



Kenya since the 2007/08 crisis

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The violence that followed the December 2007 presidential election in Kenya left over 1000 people dead and displaced an estimated 300,000 people across the country. To end the crisis, a power-sharing accord was agreed. While this accord still holds and the power-sharing government formed soon after remains in office, Kenya is dealing with the legacy of this crisis. The political leaders of 2007 remain active. However, some of them face the possibility of trial by the International Criminal Court for crimes against humanity, which could thwart their political ambitions – most notably, those of current Vice-President Uhuru Kenyatta, who intends to stand for the presidency in 2012. The jockeying ahead of next year's scheduled presidential and parliamentary elections is well and truly under way. There are no guarantees that the 2012 elections will be peaceful.

Amidst the continuing domestic political turbulence, in October Kenya launched a military incursion into southern Somalia. Targeted against the armed militant group known as al-Shabaab, the prospects for the incursion remain uncertain. The UK Government, the EU and the US have all given the Kenyan incursion their support – provided it remains consistent with international law. At the same time, large parts of Kenya have been affected severely by the food crisis in the Horn of Africa. 3.75 million people are experiencing food insecurity across the rural areas of the country.

The 2007 violence affected economic growth in 2008 and 2009. There was a significant recovery in 2010 and IMF projections are for an average 6.5% growth over 2011-16. But these apparently positive prospects could be undone if there is a resurgence of political violence or by other endemic problems such as inflation, corruption or rapid population growth. Kenya has been identified as one of the UK Department for International Development's 27 focus countries in the recent bilateral review, triggering a 72% increase in aid over the period 2011/12 to 2014/15.

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1 Political background

1.1 The grand coalition

The violence that followed the December 2007 presidential election in Kenya left over 1000 people dead and displaced an estimated 300,000 people across the country.¹ To end the crisis, a power-sharing accord was agreed.² It was formalised in the *National Accord and Reconciliation Act*, signed on 28 February 2008.³ The former UN Secretary General Kofi Annan helped mediate negotiations between the two protagonists, President Mwai Kibaki and his main political challenger, Raila Odinga. The power sharing accord allowed President Kibaki to remain head of the Government with extensive executive powers. However, the post of Prime Minister was created and filled by Raila Odinga, who was given the authority to co-ordinate and supervise departmental ministries.

The main coalition partners are the Party of National Unity (PNU) headed by President Kibaki, with Uhuru Kenyatta as the current Deputy Prime Minister and Minister of Finance; the Orange Democratic Movement (ODM), led by Raila Odinga; and the Orange Democratic Movement-Kenya (ODM-K), led by Vice President Kalonzo Musyoka.

Thus far, the power-sharing accord has remained intact. However, there have been long periods of stasis within the Government. Disagreements between the coalition partners, compounded by corruption scandals, have blocked many reform efforts. There have been several public falling-outs amongst the coalition partners, mainly revolving around the sharing of executive power between the various camps of President Kibaki, Prime Minister Odinga and Vice President Musyoka. In February 2010, after Raila Odinga tried to suspend then Agriculture Minister William Ruto and Education Minister Sam Ogeri for three months after their implication in corruption scandals, President Kibaki overturned the suspensions, claiming Odinga did not have the right to suspend them.⁴ Odinga boycotted cabinet meetings until his right to suspend ministers was acknowledged.

The first corruption scandal involved the misuse of funds that were supposed to subsidise the purchase of maize for poor Kenyans. An investigation by Price Waterhouse Cooper reported that over US\$28 million had gone missing. It found evidence that cheap maize which had been bought had been sold to middlemen, and then sold on at inflated prices.⁵ The second scandal related to nearly \$1 million that had disappeared from the Ministry of Education's fund for free primary schools. As a result, both Britain and the US suspended their education assistance in early 2010.⁶

By late 2010, political jockeying began to intensify as the next elections in 2012 appeared over the horizon. Raila Odinga, Kalonzo Musyoka, George Saitoti, the Internal Security Minister, and Martha Karua, a former Justice Minister, all indicated that they intended to nominate themselves for the presidency. There remained uncertainty about the prospects of Finance Minister Uhuru Kenyatta, who has been indicted by the International Criminal Court

¹ [Around Kenya: After the violence](#), *BBC News Online*, accessed 18 Aug 2010

² ["Key points: Kenya power-sharing deal"](#), *BBC News Online*, accessed on 7 October 2010

³ [Acting together for Kenya: Agreement on the principles of partnership of the coalition government](#)", accessed on 18 August 2010

⁴ [Kenya: Two ministers suspended in corruption scandal](#)", accessed on 4 Aug 2010

⁵ *Africa Confidential*, Vol. 51, No 4, 18 February 2010

⁶ ["US suspends Kenya school funding"](#), *BBC News online*, accessed on 4 Aug 2010

(ICC) [see below]. The same applied to William Ruto, the former Agriculture and suspended Higher Education Minister. Ruto was reshuffled to Higher Education after he was cleared of corruption in the maize scandal discussed earlier⁷. Some believe that his political star is now on the wane.

Many have criticised the power sharing agreement for entrenching, rather than combating, Kenya's long-standing tradition of polarised ethnic politics, which underpinned the post-election violence that erupted at the end of 2007. Some fear that too little will have changed by the time of the 2012 elections and that there will be more political violence.⁸

While the outside world has focused much of its attention on issues of justice and accountability in the wake of the post-election violence (see below), a no less important – indeed, in many ways, interconnected – issue is that of land. Many ethnic groups were displaced from their homelands during the colonial period and have unresolved claims over what they view as their right to return. Since independence, the situation has been exacerbated by further 'land grabbing' by members of the political elite. This has exacerbated tensions and contributed to growing landlessness and (as a strategy for survival) squatting. There has also been escalating environmental degradation.⁹ Many took the opportunity presented by the post-election violence to 'settle scores' over land, which contributed significantly to levels of displacement resulting from that violence. The coalition has been forcibly evicting people deemed to be squatters, despite the fact that those being evicted have sometimes lived and worked on the same land for generations. Implementation of the National Land Policy passed by parliament in January 2010, in tandem with the new Constitution, may help to defuse the issue. However, the land question' retains the potential by itself to lead to another upsurge in violence in future.

