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

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Contents

Introduction 1
Political Background 2
Justice and Reconciliation 3
The New Constitution 5
The 2013 Elections 5
Recent Political Developments 7
The Economy 7
Regional Security Dynamics 9
U.S.-Kenya Relations 12
U.S. Assistance 14

Tables

Table 1. U.S. Bilateral Foreign Assistance to Kenya, State Department and USAID 14

Contacts

Author Information 15

Introduction

The U.S. government has long viewed Kenya as a strategic partner and a key regional actor 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. Al Shabaab's assault in September 2013 on a Nairobi shopping mall popular with Americans and other expatriates and subsequent attacks have drawn fresh attention to the U.S. strategic relationship with Kenya and other security partners in the region.

Kenya, which ranks among the top recipients of U.S. foreign assistance globally, has one of the world's fastest-growing economies. The Obama Administration has sought to highlight Kenya's role as an emerging center for digital innovation and entrepreneurship as part of a broader agenda to underscore the evolving U.S. trade and investment relationship with Africa during the President's travel to Kenya July 24-26, 2015. The Administration has also highlighted Kenya's role in promoting regional stability and hosting refugees from across the troubled region. Governance and human rights challenges, however, periodically complicate U.S.-Kenya relations. Economic frustration, 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. Reported security force abuses in the context of Kenya's domestic counterterrorism response have also raised tensions with Kenya's Muslim community. Balancing these concerns against U.S. security priorities in the region may pose challenges during Congress's annual deliberations on development and security assistance to Kenya.

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. Terrorist threats and a high urban crime rate have damaged the tourism industry and deterred greater foreign investment, despite its growing profile as a top emerging market and its position as the largest economy in East Africa. 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 bilateral and regional programs.[1]

Kenya's government has struggled to balance its response to security threats against pressure to protect civil liberties and implement political reforms under a new constitution adopted in 2010. Accountability for abuses linked to state and non-state political actors is a long-running theme raised by civil society activists and continues to be a source of tension between some donors, including the United States, and the government of President Uhuru Kenyatta. Kenyatta and his vice president, William Ruto, were elected to office in 2013, despite facing charges at the International Criminal Court (ICC) for their alleged role in orchestrating crimes against humanity after Kenya's disputed 2007 elections (see below). The Obama and Kenyatta Administrations

[1] The United States manages relations with the Somali government—formally recognized by the United States in 2013 for the first time in more than 20 years—from the embassy in Nairobi.

have expressed divergent views on the respective roles of justice, accountability, and reconciliation in promoting peace and stability, both in Kenya and the wider region.[2]

The ICC trials for Kenya began in late 2013, following the elections. While Kenyatta and Ruto have notionally cooperated with the Court, the cases have been plagued by allegations of witness intimidation and political interference. In December 2014, the ICC Prosecutor withdrew the charges against Kenyatta, citing insufficient evidence and alleging non-compliance by the government. She declared that "those who have sought to obstruct the path of justice have, for now, deprived the people of Kenya of the accountability they deserve."[3] Ruto's case continues.

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 a deterrent to those who would foment ethnic animosities for political gain. Kenya's 2013 elections were largely peaceful, despite fears of a repeat of the widespread violence that followed the 2007 elections. As in the past, however, voting largely followed ethnic lines, and ethnic mobilization contributed to the victory of Kenyatta, the son of Kenya's first president, and his running mate. 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 that were on opposing sides in 2007. The Kenyatta Administration suggests that the ICC prosecutions represent foreign interference in Kenya's internal affairs and that the trials could incite further violence. The government has also argued that the cases are a distraction from critical challenges facing the government, including terrorist threats.[4]

Political Background

Kenya, a former British colony, was essentially a one-party state from 1964 to 1991. The ruling party during this period (the Kenya African National Union, KANU) subsequently retained its political 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.

[2] In a May 2015 visit to Kenya, Secretary of State John Kerry remarked that "it is increasingly clear that justice and accountability, as well as reconciliation, are essential to peace." President Kenyatta, in his March 2015 State of the Union address, suggested that the more than 4,500 outstanding post-election violence cases might be dealt with through reconciliation and "restorative justice" rather than criminal judicial action.

[3] Kenyatta was not acquitted; the ICC judges on Kenyatta's case indicated that they would be open to the Prosecution bringing new charges against the accused at a later date, based on the same or similar circumstances, should it obtain sufficient evidence to do so. See *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the withdrawal of charges against Mr. Uhuru Muigai Kenyatta*, Press Release, December 5, 2014.

