



U.S.-Kenya Relations: Current Political and Security Issues

Lauren Ploch Blanchard
Specialist in African Affairs

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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, as the September 2013 attack on an upscale Nairobi shopping mall underscores, terrorist threats against international and domestic targets in Kenya remain a serious concern.

Kenya's military plays a key role in regional operations against Al Shabaab in Somalia. The Al Qaeda-affiliated Somali insurgent group has claimed responsibility for the Westgate Mall attack ostensibly in response to Kenya's military offensive against the group across the Somali border. The incident is the deadliest terrorist attack in Kenya since the 1998 U.S. Embassy bombing and the group's first successful large-scale operation in the Kenyan capital.

Kenya ranks among the top U.S. foreign aid recipients in the world, receiving significant development, humanitarian, and security assistance in recent years. The country, which is a top recipient of police and military counterterrorism assistance on the continent, hosts the largest U.S. diplomatic mission in Africa. Nairobi is home to one of four major United Nations offices worldwide.

The election in March 2013 of President Uhuru Kenyatta and Vice President William Ruto complicates the historically strong relationship between Kenya and the United States. Kenyatta, whose victory against former Prime Minister Raila Odinga was deemed credible by most observers, and Ruto face charges before the International Criminal Court (ICC) for their alleged role in crimes against humanity during violence that followed Kenya's last elections in December 2007.

Ruto's ICC trial commenced in September 2013; Kenyatta's begins in November. Their supporters have portrayed the cases as part of an international conspiracy against Kenya, and as emblematic of racial bias on the part of a court that has, to date, exclusively targeted Africans for prosecution. This was a campaign message during the 2013 elections, in which voting largely followed ethnic lines. The September vote by Kenya's parliament to withdraw from the Rome Statute of the ICC does not affect the current trials and is, for now, largely symbolic.

Kenya's key aid donors and senior Obama Administration officials have been supportive of the ICC process for the country, viewing impunity for state corruption and political violence as a major challenge that continues to threaten Kenya's long-term stability. 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 issue for Congress in the coming months, as it weighs various governance, human rights, and security priorities in the country.

The 2007-2008 post-election violence tarnished Kenya's generally peaceful reputation and had a significant impact on its economy, which is East Africa's largest and most diverse. More recent developments, including the September 2013 terrorist attack and a fire in August that did extensive damage to Nairobi's airport, the region's busiest, may again slow economic growth.

The March elections were the first held under a new constitution, under which major political reforms are proscribed. The Kenyatta government faces high expectations by the electorate to improve the economy and deliver on pledged political and social reforms.

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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 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 neighboring Somalia against a regional Al Qaeda "affiliate," Al Shabaab. The terrorist assault in September 2013 on a Nairobi shopping mall popular with Americans and other expatriates, claimed by Al Shabaab, draws fresh attention to the U.S. strategic relationship with Kenya and other security partners in the region.

With U.S. aid levels reaching almost \$1 billion annually in some years, Kenya ranks among the top recipients of U.S. foreign assistance globally. The United States has valued Kenya's role as a peacemaker among its neighbors and as a host to refugees from across the troubled region. 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 could threaten the country's long-term stability. Balancing these concerns against U.S. security priorities in the region may pose challenges for congressional deliberations in the near term.

Kenya's March 2013 elections were largely peaceful, despite fears of a repeat of the widespread violence that followed Kenya's last elections. As in past elections, however, voting largely followed ethnic lines, and ethnic mobilization contributed to the victory of President Uhuru Kenyatta and his running mate, William Ruto. The combination of Kenyatta and Ruto on the presidential ticket is credited by many analysts with reducing the likelihood of violence during the elections, given that they represent ethnic groups on opposing sides during the last election. President Kenyatta's election poses a challenge for many foreign governments, including the United States, as they determine how to conduct diplomatic relations with a head of state who, along with his vice president, is charged by the International Criminal Court for his alleged involvement in crimes against humanity during the 2007-2008 post-election violence.

