

One year on: Kenya on a knife-edge

Action points for US policy-makers on current risks to Kenya's stability

The crisis persists: Although Kenya largely seems to be calm at present, appearances are deceptive. The problems that led to last year's explosion of violence persist and are receiving no serious attention from the coalition government. Despite the rhetoric accepting the outcomes of the Annan mediation and the promises to renew institutions and address injustices, the ruling political class continues to "re-arm" financially by engaging in massive corruption, avoid accountability and maximize opportunities for possible manipulation of the 2012 election. Apart from the political settlement that brought an uneasy peace, there has been very little progress on the commitments made under the mediation agreement.

Public anger is pervasive: Ordinary Kenyans, whatever their political or ethnic persuasion, feel frustration and anger towards the political class. While middle and propertied classes may show some tolerance for business-as-usual, the majority poor are vocal and angry at the self-interest exhibited by politicians.

Ethnic mistrust deepening: In many areas, the frustrations are aggravated by ethnic mistrust. The lack of non-sectarian channels through which this anger can be expressed in support of progressive policies means that there will likely be a strong ethnic bias in voting patterns in 2012 as people without alternatives feel forced to choose their "own." Non-Kikuyu communities feel the Kikuyu have had their turn and should relinquish the highest political office; if there is a strong Kikuyu candidate in 2012 then there is sure to be a repeat, many times magnified, of 2008. Kikuyu, by contrast, fear that if they let go, they will be finished. Coupled with this sense of victimhood among Kikuyu is a sense of entitlement and superiority that only they can lead the country.

New political violence and collapse can be averted: The risk of violence and conflict can be reduced but major efforts are needed between now and 2012. Public anger and frustration will be assuaged if corruption is seriously challenged, if institutions are renewed and proofed against interference, and if those responsible for last year's violence and election malpractices are held to account. Following the commitments made under the mediation agreement, there must be verifiable disarmament and demobilisation of militias; security forces must act within the law; fundamental rights and civil liberties must be restored; IDPs must be sustainably resettled; those responsible for gross and systematic violations of human rights must be brought to justice and there must be progress on the so-called long-term issues such as constitutional reform, the youth crisis, land reform, addressing poverty and inequity and consolidating national unity. The alternative is a terminal loss of confidence in democracy and worse instability and violence than we have so far seen.

There are four spheres in which US action can make a difference:

1. Signal US concern and engagement to sustain democracy

The US is highly influential in Kenya and this Administration's "Kenya connection" offers a unique opportunity to add pressure without inordinate risk. US diplomatic representation has been problematic with the ambassador being seen as too politically involved and, while plugged in with the business community, not close to the non-governmental sector although that is where the strongest drive for reform is to be found. The US has also been perceived as sometimes reluctant to work in concert with other international partners. Washington should assume a more critical stance with USG officials seeking to convey via both formal and informal channels that better standards of governance are necessary, including compliance with rule of law, an end to extra-judicial killings and other impunity, commitment to address corruption, to meet democratic standards on freedoms of association, assembly, speech and expression; and an end to the use of

illegal restrictions on public demonstrations and of repressive and violent means to maintain public control.

- Renew US diplomatic representation as soon as possible to signal a change of tone and follow up with an early visit by the new A/Secretary for Africa to Kenya to simultaneously stress continued US engagement and more conditional relationship. We would not recommend a visit by the President unless and until major governance improvements have been registered. In the absence of a new Assistant Secretary, perhaps a high-level congressional delegation could travel to Kenya to make these points.
- In the wake of the latest killings, and in light of already deep fear and concern among human rights defenders, USG should state clearly to the GoK that punitive treatment and political killings are not acceptable and there should be an immediate end to such atrocities.
- USG should express strong support for the Philip Alston report and press the GoK to act on its recommendations; the new A/S Africa should ask the GoK how it intends to respond to the report and recommend an overhaul of police management and training to end rogue behaviour and impunity.
- Review US engagement with Kenyan security institutions with a view to avoiding protection of bad behaviour out of concern for US interests or the primacy of the War on Terror. US interests are in fact jeopardised by police and military impunity since it creates alienation in the population that provide fertile ground for terror organizations and more grievances against the police and the USG.
- Find ways to provide support to young people angered by the present levels of impunity and lack of service delivery. Current levels of alienation risk driving youth into blind alleys such as ethnic sectarian politics and involvement in militia instead of identifying the real causes of their disappointment; programs that offer non-partisan space and learning opportunities may provide an alternative to such negative paths.

2. Ensure accountability for the 2008 violence and the 2007 election fiasco

US support for a comprehensive approach to accountability is urgently needed. Given the risks highlighted above, it is of the highest importance that those who perpetrated the post electoral violence and the election malpractices that were the trigger for this violence are held accountable, both to calm public anger and to discourage other politicians and security officials from using such strategies in future.

