



INSTITUTE FOR DEFENSE ANALYSES

**Kenya Trip Report: Evaluating Conflict
Triggers in Kenya's 2013 General
Elections**

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Stephanie M. Burchard
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Executive Summary

- In late January/early February 2013, IDA researchers traveled to Kenya to work with civil society to evaluate the preparations in place to mitigate electoral violence, understand the factors that might trigger violence at different points in the electoral cycle, and determine the likelihood for violence.
- IDA's discussions with civil society organizations, government officials, and other stakeholders confirmed Tana River, locations in northeastern and eastern Kenya, Kisumu, Mombasa, Eldoret, Marsabit, Mt. Elgon District, Nakuru, and Nairobi are at high risk for pre-election violence. Intense post-election violence, on the scale that occurred in 2007-2008, seems unlikely, due to the controls on hate speech and the threat of the International Criminal Court; they appear to make *organizing* large-scale violence costlier and riskier for politicians.
- The Kenyan political landscape, however, is volatile. IDA researchers identified four key events that could directly affect political strategies on the ground and, in turn, the likelihood of violence. Particular attention should be given to:
 - The ruling by Kenya's High Court on Uhuru Kenyatta and Willam Ruto's suitability for office (expected February 15)
 - Any development in the ICC case
 - The controversy over withheld UN funds
 - The possibility of a second round of voting.



INSTITUTE FOR DEFENSE ANALYSES

**GLOBAL COVERAGE ANALYSES PROGRAM – AFRICA
ELECTIONS, REGIME SUCCESSION, AND GOVERNANCE**



**TRENDS IN DEMOCRATIZATION AND
ELECTORAL VIOLENCE IN AFRICA**

**KENYA TRIP REPORT: EVALUATING CONFLICT TRIGGERS IN
KENYA'S 2013 GENERAL ELECTIONS**

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FEBRUARY 12, 2013

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Kenya Trip Report: Evaluating Conflict Triggers in Kenya's 2013 General Elections