1.2 The August 2010 Constitutional referendum

The popular endorsement of a new Constitution in a referendum in August 2010 prompted hopes that a turning point in Kenyan politics might at last have been reached.

A key element of the power sharing accord agreed to between President Mwai Kibaki and Prime Minister Raila Odinga was agreement that there should be a new Constitution for Kenya, in which, amongst other things, the previously overwhelming power of the President would be considerably reduced. The constitutional referendum campaign turned competing factions within the ruling coalition government against each other. For much of the campaign it looked as if the country would be left more divided by its end, rather than more united.

Both President Kibaki and Prime Minister Odinga gave their full endorsement to the proposed new Constitution. Some claimed that this was in part because the Obama administration in the US had made it clear that flows of US aid and investment would be reduced if the new Constitution did not pass.¹⁰ Some commentators asserted that Kibaki and Odinga also had their own personal motivations for working together in the 'Yes' campaign: Kibaki wanted to ensure his political legacy was a positive one, while Odinga wanted the official endorsement of Kibaki of his presidential candidacy ahead of the 2012 election.

⁷ *Africa Confidential*, Vol. 50, No. 4, 20 February 2009,

⁸ Odinga is Luo, Kenyatta and Karua are Kikuyu. Ruto is Kalenjin. If you would like an account of Kenya's complex ethnic politics, contact the author.

⁹ For a useful summary of the 'land question' in Kenya, see an April 2010 paper by Ibrahim Mwathane on the issue, presented to a World Bank conference. This paper is available via Google.

¹⁰ "Obama's stand: US goodies tied to reforms", *Kenyan Standard Newspaper*, accessed on 28 June 2010

There was more muted support for the proposed new Constitution by Odinga's rivals within the 'Yes camp: Vice-President Kalonzo Musyoka and Finance Minister Uhuru Kenyatta, both of whom are also potential candidates for the Presidency in 2012, gave only lukewarm support to the campaign. The strong and vocal 'No' campaign was, led by the former President Daniel Arap Moi and supported by William Ruto. The 'No' camp had the support of various church and religious leaders, who feared that the proposed new Constitution would legalise abortion and give preferential rights to Muslims.¹¹

The referendum on the proposed new Constitution took place on 4 August 2010. Kenyans voted 69% in favour and 31% against, on a turn-out of 71% of the population.¹² It came into force later the same month.

A Kenyan analyst has summarised the new Constitution as follows:

The new Constitution seeks to introduce a system of checks-and-balances that will strive to keep future presidents from exploiting the state for their own personal gain. In particular, the new Constitution establishes a bi-cameral parliament, with a legislative assembly and a Senate. The Senate will have a limited role in developing legislation and will primarily function as a checks-and-balance mechanism for legislation developed by the Members of Parliament (MPs). The Senate will also be able to exert oversight on the activities of the executive. In particular, a future Senate will be able to impeach the president of Kenya if circumstances require this to be done.

The Parliament has powers of accountability including reviewing the conduct of the executive, including the president, and exercising oversight over other state organs. In order to entrench the accountability of MPs to the people, the proposed Constitution also provides for the right to recall parliamentarians. A notable feature of this new constitution is the extent to which public participation in the conduct of parliament has also been made a constitutional obligation.

Geographically, Kenya will now be divided into 47 counties which will be headed by an elected governor. The Constitution also stipulates that 15 per cent of the national budget will be disbursed to the counties for their own developmental, education and health initiatives. This will ensure that state resources are not monopolised by the metropole or entirely controlled by the national government, but equally distributed to all sections of the country.

The new Constitution will also entrench a Bill of Rights as well as promote gender equality. In particular, the Constitution stipulates that as a general rule state institutions should not have more than two-thirds of one gender to the exclusion of the other. Furthermore, the Constitution has established a framework for the comprehensive review of land reform. It creates legal protection against corruption to enable businesses to flourish, unhindered by state exploitation.¹³

It is also worth noting that the new Constitution makes it potentially less attractive to seek high office; anyone running for the presidency in 2012 must relinquish their parliamentary seat and pick a running mate before they can run. In addition, losing candidates are not allowed to try again for political office for the next five years. The Constitution states that presidential elections should take place in August every five years.

¹¹ "The Battle Over Kenya's New Constitution" *Time Magazine*, accessed 18 August 2010

¹² "Kenya votes for new constitution", *Daily Telegraph*, accessed on 18 August 2010

¹³ T. Murithi, "Kenya's constitutional renewal: A post-referendum analysis", *Pambazuka News*, Issue 498, 29 September 2010

1.3 The search for accountability after the violence

Nobody has yet been held formally responsible for the violence which erupted after the 2007 presidential election. Both President Kibaki and Prime Minister Odinga have argued that the violence was overwhelmingly spontaneous rather than organised by sections of the political elite. However, many people were astonished at the time by the speed with which the violence escalated after the presidential election, leading to strong suspicions that there was indeed a significant degree of pre-meditation behind it. Those sceptical that the Kenyan political and judicial system could be relied upon to conduct credible investigations and bring alleged perpetrators to justice were soon suggesting that those with the greatest responsibility for the violence might ultimately have to be investigated by the ICC. Kenya is a signatory to the Rome Statute, which established the ICC.

As part of the power sharing accord, it was agreed to set up a national commission of inquiry to investigate the post-election violence. The Waki Commission, officially known as the Commission of Inquiry on Post Election Violence (CIPEV), was established in February 2008 by the Government and was named after its chairperson, Justice Philip Waki. Its report, which was published in October 2008, recommended that the Government should establish a national tribunal to investigate and prosecute those responsible for the violence. Justice Waki raised the stakes yet further by giving Kofi Annan, who had continued to play an active role in Kenya, a sealed list naming ten alleged key organisers and financial sponsors of the violence.