Kenya has a long history of politicized violence, and, for some Kenyans and foreign observers, the ICC cases represent an important first step toward establishing accountability, and as a deterrent to those who would foment ethnic animosities for political gain. The Kenyatta Administration, which has committed to cooperating with the ICC, suggests, however, that the prosecutions represent foreign interference in Kenya's internal affairs and that the trials, as they proceed, might incite further violence. The government also argues that the cases are a distraction from critical challenges facing the government, including terrorist threats. In early September, President Kenyatta warned that government cooperation with the court might be affected if he and Vice President Ruto were required to appear at the Hague at the same time.¹ President Kenyatta declined to attend the September 2013 United Nations General Assembly meeting in New York, reportedly the first time since independence that the Kenyan head of state has not been

¹ James Macharia, "Kenyatta Urges ICC to Ensure Trials Do Not Damage Government," Reuters, September 9, 2013.

present, citing the need to remain in Kenya while his vice president, who was due to be present before the ICC, was abroad. Ruto subsequently sought and obtained limited leave from the trial to return to Kenya following the Westgate Mall incident.

Security threats facing Kenya, both domestic and foreign, impact the broader region. The country is a top tourist destination in Africa and a regional hub for transportation and finance, and its economy is among Africa's largest. Terrorist threats, a high urban crime rate, and several high-profile kidnappings have damaged the tourism industry and foreign investment, which took years to recover from the 2007-2008 violence. 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, as the U.S. embassy in Mogadishu has been closed since 1991.

The September 2013 Siege of Nairobi's Westgate Mall

On September 21, masked gunmen attacked an upscale shopping mall in Nairobi, taking hostages and killing more than 60 people. Several hundred people, including Americans, were wounded in the siege. The attack is the most deadly terrorist incident in the country since the 1998 U.S. embassy bombing, and comes almost two years after the Kenyan military launched a unilateral military offensive across its northeastern border with Somalia. Al Shabaab has claimed responsibility for the attack through Twitter and press interviews, citing retaliation for Kenya's ongoing military role in Somalia and stating that the target was chosen because it is frequented by Western nationals and Kenyan elites.²

The Somali insurgent group, more formally known as *Harakat Al Shabaab Al Mujahidin* ("Mujahidin Youth Movement") has long been linked to Al Qaeda and was designated by the United States as a Foreign Terrorist Organization (FTO) in 2008. The group, which maintains ties with Al Qaeda in the Arabian Peninsula (AQAP), announced its formal merger with Al Qaeda in February 2012, although the practical effects remain unclear. In July 2010, Al Shabaab conducted its first major attack outside Somalia, killing 76 people, including one American, in near simultaneous bombings in Kampala, the capital of Uganda. With that attack, Al Shabaab indicated its willingness, and capability, to follow through on threats against countries contributing to AMISOM, the regional stabilization force in Somalia that has been responsible for significant security gains against the Al Shabaab insurgency in recent years. While Al Shabaab has lost territory against AMISOM advances in the past two years, it continues to conduct deadly asymmetrical attacks against both Somali and foreign targets inside Somalia. Notable attacks against foreign targets in 2013 include the June attack against the U.N. compound, in which 22 people were killed, and the July attack on the Turkish diplomatic residence, both in Mogadishu.

Experts from the United Nations Monitoring Group on Somalia have closely reported on the rise of groups and individuals supportive of Al Shabaab in Kenya, including a Kenyan group known as the Muslim Youth Center/Al Hijra.³ According to their July 2013 report, Al Hijra and its supporters "have suffered setbacks from disruptions of Al Hijra's operations by international and regional security services, as well as unexplained killings and disappearances of its members."⁴ The report warned that Al Hijra fighters returning from Somalia in the wake of Al Shabaab defeats and Al Hijra members reeling from disruptive operations in Kenya "sought operational direction and guidance since the latter part of 2012 from individuals with former ties to Al-Qaida in East Africa and self-styled Al-Qaida affiliates."