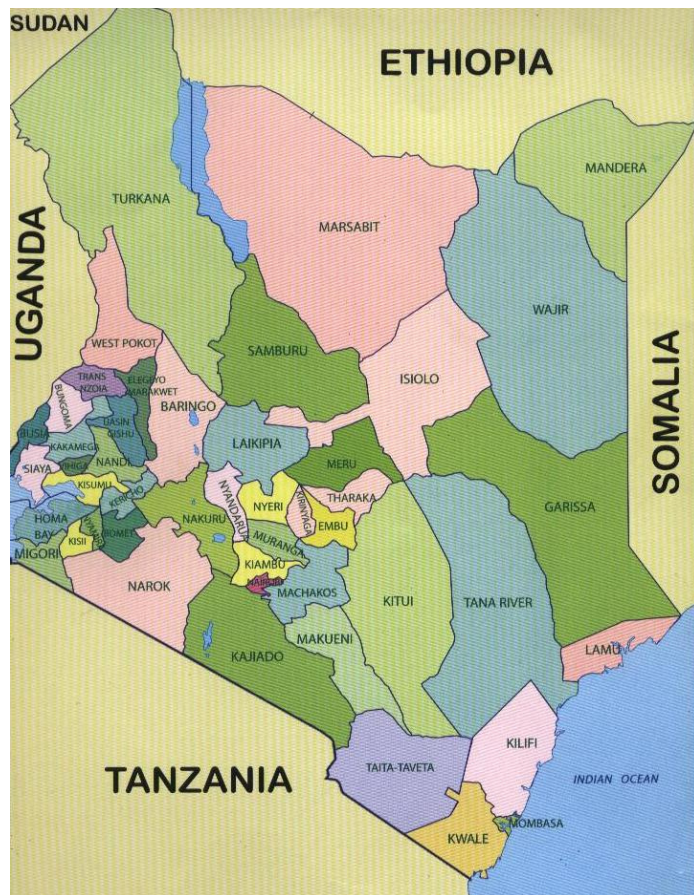
Introduction

Kenya's general elections, scheduled for March 4, 2013, are of increasing concern to Kenyans, the region, and international institutions. The polls will determine 1,882 elected positions, but most of the focus rests on the presidential race. It pits Uhuru Kenyatta (a Kikuyu), who has selected William Ruto (a Kalenjin) as his running mate, against Raila Odinga (a Luo), the current prime minister. The ethnicities of the candidates are significant because the post-election violence in 2007-2008 was committed explicitly in ethnic terms (even if underlying explanations are not necessarily related to ethnicity). In 2007, following the announcement of Odinga's loss to incumbent Mwai Kibaki (a Kikuyu), extremists in the Kalenjin community, who had allied with Odinga, directed attacks mostly toward the Kikuyu. After a month of retaliatory attacks and counter-attacks eventually drawing in other ethnic groups, nearly 1,300 died and 664,000 were displaced.¹ The resulting National Accord and unity government, which ended the violence, were meant to usher in reforms to several key institutions, in a bid to break the cycle of electoral violence in Kenya.

In view of Kenya's 2013 general elections, IDA researchers traveled to Kenya in late January/early February 2013 to work with civil society to evaluate the preparations in place to mitigate electoral violence, understand the factors that might trigger violence at different points in the electoral cycle, and determine the likelihood for violence. IDA partnered with the Electoral Institute for Sustainable Democracy in Africa (EISA), which has a field office located in Nairobi, to organize a two-day workshop ("Improving Efforts to Prevent Electoral Violence in Kenya") in Nairobi from January 27 to 29, 2013. IDA also participated in EISA's two-day regional meeting in Nakuru, Kenya on January 31 and February 1, 2013. Both events drew approximately 30 participants. In addition, IDA conducted interviews with civil society organizations, electoral experts, and politicians in Kenya. The following report summarizes IDA's main findings on election preparations, conflict triggers, and the possibility of violence at different points in the electoral cycle. The report documents the current hotspots for violence, conflict drivers, and key institutional reforms and weaknesses. The report concludes with four contingencies that could adversely impact the election, should they occur.

Current Hotspots

An estimated 477 people have already died, and 118,000 have been displaced in inter-communal violence from the beginning of 2012 until February 2013. While not all death and displacement is related to the elections, a significant portion qualifies as such. In particular, the clashes between the Orma and Pokomo in Tana River County, which have been linked to electoral politics, left 180 dead and 34,000 displaced. In Isiolo, Mandera, Garissa, and Marsabit (northeastern and eastern Kenya), 120 people were killed and 77,000 displaced through inter-clan violence, likely stemming from competition over the devolution of power and creation of county governments.² Not surprisingly, many Kenyans are anxious about the possibility of electoral violence, as a January 25, 2013 IPSOS Political



Source: <http://softkenya.com/county/kenya-counties-map/>

Barometer Survey revealed. In particular, 79 percent of Marsabit, 40 percent of Makueni, 38 percent of Kakamega, 37 percent of Mombasa, 36 percent of Garissa, 31 percent of Isiolo, 30 percent of Nairobi, 29 percent of Homa Bay and Nyeri, 28 percent of Migori, and 26 percent of Kilifi, Kisumu, Mandera, Murang'a and Vihiga County residents believe electoral violence is likely to occur.³ IDA's discussions with civil society organizations, government officials, and other stakeholders confirmed that some of these areas would indeed experience violence and identified several other areas at high risk of election-related violence. In addition to Tana River and the locations in northeastern and eastern Kenya, additional areas of high concern included Kisumu, Mombasa, Eldoret, Marsabit, Mt. Elgon District, Nakuru, and Nairobi.⁴ The existing tensions of these high risk communities are elaborated below. Notably, many other communities may be at risk; the aforementioned nine, however, were highlighted in several discussions.