The Government initially promised to implement the recommendations of the Waki Commission but was soon stalling. In July 2009, with no indication being given by the coalition that it was going to create the national tribunal called for by the Waki Commission, Kofi Annan gave the list of names produced by the Waki Commission to Luis Moreno-Ocampo, the Prosecutor at the ICC. The ICC announced on 31 March 2010 that it would investigate the post-election violence, citing its role under the Rome Statute (Articles 17 and 18) as a court of last resort.¹⁴

It is important to note that, in August 2008, Kenya's statutory national human rights institution, the Kenya National Commission on Human Rights (KNCHR), published its own report into the post-election violence. It included a list of 219 alleged perpetrators, including senior politicians such as William Ruto and Finance Minister Uhuru Kenyatta. It has been assumed in many quarters that the KNCHR list includes those on the shorter list produced by the Waki Commission.¹⁵ However, the Waki list has still not been released to the public, so this remains impossible to verify.

There was also controversy when Sudanese President Omar al-Bashir, who has been indicted by the ICC and subject to an arrest warrant, which signatories to the Rome Statute are obliged to implement when they have the opportunity, attended the ceremony in Nairobi to mark the coming into force of Kenya's new Constitution in August without official hindrance.

There is also a Truth, Justice and Reconciliation Commission in Kenya. However, it has so far been widely viewed as lacking credibility and operational effectiveness. Many viewed its

¹⁴ [International Criminal Court press release 31 March 2010, accessed 4 August 2010](#)

¹⁵ *Africa Confidential*, Vol. 49, No. 17, 22 August 2008; [Kenya National Commission for Human Rights, "On the Brink of the Precipice" \(August 2008\)](#). For the KNCHR's list of alleged perpetrators, see Annex One of its report.

chair, Bethuel Kiplagat, as unsuitable for the role due to his political past. As 2010 gave way to 2011, the campaign to force him to stand down was gathering momentum.

Kenya's political mood experienced a brief upswing following the decisive endorsement of a new Constitution by an August 2010 referendum. Since then, however, the mood has again darkened. The announcement on 15 December 2010 by the Prosecutor of the [International Criminal Court \(ICC\)](#) that he was issuing indictments for crimes against humanity against six leading political figures has destabilised and paralysed Kenya's Grand Coalition government.

2 Political developments during 2011

2.1 Elite manoeuvrings and the ICC

The six men indicted by the ICC are:

- Uhuru Kenyatta (Deputy Prime Minister and Minister of Finance, ally of President Kibaki)
- Francis Muthaura (Head of the Civil Service and Cabinet Secretary, ally of Kibaki)
- Major-General Mohammed Hussein Ali (Postmaster-General, ally of Kibaki)
- William Ruto (suspended Higher Education Minister, estranged ally of Prime Minister Odinga)
- Henry Kosgey (Minister for Industry, ally of Odinga)
- Joshua arap Sang (Broadcaster and supporter of Odinga)

The indictments accuse them of playing leading roles in the organisation of the violence that took place during the period following the 2007 elections. The ICC Prosecutor, Luis Moreno-Ocampo, is understood to want to try the men in two cases: Ruto, Kosgey and Sang on charges of planning and organising violence against Kibaki's PNU for a year before the elections and of murder, deportation and persecution; and Kenyatta, Muthaura and Ali for retaliatory violence, using the police and the Kikuyu-based *Mungiki* sect. Ocampo has talked of trials beginning at the end of 2012 – around the time of the next elections. This is subject first to the ICC judges agreeing with him that the six have a case to answer. That is the stage of the judicial process has been underway during the course of 2011. Their best hope is that the pre-trial judges decide that their alleged crimes, while serious, are insufficiently grave to be considered 'crimes against humanity'. The six men were summoned to appear at The Hague for a pre-trial hearing on 7 April. All attempted to challenge the ICC's jurisdiction. Polls at the time suggested that the vast majority of Kenyans supported the ICC indictments.

The indictments triggered a sudden re-energisation of a long-stalled government initiative to establish a domestic tribunal to try those accused of greatest responsibility for the post-2007 election violence. Kibaki and Odinga now find themselves on opposite sides in this argument, with Odinga and his party, the Orange Democratic Movement – after a period of reflection (or hesitation) – coming out in favour of the ICC process, Odinga and his backers have been able to prevent these renewed efforts to establish a local tribunal.

An attempt to get a private members bill passed by parliament calling for Kenya to withdraw its accession to the Rome Statute was also repelled. But some continue to try and keep this tactic alive. However, Kibaki and allied ministers also sought support abroad for bringing the ICC process to a halt. They had some success. In February 2011, the African Union called for the trials to be deferred for a year (in the first instance) at the request of the UN Security Council, as provided for by Article 16 of the Rome Statute. Kibaki personally addressed the

UN Security Council in New York on 16 March to press for a deferral, warning that the ICC indictments increase the danger of renewed violence, if potential presidential candidates are barred from standing, when the 2012 elections come around. Critics ask whether trying them at home, as Kibaki continues to claim Kenya is willing to do, would be any less destabilising. 'Homegrown solutions' have a poor record in Kenya. The Truth, Justice and Reconciliation Commission appears to have lost all credibility. Its chair, Bethuel Kiplagat, was finally forced to stand down in early 2011.

The US, UK and France made it clear that they would veto any resolution that called for deferral. China supported the Kibaki initiative. In terms of the non-permanent members, South Africa also supported a deferral. However, in the end, Kenya did not seek to put the issue to the vote by formally tabling a resolution. Meanwhile, the Prosecutor expressed concerns that some of the indictees, or actors close to them, might threaten potential witnesses. All prosecution witnesses have subsequently been relocated to Europe.¹⁶

The Kibaki-Odinga split on this issue brought the coalition government to another of its periodic standstills – a condition in which it has largely remained throughout this year. The passage of laws to implement key aspects of the new Constitution fell far behind schedule. In June 2011, the Government announced a range of official appointments designed to show that it was serious in its plans to reform the judiciary. Willy Mutunga, the respected and experienced lawyer and activist, was appointed the new Chief Justice (after a failed attempt to get somebody much more pliable into the post) and Keriako Tobiko, a former Director of Public Prosecutions accused by some of being reluctant to take action against powerful politicians, was appointed Attorney General. Sceptics interpreted his appointment as a tactic to safeguard the position of those same politicians.¹⁷ Meanwhile, inflation has soared to over 17% and the economy is not performing as strongly as it might (see also below).¹⁸

Odinga has begun to sound increasingly negative about the legacy of the 'power-sharing' arrangement that was so central to the political deal struck in 2008 as part of efforts to bring the post-election violence to an end. Sounding not unlike Tsvangirai in Zimbabwe, he said in an interview earlier this year: "I've been telling people that the Kenyan example is not an example to be emulated. In fact, it is an impediment to democratisation that losers will cling to power in the hope that power sharing arrangement will be negotiated post-election."¹⁹ His convictions are likely to have been strengthened by his experience in early 2011 of mediating between Gbagbo and Ouattara in Ivory Coast - a role which the AU eventually relieved him of.