- USG should express strong support for both a local special tribunal and an ICC referral. The two are not alternatives; there is a small number of powerful individuals who are unlikely to come to trial in Kenya thanks to their reach and fear of holding them accountable. As an external court, the ICC offers a channel beyond their control; at the same time, it may make local justice more likely as such individuals seek to avoid the ICC as the worst option. Meanwhile those less powerful perpetrators and instigators can and should be tried at a local tribunal strengthened by international participation. USG should join other international partners in calling on the GoK to ensure the establishment of a special tribunal through a transparent legislative process incorporating civil society input.
- Beyond the specific question of the tribunal, there are recommendations in Justice Waki's report which can be implemented without legislative action, especially some relating to the security sector. USG should call for such executive action to be taken. We would particularly stress the provisions in the report relating to gender based violence, the impact of which was shockingly extensive.
- USG can encourage Kofi Annan to visit Kenya soon and regularly to hear directly of progress or lack thereof, in order to increase pressure for implementation of promised

reforms and accountability. He should not solely spend time in Nairobi but travel to other areas to see for himself the lack of advance on agenda items such as disarmament and demobilization of militias and sustainable resettlement of IDPs.

- The Attorney General and the GoK should be asked to enforce and strengthen the Witness Protection Act. The USG can facilitate witness protection by offering asylum and providing resources to civil society to keep human rights defenders and activists in Kenya safe.
- In the absence of progress or if there is blatant action to protect perpetrators, USG should consider reinstating use of targeted travel and financial sanctions against individual members of the coalition government – and their families -- who are seen as responsible for, or protective of corruption or violence.

3. Ensure an effective election will be held in 2012

Unresolved tensions from 2008, lack of progress on key items of the mediation agreement and continuing governance weaknesses would make it risky and undesirable to hold any public contest for power in the near future and, in any case, the parties sharing power have a mutual interest in avoiding an election until the required date of 2012. We see it as absolutely critical, however, that an election is held that year and that it is an independently organized, transparent and reliable exercise. That imposes a major challenge – to ensure that preparations and necessary steps from now for the next three years are conducted transparently and protected against future manipulation.

- Most immediately, the USG should call for the most egregious anti-democratic legislation, including notorious sections of the media bill, should be repealed. GoK recently promised in consultations with the media that this would be done during the next session of Parliament, pressure should be exerted to ensure this promise is kept.
- The holding of a transparent and accurate census in August this year, will be critical for any future poll but ethnic and other sectarian pressures threaten its quality and reliability. USG should monitor developments ahead of the census and consider an offer of both technical assistance and scrutiny of the process. It might be helpful to facilitate information-sharing with other African census workers, and express support for a diverse and large number of census workers and observers as well as protocols designed to protect them from pressure;
- A Constitutional referendum has to be held before June 2010. USG should urge the GoK to ensure that it is free of political and sectarian manipulation and should speak out if that standard is not met.
- USG should urge the Parliamentary select committee working on creation of the Boundaries Commission to ensure that the Commission is insulated from entrenched interests so that its work can be trusted by voters.
- USG should urge the Parliamentary select committee addressing the creation of a new electoral commission to consider rules and protocols for selecting commissioners that guarantee independence from any entrenched interests and put it beyond the reach of political interference.
- Come the election itself, USG should assist with full scrutiny, civic education and monitoring from early in the process
- In the case of all Commissions and processes emerging from last year's mediation, the USG should advocate clear, transparent and accountable process for appointing members of all commissions.

4. Zero tolerance for corruption

Corruption with impunity at all levels of the political class remains a major risk factor for Kenyan democracy and stability. It is both the enabler and the driver of much of the violence and manipulation of politics around Kenyan transfers of power. The US government has a key role to play in working for accountability. Clear messaging in line with the mood of ordinary Kenyans, is vital.

- USG should call for clear and immediate action regarding any minister against whom there is evidence, starting with appropriate administrative action, for example suspension from office during investigations. Investigations by the Kenya Anti-Corruption Commission (KACC) should be timely and serious and should result, where appropriate with charges and trial. There must be a serious demonstration of political will and of resolve to address corruption from GoK, KACC, the Attorney General's Office and the Judiciary. The Chief Justice should develop prudential rules to prevent abuse of constitutional references in corruption cases.
- USG should give consistent support to effective Access to Information legislation, emphasise the need for a free media and provide endorsement and assistance to civil society engaged in anti-corruption activities.
- USG should order a review of the role of corruption in efforts against terrorism in Kenya. Reports suggest that corruption in the forces of law and order and lack of effective action by the Kenyan government and the Attorney General enable terrorist organizations to plan, organize and transit weapons and money through Kenya. USG should condition future security cooperation on better performance in controlling corruption as one of a range of actions to address terrorist organizations
- The threat of personal visa sanctions on officials and their families, used last year during the crisis, was effective in reducing provocation to violence. This threat can and should be used in relation to corruption and lack of effective action to reduce it.

Maina Kiai (mkiai2001@yahoo.com)

Gladwell Otieno (Gladwellotieno@africog.org)

On behalf of Kenyans for Peace with Truth and Justice

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