Kisumu

Serious electoral clashes could erupt in Kisumu, as two principal gangs – American Marine and China Squad – are considered closely allied with political parties. American Marine, in existence for approximately five years, is viewed as allied with Odinga’s Orange Democratic Movement (ODM). There are reports that American Marine provides protection to ODM officials when they visit, and some gang members have high positions in the party.⁵ On the other hand, China Squad, a newer gang, is associated with The National Alliance (TNA), led by Kenyatta, and is perceived as having a closer relationship with the government in Kisumu. The state apparatus appears biased because state counsel has brought more charges, and the police have reacted more violently against American Marine, but other investigations also report police inaction against American Marine.⁶ Both gangs charge small businesses “protection fees” and harass private property owners. Mediation efforts between the two groups have been futile and marred by mistrust. Serious clashes between American Marine and China Squad erupted in September 2012, when ODM aspirant, Shem Onyango Kwegu, was killed. No arrests were made in the cases, which resulted in several days of armed confrontation between the gangs. When the police finally intervened, eight protestors were killed. Fighting stopped with the intervention of the National Cohesion and Integration Commission.⁷

Mombasa

The Mombasa Republican Council (MRC), a separatist movement on the mainly Kenyan Coast, home to most of Kenya’s Muslims,⁸ has the potential to destabilize the coastal region. The group claims a 1963 agreement between the British, the Kenyan Government, and the Zanzibar Sultan that gave the strip of land to Kenya is invalid.⁹ According to local sources, the MRC plans to disrupt and discredit the polls by preventing the people of Coast province from voting. The MRC believe that low voter-turnout would give them more leverage in its secessionist argument, since they could then claim that the Muslims of the region were not motivated to vote.¹⁰ Their threat might be mitigated, however in the coming days, as some members of the MRC have been actively campaigning for candidates, and a founding MRC Secretary General Khatib Mjaka Mtengo is local parliamentary candidate in Msambweni.¹¹

Local observers are also concerned by the emergence of an anti-democratic Muslim Sect, Hizb ut-Tahrir (HT), in Mombasa. HT is a radical Islamist group dedicated to establishing global Muslim governance across the world. They object to Muslims voting in non-Muslim countries and work toward instituting Shari’a. While their presence in Kenya only began to be mentioned in late 2012,¹² the group claims to be active in nearly 50 countries.¹³ Both the MRC and HT are undertaking substantial recruitment efforts in the region. There are fears that HT and the MRC could join forces to disrupt the elections, since low voter turnout could be portrayed as validation and support for each of

their objectives.¹⁴ Notably, during the recent primaries, most coastal nominations were given to upcountry candidates and Christians.¹⁵

Tana River County

Politicians are likely to continue exploiting grievances of the local communities in Tana River County and to use violence as a tool to win the upcoming elections by displacing certain ethnic groups from their constituencies.¹⁶ Politically motivated fighting between the Christian Pokomo agriculturalists and the Muslim Orma pastoralists in Tana River County since August 2012 has left more than 180 people dead and 34,000 people displaced.¹⁷ In August, local Member of Parliament Dadho Godhana was arrested for inciting violence, and Interior Security Minister Yusuf Haji was questioned for his involvement.¹⁸ After violence erupted in January 2013, locals reported that the attackers were sponsored by politicians to commit electoral violence and ethnic cleansing.¹⁹

Eldoret Constituency

Violence is also likely to intensify in Eldoret, located in Uasin Gishu County. Ruto, Kenyatta's vice presidential candidate on the Jubilee Alliance ticket (which comprises TNA), is accused of mobilizing his Kalenjin kinsmen to carry out pre-planned attacks on Kikuyus, Kisii, Kamba, and others in Eldoret during the 2007-2008 elections. While the town appears peaceful, workshop participants warned that residents are angry and suspicious of each other, and violence could easily erupt. There have already been claims that people from other regions have been brought into Eldoret to vote for the Jubilee Alliance.²⁰

Marsabit County

Marsabit is inhabited principally by the Borana, Gabra, Burji, Rendille, and Turkana. Longstanding ethnic grievances, between its resident groups, intensified by the political competition created by devolution of power, put Marsabit County at risk of experiencing electoral violence.²¹ Indeed, the gubernatorial race has already been organized along ethnic lines and ethnic alliances have already formed.²² Frequent clashes between the Borana, the largest group, and the smaller groups, especially the Gabra, have destabilized the region for decades and small arms are easily obtained. The sparse police presence and the lack of national attention make it easier to commit violent acts with impunity.