Nonetheless, insofar as opinion polls can be relied upon in Kenya, Odinga remains the clear favourite to win the presidency in the 2012 polls, with Uhuru Kenyatta, despite his uncertain status, his nearest challenger. A possible additional candidate to those already mentioned is Peter Kenneth, a Kikuyu politician with a track-record in grassroots development. The new Constitution does not allow anybody charged with a crime to stand for parliament, which could rule Kenyatta and Ruto out of the running. Some members of the Cabinet are calling for the new Constitution to be amended so that the next presidential election takes place in December, rather than August. However, there are plenty who oppose such a move.²⁰

¹⁶ *Africa Confidential*, 10 June 2011

¹⁷ *Africa Confidential*, 24 June 2011

¹⁸ "A fragile state is put to the test", *Financial Times*, 28 October 2011

¹⁹ "Odinga calls time on endangered despots", *Financial Times*, 9 March 2011

²⁰ "Cabinet amendments will steal the dream of a new Kenya", *Nairobi Star*, 8 November 2011

The ICC held ‘confirmation of charges’ hearings in September/early October for the two grouped cases. In the days preceding these hearings, the Kenyan Government again called on the ICC to allow local courts to take over the cases, although there have still been no moves to begin an in-country investigatory process. This appeal was dismissed.²¹ In his statement before the ICC, Uhuru Kenyatta alleged that Raila Odinga was “politically responsible” for the post-election violence. We are still awaiting the ICC’s ruling – it is scheduled for December. Kenyatta said he will step down from the government if charges against him are confirmed.²² Most expect that all six indictees will be found to have a case to answer. Some doubt whether Kibaki will ultimately agree to hand Kenyatta, or perhaps even the others, over to the ICC for trial, if it comes to that point. Kenyatta is already being portrayed by supporters as a potential Kikuyu martyr, with some making comparisons with his father’s trial by the British during the independence struggle. This period does feel like the calm before the coming storm. Africa Confidential states: “[...] when the President’s men and the Kikuyu hero have their backs to the wall, anything could happen.”²³

On 20 November it was reported that the ICC had written to the Kenyan Government to ask it to ensure that none of the suspects transfer assets to third parties until the cases have been completed.²⁴

2.2 Security: Kenya’s Somalia incursion

In early 2011, there was a burst of fighting in Gedo region, southern Somalia, along the border with Kenya, which placed the Kenyan army on high alert. The security forces say that there has been al-Shabaab ‘infiltration’ of Kenya, arguing that a bomb attack in Uhuru Park in June was the work of Kenyan al-Shabaab sympathizers. Predominantly Muslim coastal communities have been particularly restive in recent years, complaining about political and economic marginalization.²⁵ Al-Shabaab admitted responsibility and said that it was considering carrying out attacks in Kenya. Somali pirates have been tried and convicted in Kenya in recent times.

As famine struck the Horn of Africa during the second half of 2011, tens of thousands of Somalis fled to the refugee camps at Dadaab in eastern Kenya, imposing a growing burden on the host state and local communities. Then, on 15 October, following a mini-surge of attacks on and kidnappings of foreign tourists (Briton David Tebbutt was killed and his wife, Judith, amongst those abducted) and aid workers close to the Kenya-Somalia border, about 1,600 Kenyan troops crossed the border into Somalia in operation ‘Linda Nchi’ (Protect the Nation). Originally described by the Kenyan government as an operation aimed at capturing those who had engaged in the attacks and kidnappings, it soon came to be characterised as Kenya’s contribution to defeating al-Shabaab and creating peace in Somalia. The ultimate target of the Kenyan incursion appears to be al-Shabaab strongholds in the south, above all the port of Kismayo.²⁶ According to Africa Confidential, French and US seaborne forces may well be providing assistance. Both are believed by some commentators to have deployed

²¹ “ICC dismisses Kenya’s bid to halt post-poll trials”, *Nation*, 31 August 2011

²² “Kenyan politician uses the dock to give stump speech”, *Independent*, 1 October 2011

²³ *Africa Confidential*, 7 October 2011

²⁴ “ICC seeks embargo on Uhuru and Ruto assets”, *Nation*, 20 November 2011

²⁵ There is a group which favours secession for the coastal communities called the Mombasa Republican Council. It has been banned by the authorities but there are efforts to promote dialogue with its leaders.

²⁶ “Kibaki gambles on regional war with al Shabaab”, *Africa Confidential*, 21 October 2011

special forces on the ground, although this is officially denied. It is worth noting that the French oil company Total has oil interests off the coast of Kenya.²⁷

On 1 November, Kenya's military spokesman, Major Emmanuel Chirchir, stated that major attacks against al-Shabaab forces based at Baidoa, Bardhere, Dinsor, Buale, Barawe, Jilib, Afmadow and Kismayo could begin at any time. However, at the time of writing, they have not yet done so. Kenya claims that al-Shabaab has already ceded about 50% of the territory that it controlled in the south as a result of its incursion.²⁸ This has not been independently confirmed. Al-Shabaab has engaged only sporadically with the Kenyan army to date, undertaking several raids on convoys. There were also two grenade attacks in Nairobi in late October.²⁹ There are reports al-Shabaab has been busy re-arming itself in preparation for a major Kenyan offensive, with fingers pointing (as they have done for several years) at Eritrea as al-Shabaab's main supplier. Eritrea has denied this, but the vast majority of observers are not persuaded. UN sanctions imposed on Eritrea in 2009 remain in force.³⁰ MSF claimed that three civilians were killed in a Kenyan jet raid in Jilib region on 30 October. Kenya has promised to investigate this and other such reports of civilian casualties.³¹

