously with all parties concerned to ensure that the forthcoming elections are peaceful, free, and fair.

THE CONTINGENCIES

Six factors make the prospects for electoral violence particularly high in the run-up to and in the immediate aftermath of the 2013 elections:

- *As in prior elections, the leading presidential candidates are mobilizing voters along ethnic lines.* This is resulting in a polarized electorate and outbreaks of violence between the members of rival ethnic groups. Kenyan politics have historically been contests in which the leaders of the country's largest ethnic groups form ethnic coalitions among themselves and with the leaders of smaller groups to dominate their rivals. Ethnic fault lines run deep because the country is divided into five large groups that constitute 68 percent of the population—the Kikuyu and related groups (21 percent), the Luhya (14 percent), the Kalenjin (13 percent), the Kamba (10 percent), and the Luo (10

percent). Interethnic violence between unemployed youth hired by rival politicians is already occurring in nearly a dozen areas.

- *The race for the presidency is likely to be extremely close.* Under its new constitution, Kenya has adopted a two-round runoff procedure to ensure that whoever is elected president will have received a majority of the vote. The current contest began with five major candidates campaigning for the post. Three have already dropped out after concluding that they would be eliminated in the first round scheduled for March 4. They have allied themselves with one of the present front-runners: Prime Minister Raila Odinga, a Luo and head of the Orange Democratic Movement (ODM), and Deputy Prime Minister Uhuru Kenyatta, a Kikuyu and the leader of the National Alliance party (TNA). Both seek victory in the first round, but the presence of a half-dozen minor candidates may force a runoff election.
- *Kenya's forthcoming elections will be the most complex in its history, because of an expanded number of electoral positions.* In addition to electing a president, Kenyans will directly elect 384 members of a new bicameral legislature, plus 47 governors and 47 county assemblies. The new county system of subnational government, which creates a quasi-federal governing process, could mitigate Kenya's long history of ethnic conflict by providing all groups, large and small, with a measure of power and resources. However, devolution also multiplies the arenas of electoral competition and the prospects for election-related violence in the near term, especially in counties with multiethnic populations.
- *The Independent Electoral and Boundaries Commission (IEBC) will be unable to prepare for the elections so that Kenyans can go to the polls with confidence.* Due to delays in the procurement of required equipment and technical issues, the commission completed voter registration two months behind schedule. Moreover, the commission registered only 14.4 million, or 69 percent, of the more than 21 million Kenyans eligible to vote. The IEBC also faces major challenges with respect to the recruitment and training of up to 120,000 temporary workers to staff 29,000 to 40,000 polling stations, and the procurement and distribution of essential supplies such as ballots and ballot boxes. The IEBC is also responsible for educating voters on what will be a complex ballot, since Kenyans will be voting for six offices for the first time. Most important, the commission must address the principal failure of the 2007 elections by carrying out an accurate transmission and tabulation of the votes from thousands of polling stations to its results reporting center in Nairobi and by making a timely announcement of the results. Any further delays or missteps in meeting these challenges could force a postponement and/or undermine the legitimacy of the elections. Unfortunately, personal disagreements between the chair and the chief operating officer of the IEBC have also compounded its problems.
- *Ongoing proceedings of the International Criminal Court (ICC) could complicate the presidential election and its outcome.* One of the two leading candidates for president, Uhuru Kenyatta, and his running mate, William Ruto, the most prominent Kalenjin leader, have been indicted by the ICC for perpetrating interethnic violence between Kikuyus and Kalenjins following the 2007 elections. Their trials are scheduled to begin on April 10 and April 11, 2013, respectively, but neither is likely to travel to The Hague if they emerge victorious in the first round or are finalists in the second. Indeed, one major purpose of their alliance is to avoid trial. Their alliance also, ironically, raises the prospects for peace during this election cycle between their respective ethnic groups, the Kalenjins and the Kikuyus, who viciously attacked each other in 2007. The election of Kenyatta and Ruto, however, would most likely result in the United States, European Union states, and others that

support the ICC process shunning them diplomatically. This could invoke a potentially hostile response from Kenyatta and Ruto and ultimately lead to Kenya's increased international isolation.