A statement attributed to the group in late 2012 warned it would shift its focus to "jihad in the region of east Africa with the obvious emphasis on Kenya" and said:

"Our focus on the region of east Africa should not be viewed as an admission of defeat in Somalia ... [Muslim Youth

² "Q&A: Al-Shabab Defends Nairobi Attack," Al Jazeera, September 23, 2013.

³ The former Muslim Youth Center adopted the name *Al Hijra* ("the emigration"), signaling its attempt to place itself in the context of the original *hijra* of the Muslim prophet Mohammed and his closest supporters from Mecca to Medina.

⁴ U.N. Document S/2013/413, Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2060 (2012), July 12, 2013.

Center] MYC's decision to focus on Kenya and the wider east African region is but a mere continuation of the jihad in Somalia and not defeat.... As our brothers Al Shabaab and our Kenyan mujahidin combat the kuffar [infidels] inside Somalia, MYC and its lions will continue to spread the sword here in east Africa making Kenya an example for other east African countries.”⁵

The July 2013 U.N. report identified a cleric named Abubakr Sharif Ahmed (aka “Makaburi”) as having “exerted a growing influence over Al Hijra” and as being “determined to redirect the group’s resources and manpower from hitting ‘soft targets’ to conducting complex, large-scale attacks in Kenya on behalf and in support of Al-Shabaab.” Ahmed has been the subject of Kenyan terrorism investigations for years and was accused of inciting violent riots and attacks in the Kenyan coastal city of Mombasa after the public murder of his associate About Rogo.⁶ In 2012, the U.S. government designated Ahmed for sanctions for contributing to the conflict in Somalia, alleging that he “provides material support to extremist groups in Kenya and elsewhere in East Africa” and “has preached at mosques in Mombasa that young men should travel to Somalia, commit extremist acts, fight for al-Qa’ida, and kill U.S. citizens.”⁷ He has pled not guilty to charges of incitement and denied involvement with terrorist activities.

While details of the Westgate attack remain unclear, Kenyan officials suggest that among the attackers may be not only Somalis or other Africans, but also possibly British or American citizens. The Somali diaspora community in the United States has drawn attention from law enforcement officials in recent years because of efforts by Al Shabaab to recruit and raise funds abroad. Al Shabaab recruitment in the United States has been linked to concerns regarding threats to the U.S. homeland and the involvement of U.S. citizens in terrorism activities overseas. The Federal Bureau of Investigation and other entities within the Justice Department, and the Department of Homeland Security have developed a range of outreach programs designed to counter radicalization and increase dialogue with Somali communities in the United States. Several Somali Americans have been prosecuted for terrorist financing, and several American citizens (many, but not all, of Somali origin) have been indicted on suspicion of traveling to Somalia to train and fight with Al Shabaab. At least two Somali Americans have been implicated in suicide bombings in Somalia. Among the most infamous of Al Shabaab’s foreign fighters was a Lebanese American from Alabama, Omar Shafik Hammami, also known as Abu Mansour al-Amriki, who appeared in propaganda videos and used Twitter and other Internet sites for recruitment. Hammami, for whom the United States had issued a \$5 million bounty, was killed in early September 2013, reportedly by former allies within Al Shabaab. Rumors of possible involvement by American foreign fighters in the Westgate incident are, at the moment, unsubstantiated.

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. The September 2013 siege of the Westgate Mall in Nairobi, a popular shopping destination for tourists, expatriates, and the Kenyan elite, is the first successful high-profile terrorist attack in the country since the Al Qaeda attacks in Mombasa in 2002. There have been numerous small-scale attacks on civilian and state targets in recent years, though, many of which are attributed to Al Shabaab

⁵ U.S. Government Open Source Center Report AFP20121212950048, “Kenyan Islamist group threatens to launch ‘jihad’ in East Africa,” Twitter, December 11, 2012.

