



Kenya: Current Issues and U.S. Policy

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Summary

- The U.S. government views Kenya as a strategic partner and anchor state in East Africa, and as critical to counterterrorism efforts in the region. Kenya has repeatedly been a target of terrorist attacks, and the concentration of potential international and domestic targets in Kenya remains a serious concern. Its military plays a key role in regional operations against Al Shabaab in Somalia.
- Kenya ranks among the top U.S. foreign aid recipients in the world, receiving nearly \$1 billion annually in development, humanitarian, and security assistance in recent years. The country hosts the largest U.S. diplomatic mission in Africa.
- There is considerable uncertainty surrounding Kenya's upcoming elections on March 4. President Mwai Kibaki is retiring after serving two terms, and a close race and crowded field of candidates appears likely to force a presidential runoff in April. The international community is particularly concerned with the potential for a repeat of the widespread violence, largely along ethnic lines, that followed Kenya's last elections in December 2007. That crisis tarnished Kenya's generally peaceful reputation and had a significant impact on its economy, which is East Africa's largest and most diverse.
- The March elections are the first to be held under a new constitution, and are its most complex yet, with voters casting six different ballots for presidential, parliamentary, and local candidates. Domestic and foreign observers have expressed concerns with technical challenges such as long queues and insufficient voter education; localized political violence; and allegations of vote buying, voter intimidation, and threats against the judges responsible for resolving electoral disputes. Rumors of bias and partisan activities by some top government officials persist, and questions regarding police preparedness remain. Polls suggest voting may largely follow ethnic lines, as in previous elections.
- The presidential frontrunners appear to be Prime Minister Raila Odinga and Deputy Prime Minister Uhuru Kenyatta. Kenyatta and his running mate, William Ruto, stand indicted by the International Criminal Court (ICC) for alleged crimes against humanity committed during the 2007-2008 post-election violence. Their trials are scheduled to begin in early April at the Hague. Their supporters have portrayed the cases as driven by Odinga and purported Western allies, and their continued compliance with the court, should they win the election, is in question.
- Kenya's key aid donors and senior Obama Administration officials have been supportive of the ICC process for the country, and several foreign governments have indicated that diplomatic interaction with Kenya's top leadership may be limited in the event of a Kenyatta/Ruto win. Additional foreign government restrictions on trade and aid may apply, depending on the Kenyan government's compliance with the court. Implications for U.S. relations, assistance, and future cooperation remain unclear, given that the United States is not a state party to the ICC. This may be a key question for Congress in the coming months, as it weighs various governance, human rights, and security priorities in the country.
- Impunity for state corruption and political violence has been a major challenge that continues to threaten Kenya's long-term stability. Reforms required under the new constitution, if fully implemented, could set the country on a new course.

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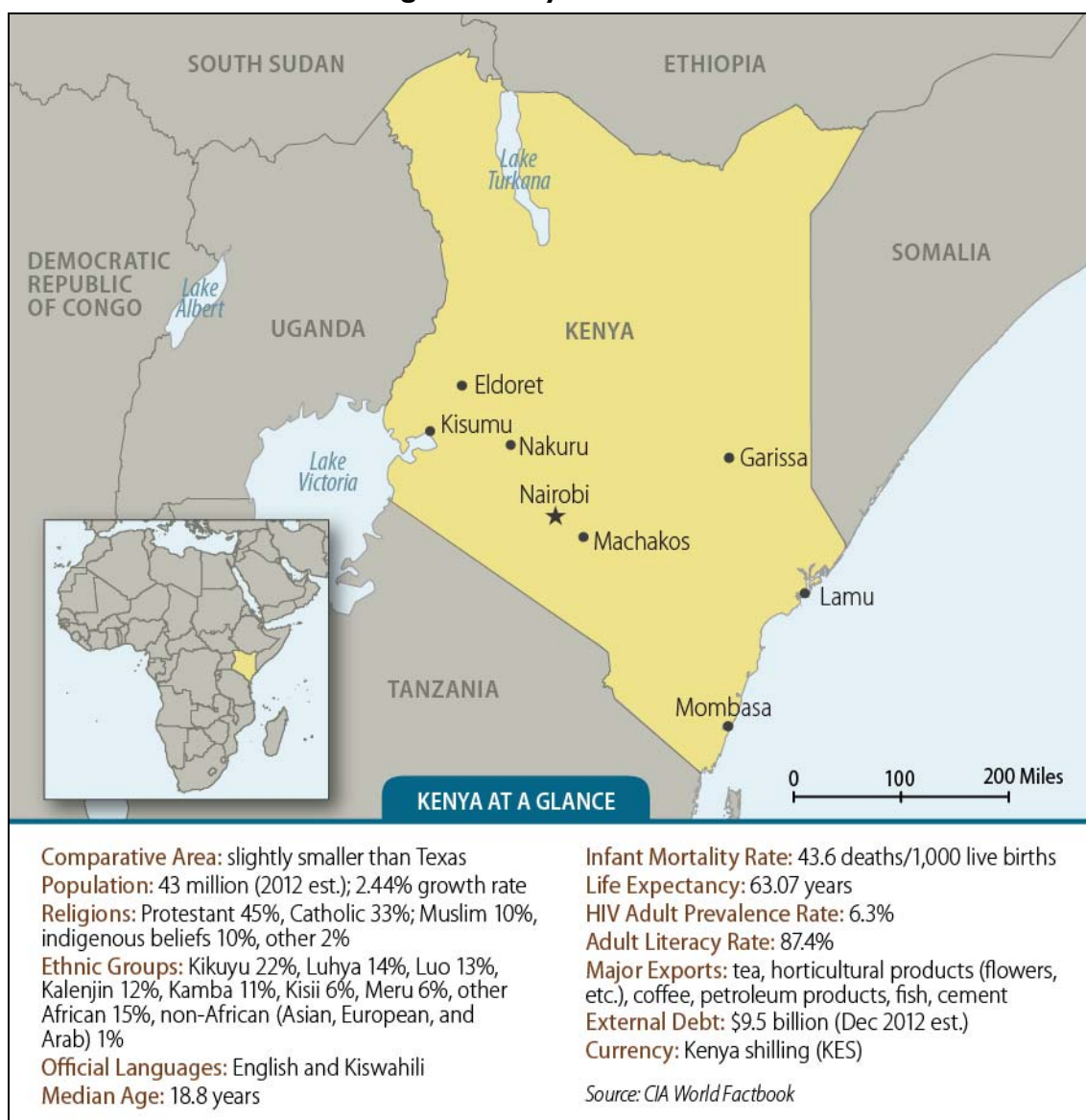
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Figure I. Kenya at a Glance



Introduction

The U.S. government has long viewed Kenya as a strategic partner and an anchor state in East Africa. After Al Qaeda's 1998 bombings of the U.S. embassies in Kenya and neighboring Tanzania, this partnership took on a new dimension as Kenya emerged on the frontline in the struggle against international terrorism. Kenya expanded its efforts to counter violent extremism in the region in late 2011, when it launched military operations in Somalia against a regional Al

Qaeda “affiliate,” Al Shabaab. The United States has also valued Kenya’s role as a peacemaker among its neighbors and as a host to refugees from across the troubled region.