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

Ethnic Dynamics and Divisions

Kenya is home to more than 50 ethnic groups, and no one group constitutes a majority. 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 and government jobs and 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—received the greatest state investment in schools, roads, and health services. Other areas were marginalized and remain comparatively underdeveloped, such as the predominately Muslim northeastern and coastal areas, and western Kenya, which is home to the second- and third-largest ethnic groups, the Luhya and Luo.[5] 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.[6] 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.

Political realignments prior to the December 2007 elections created a volatile ethnic dynamic, and when then-incumbent President Mwai Kibaki (a Kikuyu) was declared the winner of an extremely close presidential race amid charges of rigging, opposition supporters launched protests. The outrage expressed by Odinga supporters turned violent in many parts of Kenya, largely along ethnic lines.[7] Some 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.[8] 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

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

[6] 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).

[7] 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.

[8] State Department, "Kenya," *Background Notes*, May 7, 2012.

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.[9]

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 of the suspects—William Ruto, Uhuru Kenyatta, Joshua arap Sang, and Francis Mutharua—in January 2012.[10] The Kenyan government objected to these cases, despite being a state party to the ICC.[11] 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 2013, 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.[12]

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 faced similar charges, but his were 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. In December 2014, the ICC Prosecutor withdrew the charges against Kenyatta, citing insufficient evidence and alleging non-compliance by the government. She declared that "those who have sought to obstruct the path of justice have, for now, deprived the people of Kenya of the accountability they deserve."[13]

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

[10] 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.

[11] 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.

[12] "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.

[13] Kenyatta was not acquitted; the ICC judges on Kenyatta's case indicated that they would be open to the Prosecution bringing new charges against the accused at a later date, based on the same or similar circumstances, should it obtain sufficient evidence to do so. See *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the withdrawal of charges against Mr. Uhuru Muigai Kenyatta*, Press Release, December 5, 2014.

The New Constitution

Kenyan voters went 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. Various functions have been devolved to Kenya's 47 new counties, including health, agriculture, and roads, with the aim of improving service delivery and accountability, a process described by the World Bank as one of the most rapid and ambitious in the world. New public vetting and oversight mechanisms for key state institutions have been introduced, and the 2010 constitution includes Kenya's first bill of rights.

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 and dismissed. The new Supreme Court chief justice, former human rights activist Willy Mutunga, is seen by many as a reformer.

Constitutionally required changes in some other sectors, including land and police reform, have moved more slowly. Concerns have been raised with the pace of police reform.[14] 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 more than 400 people were fatally shot by police, many in the back, often in ODM strongholds, and with a high likelihood that many were killed unlawfully. Human Rights Watch alleged that police were authorized to fire indiscriminately on protestors.[15] The excessive use of force by police remains a serious issue—according to a study by the International Mission, the use of lethal force by the Kenyan police occurs at rates far higher than in other countries, even with crimes rates taken into account.[16]

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.[17] The close race increased fears that if the election results were contentious, they might spark political violence, as happened in 2007.

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[14] See, e.g., Amnesty International, *Police Reform in Kenya: 'A Drop in the Ocean,'* January 2013; Human Rights Watch (HRW), *High Stakes: Political Violence and the 2013 Elections in Kenya*, February 2013; and Alexander Noyes, "Cleaning House in Kenya's Police Force," *Foreign Policy*, December 30, 2013.

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

[16] International Justice Mission, *Assessment of the Lethality of the Kenya National Police Service*, 2014. See also "Is Kenya's heavy handed response to security threats justifiable?" Al Jazeera, April 4, 2014 and Tom Odula, "In Kenya, Police kill suspects with near impunity," Associated Press, December 5, 2014.

[17] The 2010 constitution requires a presidential candidate to win a majority of 50% of the votes plus one, and to secure

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.[18] 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 election.[19] 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.[20]

Odinga conceded defeat after the Supreme Court's ruling, easing tensions and allowing the Kenyatta Administration to commence its 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."[21] The Jubilee coalition—Kenyatta's The National Alliance (TNA) and Ruto's United Republican Party (URP)—have sought to merge formally into a new Jubilee Alliance Party (JAP) in preparation for the next elections, in 2017. Some coalition members have resisted dissolution of their respective parties, however, and rumored tensions between TNA and URP leaders, some in relation to Ruto's ICC prosecution and to debates over political influence, may complicate the merger.

more than a quarter of votes in 24 of the country's 47 new counties, to avoid a run-off.