Mt. Elgon Constituency

The Mt. Elgon constituency, which is now a part of Bungoma County, was previously its own district. Bungoma County has four main ethnic groups, namely the Bakusu, Sabaot, Tachoni, and Tura. Violent clashes have occurred in the region with

particular ferocity since the creation of the Sabaot Land Defence Force (SLDF), in 2005. Clashes take place not only between the various ethnic groups, but also among clans with the Sabaot.²³ Repeated police and military attempts to rid the region of the SLDF have led to claims by residents that police killed, tortured, and displaced civilians in their attempts to oust the militants.²⁴ Claims that the SLDF are regrouping ahead of the elections emerged in early January 2013.²⁵

Nakuru

Nakuru is the main city in Kenya's Rift Valley, the province where approximately 50 percent of the fatalities resulting from the 2007-2008 post-election violence took place.²⁶ The main grievances include unequal access to land and ethnic-based conflict between the Luo, the Kikuyu, and the Kalenjin. It was reported to IDA that there have recently been large movements of people out of Nakuru County, that tribal alliances have been formed, and that significant amounts of food supplies are being stored in anticipation of the election. IDA researchers witnessed residents assembling in protest of the nomination of a candidate in Nakuru: Police drove through a throng of people to defuse the situation and calm was quickly restored. It should be noted that because Nakuru was particularly hard hit during the 2007-2008 post-election violence, it should come as no surprise that residents are anxious.

Nairobi

Nairobi City and Nairobi City County are at risk of experiencing electoral violence because the grievances that arose during the 2007-2008 electoral violence, which heavily impacted Nairobi, have not been addressed. Many people who lost their homes and property in the informal settlement in Kibera are still displaced. There have already been claims of importation of voters from other regions and of voter intimidation during the primaries. The perception that politicians have already committed fraud during the January 2013 nomination process in Nairobi has left voters in the city angry. Fierce competition between the major coalition and minor parties is expected in Nairobi for local and national positions. The proliferation of gangs in the informal settlements makes hire by politicians or grassroots violence over land and other grievances more likely. Underlying structural issues such as youth unemployment, land issues, social tensions, and drug and alcohol abuse in the slums are also exacerbated in Nairobi.

Enduring Conflict Drivers

Land Grievances

Kenya's history is replete with challenges by indigenous groups to settlers over land rights, grievances generated by unlawful acquisition of land by politicians or other

powerful individuals, and tensions between ethnic groups sharing the same land. In the past, these grievances have been manipulated by politicians to encourage ethnic clashes – where members of particular ethnic groups are displaced, intimidated, or killed – in a bid to secure votes. For example, in Coast province in 1997, the Raiders, a gang comprising the Digo ethnic group and funded by a local politician, attacked Kikuyu whom they charged with taking both their jobs and their land.²⁷

Despite reforms to the Land Commission, historical grievances have not been solved since the 2007 elections. Indeed, Odinga has begun to mention land rights in a veiled reference to beliefs by some that the Kikuyu have unlawfully acquired land of other groups; Kenyatta is a Kikuyu. While the National Cohesion and Integration Commission (NCIC) stated that land grievances (and other historical injustices) references could not be used in campaigns,²⁸ it is a tried-and-true mechanism for inciting violence, if its use is not curbed.

Internally Displaced People

The 2007-2008 post-election violence resulted in the displacement of 664,000.²⁹ While the government of Kenya announced that only 740 people remained displaced as a result of the 2007-2008 violence and they would be resettled by the end of February,³⁰ this might not be an accurate picture. From the beginning, international organizations have questioned the methodology used by the Kenyan government to count the number displaced: whereas most reputable sources refer to 664,000 IDPs (this number includes those in camps and with families), the Kenyan government counted 6,800 *households* who were officially registered by the Ministry of State for Special Programmes.³¹ Thus, while 740 might indeed be resettled by the end of February, the vast majority of IDPs could remain displaced. With so many IDPs who might harbor grievances related to their situation, they can easily be mobilized for violence.