With U.S. aid levels approaching \$1 billion annually, Kenya ranks among the top recipients of U.S. foreign assistance globally. However, governance and human rights challenges periodically complicate Congress’s annual deliberations on aid to Kenya and factor into its oversight of U.S. policy toward the country. Corruption and abuses of power have fueled grievances among Kenya’s diverse population. Periodic ethnic disputes—notably the widespread civil unrest that followed contested elections in December 2007—have marred the country’s generally peaceful reputation. Impunity for state corruption and political violence remains a major challenge that threatens to undermine the country’s long-term stability. Balancing these concerns against U.S. security priorities in the region may pose challenges for Congress in the near term.

As Kenya approaches its next elections in March 2013, there is significant uncertainty regarding the potential for further unrest. Public opinion polls suggest that voting may largely follow ethnic lines, as in previous elections. Some analysts view the pending prosecution of four Kenyans at the International Criminal Court (ICC) for their alleged involvement in the 2007-2008 post-election violence as an important first step toward establishing accountability, and as a deterrent to those who would foment ethnic animosities for political gain. However, among those indicted by the ICC are leading politicians who have sought to leverage perceptions in their communities that the cases are biased or driven by the West. Two of the defendants, who were on opposing sides in the last elections, intend to run together on a presidential ticket in the 2013 polls. This may minimize the likelihood of violence between their ethnic groups, but the possibility of conflict along other ethnic fault lines remains. Outbreaks of localized, deadly conflict in parts of the country in the past year are also of concern and may be linked to local political maneuvering in advance of the elections. Finally, spoilers, either foreign or domestic, could use small-scale terrorist attacks, which have increased in Kenya since the onset of its operations in Somalia, to disrupt the elections. The State Department maintains a travel warning for U.S. citizens given “heightened threats from terrorism” to U.S., Western, and Kenyan interests in the country.¹

Renewed unrest would have implications not only for Kenya but for the broader region. The country is a top tourist destination in Africa, although terrorist threats, a high urban crime rate, and several high-profile kidnappings have damaged its tourism industry, which took years to recover from the 2007-2008 violence. Kenya is a regional hub for transportation and finance, and its economy is among Africa’s largest. Many international organizations base their continental headquarters in Nairobi, which is home to one of four major United Nations offices worldwide and serves as a base for regional humanitarian relief efforts. Kenya also hosts the largest U.S. diplomatic mission in Africa, from which U.S. agencies manage both bilateral and regional programs. The United States manages relations with the Somali government—formally recognized by the United States in January for the first time in more than 20 years—from the embassy in Nairobi, given that the U.S. embassy in Mogadishu has been closed since 1991.

Political Overview

Kenya, a former British colony, was essentially a one-party state until 1991. The ruling party during this period (the Kenya African National Union, KANU) subsequently retained its political

¹ The January 2013 warning notes that “the levels of risk vary throughout the country.” See <http://travel.state.gov>.

dominance, in part through electoral manipulation and repression, until 2002, when long-serving President Daniel arap Moi stepped aside at the end of his fifth term under donor and domestic pressure. The elections that year were hailed at home and abroad as reflecting a fundamental shift in Kenya's democratic trajectory. For the first time, the fractious and primarily ethnically based opposition parties came together, forming the National Rainbow Coalition (NARC), to defeat Moi's chosen successor, Uhuru Kenyatta, son of Kenya's first president, Jomo Kenyatta. After the election, though, NARC's unified front slowly unraveled, revealing underlying ethnic grievances and patronage politics that belied the optimism of the 2002 polls.

One of the NARC factions, led by Raila Odinga, accused the new president, Mwai Kibaki, of dishonoring a deal made prior to the elections, which would reportedly have created a power-sharing arrangement with a prime ministerial post for Odinga. Instead, Odinga was appointed minister of roads. A then-ongoing constitutional review process might have provided a vehicle for the new prime minister post, Odinga's team argued, as part of a widely popular push for more checks and balances in the political system. The draft constitution proposed by the government in 2005, however, sought to maintain a strong presidency and create a ceremonial prime minister. It was defeated in a public referendum after an intense campaign led by Odinga and his allies.

Odinga and another former NARC member, Kalonzo Musyoka, both challenged Kibaki for the presidency in the December 2007 general elections. In the parliamentary polls, deemed largely credible, parties opposed to Kibaki's coalition made significant gains. Odinga's party, the Orange Democratic Movement (ODM), fell seven seats short of an absolute majority. The presidential election, however, was seen by observers as deeply flawed, with evidence of rigging on both sides. Despite significant irregularities in the vote tabulation process and indications that voter turnout in some areas was over 100%, the electoral commission declared Kibaki the winner, and he was quickly sworn in as president.

Riots in urban areas followed the announcement of the election results, and the outrage expressed by Odinga supporters turned violent in many parts of Kenya, largely along ethnic lines.² Some of the violence was spontaneous, but investigations found that multiple attacks were planned, with politicians on both sides implicated. In what became Kenya's worst political crisis since independence, as many as 1,300 people were killed and some 500,000 displaced during the ensuing six weeks of violence, according to the State Department.³ Negotiations between the parties under the auspices of former U.N. Secretary General Kofi Annan and several African former heads of state, combined with significant pressure from the United States and other aid donors, led to a power-sharing agreement on February 28, 2008. A coalition government was formed in April 2008, with Kibaki as president and Odinga in a new prime minister position. The parties agreed to draft a new constitution, and to address sensitive land rights issues.

² Inter-ethnic violence occurred between Luo (Odinga's ethnic group) and Kikuyu (Kibaki's ethnic group), primarily in urban areas, and in the Rift Valley, where election unrest combined with historic land-focused grievances held by Kalenjin ethnic groups, prompting attacks against Kikuyu communities. Many of the victims nationwide were Kikuyu, but Kikuyu gangs also organized retaliatory attacks against non-Kikuyu.

³ State Department, "Kenya," *Background Notes*, May 7, 2012.

