

The March 2013 Elections in Kenya and the Responsibility to Protect Global Centre For the Responsibility to Protect

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INTRODUCTION

On 4 March Kenyans will vote in highly anticipated elections. These elections will be Kenya's first since widespread violence following the December 2007 presidential election shocked the country and world. The 2007/8 violence lasted two months, during which time 1,133 Kenyans were killed, over 600,000 driven from their homes and more than 110,000 private properties were destroyed. The stakes during the upcoming elections are high and, while not inevitable, there is a serious risk of a recurrence of widespread violence.

The crimes perpetrated during the deadly 2007/8 postelection violence rose to the level of crimes against humanity, according to the International Criminal Court (ICC). These are crimes that the Kenyan government, along with every other United Nations (UN) member state, committed to protect populations from at the 2005 UN World Summit when affirming its support for the Responsibility to Protect (R2P). In keeping with R2P, international actors responded swiftly to halt the violence in Kenya and the response is widely cited as the first successful example of "R2P in practice."(...)

This is a historic moment for Kenya with a new progressive constitution and a thriving economy. As the country marks its jubilee year, honoring 50 years of independence, considerable efforts have been taken to ensure that Kenya does not experience mass atrocities once again.

It is therefore imperative that, in keeping with R2P, the Kenyan government, with the support of the African Union (AU), UN, regional allies, donors and local civil society, intensify efforts to prevent a recurrence of violence and potential mass atrocities.

BACKGROUND

Electoral violence in Kenya is not new. At least 4,433 Kenyans have been killed and over 1.8 million people displaced by such violence since 1993. The scale and intensity of the 2007/8 post-election violence was, however, unprecedented. Within hours of the announcement of incumbent President Mwai Kibaki as the victor over Raila Odinga in the 27 December presidential election, protests over the perceived rigging of results quickly turned violent and mass atrocities were committed. (...)

International mediation led by Kofi Annan and an AU Panel of Eminent Personalities, with support from the UN, Kenya's neighbors, key donors and civil society, helped stem the tide of violence. The mediation effort, known as the Kenya National Dialogue and Reconciliation Process, led to a power-sharing agreement and the creation of an agenda for peace. Under agenda item 4, parties to the mediation made a commitment to address "long-term issues and the root causes of the conflict," including land reform and the distribution of political power. (...)

On 4 March Kenyans will vote in their fifth multi-party election. The elections will be Kenya's most complex, with voters casting ballots in six simultaneous elections for candidates at the national and local level, including: president, lower house, senate, women's/youth/disabled representatives, county governors and local country assemblies. The two leading presidential candidates are Prime Minister Raila Odinga and Uhuru Kenyatta. It appears unlikely that either will achieve victory in the first round on 4 March. A run-off election to determine the winner is planned for 11 April. Kenyatta, along with his running-mate, William Ruto, and two other men face ICC charges for crimes against humanity stemming from the 2007/8 post-election violence. Ruto's trial is set to begin at The Hague on 10 April and Kenyatta's will start the following day, the same day as the run-off election. Whether the two meet the "integrity standards" for candidates under the new constitution and will be permitted to run in the election will be determined on 15 February when a Kenya court renders its judgment in a trial initiated by Kenyan nongovernmental organizations. As Kenya wrestles with how to deal with past crimes, inter-communal violence is rising again. Since August 2012, 183 people have been killed and 34,417 displaced by politically-motivated inter-communal violence in Tana River county, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA).(...)

The politicization of existing conflicts between ethnic communities over access to land and water is one factor contributing to a rise in violence in Tana River county and elsewhere. Worryingly, some local politicians also appear to be inciting violence as a means of influencing electoral outcomes. This includes by forcibly displacing populations to change local demographics. (...)

THE APPLICABILITY OF THE RESPONSIBILITY TO PROTECT

R2P is concerned with the prevention of mass atrocities, not with the political outcome of elections. However, far too often in fractured societies where ethnic politics prevail, elections can result in violent protest and the commission of mass atrocities, as occurred previously in Kenya and more recently in Côte d'Ivoire in 2011. Such periods of heightened risk necessitate increased efforts to anticipate and mitigate threats.

In committing to uphold R2P the Kenyan government accepted that it bears the primary responsibility to protect its population from genocide, war crimes, crimes against humanity and

ethnic cleansing. At the core of this responsibility is the commitment to take preventive action. The government thus has a responsibility to: (1) ensure that government officials do not incite or facilitate the commission of crimes, (2) deter private actors from inciting, aiding or perpetrating crimes, (3) arrest and prosecute perpetrators and (4) ensure that the police and military observe international human rights standards and have the capacity to respond to developing threats. The government of Kenya has, in the wake of the 2007/8 post-election violence, taken many preventive steps. These include efforts to address some of the underlying causes of conflict through the creation of a National Land Commission, the devolution of considerable power from the presidency to the legislature, judiciary and 47 local counties and the establishment of an Independent Electoral and Boundaries Commission (IEBC). The international community has provided considerable financial, technical and political support to assist the Kenya government in carrying out these reforms. Regrettably, reform of the security sector, called for in the constitution, has yet to be rigorously implemented.

The government has also undertaken studies to identify possible flashpoints for violence and develop strategies to reduce the level of risk. This includes working with the National Cohesion and Integration Commission to establish “district peace committees,” training peace monitors and working with telecommunications companies to curb the possible transmission of electronic hate speech. (...)