Devolution of Power

The 2010 constitution divided Kenya into 47 counties, a significant devolution of power from the eight provinces that had existed. The new counties will each have a governor and an assembly, providing an opportunity for increased political contestation. It is also a chance for increased electoral violence. Indeed, this has already taken place: many concluded that the violence in Tana River was a result of the contest for governor, which pitted the Orma and Pokomo against each other.³²

Evaluating Key Institutional Reforms

The 2008 National Accord, which stopped the post-election violence, called for the reform of key institutions in Kenya. Most notable have been the passage of the 2010 constitution and the reform of the judicial sector. After all, Odinga chose to protest the

2007 election in the streets because he claimed the judiciary was biased. Today, Kenya has new and credible leaders in the judiciary: the chief justice and his two deputies were publicly vetted and questioned, a dramatic departure from the past. The National Accord also resulted in the creation of the NCIC, tasked with reconciling Kenya's ethnically divided electorate, and an acute focus on quickening responses to early warning of violence. On other essential reforms – the electoral commission, the police service, and parliamentary oversight procedures – the balance sheet is mixed.

Independent Electoral and Boundaries Commission (IEBC)

The missteps and weakness of previous Electoral Commission of Kenya (ECK) was seen by many as the trigger in the post-election violence – making reform to the election management body essential to breaking the cycle of violence. Indeed, the IEBC has significantly more power than the ECK, which many see as an asset in preventing election violence.³³ Unlike the ECK before it, the IEBC commissioners have spoken with the top presidential candidates – Kenyatta and Odinga – and explicitly warned them about their electoral conduct.³⁴ The previous ECK commissioner was unable to communicate frankly with the presidential aspirants. Many also praised the IEBC for undertaking reforms that make it difficult to interfere with vote counting and tabulation.³⁵

Despite this progress, the IEBC is the source of much concern among Kenyan civil society. General sentiments seem to be that the IEBC as a whole is, at best, incompetent and, at worst, seriously lacking in objectivity and integrity. According to African Union (AU) observers, the IEBC has shifted timelines for the electoral process on many occasions,³⁶ leading to confusion in the public's perception and on the ground. Many stakeholders expressed concerns about the partiality of the IEBC, flawed nomination process during the party primaries, and the absence of voter education programs. Deputy IEBC Commissioner Yusuf Nzibo, present at the workshop, attempted to assuage concerns. Addressing claims about the lack transparency and impartiality, in particular, he stated that a multitude of actors from political parties and civil society will be invited to observe the opening of ballots, and provisional results will be updated in real time.

Additionally, several Kenyans commented on perceived biases within the IEBC leadership. It is rumored that the Chief Executive Officer of the IEBC, James Oswago, is a supporter of Odinga and the ODM while the Chair of the IEBC, Ahmad Issack Hassan, is a supporter of Kenyatta and TNA. Some, however, praised Hassan for being relatively neutral and believed that, because he is concerned with his legacy, he would continue to behave impartially.³⁷ Individuals also expressed displeasure in how the IEBC has ruled in various nomination disputes during the primary process. The IEBC failed to adequately enforce election-related laws during the primary process in that they did not bring charges against a single offender,³⁸ leading some to conclude that the IEBC was guilty of the selective application of justice. In the past, the chair of the ECK, Sam Kivuitu, stated

that his family was threatened when he ruled against the powerful political parties. It is not clear whether Mr. Hassan faces the same concerns.³⁹

The lack of voter education was among the most frequent complaints against the IEBC and a serious impediment to a credible and peaceful electoral process. In March, Kenyans will elect candidates to fill 1,882 positions at the national and county levels. In all, there will be six ballots: the president and vice president, parliamentary representative, county governor, county assembly representative, senator, and women's representative. Further, the new constitutional requirements for winning the presidency (50 percent plus 1 and a minimum of 25 percent of the votes in 24 of the 47 counties) is believed to be too complex for many voters to understand. Misinformation might allow politicians to stoke voter frustration and mobilize for violence. Voter education just began on Sunday, February 3.

Commissioner Nzibo explained that the IEBC would have liked to embark on a more comprehensive voter education program, but that the government did not provide adequate funds for the Commission to do so. In fact, from a request of Ksh26 billion (\$300 million), the IEBC received Ksh17 billion (\$200 million). In June 2012, there was an attempt by donors to fill the deficit by providing Ksh2.2 billion (\$26 million),⁴⁰ but it still left a substantial gap in the budget. One interviewee claimed that voter education funds were misappropriated by politicians and that greed led to the disappearance of a significant portion of voter education funds.