⁶ A 2012 U.N. Monitoring Group Report identified Rogo as “a known associate of members of Al-Qaida East Africa and an advocate of the violent overthrow of the Government of Kenya.” In July 2012, Rogo was designated by the U.S. government as contributing to the conflict in Somalia. He was shot in Mombasa on August 27, 2012.

⁷ Treasury Department, “Treasury Targets Regional Actors Fueling Violence and Instability in Somalia,” July 5, 2012.

or its sympathizers. The frequency of these attacks, most of which occur near the Somali border, has increased since Kenya commenced military operations in Somalia in 2011 (see below).

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 were born in Kenya, some whose families have been in Kenya for generations. 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 2012.⁸ 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.⁹ Reports suggest Somalis, particularly in Eastleigh, are increasingly subject to police harassment. A Kenyan army unit is under investigation for the shooting of civilians and for other abuses in the northeast town of Garissa, home to many Somali Kenyans, 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 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.¹⁰ 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 deadly attacks in the capital and elsewhere. Various criminal organizations,

⁸ "Kenyan Muslims Fear the Worst Over Proposals to Boost Police Powers, *The Guardian* (UK), September 27, 2012.

⁹ Human Rights Watch, *Criminal Reprisals: Kenyan Police and Military Abuses against Ethnic Somalis*, May 2012.

¹⁰ 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, which provides training and equipment. Kenya's air and naval operations in Somalia remain outside AMISOM.

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.¹¹ The United States and Kenya have an agreement 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.

Figure I. Kenya at a Glance



Political Background

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

¹¹ See CRS Report R40528, *Piracy off the Horn of Africa*, by Lauren Ploch Blanchard et al.

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.

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 Mount 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.¹² 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.¹³ Such perceptions underpinned the resentment that fed hate speech and violence surrounding the 2007-2008 post-election crisis. Related state corruption and nepotism have 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.

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

¹² See Commission on Revenue Allocation, Kenya: Country Fact Sheets, December 2011 at opendata.go.ke.

¹³ 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).

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.¹⁴ 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.¹⁵ 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.

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.¹⁶

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.

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

¹⁴ 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.

¹⁵ State Department, "Kenya," *Background Notes*, May 7, 2012.

¹⁶ Commission of Inquiry into the Post-Election Violence (CIPEV), *Final Report*, October 2008.

of the suspects—William Ruto, Uhuru Kenyatta, Joshua arap Sang, and Francis Mutharua—in January 2012.¹⁷ The Kenyan government objected to these cases, despite being a state party to the ICC.¹⁸ The ICC judges nevertheless proceeded, having found Kenyan efforts insufficient to constitute a credible claim to prosecuting the suspects at home. Witness protection remains a serious concern—in March, the ICC Prosecutor dropped the charges against Mutharua, claiming that key witnesses in the case had either died, been bribed, or were too afraid to testify.¹⁹

The ICC Charges Against Kenyatta and Ruto

The ICC trial against Vice President William Ruto began in September 2013. He faces 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, whose trial is scheduled for November, faces similar charges, but his are tied to revenge attacks by Kikuyu gangs against groups seen to support the ODM party, namely Luo and Kalenjin, in the 2007 elections. Both cases have been marked by a high number of witness defections, a possible sign of intimidation.

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.

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. Concerns have been raised with the pace of police reform.²⁰ The Waki Commission found that the police response to the 2007-2008 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

¹⁷ 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.

¹⁸ 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.

¹⁹ "Statement by the ICC Prosecutor on the Notice to Withdraw Charges Against Mr. Mutharua," *ICC Weekly Update #163*, March 12, 2013; "ICC's Agony Over Key Kenyan Witnesses," *The Standard* (Nairobi), August 16, 2012.

²⁰ 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.

indiscriminately on protestors.²¹ Amnesty International suggests that new policies on the use of force have yet to be applied in practice.