[18] 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.

[19] European Union Election Observation Mission to Kenya, Final Report, 2013.

[20] See the September 3, 2013, Mars Group Kenya Audit Report at http://blog.marsgroupkenya.org.

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

Recent Political Developments

President Kenyatta has pursued an ambitious economic growth agenda as part of his Vision 2030 development program, through which he aims to transform Kenya into a newly industrializing middle-income country (see "The Economy"). He seeks to position Kenya as a global leader in sustainable development with a focus on expanding electricity supply through green energy. His government has also sought to expand trade links and attract foreign investment, and has pursued several major infrastructure projects, including a new standard gauge railway that would link Kenya, Rwanda, South Sudan, and Uganda, and the ambitious $20 billion Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) Corridor project, which aims to cut dependence on Kenya's main port of Mombasa and develop its northern frontier. Kenya has increasingly sought to finance these projects through public-private partnerships when traditional donor funding is not readily available; both the railway and LAPSSET projects have been largely facilitated through Chinese financing. The Kenyatta government also seeks to establish an international financial center in Nairobi and recently signed an agreement with Qatar to support this objective.

President Kenyatta has also launched various initiatives to cut bureaucracy and corruption, which he has identified as among the most pressing challenges facing the country. Among these efforts are new *huduma* ("service") centers that serve as one-stop shops for government services, which are being increasingly digitized. Kenyatta announced a new anti-corruption drive in 2015. More than 175 officials have since been implicated in graft, among them the Ministers of Land, Labor, Transport, Agriculture, and Energy and Petroleum, who have been suspended pending further investigation. Senior anti-corruption officials were subsequently suspended in April following allegations of misconduct—they had reportedly been under pressure since bringing new criminal prosecutions to court relating to a 10-year-old corruption case known as Anglo-Leasing (in which senior officials of the previous government, some with close ties to the current administration, have been implicated). The corruption charges leveled against the 175 government officials have stirred some controversy within the Jubilee coalition—supporters of Vice President Ruto contend that his allies have been disproportionately targeted, including his chief of staff.[22]

In his March 2015 State of the Union address, President Kenyatta surprised many observers by issuing an historic public apology for state abuses under past administrations, citing "unresolved murders, the existence of torture chambers and detentions without trial; events such as the Wagalla tragedy [the killing of hundreds or possibly thousands of ethnic Somalis in northeast Kenya in 1984 by the Kenyan army]; and violence against the proponents of expanding our democratic space; and all actions that have at times failed to recognize the civil and human rights of Kenya's citizens." While acknowledging past abuses, however, he also indicated that there were challenges to successfully prosecuting the more than 4,500 cases of post-election violence from 2007-2008 and suggested that the cases might be dealt with through reconciliation rather than judicial action, noting his own alliance with former rival Ruto. His announcement of a $100 million "restorative justice" fund has received mixed responses—Amnesty International contends that while the initiative is potentially welcome, ensuring criminal justice for victims is critical.

The Economy

In 2014, the World Bank reclassified Kenya from a low-income country to a lower middle-income country after Kenya revised the statistical measurement of its GDP, which increased the size of its economy by 25%. Agriculture, manufacturing, and real estate are the primary drivers of growth, but Kenya also has a vibrant telecom industry that is a global pioneer in mobile banking

[22] "Deputy President big loser as close allies are named in graft report," *Daily Nation*, March 28, 2015.

technology, and is a nascent digital innovation hub. Following a period of stagnation due to the 2007-2008 post-election crisis, the global economic downturn, and a 2011-2012 regional drought, the economy has exhibited strong growth rates of 5%-6% in recent years, making Kenya one of the world's fastest-growing economies. However, formidable development challenges remain: Kenya ranked 147 out of 186 countries surveyed in the U.N. Development Program's (UNDP's) 2014 *Human Development Report*, and it has made limited progress in reducing high rates of extreme poverty, food insecurity, and maternal mortality.[23]

Inflows of foreign direct investment (FDI) reached a new high in 2014, and, at an estimated $989 million, were nearly double investment in the prior year. According to the State Department, Kenya's investment climate is "generally positive ... characterized by stable monetary and fiscal conditions and a legal environment that makes few distinctions between foreign and domestic investment."[24] Nevertheless, the economy continues to suffer from a weak business environment, in which obtaining basic utilities can take several months.[25] The country ranked 136 out of 189 countries in the World Bank's 2015 "Ease of Doing Business" index, and a December 2014 World Bank evaluation of the economy noted that "firms in Kenya reported that the obstacles that most constrained them were costly and unreliable electricity; inadequate access to finance; difficulties in trading across borders; competition from the informal sector; and crime, theft, and disorder."[26] High fuel costs, inflation, and poor transportation infrastructure hamper multiple sectors.