Apart from the logistics of casting ballots, the IEBC will be faced with the challenge of counting and declaring results in 1,882 races. Legally, the IEBC has seven days by which it must declare results. As was repeated numerous times, since Kenyans are unlikely to wait patiently for seven days for the results of the election, the IEBC has agreed to share provisional electoral results with the country. During the 2007-2008 cycle, media houses had released their own data, leading to clashes⁴¹ as confusion ensued. Final results for the presidential and parliamentary elections will be declared within 48 hours, with announcements of constituency results beginning just hours after the polls close.⁴²

The Police

Many are concerned about the role of security services in Kenya's upcoming elections. Concerns focused on both the ineffectiveness of the police and their inaction in disputes and perceived political biases. Several Kenyans mentioned that the police forces are sometimes biased and take sides in political disputes. For example, it was claimed that the police have taken sides in disputes between American Marine and China Squad in Kisumu. Additionally, individuals from Kisumu are especially worried about the increase of police in Kisumu ahead of the election. They report that having so many police so visible is causing significant anxiety among the population.⁴³ It was also

mentioned that, in some cases, the provincial administration police have been more helpful than the Kenya Police Force.⁴⁴

Many believe that the police reforms have been inadequate. In particular, many cite concerns that security forces are ill prepared to manage elections and the possibility of election-related violence. As one interviewee succinctly put it: “what police reforms?” Another interviewee believed that security forces could, at most, handle two pockets of instability but any more than that would seriously test police capacity.⁴⁵ The 2010 Constitution established the position of Inspector General of the Police to facilitate the implementation of police reforms. Due to political wrangling, this position was only recently filled in December 2012 by David Kimaiyo. While Kimaiyo has made several strong pronouncements about security and police readiness, there is serious concern that he has not had sufficient time in his position to affect much positive change.

Lack of Coordination Regarding Early Warning and Early Response

During the workshop, IDA researchers heard about the use of at least seven different platforms for reporting electoral violence. Some are promoted by the Kenyan government (Uwiano, district peace committees) and some by Kenyan civil society (NSC-Amani 109, PeaceNet, and Conflict Management Panels (CMP), Uchaguzi, and Sisi Ni Amani). So far, there is no mechanism for coordinating early warning systems. Responding to early warnings of violence is also weak. Most groups resort to notifying police forces. One interviewee, who is running for parliament, stated that he was unaware of any nationally promoted way to report election violence. Notably, when representatives from the Constitution Reform and Education Consortium have invited the police to attend meetings where they discuss areas of rising tension, the police have either refused to attend or, when they do, are defensive.⁴⁶

An important result of the EISA workshop in Nakuru, which brought together CMPs in the hotspots of Eldoret, Kisumu, Nairobi, and Nakuru, was the development of regional action plans to address electoral violence. In Eldoret, the CMP intends to coordinate with political liaison committees, involve media, hold sporting and cultural events, encourage aspirants to sign peace agreement, distribute flyers and stickers with peace messages, and issue weekly press releases on relevant events. In Nairobi, the CMP has stated its intention to go to the slums to hold forums and dialogues with voters and work with gangs (specifically the Mungiki), like they have in the past to prevent violence. In Kisumu, the CMP will hold dialogues, work with the media, field election observers, request a reduction in the number of security officers and monitor and evaluate the electoral process. In Nakuru, the CMP wants to hold various meetings and work closely with church leaders to prevent electoral violence.

The National Cohesion and Integration Commission (NCIC)

The NCIC was formed as part of the 2008 negotiation to end the post-election violence. It has the power to launch investigations into alleged discrimination and to make recommendations for prosecution. Since its inception, the NCIC has embarked on an ambitious program of civic education and advocacy. The NCIC was described as a very useful entity as it has a singular mandate to deal with and defuse electoral tensions. It can initiate proceedings to prevent and punish electoral-related offenses. Also, its membership is diverse and representative of Kenya as a whole.⁴⁷ Some, however, argue that the NCIC has been too focused on monitoring hate speech and not focused enough on working to foster national cohesion. It was also mentioned that the NCIC should coordinate more with the IEBC.⁴⁸