- *Kenya lacks an adequate number of trained police.* Kenya has approximately 70,000 police, or roughly 160 per 100,000 residents, which is less than three-quarters of the 220 per 100,000 recommended by the United Nations. Kenya's police are also widely regarded as corrupt and prone to human rights abuses. They were unable to contain the violence following the 2007 elections, and may not be sufficiently improved to deal with the challenges this time. Because there will be between 29,000 and 40,000 polling stations to which at least one officer must be deployed, the police will be stretched to the limit. This reality, coupled with the likelihood of violence in more areas than in the past, could create a situation in which the Kenya Defence Force is required to augment the police to maintain order. Such involvement would be the military's first deployment to maintain domestic order since independence.

Three broad scenarios, each with its own variations, are presently conceivable for the 2013 elections:

- *The IEBC conducts credible elections on March 4, and one of the presidential candidates, most likely Raila Odinga or Uhuru Kenyatta, wins or prevails in the runoff round scheduled for April 11.* Outbreaks of violence are limited to rural areas and associated mainly with elections at the county level. Though this scenario was plausible a year ago, it is much less likely today. Raila Odinga remains the leading candidate, but he has lost popularity among ethnic groups other than his own. At the same time, Uhuru Kenyatta has gained popularity and could beat Odinga in a runoff, according to some recent public opinion polls. If the past is any guide, a close election is likely to be accompanied by violence between Kikuyus, who will mostly vote for Kenyatta, and Luos, who will mostly vote for Odinga.
- *Violence by Kikuyu and Kalenjins against Luo breaks out after the Kenyan government arrests Uhuru Kenyatta and William Ruto to send them to the ICC.* Because President Mwai Kibaki, a Kikuyu, firmly controls Kenya's security forces, such arrests are unlikely. Indeed, the arrests are only plausible if Kibaki and other senior Kikuyu political and business leaders conclude that their interests are best served by backing Musalia Mudavadi, a Luyha, whom they view as a benign, non-Kikuyu vehicle to defeat Odinga. These leaders face a difficult choice between maintaining their loyalty to a fellow Kikuyu by shielding Kenyatta from the ICC or forsaking him to avoid the international sanctions that will be levied on Kenya or selected members of its political class if Kenyatta is elected president or if the government of Kenya fails to honor its obligations under the Rome Statute. Senior Kikuyu leaders—who arguably control Kenya's economy—rightly worry that business and Kenya's international stature will suffer if the country elects a president the world shuns. Some also realize that it is not in the interests of the broader Kikuyu community to push for the election of a Kikuyu successor to Kibaki, as Kenyatta would be Kenya's third Kikuyu president out of four since independence.
- *The IEBC continues to stumble in its preparations for the 2013 elections and fails to facilitate a credible process.* Since more than 30 percent of the eligible electorate was not registered, civil society organizations protest their disenfranchisement and bring cases before the courts to force the continuation of registration. The IEBC also fails to meet its remaining challenges required for credible elections and thus is confronted with a painful choice between two unappealing alternatives. First, in mid-to-late February 2013, the IEBC panics, realizing that it cannot

conduct competent elections without further preparation. It announces a ten-day-to-one-month postponement of the elections. Though the decision is sound from an operational standpoint, the political blowback is instantaneous as rival candidates accuse the IEBC of “rigging” the elections in favor of the other. The General Services Unit, Kenya’s paramilitary police, puts down protests on Nairobi’s streets, but not until after several protesters are killed. Second, due to fears of retribution if it postpones the elections, the IEBC decides to muddle through by proceeding with the elections on March 4 even though it knows it is not adequately prepared to conduct the process. Sporadic violence occurs in various areas as a result, and several returning officers are killed. The police are sent in to restore order but are unable to do so in many areas because of insufficient personnel. Order is restored after President Kibaki and the Kenya Defence Force’s chief of staff reluctantly conclude that the army must be sent in to reinforce the police.