THE RISK OF FUTURE MASS ATROCITIES

The potential flashpoints for the 2013 elections are more numerous than in 2007, including many impoverished, remote and rural parts of the country. The Kenyan National Security and Intelligence Service identified 27 out of 47 counties as having considerable potential to degenerate into electoral violence. Those populations deemed most at risk are in: Samburu, Turkana and Nakuru counties, Coast and North Eastern provinces, which include Tana River and Isiolo counties, and informal settlements in Kisumu, Nairobi and Mombasa. According to contingency plans developed by OCHA and the Kenyan authorities, violence during the upcoming elections could potentially affect up to 450,000 people, with up to 150,000 requiring assistance.(...)

Politics and ethnicity remain closely connected in Kenya. In the run-up to these elections, specific ethnic groups have associated themselves with The National Alliance (TNA), Coalition for Reform and Democracy (CORD) and Amani Coalition political parties. Given the history of violence around elections, the main ethnic groups, Kikuyu and Kalenjin on the TNA side and the Luo and Kamba on the CORD side, are likely to blame each other in the event that the electoral process is perceived as unfair to either group. This could easily descend into widespread violence, particularly in parts of Nairobi, Rift Valley, Nyanza and Eastern provinces. (...)

Many local leaders seek to preserve the system of ethnic patronage that devolution was

intended to remove. As a result, the mobilization of ethnic grievances to garner political support remains rampant. This is particularly dangerous in parts of the country with a history of inter-communal tensions over access to resources. For example, a scramble for land is underway in Tana River county with foreign and domestic investors keen to buy up valuable tracts of arable land for food and bio-fuel production. In Turkana county violence associated with cattle rustling is increasingly linked to local politics and efforts to secure control over energy resources. Outbreaks of violence during the election period in one or more of these areas will be hard for the police to contain and could lead to the further commission of mass atrocities.(...)

This could spark violence among groups that already have long-standing grievances against each other. Particular cities and populations also face their own unique threats. In Mombasa, the emergence of the secessionist movement the Mombasa Republic Council(MRC) has increased tensions in the city. The police have reportedly used disproportionate force in the past against perceived MRC supporters, including members of the local Muslim community. A significant number of

The Somali population also faces a heightened risk. Motivated in part by the Kenyan government's offensive against it in Somalia, Al-Shabaab, an Islamist terrorist group, has reportedly carried out a number of attacks in Garissa, Nairobi and elsewhere. These attacks are being used to drive a wedge between Christian and Muslim communities in Kenya as a means of fomenting violence and destabilizing the country. This has also contributed to the further marginalization of the Somali population. The government has recently ordered that all Somalis living in urban areas be relocated to refugee camps in the north of the country. Should violence break out during the electoral period or a terrorist attack be launched, the Somali community, and Muslims more broadly, may be targeted by the police and others. This risk is particularly acute in Coast and North Eastern provinces. (...)

In response to these multi-faceted threats, the Kenyan government's ability to uphold their R2P is undermined by their failure to advance significant reforms to the security sector. Given the role that the security forces played in the 2007/8 post-election violence, security sector reform should have been a top priority for the Kenyan government and the donor community.

Moreover, key benchmarks such as human rights and elections preparedness training have not been completed. Instead, the security forces responsible for providing protection during the elections, notably the police, appear ill-prepared to fulfill their responsibilities.

In particular, the response to the recent violence in Tana River county does not bode well. As in 2007/8, the police were unable to rapidly deploy when they received early warning of impending attacks. Once deployed, they were often unable to halt unfolding violence. A lack of resources also impairs the ability the police to adequately protect civilians and themselves. (...)

Militias, often formed along ethnic and political lines, pose a grave risk to civilians. The police may also pose a threat to civilians. Nearly one-third of the 2007/8 post-election violence victims were killed by the police. The government-mandated Waki Commission report concluded that at times poorly trained police forces committed crimes with impunity and acted with allegiance to their ethnic groups and preferred political candidates rather than to the state.

(...)

On the positive side, key political actors at the national level appear to be heeding warnings from the Kenyan government and the ICC to not incite violence. But, in the absence of prosecutions for previous electoral violence would-be perpetrators may believe that there will be no consequences for such activities. The failure to confront impunity for past crimes threatens a recurrence of such crimes during the upcoming elections.

UPHOLDING THE RESPONSIBILITY TO PROTECT

In keeping with R2P the government of Kenya, AU, UN and key donor states must intensify their preventive engagement. In the long-term, international actors must work with the Kenyan government to overcome deficits in its reform efforts. Today, it is imperative to prioritize proximate preventive strategies. Central to this is strengthening the capacity of the IEBC. (...)

The AU, UN, East African Community (EAC), Kenya's neighbors and concerned states need to have coordinated contingency plans in place in order to halt mass atrocities should they occur. (...)

CONCLUSION

The domestic and international response to postelection violence in Kenya during 2007/8 showed that non-coercive tools, such as mediation, can help to halt atrocities when employed early, with sufficient resources and vigorous international support. In the face of the considerable risks facing the country as it approaches the March 2013 elections, now is the time to intensify proximate preventive efforts. By local, regional and international actors working together in a coordinated and sustained manner, Kenya may yet prove that commitment to R2P's core tenet, prevention, can save lives and help transform a country.

See the full policy brief
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