Parliamentary Reforms

The Kenyan Constitution laid out an ambitious framework for conducting of free and fair elections. There have been several acts passed by Parliament regarding the holding of elections (e.g., Political Parties Act, Electoral Integrity Act). Each provision has been significantly watered down by Parliament in the run-up to the 2013 election.⁴⁹ Participants mentioned that Parliament was “selfish” and had “torn the constitution into pieces.” Interviewees also noted that Parliament has actively been undermining the strength of the Constitution through subsequent election-related acts.⁵⁰ They also blocked efforts at enacting campaign finance reform.⁵¹

Hate Speech Monitoring

Close monitoring by various organizations has led to less overt hate speech being spread through major media channels. One of the NCIC’s main tasks is monitoring media for the presence of hate speech. They are tracking newspaper, radio, and television, and the government has hired bloggers to monitor websites for inflammatory content. The government enlisted the help of the Umati team, a web-based project monitoring dangerous speech for research firm iHub Research. Kenya’s National Human Rights Commission and civil society NGOs will also be monitoring online content.⁵² There is, however, little that NCIC or any Kenyan body can do to shut down Twitter, Facebook, or other websites.⁵³ Moreover, enforcement has been spotty; the IEBC has the power to impose sanctions, but only one politician so far has been charged with hate speech, and it remains to be seen how the IEBC uses its sanctioning power in the weeks to come.⁵⁴

Media houses appear to be refraining from outright hate speech because they know they are being observed and because a radio talk show host charged with fueling the 2007-2008 violence will face trial at the ICC.⁵⁵ It is not only pressure from the NCIC and the Media Council of Kenya, and various other organizations, but also monitoring by local police and security forces that is dissuading hate speech. Local police are recording

speeches at rallies and local meetings. There are reports of gang members and politicians who desisted from using hate speech and fled after noticing recording devices.⁵⁶

While overt hate speech is greatly diminished, subtle and coded hate speech has persisted. Land, for example, a contentious and ethnically charged issue at the heart of the 2007-2008 Kikuyu-Kalenjin clashes,⁵⁷ is already being raised by the candidates. In various speeches and interviews in recent weeks, Odinga has brought repeated focus to the divisive issue of land and has said that his opponent, Kenyatta cannot be trusted with land reform. Odinga argues that Kenyatta is one of the people who own huge dubiously acquired tracts of land. Claims have also been brought against William Ruto for allegedly using questionable land deeds to acquire a farm.⁵⁸ Police Inspector General David Kimaiyo warned all candidates to refrain from discussing land and other historical grievances since they are emotionally charged issues that can easily incite violence. Odinga, however, has said he will continue talking about land because it is an important issue and Uhuru and Ruto have important questions to answer concerning it.⁵⁹

Politicians and community leaders are also communicating through songs, prayers, and other formats. For example, subtle hate speech was sneaked into one peace prayer meeting, where candidates prayed that their specific opponents be struck down by God and urged voters to be on the side of God. Yet, it is also nearly impossible for any organization to monitor the below-the-surface interactions of politicians and constituents. What a candidate and his or her campaign staff say to citizens when they are going door to door cannot be monitored or punished. Corrupt politicians could be riling up gangs and promoting violence covertly enough to go unnoticed.⁶⁰

Tentative Conclusions and Unexpected Events

From interviews with stakeholders and workshop participants, IDA researchers conclude that there will be increased pre-election violence. The risk of intense post-election violence, however – at the level seen in 2007-2008 – is unlikely. The controls on hate speech and the threat of the ICC appear to make *organizing* large-scale violence costlier and riskier for politicians. The focus, it seems, will be on ensuring that voters who oppose a political party will somehow not be able to vote – either through displacement, disenfranchisement, or intimidation. For this reason, continued pre-election violence in small pockets of the country is more likely.

And yet, there is a great deal of volatility in the Kenyan political environment, making it difficult to predict with certainty how the election will unfold. While post-election violence less likely today, a few weeks before the election, certain developments might increase its likelihood as election day approaches. In this regard, IDA researchers identified four key events that could directly affect political strategies on the ground and, in turn, the likelihood of violence. Particular attention should be given to the ruling of the High Court on Kenyatta and Ruto's suitability for office (expected February 15); any

development in the ICC case; the controversy over withheld UN funds; and the possibility of a second round of voting.