Ethnic Dynamics and Divisions

Kenya is home to more than 50 ethnic groups, and no one group constitutes a majority of the population. The Kikuyu, comprising just over 20% of the population, are the largest group, and they have long been perceived by many Kenyans to disproportionately dominate the country's political class and the business community. Kikuyu led the Mau Mau insurgency against the British prior to independence. Under Kenya's first president, Jomo Kenyatta, a Kikuyu, the community was seen to benefit disproportionately from the allocation of state resources, namely land, constituency funds, government jobs, and procurement contracts. When Kenyatta's vice president, Daniel arap Moi, assumed office after Kenyatta's death in 1978, many of these benefits shifted to his people, a smaller grouping of ethnicities collectively referred to as the Kalenjin (estimated at 12% of the population).

In the first four decades after independence, the heartlands of these two communities—the central highlands around Mt. Kenya for the Kikuyu and the central Rift Valley for the Kalenjin—saw the greatest state investment in schools, roads, and health services. Other areas were marginalized and remain comparatively underdeveloped, such as the predominately Muslim provinces of Coast and North Eastern, and the area of western Kenya near Lake Victoria that many from the Luo ethnic group call home.⁴ Some Kenyans have referred to the dynamic of ethnic favoritism with colloquial phrases such as “It’s our turn to eat.” Such favoritism and patronage politics also has reinforced a focus on “tribe” among many Kenyans that has origins in the colonial period.⁵ Such perceptions underpinned the resentment that fed hate speech and violence surrounding the 2007-2008 post-election crisis. Related state corruption has also undermined the country's economic performance and development.

No single ethnic group constitutes a large enough voting block for its political leaders to obtain or maintain power alone—Kenya's electoral system requires them to form alliances with other groups. These alliances shift periodically; many of today's key political figures have moved in and out of government and the opposition since the Moi era.

Justice and Reconciliation

After reaching the 2008 power-sharing agreement, the new government established a Commission of Inquiry (often referred to as the Waki Commission for its chairman, Kenyan Justice Philip Waki) with international representation to investigate abuses related to the post-election violence. The commission provided its report to President Kibaki and Prime Minister Odinga in October 2008. According to the Waki Commission report, Kenya's “history of ethnic violence has been papered over” and there had been “no serious effort by any government” to punish the perpetrators or address the complaints of the victims. Further, the Commission stated that “impunity has become the order of the day.” The commissioners identified several factors contributing to the violence, namely:

the politicization and proliferation of violence, which in turn led to a culture of impunity;

the growing power and personalization of power around the Presidency;

the perception among certain ethnic groups of historical marginalization, which was tapped by politicians to create an underlying climate of tension and hate; and

a growing population of poor, unemployed youth who join militias and gangs.⁶

Rather than publicly disclosing alleged perpetrators, the Waki Commission provided a list of names to mediator Kofi Annan, who in turn submitted them to the ICC in July 2009.

⁴ See Commission on Revenue Allocation, Kenya: Country Fact Sheets, December 2011 at opendata.go.ke.

⁵ For further discussion, see, e.g., Michela Wrong, *It's Our Turn to Eat: The Story of a Kenyan Whistle-Blower* (NY: HarperCollins, 2009) and Charles Hornsby, *Kenya: A History Since Independence* (NY: I.B. Tauris, 2011).

⁶ Commission of Inquiry into the Post-Election Violence (CIPEV), *Final Report*, October 2008.

In 2011, the ICC summoned five senior Kenyan government officials and one radio journalist to respond to allegations of crimes against humanity committed during the post-election violence. The suspects each denied the accusations against them. The Court confirmed charges against four of the suspects—William Ruto, Uhuru Kenyatta, Joshua arap Sang, and Francis Mutharua—in January 2012.⁷ The Kenyan government has objected to these cases, despite being a state party to the ICC.⁸ The ICC judges have nevertheless proceeded, having found Kenyan efforts insufficient to constitute a credible claim to prosecuting the suspects at home. The trials are scheduled to commence in April 2013. Witness protection remains a serious concern.⁹

The New Constitution

Kenyan voters returned to the polls in August 2010 to vote on a new draft constitution, approving it by roughly a two-thirds majority. The new constitution brings major changes to government—it establishes new checks and balances and a more deliberate separation of powers; devolves considerable powers to a new county level of government; and creates new bodies, including a Supreme Court, an upper house (the Senate) in parliament, a new anti-corruption authority, and an independent land commission. New public vetting and oversight mechanisms for key state institutions have been introduced, and the 2010 constitution includes Kenya's first bill of rights. These changes have required the parliament to pursue an ambitious law-making agenda to implement the constitution before the upcoming March elections.

Initial reforms to the judicial sector under the new constitution have been received positively by donors and Kenyans, and are seen as both increasing its independence and enhancing the integrity of its judges. Several senior judges were found to be unfit for office—two were linked to long-running, high-profile corruption cases—and were dismissed in 2012. The new chief justice of the Supreme Court, former human rights activist Willy Mutunga, is viewed by many as a reformer.

Constitutionally required changes in some other sectors, including land and police reform, have moved more slowly, and some remain outstanding. In early 2013, Prime Minister Odinga objected to presidential nominees for senior police posts based on integrity issues and a lack of consultation; they were nevertheless sworn in in February. Concerns have been raised with the pace of police reform as elections approach, given police abuses during the 2007-2008 violence.¹⁰ The Waki Commission found that the police response to the violence varied and was affected by ethnic divisions, and that some police participated, or were complicit, in attacks against civilians. The Waki report states that at least 405 people were fatally shot by police, many in the back, often in ODM strongholds, and with a high likelihood that many were killed unlawfully. Human Rights Watch alleged that police were authorized to fire indiscriminately on protestors.¹¹ Amnesty International suggests that new policies on the use of force have yet to be applied in practice.

⁷ The six original suspects were Ruto, former Minister of Education; Kenyatta, Deputy Prime Minister and former Minister of Finance; Henry Kosgey, former Minister of Industrialization; Mutharua, former head of the civil service; Mohammed Hussein Ali, former police commissioner; and Sang, a radio journalist.

⁸ The government first lobbied for the African Union to petition the U.N. Security Council for a deferral and more recently applied to the East African Court of Justice for the transfer of the trials to the Tanzania-based court. Kenya's parliament passed legislation in 2010 unsuccessfully urging the government to withdraw as a state party to the ICC.

⁹ See, e.g., "ICC's Agony Over Key Kenyan Witnesses," *The Standard* (Nairobi), August 16, 2012.

¹⁰ See, e.g., Amnesty International, *Police Reform in Kenya: 'A Drop in the Ocean,'* January 2013 and Human Rights Watch (HRW), *High Stakes: Political Violence and the 2013 Elections in Kenya*, February 2013.

¹¹ HRW, *Turning Pebbles: Evading Accountability for Post-Election Violence in Kenya*, December 9, 2011.