Tourism, formerly the second-largest source of foreign exchange, has suffered as a result of concerns arising from recent terrorist attacks. Kenya's economic outlook remains strong, however, owing to the continued expansion of the services sector, high domestic demand, public and private investment in infrastructure, and the country's stable macroeconomic environment.[27] The manufacturing sector, stagnant in recent years due to low productivity and inadequate competition, has the potential to be a major source of future growth with ongoing government efforts to pursue privatization, deregulation, and trade liberalization.[28]

Economic ties between the United States and Kenya are robust and growing. According to the Office of the U.S. Trade Representative, two-way trade surpassed $1 billion in value in 2013, up 13% from the previous year.[29] Kenya is eligible for African Growth and Opportunity Act (AGOA) benefits, allowing duty-free exporting of certain goods to the United States. The country is a beneficiary of the Obama Administration's Power Africa initiative, which supports the development of Kenya's renewable energy sector through financing, technical assistance, and investment promotion. As a member of the East African Community (EAC), Kenya also benefits from President Obama's Trade Africa initiative, which seeks to "double intra-regional trade in the EAC, increase EAC exports to the United States by 40 percent, reduce by 15 percent the average time needed to import or export a container from the ports of Mombasa or Dar es Salaam to the land-locked interior, and decrease by 30 percent the average time a truck takes to transit selected

[23] UNDP, "UNDP in Kenya: Eight Goals for 2015," at http://www.ke.undp.org/content/kenya/en/home/mdgoverview.

[24] State Department, "2015 Investment Climate Statement – Kenya," May 2015.

[25] World Bank, "Ease of Doing Business in Kenya," at http://www.doingbusiness.org/data/exploreeconomies/kenya.

[26] World Bank, "Anchoring High Growth: Can Manufacturing Contribute More?" December 2014.

[27] Economist Intelligence Unit, "Country Report: Kenya," July 2015.

[28] World Bank, "Kenya Emerging as One of East Africa's Growth Centers," March 5, 2015.

[29] U.S. Trade Representative, "Kenya," May 7, 2014.

borders."[30] In February 2015, U.S. Trade Representative Michael Froman signed a U.S.-EAC Cooperation Agreement to streamline U.S. investment and trade with the region.[31]

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.[32]

International pressure regarding increasingly endangered African elephant populations mounted in the 1980s.[33] 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.[34] 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. In 2015, President Kenyatta appointed Leakey chairman of the KWS.

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.[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.

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 early 2015, President Kenyatta publically burned 15 tons of ivory on World Wildlife Day and has committed to destroying all of Kenya's ivory stockpiles by the end of 2015. The Kenyan government continues to press regional counterparts to strengthen law enforcement efforts to counter wildlife smuggling. The KWS has established a forensic and genetic laboratory that seeks 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.

Regional Security Dynamics

Insecurity in neighboring countries, 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

[30] USAID, "Trade Africa," April 16, 2015. See also "Trade Africa Initiative," CRS Insights (IN10015), April 10, 2014.

[31] U.S. Trade Representative, "Remarks by Ambassador Michael Froman at the Signing of the U.S.-EAC Cooperation Agreement," February 26, 2015.

[32] 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.

[33] 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.

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

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

active role in regional security. Poaching, banditry, cattle rustling, and high urban crime, and 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, was the first successful high-profile terrorist attack in Kenya since the Al Qaeda attacks in Mombasa in 2002. In April 2015, Al Shabaab carried out its deadliest attack in Kenya to date, killing 148 people in an assault on Garissa University. The frequency of attacks, most of which still occur near the Somali border, has increased since Kenya commenced military operations in Somalia—the attacks and resulting counterterrorism responses have raised the level of tension between the Kenyan government and its Muslim and ethnic Somali communities (see text box below).