High Court of Kenya Hearing on Presidential Bids of Uhuru and Ruto

A five-judge panel of the High Court of Kenya is scheduled to decide on February 15 whether Ruto and Kenyatta fit the ethnical and integrity standards for presidential candidates. In the unlikely event that the court rules against Kenyatta and Ruto, there is a very real chance of violence in their respective communities. Despite being charged with crimes against humanity by the ICC, Kenyatta and Ruto have the support of nearly half the electorate. Disqualifying them would cause serious security concerns. Stakeholders believe that the court will “read the mood” of the country, implying that they will not prevent Kenyatta and Ruto’s candidacies.⁶¹

Developments in the International Criminal Court Case

On February 9, the ICC wrote to the Government of Tanzania to request an analysis of whether the cases can be heard in Arusha. Meetings with some stakeholders in Nairobi suggested that this might relieve some of the tension surrounding the case. If the hearings are held in Africa, some felt that they would somehow be fairer than if they were held in Europe. Current news reporting indicates that many of the witnesses are fearful of the cases moving to Arusha or any other African countries – saying that they feel safer in Europe.

Kenyatta and Ruto have indicated that, if they are able to win the presidency, it would make it easier to avoid the ICC trial. In a recent interview, Ruto stated that, if the Kenyan people voted him in, it would be a signal that he is cleared of the charges against him because criminals would not gain the support of the people.⁶² A second place finish might corner the two accused and could lead them to use violence to force another unity government in a bid to avoid facing the ICC process. Transferring the case to Arusha might reduce the fear of a conviction, if they believe such a process would be easier to overcome.

United Nations Funding

The United Nations is withholding nearly Ksh18 Billion (\$209.3 million) meant to reimburse Kenya for personnel and equipment used in intervention in Somalia. Kenya had budgeted to use the funds for the upcoming election. But the African Union Mission in Somalia has requested a forensic audit on the reimbursement claims by Kenya. Already, the Kenyan parliament’s reduction in the IEBC’s budget has resulted in deep cuts in voter education – particularly worrisome because of the complexity of the election. Additional cuts in the budget could further damage the credibility of the IEBC –

already shaky because of its bungling of the voter registration and the primary nominations processes – and the credibility of the elections in general.

Second Round

Kenyatta and Ruto feel that their best chance of avoiding the charges and trial of the ICC is to win the election in the first round. The second round, should one be required, is scheduled for April 11; it is also the first day of the ICC trial for Uhuru Kenyatta. William Ruto is scheduled to start trial on April 10.⁶³ Without the protection of being a head of state, they will have to face the charges at The Hague. Although they have claimed that they are prepared to do so, this is no guarantee that they will honor that commitment. More realistically, it seems that they will try to avoid going to The Hague – as has Sudan's Omar el-Bashir, the only other sitting head of state facing ICC charges. If there is to be a second round, it will likely increase the chances that Kenyatta and Ruto will try to foment violence between the first and second round, in a bid to demonstrate their supporters' unwillingness to keep the peace while they are in The Hague. This could result in another powersharing arrangement, thereby shielding them from testifying.

While IDA researchers are predicting the continuation of pre-election violence and a lower risk for intense post-election violence, this does not mean that the number of deaths or displacement will be less. Indeed, the fatalities and displacement from the violence preceding the 1992 election were the same as the 2007-2008 violence. Spread over eight months, however, rather than one month, it appeared less intense. Attempts to stop violence should therefore take place now and not wait for the day after the election.

Acronyms

CRECO	Constitution and Reform Education Consortium
CMP	Conflict Management Panel
EISA	Electoral Institute for the Sustainability of Democracy in Africa
ELOG	Election Observation Group
ECK	Elections Commission of Kenya
HT	Hizb ut Tahrir
ICC	International Criminal Court
IEBC	Independent Elections and Boundaries Commission
MRC	Mombasa Republican Council
NCIC	National Cohesion and Integration Commission
ODM	Orange Democratic Movement
SLDF	Sabaot Land Defence Force
TNA	The National Alliance

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