The Upcoming Elections

Elections are scheduled for March 4, and expectations for the new electoral commission are high.¹² President Kibaki is constitutionally prohibited from standing for a third term. The constitution dissolves the prime minister position after the elections, and the two primary candidates for the presidency, according to opinion polls, appear to be Raila Odinga and Uhuru Kenyatta. Among the eight presidential candidates are other well-known politicians, and many expect the proliferation of aspirants to deny any contender the required absolute majority, thereby forcing a run-off.¹³ The likelihood of a close race increases incentives for political violence and the possibility that the final election results will be contentious, as they were in 2007.

The parties finished their primaries in January, and each has signed an electoral code of conduct. All eight presidential candidates participated in Kenya's first-ever presidential debate, held on February 11 and widely televised and broadcast on radio and Internet. It covered a range of issues, from job creation to security and crime. More sensitive issues were also raised, including tribalism and the ICC cases. Prime Minister Odinga, who will run with Kalonzo Musyoka on the ODM ticket, questioned the practicality of having an ICC indictee as president, alluding to Kenyatta, who has chosen former Odinga ally William Ruto to stand as his running mate for the National Alliance (TNA) party.¹⁴ Ruto faces ICC charges of murder, deportation or forcible transfer, and persecution, in relation to attacks, primarily against Kikuyu, by members of his Kalenjin ethnic group, in the Rift Valley. Kenyatta faces similar charges at the ICC, but his are tied to revenge attacks by Kikuyu gangs against groups seen to support ODM, namely Luo and Kalenjin. The impact of the allegations against Ruto and Kenyatta on their ability to draw votes from their ethnic bases is a major question in determining their prospects to win the election, but their partnership is likely to reduce the possibility of violence between Kikuyu and Kalenjin around the elections. Personally, Kenyatta and Ruto share a long history, having previously served together as members of KANU (Ruto ran Kenyatta's presidential campaign in 2002).

If the presidential race results in a runoff, it is expected to be held in April, which would coincide with the scheduled start of Kenyatta and Ruto's trials at the Hague. Both have pledged to cooperate with the Court, while denying the charges against them. ICC officials have raised concerns about the logistics of the trials, and some observers have questioned whether they might be delayed, as the defendants have requested. The ICC Prosecutor has indicated that the defendants will be required to attend the trial, and that warrants for their arrest will be issued if they fail to appear. In Kenya, legal challenges to Kenyatta and Ruto's eligibility as candidates, based on integrity and ethics requirements in the new constitution, appear unlikely to halt their bid for office, barring a last-minute decision by the Supreme Court. With only weeks before the election, it appears unlikely that, should the Supreme Court deem them ineligible, such a ruling could be reached in time for their names to be removed from the ballot.

¹² Voter registration concluded in December with 14.4 million out of an estimated 21 million eligible voters registered.

¹³ The 2010 constitution requires a presidential candidate to win a majority of 50% of the votes plus one, and to secure more than a quarter of votes in 24 of the country's 47 new counties, to avoid a run-off.

¹⁴ A large number of new political parties were created in 2012. Many then formed coalitions with new names, adding to the confusion. For example, Odinga (ODM) and Musyoka (Wiper Democratic Movement) united to form the Coalition for Reform and Democracy (CORD). Kenyatta (TNA) and Ruto (United Republican Party) formed the Jubilee Coalition with Deputy Prime Minister Musalia Mudavadi (United Democratic Forum), who served as Vice President under Moi. Mudavadi left the coalition after the party nomination process in December. The presidential ballots will include the name of the presidential candidate's party rather than the name of their coalition.

In addition to tensions around the presidential race, local outbreaks of violence in the past year in parts of Kenya may reflect an unintended consequence of the devolution of power long sought by Kenyan civic and political activists and provided under the new constitution. By expanding the number of political contests in the upcoming elections to disperse power from the central government to the local level, the constitution may have caused local competitions over resources to become increasingly politicized.¹⁵ Many analysts have identified the drawing of county boundaries as the cause for inter-communal conflict in several areas, notably the Tana River delta region on the coast, where some 200 people have been killed and more than 34,000 displaced in attacks by rival communities since 2012. Many of these new boundaries have been drawn along ethnic lines. In total, according to the United Nations, more than 450 people have been killed and over 110,000 displaced by inter-communal clashes in Kenya since the start of 2012.¹⁶

The Economy

Kenya's economy is the largest and most diverse in East Africa, although it has faced increased challenges in recent years. The economy was hit hard by the post-election crisis, the global economic downturn, and regional drought. The growth rate has risen in the past two years, averaging 5%-6%, but not enough to address the country's development needs. The kidnapping of several foreigners by Somalia-based networks and the potential for terrorist attacks, combined with spillover effects from Europe's financial woes, have hurt Kenya's tourism industry and its investment climate. High fuel and electricity costs, inflation, poor transportation infrastructure, and inadequate power supply continue to hamper multiple sectors. Government efforts to pursue privatization, deregulation, and trade liberalization are ongoing, but high tariff rates continue to hinder investment.¹⁷ Agricultural products dominate exports to Europe, while manufactured goods, primarily apparel made from imported fabrics, dominate exports to the United States. China is increasingly investing in the country. Despite challenges, U.S. companies also appear to see potential in Kenya—more than 60 American companies, including General Electric and IBM, have operations in the country and many of them are expanding. Nascent oil exploration in northern Kenya also shows signs of promise. Kenyan firms have led the way in developing mobile phone-based banking systems that have revolutionized financial transactions for increasing numbers in the developing world. U.S. foreign direct investment in Kenya has grown in recent years, and the U.S. government has proposed a new trade and investment partnership with the East African Community (EAC), of which Kenya is a member. The United States plans to engage with the EAC in a Commercial Dialogue, only one of four such dialogues worldwide.

Social and Humanitarian Issues

By regional standards, Kenya's population is highly literate, and the number of Internet and mobile phone users is rising dramatically. The country has a growing middle class, but more than

¹⁵ Kenya's new constitution creates a new subnational layer of government, at the county level, with new positions—Senate, gubernatorial, and county assembly seats—to be contested for 47 counties across the country. For more information, see the International Crisis Group, *Kenya's 2013 Elections*, Africa Report No. 197, January 17, 2013.

¹⁶ Spokesperson for the U.N. Secretary General, News Briefing, January 10, 2013.

¹⁷ World Bank, *Doing Business in the East African Community in 2012*, April 11, 2012. Kenya's ranking in the World Bank's *Doing Business 2013* report fell four places to 121st out of 185 countries, placing it behind Uganda's less sophisticated economy and in 10th place among sub-Saharan African countries.

half the population lives on less than \$1 per day. Only an estimated 2 million Kenyans are employed in the formal sector. Unemployment is widespread, and a high population growth rate has contributed to a young, increasingly urban, and potentially restive population.