The 2013 Elections

The March 2013 elections heralded several major changes in Kenya's political system. The new constitution dissolved the power-sharing arrangement created after the 2007 elections, including the position of prime minister, making the presidential race a winner-takes-all scenario for the executive branch. With President Kibaki constitutionally ineligible to run for a third term, eight presidential candidates vied for the post. Among them, the two primary candidates were then-Prime Minister Raila Odinga and Kenyatta, who was then Deputy Prime Minister. The proliferation of aspirants and opinion poll data led many observers to expect that neither of the top candidates would achieve the required absolute majority in the March 4 polls, thereby forcing a run-off.²² The close race increased fears that if the election results were contentious, they might spark political violence, as happened in 2007.

The ICC cases became key among a range of issues covered in the presidential campaigns, as was evident in Kenya's first-ever presidential debate, which was widely televised and broadcast on radio and Internet. Odinga questioned the practicality of having an ICC indictee as president, while Kenyatta and Ruto, who ran under the banner of the new Jubilee coalition, focused on rallying votes from their ethnic bases and, according to many analysts, ran a better-managed campaign.²³ Legal challenges to Kenyatta and Ruto's eligibility as candidates, based on integrity and ethics requirements in the new constitution, failed to halt their bid for office.

Voter turnout in the March 4 elections was high, at 86%, and the complexity of the polls, during which voters cast six different ballots for presidential, parliamentary, and county-level races, combined with the failure of new electronic systems for transmitting and tallying results, delayed the announcement of the election results until March 9. Candidates from the Jubilee coalition won the most seats in the National Assembly and the new Senate, but failed to secure an absolute majority. Uhuru Kenyatta was declared the winner of the presidential race with 50.07% of all votes cast, avoiding a runoff against Odinga, who earned 43.3% of the votes, by a slim margin of 8,419 votes. While the margin by which he won a first-round victory was narrow, his lead against Odinga was not—Kenyatta beat Odinga by more than 800,000 votes. Kenya's Supreme Court, which heard several challenges to the results, including from Odinga, found on March 30 that the elections had been held in a free, fair, and credible manner, and that Kenyatta and Ruto had been validly elected. Many election observer groups concurred: while noting problems during the party primaries, isolated violence in parts of the country on election day, technological failures, and a lack of transparency during the tallying process, observers largely agreed that they had not seen evidence to indicate that such irregularities undermined the declared result of the presidential

²¹ HRW, *Turning Pebbles: Evading Accountability for Post-Election Violence in Kenya*, December 9, 2011.

²² 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.

²³ 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.

election.²⁴ While some analysts have questioned whether discrepancies in the tallying of polling station results could indicate that Kenyatta might not have passed the first-round 50% threshold, it appears unlikely that a full recount would have ultimately overturned his win.²⁵

Odinga conceded defeat after the Supreme Court's ruling, easing tensions and allowing the Kenyatta Administration to commence its five-year term unchallenged. The peaceful resolution of electoral disputes, including the opposition's acceptance of the Supreme Court ruling, was hailed by President Obama as a testament "to the progress Kenya has made in strengthening its democratic institutions, and the desire of the Kenyan people to move their country forward."²⁶ Still, the devolution of power to local-level authorities, as called for in the new constitution, continues to represent a potential flashpoint in local disputes over resources and power.

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 2007-2008 post-election crisis, the global economic downturn, and a 2011-2012 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 such as the Westgate incident, combined with spillover effects from Europe's financial woes, have hurt Kenya's tourism industry and its investment climate. A fire in August 2013 did extensive damage to Kenya's main international airport, in Nairobi, and its impact on exports and tourism is expected to have a damaging effect. 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.²⁷ 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, one of only four such dialogues worldwide.

²⁴ European Union Election Observation Mission to Kenya, Final Report, 2013.

²⁵ See the September 3, 2013 Mars Group Kenya Audit Report at <http://blog.marsgroupkenya.org>.

²⁶ The White House, Statement by the Press Secretary on the Presidential Election in Kenya, March 30, 2013.

²⁷ 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.