WARNING INDICATORS

Indicators that the forthcoming elections will be marred by violence and regarded as illegitimate by most Kenyans are:

- *Continued failure by the IEBC to meet critical deadlines to administer the elections.* In addition to registering no more than 60 to 70 percent of the eligible electorate, the commission fails to complete one or more of the remaining critical tasks required for credible elections.
- *Outbreaks of sporadic violence as election campaigns ramp up.* Most election-related violence to date has been associated with county-level races (e.g., for governor and senator) rather than with presidential contests, as occurred in 1992, 1997, and 2007. Violence at these localized levels, though troubling, is more containable than violence arising from the presidential race. The likelihood that both types of violence will occur is difficult to estimate, but is arguably as high as 50 percent depending on which contingency scenario evolves between now and the elections.
- *Formation of local militias supported by local political leaders.* Armed militias are reportedly forming across Kenya, though the exact number and their political affiliations are unclear. Their formation is fueled by the influx of arms, including automatic assault rifles from Somalia and to a lesser extent Ethiopia.
- *Renewal of hate speech, especially by politicians.* Hate speech was a significant driver of the 2007 postelection violence. The caustic rhetoric was disseminated by mobile phones, especially via text messages, and encouraged by talk show hosts on ethnic-language radio stations—two dominant modes of communication for Kenyans. The new constitution and communications legislation now largely ban hate speech, and broadcasters are responsible for its propagation. All radio stations also have delayed broadcast devices so that hate speech can be blocked. Hate speech via text messages, however, is far more difficult to control, because it cannot be filtered out by network operators. Two political leaders have been indicted for hate speech, but neither has been convicted, with the result that the likelihood of hate speech continues to be a concern.
- *Attempted acts of terrorism to disrupt the election.* Kenya has had numerous, though isolated, terrorist attacks over the years, including the 1980 bombing of the famed Norfolk Hotel in Nairobi, the 1998 bombing of the U.S. embassy, and the 2002 bombing of an Israeli-owned hotel in Mombasa. The arrest of Somali terrorists in the Eastleigh area of Nairobi on September 17, 2012, which thwarted their alleged attempt to blow up the National Assembly, confirms the continuing threat

of al-Shabab, the Somali affiliate of al-Qaeda, beyond the Indian Ocean coast. None of these attacks to date have threatened Kenya's stability, nor have they been explicitly directed at the elections, but this situation could change as the 2013 elections draw near.

- *Heightened tensions between the Kenyan government and the Mombasa Republican Council (MRC).* The MRC is a secessionist movement that argues that successive Kenyan governments have marginalized the peoples on the Indian Ocean coast. The MRC urges a boycott of the elections, and some of its members have attacked local offices of the IEBC. The government reimposed a ban on the MRC in October 2012 on the grounds that it was a threat to peace and security. However, the unbanning of the organization coupled with its participation in the forthcoming elections at the county level could diffuse the situation, because the elections hold out the possibility for more autonomy and resources from the center.

IMPLICATIONS FOR U.S. INTERESTS

Although Kenya is not a major U.S. ally or trading partner, the United States nevertheless has significant strategic and foreign policy interests to protect. Because of Kenya's importance as a regional anchor state, the United States has long invested in its economic and political development. Washington has provided military assistance to Kenya for more than thirty years, while U.S. military aircraft and ships enjoy access to Kenya's international airports and seaport at Mombasa.

The U.S. Mission in Nairobi is the largest in Africa, and it mounts a wide range of programs, including several that are regional in scope. These include diplomatic engagement with Somalia, the Regional Security Office, the U.S. Agency for International Development (USAID), the Departments of Agriculture and Commerce, the Center for Disease Control, and the Library of Congress. Private U.S. investment is also growing in Kenya; several U.S. companies, including General Electric, IBM, and Google, have established or are in the process of establishing their African headquarters in Nairobi. Oil has recently been discovered near Lake Turkana in northern Kenya, and explorations are proceeding to determine the extent of offshore natural gas. These developments, coupled with the rapid expansion of Kenya's financial services industry and information technology sectors, provide a platform for further U.S. investment and other foreign direct investment if Kenya's stability is maintained.

Any breakdown of the electoral process and political order in Kenya would also have major economic consequences in the region and jeopardize other U.S. objectives. Uganda, Rwanda, eastern Congo, and South Sudan are all landlocked areas that depend on Kenya for their external trade, especially for importing refined petroleum products and exporting goods through the Kenyan port of Mombasa. A stable Kenya is also essential for maintaining U.S. efforts to sustain the new but fragile governments in Somalia and South Sudan and continuing U.S. counterterrorism efforts against al-Shabaab along the Indian Ocean coast. Efforts by the African Union (AU) and other states to reestablish effective governance in Somalia seem to have finally gained traction and would be set back by Kenyan instability.