Tensions on the Coast

On the predominately Muslim coast, a new political movement, the Mombasa Republican Council (MRC), has given a new voice to long-standing grievances about the region's perceived marginalization and lack of state investment, and has called for secession. The High Court overturned a government ban on the MRC in July 2012, but the ban was later reinstated and warrants issued for the arrest of MRC leaders. Arrests could lead to direct confrontation with the group, which to date has maintained a public commitment to non-violence. According to State Department officials, there was no evidence in 2012 to link the MRC to violent extremist elements on the coast. MRC leaders recently reversed their call for a boycott of the March elections and have called for peaceful polls, although lingering tensions remain. Increasing anti-government sentiment among Muslim youths in the region is a cause for concern—in August 2012, a Kenyan cleric facing U.S. sanctions for contributing to the violence in Somalia (by fundraising for Al Shabaab) was killed by gunmen in Mombasa. His death sparked several days of violent protests, with demonstrators alleging that he had been the victim of an extrajudicial killing, either by Kenyan security forces, or by the United States or Israel. Such allegations were fueled in part by the extrajudicial rendition of Kenyan citizens to Uganda in 2010, after Al Shabaab conducted simultaneous bombings in Kampala that killed more than 70 people, including one American. Human rights groups have reported on other alleged rendition operations from Kenya to other Horn of Africa countries under the aegis of global counterterrorism efforts.¹⁸

Food Insecurity in the Horn of Africa and Refugee Issues

In 2011, the Horn of Africa region suffered its worst drought in 60 years. Pastoralist communities in Kenya's arid north faced conditions similar to those in Somalia, with extremely high rates of malnutrition.¹⁹ Steep increases in staple food and fuel prices left many unable to meet basic needs. At the height of the crisis, more than 4 million Kenyans required food aid. Food security has since improved, but the situation is fragile in some areas. Food prices remain high, and over 2 million Kenyans still require assistance, out of a wider regional population in need of more than 8 million.²⁰ Insecurity and gaps in humanitarian aid in south-central Somalia continue to deter the return of most Somali refugees, some of whom fled during the 2011 crisis, and others who had left Somalia much earlier. Refugee flows from Somalia and Sudan/South Sudan into northern Kenya have placed further strain on a host population that also continues to face poor food security conditions.

While Kenya has long served as a haven for refugees from the region's various conflicts and natural disasters, the government's tolerance for more than half a million Somali refugees appears

¹⁸ See, e.g., Open Society Foundations, *Counterterrorism and Human Rights Abuses in Kenya and Uganda*, November 2012; HRW, *Why Am I Still Here? The 2007 Horn of Africa Renditions*, October 1, 2008.

¹⁹ See CRS Report R42046, *Horn of Africa Region: The Humanitarian Crisis and International Response*, coordinated by Rhoda Margesson.

²⁰ USAID, Horn of Africa–Humanitarian Update #8, February 6, 2013. In 2011, more than 13 million people in the region required emergency assistance.

to be waning, in part based on an increase in attacks attributed to Al Shabaab and its sympathizers in Kenya.²¹ In December 2012, the government directed that asylum seekers in Nairobi and other urban areas no longer be received and registered, and that an estimated 100,000 urban refugees be relocated to the overcrowded Dadaab refugee complex in northeastern Kenya and Kakuma camp near the border with South Sudan. Dadaab is now Kenya's fifth-largest population center, with almost 500,000 inhabitants, and Kakuma is nearing its capacity. UNHCR and others have raised serious concerns with this directive, in part because of the potential disruption in livelihoods for many Somalis who have lived in Nairobi for years. In January 2013, Kenya's High Court issued an injunction temporarily halting efforts to relocate refugees pending a full hearing in mid-2013.

Regional Security Dynamics

Insecurity in neighboring countries, combined with concerns over terrorist movements across Kenya's porous border with Somalia and along its coastline, and piracy off the coast have led Kenya to take an increasingly active role in regional security. Poaching, banditry, cattle rustling, and high urban crime, as well as periodic outbreaks of communal violence, place competing domestic demands on Kenya's national security resources. Kenya has repeatedly been a target of international terrorist attacks, and the concentration of potential international and domestic targets in Nairobi remains a serious concern for Kenyan and Western security officials. There has not been a major terrorist incident in the country since the 2002 Al Qaeda attacks in Mombasa, but there have been numerous small-scale attacks on civilian and state targets in recent years, many of which are attributed to Al Shabaab or its sympathizers. The frequency of these attacks has increased since Kenya commenced military operations in Somalia in 2011 (see below).

As noted above, Kenya is home to over half a million Somali refugees, many of whom live in crowded Dadaab, Africa's largest refugee complex, near the Somali border. Other Somali migrants have concentrated in the Nairobi suburb of Eastleigh. Kenya also has a significant population of ethnic Somalis who are Kenyan citizens. Al Shabaab has drawn recruits from ethnic Somalis and other Muslim communities in Kenya. Many Kenyan Muslims distrust the government and view its counterterrorism efforts as discriminatory. The government faced opposition for years in its efforts to pass anti-terrorism legislation, due to concerns over civil liberties; a law was finally passed in October 2012.²² The rendition to Uganda by Kenyan security services of Kenyan citizens suspected in the Kampala bombings has been challenged in the courts, as many were reportedly carried out without due process.

Rising insecurity near Dadaab, combined with a series of kidnappings along the Kenya-Somali border, led in late 2011 to the suspension of all but emergency relief efforts at Dadaab. This coincided with the Kenyan military incursion into Somalia. While an increased police presence has since allowed some aid activities to resume, security threats, including improvised explosive devices (IEDs), continue to hamper aid delivery. Some human rights groups allege that Kenyan security forces have committed abuses against Somali Kenyans and refugees as part of indiscriminate reprisals for suspected Al Shabaab attacks in Kenya.²³ Reports suggest Somalis, particularly in Eastleigh, are increasingly subject to police harassment. A Kenyan army unit is

²¹ Kenya has raised repeated concerns about the economic, security, and demographic implications of hosting large numbers of Somali refugees and called for expanded aid delivery in Somalia to avoid a "pull" factor across the border.

²² "Kenyan Muslims Fear the Worst Over Proposals to Boost Police Powers, *The Guardian* (UK), September 27, 2012.

²³ Human Rights Watch, *Criminal Reprisals: Kenyan Police and Military Abuses against Ethnic Somalis*, May 2012.

under investigation for the shooting of civilians and for other abuses in Garissa, home to many Somali Kenyans in the northeast, during an incident in November 2012 that followed the killing of three Kenyan soldiers by unknown assailants. Kenyan police, military, and civilians have been increasingly targeted in multiple grenade and IED attacks in or near the town since late 2011.