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. Kenya has a growing middle class, but more than half the population lives on less than \$1 per day. 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. Kenya's 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. The group has to date 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. Increasing anti-government sentiment among Muslim youths in the region is a cause for concern—in August 2012, Aboud Rogo, 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 the Al Shabaab bombings in Kampala. 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.²⁸

Food Insecurity in the Horn of Africa and Refugee Issues

In 2011, the Horn of Africa region suffered its worst drought in 60 years. Pastoral communities in Kenya's arid north faced conditions similar to those in Somalia, with extremely high rates of malnutrition.²⁹ 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. 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 to be waning, in part based on an increase in attacks attributed to Al Shabaab and its sympathizers

²⁸ 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.

²⁹ See CRS Report R42046, *Horn of Africa Region: The Humanitarian Crisis and International Response*, coordinated by Rhoda Margesson.

in Kenya.³⁰ 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. Kenya's High Court, in a July 2013 ruling, upheld the asylum right of urban refugees, halting efforts to relocate them to the camps.

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.³¹

International pressure regarding increasingly endangered African elephant populations mounted in the 1980s.³² 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.³³ 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 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.³⁴ 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.³⁵ 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

³⁰ 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.

³¹ 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.

³² 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.

³³ Jane Perlez, "Kenya, In Gesture, Burns Ivory Tusks," *New York Times*, July 19, 1989.

³⁴ "Spatiotemporal Patterns of Elephant Poaching in South-Eastern Kenya," *Wildlife Research*, April 12, 2012.

³⁵ "Special Update: Elephant Poaching in Samburu," *National Geographic*, June 2012.

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 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, U.S. security cooperation with countries in the Horn of Africa took on heightened strategic priority amid contingency planning for possible U.S. military intervention in the Persian Gulf, 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 a friendship that is "broad and deep."³⁶

Kenya's flawed 2007 elections and the violence that ensued were viewed with "great dismay and disappointment" by U.S. officials such as former 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.³⁷ While 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 elements of 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.³⁸ The State Department has urged Kenyan cooperation with the ICC, and President Obama has reiterated the importance of Kenya's "commitment to uphold its international obligations, including with respect to international justice."³⁹

³⁶ Testimony of Robert F. Godec, Senate Foreign Relations Committee, *Nomination Hearing*, November 28, 2012.

³⁷ 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.

³⁸ 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 was not mandated with the authority to bring criminal charges against alleged perpetrators of abuses. The TJRC held public hearings on an array of sensitive topics, and issued its final report in May 2013, which is available at <http://www.tjrkenya.org>. Some allege that the final version of the report was tampered with by President Kenyatta's office. See Paul Seils, "Integrity of Kenya's Truth Commission Report Must Be Restored," Al Jazeera, June 9, 2013.

³⁹ The White House, Statement by the Press Secretary on the Presidential Election in Kenya, March 30, 2013.

Despite the potential diplomatic challenges posed by the ICC cases, the Obama Administration has maintained its public commitment to the U.S.-Kenya relationship, during and in the aftermath of the 2013 elections. A video message by President Obama to the Kenyan people prior to the elections underscored his commitment to the partnership, according to the State Department, and reflected “the important place that Kenya occupies in East Africa and beyond.”⁴⁰ The message that “the choice of who will lead Kenya is up to the Kenyan people” received mixed responses from Kenyan politicians. Kenyatta and Ruto reportedly sought to portray the President’s comments as endorsing their legitimacy as candidates, but a subsequent comment by Assistant Secretary Carson that “choices have consequences” was interpreted by some as interference, that is, an implicit message that the United States did not view ICC suspects as appropriate candidates.⁴¹ The Kibaki Administration was sensitive to comments by donor governments related to the ICC issue, and in February the Foreign Ministry admonished European ambassadors for what it viewed as interference in domestic issues and a perceived effort to influence the elections.⁴² That sensitivity continues under the new government, which has looked to alternative allies, such as China and Russia, for diplomatic and economic support in the early months of its tenure.