PREVENTIVE OPTIONS

The United States and other interested states have far less leverage over Kenyan domestic politics than they did two decades ago, when Western pressure forced Kenya's return to multiparty politics. The Kenyan government no longer depends as much on external aid to operate. Notwithstanding the

flaws in the 2007 elections that brought it to power, the current coalition government is also democratically elected. Consequently, concerned states now need to rely more on their ability to persuade Kenya's political leaders that it is in their interests to ensure free, fair, and peaceful elections. In the lead-up to the election, six efforts appear most promising:

- The United States could lead a coalition of like-minded states to impress upon the Kenyan government that time is running out to make adequate preparations for a credible election, including enhancing the police's preparedness to prevent and contain violence. The ability of the United States and others to persuade Kenya's political leaders to take necessary actions has always been greatest when done multilaterally. Such multilateral messaging, however, has historically depended on the United States playing a leadership role. An informal contact group of donors, now known as the Democracy and Governance Donors Group, has existed since 1992, but its recent activities have been limited largely to discussions among technical experts on elections management, democracy assistance, and conflict prevention. These discussions need to be raised immediately to the chiefs of mission level to finalize and implement a coordinated action plan to develop a common strategy that aims to raise the prospects of a credible election. Kenya's international partners wield their greatest influence when they articulate concerns on a multilateral basis. The leading partners for coordinated action are the United Kingdom, Germany, Canada, Denmark, the Netherlands, Sweden, and especially the European Union. Strong messaging by other states in Nairobi should be buttressed by strong messaging from home. A joint or complementary statement or statements by U.S. president Barack Obama, UN secretary-general Ban Ki-moon, and other influential leaders would be particularly useful.
- Together with its partners, the United States could publicly announce its support for the continued diplomatic engagement in Kenya by Kofi Annan and the African Union Panel of Eminent African Personalities, which he chairs. Although Annan brokered the National Accord between President Mwai Kibaki and Prime Minister Raila Odinga that ended the 2007 postelection violence, his presence in Kenya has never been fully embraced by Kibaki's side of the coalition government, including presidential candidate and ICC indictee Uhuru Kenyatta. Annan's mandate and that of the panel could nevertheless be extended until after the elections. He and his colleagues constitute an African solution to a major African problem and provide a respected platform on which the United States and its partners can mount their own efforts.
- The United States can also work with its partners to provide whatever assistance the IEBC may still require for the elections, including the provision of outstanding equipment and supplies, and/or additional technical expertise to enable the commission to complete its outstanding tasks.
- The United States could continue funding programs via USAID's Office of Transition Initiatives (OTI) to strengthen civil society organizations that focus on countering youth mobilization. Youth in conflict-prone areas—including Nairobi's slums, Eastleigh, the northwestern Rift Valley, Kericho, and the coast—are particularly vulnerable to being recruited by elites for the purpose of fomenting electoral violence. Strengthening civil society networks in these areas is arguably the most effective method to counter their mobilization. USAID should also continue its support of the Elections Observation Group (ELOG), a network of civil society organizations intending to provide domestic electoral observers.
- The United States could provide international assistance to strengthen Kenya's police to be better prepared for dealing with election-related violence as it unfolds. Put simply, Kenya needs to

recruit, train, and deploy more cops. However, any assistance to build greater police capacity must be provided in a manner that does not perpetuate the poor record of the police with respect to human rights. The United States could encourage the United Kingdom to assist in this vital area since the UK has greater experience in providing this form of aid.

- Finally, the United States, along with like-minded partners, could mount an aggressive multilateral electoral observation mission consisting of two parts: long-term observation starting no later than January 15, 2013, to monitor preparations for the elections at all levels across Kenya and continuing through the end of the elections; and an exercise that would track outbreaks of violence before and after the elections. The Carter Center and/or the National Democratic Institute have the capacity to mount such observer missions, and the UN Electoral Assistance Division could be engaged to maximize coordination.