On 16 November, the three Presidents of Uganda, the Transitional Federal Government in Mogadishu and Kenya announced a combined assault against al-Shabaab to inflict a decisive defeat on it.³² Kenya has asked the UN Security Council to facilitate deployment of African Union in Somalia (AMISOM) troops in areas it has taken from al-Shabaab in the south and to support a naval blockade of Kismayo. Perhaps not entirely coincidentally, Kenya has also offered to provide troops for AMISOM.³³ Ethiopia has made the same offer and on 20 November it was reported that Ethiopian troops had also crossed into Somalia.³⁴

There has also been speculation that Kenya's main intention is to create a buffer zone in southern Somalia and that to facilitate this it is encouraging another recently formed local polity along the border known as 'Jubbaland', or 'Azania', although it is anything but certain that this new polity will prove stable or durable.³⁵ A few have wondered aloud whether the incursion may in part be motivated by a hope that it might provide diplomatic cover for some of the senior Kenyan political figures who are currently subject to the scrutiny of the ICC in The Hague.³⁶ However, there is no evidence to support this. More broadly, humanitarian concerns have not been invoked by the Kenyan Government as a justification for the incursion.

For now, public opinion in Kenya seems largely acquiescent, but there are already some critics and their ranks could grow quickly if the Kenyan army starts to experience significant casualties. One Kenyan opponent of the incursion has claimed:

²⁷ "Confused war aims cause alarm", *Africa Confidential*, 4 November 2011

²⁸ "Al-Shabaab on the run in South Zone", *The Nation* [Kenya], 8 November 2011

²⁹ "Somali al-Shabaab militants attack Kenyan army convoy", *BBC News Online*, 2 November 2011

³⁰ "Eritrea denies sending weapons to al-Shabaab in Somalia", *BBC News Online*, 2 November 2011. For background on sanctions, see Library Standard Note SN05259, "[The UN imposes sanctions on Eritrea](#)", 30 December 2009

³¹ "Kenya to probe alleged Somalia civilian deaths", *Garowe Online*, 3 November 2011

³² "Uganda, Kenya and Somalia in joint assault on al-Shabaab", *Monitor*, 17 November 2011

³³ "Nine militants killed in raid as Kenya seeks UN support", *Nation*, 14 November 2011

³⁴ "Ethiopian troops 'enter Somalia'", www.aljazeera.net, 20 November 2011

³⁵ "Are Kenyans seeking a buffer zone in Somalia?", *BBC News Online*, 28 October 2011

³⁶ See Library Standard Note SN05905, "[Kenya – Six politicians fight their indictment by the International Criminal Court](#)", 17 March 2011

Contrary to the impression that this is an angry national reaction to a recent provocation, the fact of the matter is that this military operation has been in the planning pipeline for quite some time. According to impeccable sources who are quite familiar with the inside workings of Kenya's military, intelligence and security machinations, what is happening in Somalia is part of a detailed and coordinated Intergovernmental Authority on Drought and Development joint intervention in Somalia with specific roles for Ethiopia, the TFG in Mogadishu, the African Union troops and the Kenyan military.³⁷

For the moment, there is no definitive evidence that there has been an element of pre-planning, but if there has been, it would be surprising if Western stakeholders such as the US and UK did not know about the Kenyan incursion in advance. In any case, they might well harbour doubts about the prospects for the incursion. Past experience suggests that executing such plans, if they do exist, is anything but straightforward. As the preceding military intervention by Ethiopia demonstrated, the presence of foreign troops invariably provokes an armed counter-response sooner or later. Similarly, Ethiopia, which might be expected to support the incursion, does have concerns about Ogadeni influence within 'Jubbaland'. Partly for this reason, the Transitional Federal Government in Mogadishu has also felt compelled to oppose the incursion *per se*, even though welcomes any weakening of al-Shabaab and is open to military co-operation with the Kenyans. Some are warning that Kenya has not formulated clear aims for its incursion and would be wise not to remain in southern Somalia for long.³⁸ But getting out is always harder than going in. An analyst for the International Crisis Group has predicted: "I think the Kenyans are into a very long and messy intervention in Somalia."³⁹

2.3 Recent UK official actions and statements

On 8 November, Lord Howell of Guildford, speaking for the UK Government, set out its current position regarding the Kenyan incursion:

We are discussing the Kenyan military intervention in Somalia with many of our partners, including the EU and other organisations. The UK supports Kenyan action so long as it is undertaken in coordination with the Transitional Federal Government (TFG) and complies with international law. We will work with Kenya, the TFG, the EU and other organisations, such as the Intergovernmental Authority on Development, to ensure that any action does not impede humanitarian operations and is consolidated by stabilisation and the development of credible, accountable governance structures.⁴⁰

Compliance with international law was subsequently described by Lord Howell as compliance with Article 51 of the UN Charter, which enshrines the principle of the right to self-defence. He added:

[...] Of course, Article 51 does not permit unrestricted self-defence; it requires a real sense of challenge to national security and that the necessary defence should be proportionate. That is very important. That is what the Kenyan authorities will need to establish to satisfy our criteria for support.⁴¹

³⁷ O. Oloo, "The quixotic invasion of Somalia will devastate Kenya", *Pambazuka News*, 27 October 2011

³⁸ "Kenya's political failure in southern region", *Garowe Online*, 12 November 2011. Concerns have also been expressed, particularly by Muslim leaders, about alleged Israeli military assistance to the Kenyan incursion.