Somali Refugee Communities in Kenya

Kenya hosts more than 590,000 refugees, most of them in the Dadaab/Alinjugur refugee complex (almost 350,000 refugees) near the Somali border; and in Kakuma (more than 184,000 refugees), near the border with South Sudan. Another 57,000 registered refugees and asylum seekers are in Nairobi. Somalis comprise just over 70% of the refugee population, and they have come under increasing pressure in the context of the rising terrorist threat in Kenya. Escalating insecurity near Dadaab, combined with a series of kidnappings of aid workers and attacks against security forces along the Kenya-Somali border, led in late 2011 to the suspension of all but emergency relief efforts at the camps. This coincided with Kenya's military incursion into Somalia. While an increased police presence around Dadaab subsequently allowed many aid activities to resume at the camps, security threats continue to hamper aid delivery. Dadaab is more than 20 years old, and according to UNHCR, "restrictions imposed on refugees by the Government of Kenya make it difficult for them to establish a financially independent existence in which they can fend for themselves." Many Somali refugees have lived in Kenya since the 1990s and have children and grandchildren who were born in the Dadaab camps. (In addition to the refugee population, more than 2 million Kenyans are ethnic Somali, the country's sixth-largest ethnic group.)

Many human rights groups allege that Kenyan security forces have committed abuses against Somali Kenyans and refugees as part of indiscriminate reprisals for Al Shabaab attacks. Reports suggest that Somalis, particularly in Nairobi's Eastleigh neighborhood, are routinely subject to police harassment, notably during an April 2014 domestic security operation known as Operation Sanitization of Eastleigh. The operation, which purportedly aimed to round up alleged members of Al Shabaab in the predominately Somali neighborhood, followed a March 2014 government order for all refugees living in cities to report to refugee camps (in contravention of a Kenyan court ruling against a similar directive issued in 2013). The police operation reportedly resulted in the detention of at least 4,000 people, some of whom were forcibly relocated to Dadaab, and in the deportation of more than 350 Somalis. Additionally, 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. Regional analysts warn that such abuses have the potential to further fuel radicalization, and that Al Shabaab may intend with its attacks to provoke violent responses from the government against ethnic Somalis and other Kenyan Muslims, in order to fuel support from those communities for its efforts. Kenyan officials have repeatedly threatened to close Dadaab despite little public evidence linking Dadaab refugees to any Al Shabaab attacks. Under pressure to facilitate refugee returns, UNHCR, which signed a Tripartite Agreement on Voluntary Repatriation with the governments of Somalia and Kenya in November 2013, has maintained that any returns must be voluntary and take place in safety and dignity. While conditions in parts of Somalia have improved in recent years, the humanitarian situation is fragile, with more than 3 million people in need. Security conditions there remain volatile, with sporadic attacks against government targets, civilians, and aid workers.

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.[36] Kenya took the strategic port city of Kismayo, which served as one of Al Shabaab's key sources of revenue, in late 2012 and several other key Al Shabaab strongholds in 2014. The Kenyan forces are well-equipped by regional standards, but have limited experience in deploying beyond their borders, except as peacekeepers. A Kenyan, Lieutenant General Jonathan Rono, was recently named Force Commander of AMISOM, and Kenyan and Ethiopian troops launched a new offensive against remaining Al Shabaab positions in southern Somalia in July 2015. While the mission receives relatively substantial donor support, it is, according to many security analysts, overstretched and lacks sufficient personnel and aviation assets, namely helicopters, to secure and maintain a presence in the rural parts of south-central Somalia where Al Shabaab operates. Coordination among AMISOM troop contributors is also a challenge, and by some accounts the mission suffers from weak AU political leadership.[37]

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, 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.[38] 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.

The Garissa university attack has heightened public calls for the Kenyan government to increase the pace of security sector reforms and address domestic radicalization. While its initial response to the attack appeared focused on an effort to link it to the Somali refugee community, officials later reported that several of the attackers, and the alleged mastermind, were Kenyan citizens. Other government responses have drawn criticism from advocacy groups and non-governmental organizations, including the closure of Somali remittance companies in Kenya (some of which have since been allowed to resume operations) and a crackdown on civic organizations, including several human rights groups, that the government contends are sympathetic to Al Shabaab. Kenyan officials have increasingly acknowledged growing domestic radicalization—in June, Kenya hosted a major conference on countering violent extremism, which was attended by Under Secretary of State for Civilian Security, Democracy, and Human Rights Sarah Sewall.