MITIGATING OPTIONS

Given Kenya's electoral history, there will almost certainly be further incidents of violence in the run-up to the 2013 elections. Such violence will consist mainly of small-to-moderate outbreaks scattered across the country, which the Kenyan police—supplemented in extreme cases by the Kenya Defence Force—may still have the capacity to put down. Violence between the first and second rounds of the presidential election, or after the second round if the outcome is in doubt, is likely to erupt rapidly as it did in 2007. In such circumstances, the United States and others have few good options beyond applying diplomatic pressure and offering mediation assistance. Timely military intervention to prevent a major escalation of violence is not feasible. In contrast to West Africa, where the Economic Community of West African States (ECOWAS) has intervened in its region, there is no comparable organization in East Africa. The East African Community remains fragile and is unlikely to risk its future by moving into the military sphere. Authorizing and organizing an international coalition of the willing will be difficult and is unlikely to be consummated in time.

To improve the ability of concerned states to respond promptly to a potentially rapidly deteriorating situation, one option would be to “pre-position” a multinational diplomatic mission in Nairobi on the eve of the presidential election. This could be headed by a special envoy of the UN secretary-general and contain representatives of the other leading external actors. It would be prepared and empowered to act quickly to bring a negotiated end to an emerging crisis and avoid the kind of drawn-out negotiations that occurred in 2007. Any pre-positioning of an international delegation from outside Africa should be preceded by the AU's reauthorization and perhaps enlargement of the Panel of Eminent African Personalities.

The United States and its partners have few “sticks” to apply to encourage recalcitrant players to agree to a negotiated settlement. Two options, however, could be useful. The first is targeted sanctions against individual Kenyans, particularly members of the political class who incite violence, including visa bans and the freezing of their personal assets. To be effective, such measures would have to be extended to family members, especially children attending American and British universities. Visa bans might also be extended to prominent members of the business community known to support politicians involved in violence. Second, the United States could provide a clear warning that it will continue to support any investigations and ICC prosecutions if atrocities are committed again. Given other U.S. domestic and foreign challenges, there is likely to be little appetite in the Obama administration to take more extensive action.

RECOMMENDATIONS

The United States should impress upon Nairobi the importance of taking steps to prevent significant and widespread election violence. Secretary of State Hillary Clinton's visit to Nairobi in August 2012 was a positive first step. It should now be complemented by the following initiatives:

- Bring together like-minded states to push the Kenyan government to make adequate preparations for credible elections. The message from Washington and its partners should be that further delays sow doubts about the grand coalition government's commitment to full implementation of the National Accord and 2010 constitution. These communications should include a joint or complementary message or messages from President Obama, Secretary-General Ban, and other influential world leaders who recognize the centrality of successful elections for Kenya's transition to democracy.
- Provide unequivocal support for the continued diplomatic efforts of the African Union's Panel of Eminent Personalities in Kenya by encouraging the AU to expand and reauthorize the panel through May 2013. Urge the panel to increase the frequency of its visits to Kenya in the run-up to the elections and pre-position the panel in Kenya on the eve of the first vote and through the runoff to more quickly address any breakdown in the process.
- Rapidly provide any assistance that the IEBC may require to administer credible elections. The assistance could include helping the IEBC with voter education initiatives and with recruiting and training the 120,000 temporary poll workers potentially needed. It could also come in the form of providing technical expertise or funding and logistical support for the commission's procurement and deployment of needed supplies, such as ballots and ballot boxes. The need and likely impact of such aid should be reviewed case by case.
- Extend the current program by USAID OTI to strengthen civil society efforts to prevent election-related violence in conflict-prone areas, and integrate the new programs by the Department of State's Bureau of Conflict Stabilization Operations with those of OTI so that the two agencies do not work at cross-purposes.
- Encourage the United Kingdom and other countries with greater police-training expertise and experience than the United States to assist the Kenya police to strengthen and perhaps expand its numbers so it is not overwhelmed by the forthcoming elections as it was in 2007.
- Authorize, fund, and initiate a robust and coordinated international electoral observation mission to monitor preparations for the elections, the conduct of the elections, and the reporting of the results. The mission, in coordination with efforts by domestic observers, should include parallel vote tabulation, or PVT, to increase the likelihood of an honest and timely reporting of results. It could also monitor those outbreaks of violence that occur before and after the elections.
- Join with like-minded governments, particularly the United Kingdom, to impose visa bans and asset freezes on members of Kenya's political class who incite violence and engage in demagogic behavior.

The United States and others may have limited leverage over Kenya's domestic politics, but they are not without options that would significantly improve the prospects for acceptable elections and help avert a major crisis. However, with little more than two months before the elections, Washington must intensify its engagement or forsake its opportunity to make a difference.

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