Kenya launched its military offensive into southern Somalia in October 2011, with the stated intent of defending Kenya against terrorist threats and incursions by Al Shabaab. Governments in the region, including that of Somalia, expressed support for Kenya's actions. In February 2012, the U.N. Security Council added its support, authorizing Kenya's inclusion into the African Union (AU) Mission in Somalia (AMISOM), raising the mandated troop level of the force from 12,000 to 17,731, and expanding its mandate beyond Mogadishu.²⁴ Kenya took the strategic port city of Kismayo, which served as one of Al Shabaab's key sources of revenue, in late 2012 on behalf of AMISOM and the Somali government. The Kenyan forces are well-equipped by regional standards, but have limited experience in deploying beyond their borders, except as peacekeepers. As part of AMISOM, Kenyan forces will likely remain in Somalia for the foreseeable future.

Territorial gains by AMISOM, Ethiopian, and Somali forces have allowed the Somali government to establish a presence in key strategic towns in southern and central Somalia and encouraged the return of some international diplomatic representation to Mogadishu, although Al Shabaab continues to conduct asymmetrical attacks. Various criminal organizations, including pirate networks, continue to operate on the Somali coast, posing an ongoing threat to ship traffic in and out of Mombasa, despite a decline in successful attacks.²⁵ The United States and Kenya signed an agreement in 2009 to facilitate the transfer of suspected pirates captured by the U.S. Navy off the Horn to Kenya for prosecution; the United Kingdom has a similar agreement.

Kenya and the Illegal Ivory Trade

East Africa is widely recognized as one of the world's most biologically diverse regions. Kenya, home to several famous wildlife reserves, relies heavily on tourism for foreign exchange earnings and has played a lead role for over 30 years in efforts to stop the ivory trade. Game hunting, once a popular sport in Kenya, was increasingly restricted in the 1970s in response to international media coverage of dramatically declining elephant and rhino populations and sensational seizures of ivory exports to Asia. Kenya banned elephant hunting in 1973 and extended the sport hunting ban to all animals, without a permit, in 1977. The government began to restrict ivory exports in 1974, although exports continued and members of President Jomo Kenyatta's own family were implicated in the trade.²⁶

International pressure regarding increasingly endangered African elephant populations mounted in the 1980s.²⁷ In 1989, as part of Kenya's campaign to have the ivory trade banned worldwide, then-President Moi drew global media attention by burning 12 tons of stockpiled tusks, worth an estimated \$3 million and representing more than 2,000 elephants.²⁸ Behind the effort was Dr. Richard Leakey, a conservationist whom Moi appointed to lead the government's wildlife department, which he transformed into the Kenya Wildlife Service (KWS). Leakey mounted an anti-poaching effort spearheaded by elite paramilitary KWS units that were authorized to kill increasingly well-armed

²⁴ AMISOM was first authorized by the U.N. Security Council in 2007. It remains a regional, rather than U.N., stabilization mission, and is the first regional mission to receive a U.N. logistical support package. U.N. support is augmented by other donor support, primarily from the EU, which pays troop stipends, and the United States. Kenya's air and naval operations in Somalia remain outside AMISOM.

²⁵ See CRS Report R40528, *Piracy off the Horn of Africa*, by Lauren Ploch Blanchard et al.

²⁶ International trade in ivory and other wildlife goods is regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which entered into force in 1975.

²⁷ The African elephant population declined from 1.3 million to 600,000 between 1979 and 1987, and Kenya's population fell from 130,000 in 1973 to 16,000 in 1989, per Ian Douglas-Hamilton, "African Elephant Population Study," *Pachyderm*, Vol. 8, 1987; and J.P. Cohn, "Elephants: Remarkable and Endangered," *Bioscience*, Vol. 40, 1990.

²⁸ Jane Perlez, "Kenya, In Gesture, Burns Ivory Tusks," *New York Times*, July 19, 1989.

poachers. Under Leakey, who also sought to address corruption within the service, the KWS developed a reputation as a disciplined and effective law enforcement agency that continues to draw significant donor funding.

Wildlife experts suggest that elephant poaching is again on the rise in East Africa. A recent study based in part on NASA satellite imagery and KWS elephant mortality data found that poaching in southeast Kenya rose between 1999 and 2002, declined dramatically in 2003, and then sharply rose annually thereafter, with elephant kills in 2008 and 2009 at levels far higher than those documented in the 1990s.²⁹ Poaching in parts of Kenya may now be at its highest rate in 15 years—by government estimates, 350 elephants were killed in 2012 alone.³⁰ Some observers estimate that increased demand from Asia is driving the trade, but regional economic trends may also play a role on the supply-side of poaching. Domestic budget constraints have reportedly limited Kenyan government support for KWS patrols and outposts. The 2008-2009 global recession, coming after the 2007-2008 violence in Kenya, was particularly damaging to East African economies—tourism fell, inflation rose, and security budgets and donor aid flows were reduced.

Reports suggest that Kenyan and Tanzanian ports and airports continue to serve as primary transit points for export of ivory to Asia. In January 2013, Kenyan police seized two tons of ivory, worth over \$1.5 million, which is cited as the largest single seizure in Kenya's history. Both Kenya and Tanzania hold sizeable stockpiles of ivory. Tanzania has increasingly lobbied for authorization to sell some of its stocks, while Kenya has maintained its opposition to stockpile sales, and in July 2011 publicly burned a reported \$16 million in tusks (reports suggest that the tusks burned represent only a portion of Kenya's existing stockpile). The Kenyan government continues to press regional counterparts to strengthen law enforcement efforts to counter wildlife smuggling, and has recently extended training to the nascent South Sudan Wildlife Forces. The KWS is additionally establishing a forensic and genetic laboratory that will, among other aims, seek to serve as a regional referral center for the DNA sequencing of elephant remains, in an effort to provide credible prosecutorial evidence for wildlife-related crimes.

U.S.-Kenya Relations

The United States and Kenya have maintained a close diplomatic relationship for decades. In the late 1970s, for example, at the height of the Cold War, events in the Middle East led the U.S. government to commence contingency planning for possible U.S. military intervention in the Persian Gulf. U.S. security cooperation with countries in the Horn of Africa took on heightened strategic priority, and Kenya's port in Mombasa was viewed as a stable alternative to options in Somalia. A resulting base-access agreement accorded Kenya substantial military aid, which continued under the Reagan Administration's policy to "contain" Soviet influence in the region. By the 1990s, with the Cold War over, the United States was increasingly sensitive to political and human rights abuses by the Moi government, although Kenya's strategic location and comparative stability ensured that relations remained cordial, aided by Kenya's role as a hub for international humanitarian relief operations in Sudan and Somalia. Ties improved as the two countries increased their cooperation on counterterrorism efforts. The 2002 elections and the subsequent political transition were a significant event in the warming relationship, which current U.S. Ambassador to Kenya Robert Godec has described as friendship that is "broad and deep."³¹

Kenya's flawed 2007 elections and the violence that ensued were viewed with "great dismay and disappointment" by U.S. officials such as Assistant Secretary of State for African Affairs Johnnie Carson, who had previously served as U.S. Ambassador to Kenya and who saw the country's democratic progress "seriously derailed and nearly destroyed" by the crisis.³² While

²⁹ "Spatiotemporal Patterns of Elephant Poaching in South-Eastern Kenya," *Wildlife Research*, April 12, 2012.