³⁹ "Are Kenyans seeking a buffer zone in Somalia?", *BBC News Online*, 28 October 2011

⁴⁰ HL Deb 8 November 2011 c124

⁴¹ *Ibid.*, c126

On 16 November, it was reported that UNDP, Denmark, UK, Japan and the US had agreed to cover at least 10% of the costs of the 2012 electoral process. A new Independent Electoral and Boundaries Commission has been established under the new Constitution.⁴²

It is also worth noting that the UK has imposed travel bans on Kenyan politicians, officials and business people for several years. The former Transport Minister, Dr Christopher Murungaru was banned from travelling to the UK in 2005, following allegations of corruption in the Anglo-Leasing Scandal in 2005⁴³, which consequently led to the USA and Germany cutting aid intended for anti-corruption programmes. As of January 2008, there were five politicians from Kenya who are prohibited from travelling to UK.⁴⁴ In December 2009, the then British High Commissioner to Kenya, Rob McCraire, indicated that this number had risen to over 20.⁴⁵

Finally, Scotland Yard detectives are reported recently to have travelled to Kenya in connection with a potential breakthrough in the case of Briton Julie Ward, who was murdered in 1988 while on safari. It is said that there may be new DNA evidence.⁴⁶

Key documents and sources

[Kenya Human Rights Commission – “Violating the Vote: A Report on the 2007 General Elections](#) (27 February 2008)

[Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007](#) (Kriegler Report, September 2008)

[Waki Report](#) (15 October 2008)

[Kenya National Commission for Human Rights, “On the Brink of the Precipice”](#) (August 2008)

[Proposed Constitution of Kenya](#) (6 May 2010. It was promulgated August 2010)

Human Rights Watch, [“Human rights concerns of Operation Linda Nchi”](#) (18 November 2011)

International Criminal Court, [Situation in Kenya](#)

3 Economy and development⁴⁷

3.1 The food crisis

Since mid 2011, the Horn of Africa has been experiencing a major humanitarian emergency. Although most international attention has been focused on southern Somalia, where six provinces have officially been declared to be experiencing famine, Kenya – in particular north, east and pockets of central Kenya – has also been severely affected.

⁴² “Donors pledge Kenya poll funding”, *Business Daily*, 16 November 2011

⁴³ [“Top ministers face inquiry into corruption allegations in Kenya”](#), *Guardian Online*, accessed on 7 October 2010

⁴⁴ HL Deb 24 January 2008 cWA66

⁴⁵ See: <http://ukinkenya.fco.gov.uk/en/news/?view=News&id=21575275>. I have not been able to find more up-to-date figures in the public domain.

⁴⁶ “Detectives travel to Kenya: Ward ‘breakthrough’”, *Daily Telegraph*, 5 November 2011

⁴⁷ Information in this section is taken from IMF (2011) *World Economic Outlook* and [Kenya: first review of the three-year arrangement under the extended credit facility](#); World Bank (2011) *World Development Indicators*; Europa World Plus [Kenya – Economy](#); African Development Bank/OECD (2010) [African Economic Outlook – Kenya](#); FT (2011) Special Report [Doing Business in Kenya](#) and various reports from the FT [Beyondbrics](#) blog

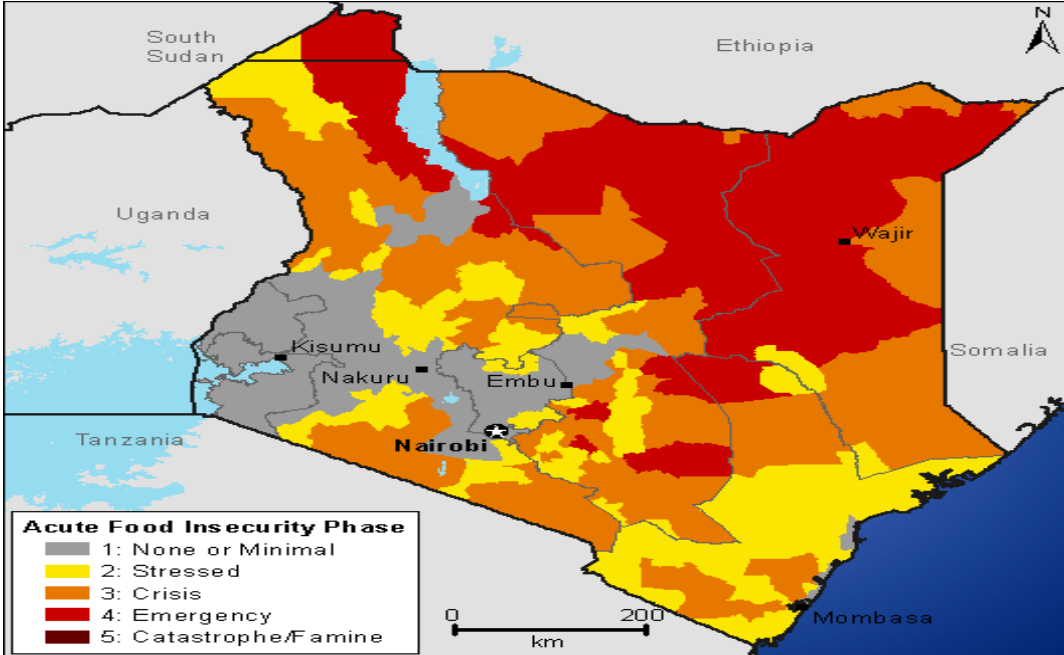
A FEWSNET [Food Security Outlook](#) briefing for the period October 2011 to March 2012 gives details about the current situation in Kenya. Below are its key messages and a map showing the areas of the country affected, including severity.

The early onset to the 2011 short-rains season has been a respite for drought-hit pastoral and marginal farm households who have experienced two to three successive failed seasons. Nevertheless, high levels of food insecurity remain for poor and very poor households with non-self-supporting livelihoods who attempt to meet substantial food gaps largely through destructive coping strategies and accessing aid interventions. An estimated 3.75 million people constitute the food insecure population in rural areas.

Food security for pastoral households in the north, northeast, and southern Maasai rangelands is anticipated to improve significantly toward the end of November when close to 80 percent of livestock that had left will have returned to wet-season grazing areas. However, some pastoralists who were unable to migrate have experienced livestock losses ranging between 15-20 percent. Although the majority of pastoral households will move from Emergency (IPC Phase 4) to Crisis (IPC Phase 3) levels, some very poor and poor households may remain at Emergency levels through December. Improvements in food security for these households will take place in January to March as the dry season sets in, due to increased self-employment opportunities (e.g., firewood, charcoal and gum Arabica collection), a significant source of income for poorer households.

Food security for crop-dependent households in the southeastern and coastal lowlands is anticipated to improve significantly during the outlook period, assuming that rains will be near normal and that current localized coastal flooding will ease. While successive household food deficits in the cropping lowlands may not be bridged by a single good season, the short rains is the principal season and good production coupled with on-going interventions should moderate current food insecurity and shift the food security status from Crisis to Stressed (IPC Phase 2) throughout the outlook period.