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 the Kenyatta Administration may be affected by their ICC cases, other than to encourage continued cooperation with the Court. Prior to the election, several European countries alluded to possible changes in diplomatic relations based on EU policies requiring only “essential” contact with ICC defendants, although the extent of those changes remains unclear.⁴³ President Obama publicly congratulated President Kenyatta on his election, and the United States and several European countries sent their ambassadors to his inauguration. President Obama spoke directly with President Kenyatta by phone during the September 2013 terrorist attack, expressing his condolences and offering U.S. support for Kenyan efforts to bring the perpetrators to justice.⁴⁴

U.S. Assistance

U.S. foreign assistance to Kenya has reached almost \$1 billion annually in recent years, and the country routinely ranks among the top 10 U.S. aid recipients globally. U.S. assistance was estimated at over \$900 million in FY2011, including over \$200 million in food and other humanitarian aid.⁴⁵ Kenya received more than \$700 million in U.S. aid in FY2012—over \$500 million in bilateral aid, including almost \$8 million in Overseas Contingency Operations funds,

⁴⁰ 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.

⁴¹ 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.

⁴² “Kenya Rebukes U.S., EU Ambassadors Over Election Comments Seen as Discrediting Top Candidate,” Associated Press, February 11, 2013.

⁴³ 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.

⁴⁴ The White House, Readout of the President’s Call with President Kenyatta of Kenya, September 22, 2013.

⁴⁵ Assistance figures compiled by CRS based on annual State Department budget justifications, USAID emergency fact sheets, and congressional notifications of both DOD and State Department security assistance.

and roughly \$200 million in humanitarian aid, in addition to U.S. support for AMISOM troop contributors. The State Department has requested \$564 million in non-emergency aid for FY2014; this figure does not include food aid or certain types of security assistance. Global health programs regularly comprise 65%-75% of total non-emergency aid to Kenya, although there has been a substantial reduction in HIV/AIDS-related funding in the past two years, based on “efficiencies and country-specific factors.”⁴⁶ The reduction in health funding, which began in FY2012, accounts for comparatively smaller aid requests in FY2013 and FY2014. 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). Such assistance has increased significantly with Kenya’s incorporation into AMISOM, both through assessed U.N. contributions and bilateral support to the country’s contributing forces.

Table 1. U.S. Bilateral Foreign Assistance to Kenya, State Department and USAID
(\$ in millions)

Account, by Year	FY2011 Actual	FY2012 Actual	FY2013 Request	FY2014 Request
Development Assistance (DA)	75.8	92	92.9	89.8
Economic Support Fund (ESF)	-	4.8	-	-
Food for Peace (FFP)		77.5	-	-
Global Health Programs (GHP) – State	498.8	241.5	277.4	382.1
Global Health Programs (GHP) – USAID	75.3	78.2	79.4	81.4
Foreign Military Financing (FMF)	1	1.5	1.1	1.2
International Military Education & Training (IMET)	0.9	0.9	0.8	0.8
International Narcotics Control & Law Enforcement (INCLE)	2	2	1.8	2
Nonproliferation, Antiterrorism, Demining & Related Programs (NADR)	8	1.2	6.2	6.5
NADR – Overseas Contingency Operations (OCO)	-	7.8	-	-
TOTAL	661.8	507.2	459.5	563.8

⁴⁶ 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.

Source: State Department FY2013 and FY2014 Congressional Budget Justifications for Foreign Operations. Totals do not include emergency humanitarian assistance, or certain types of security assistance provided through regional programs, including for counterterrorism and peacekeeping purposes.

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. Kenya has also been identified as one of six initial partner countries in the Obama Administration's Power Africa 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) and the State Department's Bureau of Conflict and Stabilization Operations (CSO) have provided conflict mitigation and election-related support.

Security Assistance

Kenya is one of the largest recipients of U.S. security assistance in 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 receives aid through a regional State Department program, the Partnership for Regional East African Counterterrorism (PREACT), with related counterterrorism funding totaling over \$10 million in FY2012. Kenya is a major African recipient of Department of Defense (DOD) "train and equip" aid, totaling almost \$80 million to date, as authorized under Section 1206 of the FY2006 National Defense Authorization Act (NDAA), as amended, and Section 1207(n) of the FY2012 NDAA, as amended, the latter applying to its role in 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 conducts civil affairs projects and other security cooperation activities in Kenya.