³⁰ "Special Update: Elephant Poaching in Samburu," *National Geographic*, June 2012.

³¹ Testimony of Robert F. Godec, Senate Foreign Relations Committee, *Nomination Hearing*, November 28, 2012.

³² Assistant Secretary Johnnie Carson, "Kenya and the U.S. – Meeting the Growing Challenge in East Africa," Remarks at the National Endowment for Democracy, Washington, DC, July 22, 2009.

acknowledging the important security role Kenya plays, U.S. diplomats and some Members of Congress have continued to raise concerns about state corruption and human rights abuses by some within the Kenyan security services. U.S. officials have also applauded progress, such as the passage of the 2010 constitution. The United States has stressed the need for accountability for the 2007-2008 unrest and long-standing, unresolved corruption cases.³³ In former Secretary of State Hillary Clinton's travels to Kenya, most recently in August 2012, she called on the government to complete reforms to ensure the integrity and credibility of the upcoming elections. The State Department has also urged Kenyans to cooperate with the ICC proceedings.

In early February 2013, President Obama released a video message on the upcoming elections, calling on Kenyans to "reject intimidation and violence and allow a free and fair vote" that is peaceful and reflects the will of the people. The President's effort underscored his "commitment to the U.S. Kenyan partnership," according to the State Department, and reflected "the important place that Kenya occupies in East Africa and beyond."³⁴ The message that "the choice of who will lead Kenya is up to the Kenyan people" received mixed responses from Kenyan politicians, however. Kenyatta and Ruto have reportedly sought to portray President Obama's comments as endorsing their legitimacy as candidates, in spite of the ICC charges, but a subsequent comment by Assistant Secretary Carson that "choices have consequences" has been interpreted by some as an implicit message that the ICC indictees may not be viewed as appropriate candidates.³⁵ The Kenyan government has been sensitive to comments by donor governments related to the ICC issue, and in early February the Foreign Ministry admonished European ambassadors for what it viewed as interference in domestic issues and a perceived effort to influence the upcoming elections.³⁶ Several countries, including France, Switzerland, and the United Kingdom, have alluded to possible changes in diplomatic relations based on European policies regarding contact with ICC indictees.³⁷ The United States is not a party to the Rome Statute of the ICC, and the Obama Administration has not publicly stated its position on how U.S. relations with Kenya's executive branch might be affected in the event of a Kenyatta/Ruto win.

U.S. Assistance

U.S. foreign assistance to Kenya has totaled almost \$1 billion annually in the past five years, making it the largest recipient of U.S. aid in Africa after Egypt.³⁸ Assistance provided by the State Department and USAID was estimated at over \$874 million in FY2011, including almost \$213 million in food and other humanitarian aid. Kenya received approximately \$844 million in

³³ Parliament established a Truth, Justice, and Reconciliation Commission (TJRC) in 2009 to investigate and report on gross human rights violations and historical injustices. The TJRC held public hearings on an array of sensitive topics, but is behind schedule to make its final recommendations for redress, including reparations.

³⁴ The White House, "President Obama's Message to the People of Kenya," Video, February 5, 2013 and State Department Spokesperson Victoria Nuland, Daily Press Briefing, February 5, 2013.

³⁵ See, e.g., "US Official Says Kenya's Elections Have Consequences," VOA News, February 7, 2013, and "U.S. Position Sends Mixed Signals in Jubilee Team," *The Standard* (Nairobi), February 10, 2013.

³⁶ "Kenya Rebukes U.S., EU Ambassadors Over Election Comments Seen as Discrediting Top Candidate," Associated Press, February 11, 2013.

³⁷ The Cotonou Agreement governs trade and development cooperation between the European Union and developing countries and legally requires compliance with the ICC. Kenya is a signatory. Sudan chose not to ratify the agreement in 2009. This in turn limited European development assistance for the country. For more information, see the European Council, *The European Union and the International Criminal Court*, May 2010.

³⁸ Globally, Kenya has ranked among the top five or six U.S. foreign aid recipients in recent years (after Israel, Afghanistan, Pakistan, Egypt, and, depending on the year, Iraq), according to annual State budget justifications.

bilateral aid in FY2012—\$652 million in bilateral aid, including almost \$8 million in Overseas Contingency Operations funds, and over \$192 million in humanitarian aid. The Administration requested \$460 million in non-emergency aid for FY2013 (this figure does not include food aid), reflecting a substantial reduction in HIV/AIDS-related funding, based on “efficiencies and country-specific factors.”³⁹ Global health programs regularly comprise 65%-75% of total aid to Kenya. Bilateral aid figures do not provide a full accounting of counterterrorism assistance, some of which draws from regional State Department accounts or is provided by the Department of Defense (DOD). With Kenya’s incorporation into AMISOM, the country’s security sector is likely to receive increased U.S. assistance, through both assessed U.N. contributions and bilateral aid.

Table 1. U.S. Bilateral Foreign Assistance to Kenya, State Department and USAID

(\$ in millions)

Account, by Year	FY2011 Actual	FY2012 Estimate	FY2013 Request
Development Assistance (DA)	75.8	92	92.9
Economic Support Fund (ESF)	-	-	-
Food for Peace (FFP)			
Global Health Programs (GHP) – State	498.8	468.8	277.4
Global Health Programs (GHP) – USAID	75.3	78.2	79.4
Foreign Military Financing (FMF)	1	1.5	1.1
International Military Education & Training (IMET)	0.9	0.9	0.8
International Narcotics Control & Law Enforcement (INCLE)	2	2	1.8
Nonproliferation, Antiterrorism, Demining & Related Programs (NADR)	8	1.2	6.2
NADR – Overseas Contingency Operations (OCO)	-	7.8	-
Peacekeeping Operations (PKO)	-	-	-
TOTAL	661.8	652.2	459.5

Source: State Department FY2013 Congressional Budget Justification for Foreign Operations and updated FY2012 figures provided by the State Department in October 2012. Totals do not include emergency humanitarian assistance, or certain types of security assistance provided through regional programs, including for counterterrorism and peacekeeping purposes.