Current estimated food security outcomes, October 2011



Source: FEWS NET For more information on the IPC Acute Food Insecurity Reference Table, please see: www.fews.net/FoodInsecurityScale

Kenya has also been heavily affected by the movement of Somalis into Kenya, particularly in the east, with the population of Dadaab refugee camps increasing rapidly. An estimated 152,000 Somalis have fled to Dadaab since January.⁴⁸ The same FEWSNET briefing referred to above says of the situation in the Dadaab camps:

By mid-October, there were an estimated 460,000 refugees in Dadaab camps. While refugees had access to a full basket of food commodities; blanket supplementary feeding for all under-fives; and school meals for all children attending school, the nutrition status of many refugees remains at the Emergency level. The highest level of child malnutrition among refugees in the camps was reported on the outskirts of Dagahaley camp, which is the closest camp to Somalia and therefore most accessible to new arrivals. The UNHCR early September nutrition survey results indicate that the outskirts of Dagahaley had Global Acute Malnutrition prevalence (W/H) of 38 percent (CI: 31.1-44.8) and a Severe Acute malnutrition prevalence of 18 percent (CI: 14.7-23.6), both levels unprecedented in Kenya. Heightened malnutrition among older refugees who are already accessing a full basket of food suggests that causes of child malnutrition are complex and often transcend access to food. The health status of refugees and host communities is of additional concern following the confirmation of seven cases of cholera across camps and increased incidences of measles, even after widespread vaccinations. Unfortunately, aid agencies scaled-down non life-saving interventions in late October due to rising insecurity, attributed to attacks by militia groups from Somalia.

⁴⁸ "Refugees use illegal routes, says UN", *Business Daily*, 23 November 2011

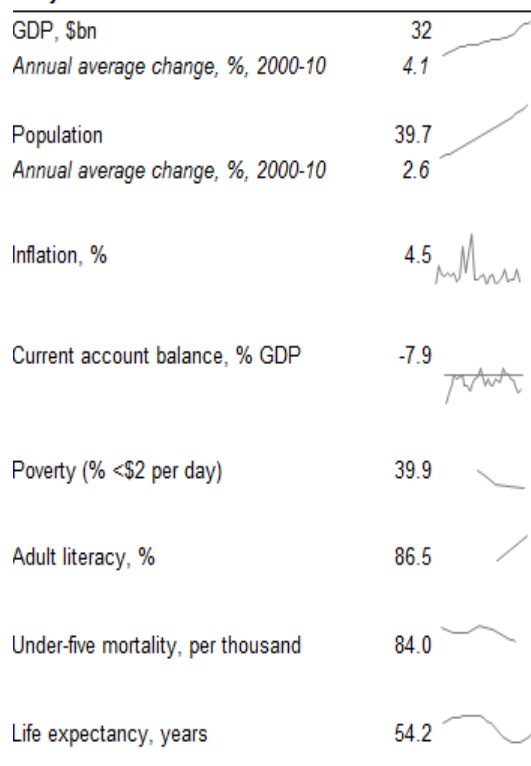
3.2 Economic background and context

Kenya is the fifth largest economy in Sub-Saharan Africa. Average living standards, as measured by GDP per capita⁴⁹ are slightly behind the regional average, although poverty rates are considerably lower too: around 20% of Kenyans live on less than \$1.25 per day, as compared with 51% across the region.

Violence following the 2007 elections, together with the global financial crisis, affected economic growth in 2008 and 2009. Performance was stronger in 2010, and the IMF expects growth to average 6.5% over 2011-16: if achieved, this would be the strongest performance in over thirty years.

The country has in the past been subject to bouts of rapid inflation, driven by food and fuel costs, which account for a high proportion of an ordinary Kenyan's expenditure, together with rapid currency depreciation, which inflates import prices. This instability, together with widespread corruption and political uncertainties, seriously threatens Kenya's growth prospects.

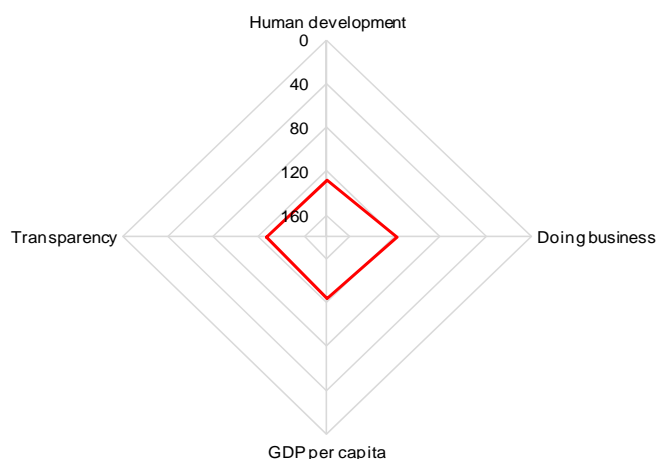
Kenya in 2010: fast facts



Note: charts show trends since 1980

Key rankings

Chart shows ranking against 181 countries, with '0' being the top/most favourably-assessed country



⁴⁹ Purchasing-power parity

Agriculture

Agriculture remains a major source of output (24%)⁵⁰ and employment (80%). Following independence, large-scale, export-orientated farms were transformed through a reform programme designed to transfer land from European settlers and to resettle Kenyan nationals upon it. More than one half of agricultural output is now subsistence production, and with relatively little irrigation, production is sensitive to weather conditions. In recent years, the country has been a net importer of its staple crop, maize, and is consistently a net importer of wheat.

Kenya is the world's largest exporter of tea, and this represents its main cash crop. Unusually, around half a million Kenyan smallholders have access to export markets via the Kenya Tea Development Authority, which buys the crop through its network of factories. Rising fertiliser prices, however, threaten the incomes of small tea plantations.

Kenya also exports a variety of fruits and vegetables, sugar, cotton and sisal, and is the largest exporter of cut flowers in Africa. The country is also a significant coffee exporter (2% of export earnings), although the extent and profitability of this activity is limited by market restrictions that require all coffee producers to sell their crop at auction in Nairobi.