The incorporation of over 4,000 Kenyan troops into AMISOM has budget implications for the State Department, which has provided roughly \$700 million in logistics support, equipment, and training for AMISOM troop contributors since 2007. This aid has been provided through the Department's Peacekeeping Operations (PKO) account, and includes U.N. assessed contributions to the U.N. logistics mission that supports AMISOM. DOD has provided more than \$100 million in funding for training and equipping AMISOM troop contributors since FY2011, some of which, as noted, has been obligated for Kenya.⁴⁷

⁴⁷ DOD provided \$140 million under Section 1206 to date, and almost \$40 million under Section 1207(n) authority.

Kenya is one of the top five global recipients of State Department Anti-Terrorism Assistance (ATA) funding, which supports border and coastal security and law enforcement programs. ATA funds support counterterrorism training for the Kenyan Police, and have averaged \$8 million annually in recent years. 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.⁴⁸

Outlook

Kenya's 2013 elections present donor governments, including that of the United States, with both opportunities and challenges as they proceed in their relationship with the Kenyatta Administration. The elections were relatively peaceful, and their outcome, including Kenyatta's victory, has been accepted by all parties, even though some still question whether Kenyatta's first round victory was legitimate. New-found public confidence in Kenya's judiciary, which appears to be a result of reforms made under the 2010 constitution, is partly credited with the peaceful outcome of these elections. The ethnic tensions that preceded the polls, however, still exist, and the Kenyatta Administration faces deep mistrust among some communities. Kenya's major political parties today appear to represent strategic alliances of ethnic communities rather than of shared ideology, and their continued cohesion is far from assured. The Kenyatta Administration represents a new generation of Kenyan leadership that has emphasized its commitment to pro-market reforms and its intent to harness public-private partnerships to create jobs, expand access to education, health care, and technology, and commence major infrastructure projects. While many of these goals dovetail with U.S. foreign aid priorities, Kenya's ability to fund them is uncertain, and ongoing security risks facing the country may deter anticipated investments.

Another factor that may affect the views of Congress and other donor countries toward Kenya is its continued compliance with the ICC, given recent moves by Kenya's parliament and President Kenyatta's warnings about the challenges of governing the country while he and his Vice President travel back and forth to the Hague for the trials.⁴⁹ If Kenyatta or Ruto's cooperation with the Court were to change, foreign diplomatic interaction with Kenya's top leadership might be limited and their ability to travel abroad curtailed.⁵⁰ Additional restrictions by ICC Member States on trade and aid might also apply, which could place the United States, which is not obligated by ICC policies, in an increasingly challenging position as a key donor to the country.⁵¹

Going forward, Congress may face difficult decisions in balancing U.S. human rights concerns against other priorities in the U.S.-Kenya relationship. These include a shared desire to counter terrorism, ongoing development and humanitarian priorities, and other foreign policy goals in the region. The United States has made significant investments in Kenya and the size of the U.S. government presence in the country underscores its importance for U.S. efforts in the region. Kenya's commitment and capacity to respond to transnational threats in ways that support U.S.

⁴⁸ State Department, *2012 Country Reports on Human Rights*, 2013.

⁴⁹ "Analysis: Kenyatta's Bid for Kenya Presidency a Diplomatic Headache," Reuters, February 14, 2013.

⁵⁰ See, e.g., Gabrielle Lynch, *The ICC Intervention in Kenya*, Chatham House, February 2013.

⁵¹ 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.

interests, however, may be challenged by multiple domestic factors, from demographic pressures to corruption and ethnic tensions, as well as by possible shifts in the diplomatic relationship.

Author Contact Information

Lauren Ploch Blanchard
Specialist in African Affairs
lploch@crs.loc.gov, 7-7640