³⁹ State Department, “Kenya,” *FY2013 Congressional Budget Justification for Foreign Operations*. Foreign aid for FY2013 is currently funded under a continuing resolution, P.L. 112-175, under which accounts are funded at the same level as in FY2012 plus 0.612%. Country allocations from those accounts are at the discretion of State and USAID.

Development Assistance

U.S. development aid to Kenya focuses on health, education, economic growth, and advancing key political reforms. Kenya receives U.S. support through the President's Emergency Plan for AIDS Relief (PEPFAR) and the President's Malaria Initiative (PMI); the Feed the Future (FtF) initiative; and the Global Climate Change (GCC) initiative. Other development programs include investments in basic education and water and sanitation. Efforts to support the implementation of the new constitution and enhance the country's system of checks and balances are cornerstones of U.S. governance programs. Technical assistance aims to build government capacity at both the national and local level, and other U.S. aid programs aim to build accountability, including through support for independent media and civil society. The judicial sector is another target of U.S. aid. The United States has provided significant elections-related assistance, totaling over \$30 million since 2010 and including support for both domestic and international monitors. USAID's Office of Transition Initiatives (OTI) supports programs that seek to mitigate conflict and promote a peaceful transfer of power through the upcoming elections. The State Department's Bureau of Conflict and Stabilization Operations (CSO) is also providing election-related support.

Security Assistance

Kenya is one of the largest recipients of U.S. security assistance in sub-Saharan Africa. Aid in the past decade has increasingly focused on improving Kenya's capabilities to control its land and sea borders and to counter terrorism. In addition to U.S. assistance, Kenyan purchases through the Foreign Military Sales (FMS) program are sizable by regional standards, and have included fighter aircraft, helicopters, and Air Force computer systems. The Kenyan Navy has received U.S. assistance to enhance its ability to counter the piracy threat emanating from Somalia. Kenya also has received aid through a regional State Department program, the Partnership for Regional East African Counterterrorism (PREACT), totaling over \$10 million since FY2009. Kenya has been a major African recipient of DOD "train and equip" aid authorized under Section 1206 of the FY2006 National Defense Authorization Act (NDAA), as amended, totaling over \$47 million to date. Congress has authorized additional DOD counterterrorism resources for Kenya and other East African countries through Section 1207(n) of the FY2012 NDAA, as amended. DOD obligated almost \$8 million in FY2012 for Kenya under this authority, most of it in support of AMISOM. U.S. Africa Command's Combined Joint Task Force Horn of Africa (CJTF-HOA), based in Djibouti, maintains a small contingent hosted at a Kenyan naval base that regularly conducts civil affairs projects and other security cooperation activities in Kenya.

The incorporation of over 3,000 Kenyan troops into AMISOM has budget implications for the State Department, which has provided an estimated \$650 million in logistics support, equipment, and training for AMISOM troop contributors since 2007.⁴⁰ This aid has been provided through the department's Peacekeeping Operations (PKO) account, and includes U.N. assessed contributions to the mission. DOD has additionally provided more than \$100 million in DOD "train and equip" funds to AMISOM forces since FY2011, some of which has been recently obligated for Kenya.⁴¹

Kenya is one of the largest global recipients of State Department Anti-Terrorism Assistance (ATA) funding, which supports border and coastal security and law enforcement programs. ATA

⁴⁰ The Kenyan military has used a variety of assets in Somalia (fighter jets, helicopters, armored personnel carriers, etc.) that were originally provided by the United States through grants and sales.

⁴¹ DOD provided \$45 million under Section 1206, and almost \$40 million under Section 1207(n) authority.

funds support counterterrorism training for the Kenyan Police, and totaled roughly \$8 million annually in FY2011 and FY2012. Congress has expressed concern with reports of abuses by Kenyan security forces in recent appropriations legislation, and has stressed the need for strict vetting of units receiving U.S. assistance. This concern is corroborated by State Department reports of police corruption and impunity, and of serious abuses by multiple security agencies.⁴²

Outlook

Kenya enters the 2013 elections facing several possible outcomes, each of which have significant implications for U.S.-Kenyan relations. A credible and relatively peaceful election, with an outcome that is accepted by all parties, would allow the country's economy to continue its recovery and would strengthen Kenya's reputation as a stable, democratic anchor in a turbulent region. However, as U.S. Ambassador Bob Godec testified before Congress in late 2012, "the responsibility for the election rests squarely with the Kenyan government and people, and success, frankly, is not assured."⁴³ If the elections lack credibility among a significant portion of the electorate, and result in widespread protests and possible violence, Kenya's political and economic progress could suffer a serious setback, with possibly serious regional implications. Further, should the next government be implicated in electoral malfeasance, or if Kenya's state security institutions, including the police, are seen to play a role in any election-related violence, Kenya's relations with donors, including the United States, could be threatened.

Another factor that may affect the views of Congress and other donor countries toward Kenya is the possible election of a president and deputy president who could be on trial at the Hague for years, while being responsible for governing the country.⁴⁴ For the ICC, the logistics of managing such trials would be a challenge. For Kenya, the impact of such an outcome on the country's international reputation is unclear. Kenya's key donors have been supportive of the ICC process, and if their relations with Sudan's President Omar al Bashir, the only head of state to currently face an ICC indictment, are an indication, diplomatic interaction with Kenya's top leadership might be limited and their ability to travel abroad curtailed. Additional restrictions on trade and aid to Kenya may also apply, depending on the next government's compliance with the ICC.⁴⁵

As Kenya's elections approach, Congress may face difficult decisions in balancing U.S. concerns related to human rights and accountability against other priorities in the U.S.-Kenya relationship. These include ongoing development and humanitarian priorities in the country and the wider region, U.S. national security concerns such as countering terrorism in East Africa and the Horn, and other foreign policy goals in the region. Given the significant investment the United States has made in Kenya and the size of the U.S. government presence in the country, another flawed election or problematic outcome would present Congress and the Administration with stark choices. Going forward, Kenya's commitment and capacity to respond to transnational threats in ways that support U.S. interests may be challenged by multiple domestic factors, ranging from corruption and demographic pressures to underlying ethnic tensions, as well as by possible shifts in the diplomatic relationship.

⁴² State Department, *2011 Country Reports on Human Rights*, 2012.

⁴³ Testimony of Robert Godec, op. cit. See also Joel D. Barkan, *Electoral Violence in Kenya*, January 2013.

⁴⁴ "Analysis: Kenyatta's Bid for Kenya Presidency a Diplomatic Headache," Reuters, February 14, 2013.

⁴⁵ For possible implications for European development cooperation with a Kenyatta government, see, e.g., The European Commission, "Non-Ratification of the Revised Cotonou Agreement by Sudan FAQ," August 2009.

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