Manufacturing and services

Kenya has a larger manufacturing and services sector than might be expected given its level of development, sustained by the employment and demand of a growing middle class, and a large number of non Kenyans, including expatriates and visitors.

Though it is the most industrially developed country in East Africa, a policy of import substitution (i.e. producing goods that the country would otherwise import) has meant that the manufacturing sector is not export orientated. The [Moi Government] has, however, taken steps to develop export industries and services: 'manufacturing for the regional market', 'developing financial services' and 'business process outsourcing' are three of six economic priorities for the government's *Vision 2030* strategy.⁵¹

Tourism

Tourism contributes around 10% of the country's GDP and is another priority of the government's long-term economic strategy. However, the sector is highly vulnerable to political turbulence. Following post-election violence in 2008, the number of visitors collapsed from 1.5m in 2007 to 729,000 in 2008. Though that figure has since recovered, the industry is once again being jeopardised by recent abductions of French and British tourists from Kenyan coastal resorts, allegedly by Somali militants.

Aid and remittances

Remittances from Kenyan nationals abroad are an important source of income and foreign exchange: in 2009, remittances were worth 5.7% of Kenyan GDP (\$1.7bn, a figure that is not unusually high for the region. It is estimated that the UK and US are the principal sources of remittances income.

⁵⁰ The World Bank estimates that a further 30% of GDP annually is contributed through agriculture-based manufacturing and services.

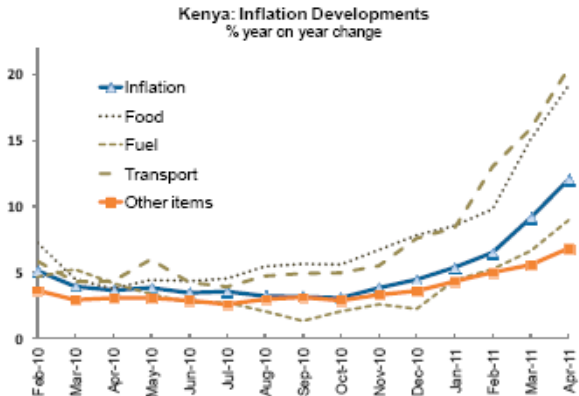
⁵¹ The others are tourism, increasing value in agriculture, and creating a more inclusive wholesale and retail trade sector.

Kenya has been a major recipient of development assistance since independence. In 2009, it received \$1.8bn (6% GDP) in total. Kenya has been the third largest recipient of UK bilateral aid since 1960, although its importance has declined over the last two decades. In 2010/11, it received \$133m. However, Kenya was identified as one of DFID's 27 focus countries in the bilateral aid review, and is set to receive a 72% increase in aid (2011/12 to 2014/15 vs 2007/18 to 2010/11). In April 2011 the World Bank had 22 active projects in Kenya and had committed more than \$2bn in the country, plus five regional projects that included Kenya. Most of the projects involved transport infrastructure. The IMF in January 2011 agreed a three-year, \$509m loans facility intended to support the balance of payments.

3.3 Issues

Inflation and currency

Kenya has in the past been subject to bouts of rapid inflation (41% in 1990, 34% in 1992, 18% in 2008), often driven by food and fuel costs, which account for a high proportion of ordinary Kenyan's expenditure, and exacerbated by currency depreciation. Inflation in the year to October was 19%, up from 5.4% at the start of the year.



Though rapidly rising fuel and food costs are partly to blame, inflation has not just been driven by global price movements. Rapid acceleration in private credit, particularly in the real estate sector, has fuelled demand-driven price increases. Moreover, the Kenyan shilling has lost over 30% over the past year (versus the US dollar), making imports far more expensive: credit-driven import demand may be partly to blame for this.⁵² The Kenyan central bank has also contributed to the problem through its tentative monetary policy response. Recently, however, it has started increasing interest rates in earnest: they currently stand at 16.5%.

Population, poverty and health

At 2.6% per year, population growth in Kenya is rapid and exceeds the Sub-Saharan African average. The country therefore requires relatively rapid economic growth simply to maintain living standards at existing levels: the 3.6% average annual rate achieved since 1998 has not been sufficient to reduce poverty over the past 10-15 years: by both \$1.25 and \$2 measures, poverty rates have not significantly declined in Kenya since 1997. The effects of the HIV pandemic, and relatively weak progress in reducing child mortality, have also resulted in a sharp decline in life expectancy in Kenya in the 1990s, from 59 years in 1992 to 52 in 2002.

Half of Kenya's population is under 14, something which may help the country meet its target of 10% growth in years to come, but at the moment acts as a constraint on growth.

HIV prevalence is 6.3% among 15-49 year olds, slightly higher than the average in Sub-Saharan Africa, although Kenya has been successful in reducing prevalence from a peak of 10.5% in 1997.

⁵² Higher import demand will tend to lead to depreciation, since their purchase requires the domestic currency to be sold in exchange for a foreign currency. Higher supply and/or lower demand for a currency will tend to reduce its value (depreciation), other things being equal.

Corruption

Corruption is widely seen as a constraint on Kenya's development: Transparency International ranked the country 154th out of 178 for perceptions of corruption (where lower ranked countries have worse corruption perceptions). A UN report released in 2005 revealed that one out of every two Kenyans had either bribed an official or knew someone who had bribed an official to obtain basic services. A number of high-level corruption scandals have been uncovered, but the installation of the new coalition Government in April 2008 had by mid-2011 demonstrated little or no improvement in this sphere.

Vision 2030

Kenya's long-term development plan, Vision 2030, was launched in October 2006. The strategy is to be implemented in a series of five-year plans, the first running from 2008-12. It is based on three pillars: economically, the target is for an average rate of GDP growth of 10% per annum, a figure the IMF has described as 'ambitious' (it considers a target of 7% more reasonable) and the achievement of middle-income status by 2030. Socially, the aim is to enhance living standards through investment in social welfare projects and programmes. Politically, Vision 2030 plans to improve accountability and reform public administration.

The plan also includes multibillion-dollar flagship infrastructure undertakings, including ports, airports, roads, railways, pipelines and the construction of new towns. These will be financed through public-private partnerships and development assistance.

More information on Vision 2030 is available from [this website](#).