The Westgate, Mpeketoni, and Garissa attacks have highlighted outstanding challenges in the government's implementation of security sector reforms, particularly of the police.[39] Questions remain about the security forces' response to Westgate, which was marred by friendly fire incidents and allegations of looting during the siege. Kenya's own Independent Police Oversight Authority (IPOA, which has received significant support from the United States) detailed the "slow and disjointed" police response to the Mpeketoni attack and a failure to act on intelligence

[36] 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.

[37] Bronwyn Bruton and Paul Williams, "Counterinsurgency in Somalia: Lessons Learned from the African Union Mission in Somalia, 2007-2013," JSOA Report 14-5, September 2014.

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

[39] For more on security sector reform issues in Kenya, see, e.g., Alexander Noyes, "Cleaning House in Kenya's Police Force," Foreign Policy, December 30, 2013.

prior to the incident.[40] Controversy also surrounds the response to the Garissa siege, which according to press reports went on for seven hours before a special police unit tasked with hostage operations deployed from Nairobi—by some accounts it was the first security team to enter the university compound and confront the attackers, 11 hours after the siege began.[41] Pressure on the government in the aftermath of Garissa led President Kenyatta to order the training of 10,000 police recruits whose enrollment had been stopped by the courts in 2014 amid allegations of widespread bribery during their recruitment. Kenyatta and the police leadership subsequently revised the order after internal deliberations and ordered a new recruitment drive. Government efforts to modernize the police force, improve command and control, and unveil a new counter-radicalization strategy are now reportedly underway.

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 political transition were a significant event in the warming relationship.

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.[42] 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.[43] 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.[44] The State Department has urged Kenyan cooperation

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[40] Independent Police Oversight Authority, *IPOA Report Following the Mpeketoni Attacks - June 15 and 16 , 2014*,

[41] See, Ryan Cummings, "Garissa attacks put spotlight on Kenya's Response to Growing Terror Threat," The Global Observatory blog, April 14, 2015; Patrick Gathara, "Kenya massacre: No lessons learnt from Westgate," *Al Jazeera*, April 5, 2015; and Heidi Vogt, "Kenya Attacks Spark Anger and Grief," *The Wall Street Journal*, April 7, 2015.

[42] 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.

[43] For more on reported abuses, see, e.g., Tom Odula, "In Kenya, Police Kill Suspects with Near-Impunity," Associated Press, December 5, 2014; Abdullahi Boru Halakhe, The Trap of Insecurity: Extrajudicial Killings in Kenya," Al Jazeera, December 8, 2014; "Inside Kenya's Death Squads," Al Jazeera, December 7, 2014.

[44] 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.tjrckenya.org. Some allege that the final version of

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."[45]

Despite the 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. President Obama's video message 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."[46] 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 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 in domestic affairs and an implicit message that the United States did not view ICC suspects as appropriate candidates.[47]

That sensitivity continued into the Kenyatta Administration, which has looked to alternative allies, such as China and Russia, for diplomatic and economic support. In February 2014, tensions in the relationship between the Obama and Kenyatta governments were aired publicly when Kenya's Cabinet Secretary accused USAID of financing anti-government protests in Nairobi and summoned USAID officials to the Foreign Ministry for an explanation; Kenyatta allies had previously alleged that the United States had supported Kenyatta's opponent, opposition leader Raila Odinga, in the elections. Police fired tear gas at the protestors, who were led by prominent anti-corruption advocate and photojournalist Boniface Mwangi.

Several legislative efforts pushed by the Kenyatta Administration have also raised concerns about the country's democratic trajectory. Among these are a controversial new security law and a proposal to impose new restrictions on non-governmental organizations, including a limit on foreign funding for local groups. The State Department's 2014 human rights report notes independent reports of government monitoring of civil society meetings and "reprisals against critics of the government." It also outlines reports of government pressure on the media and states that "the government occasionally interpreted laws to restrict press freedom." Gay rights, which the Obama Administration advocates, have been another point of contention—existing Kenyan law criminalizes same-sex conduct with up to 14 years' imprisonment. A legislative effort in 2014 to increase the maximum penalty for homosexual acts to life in prison and death by stoning for "aggravated homosexuality" did not advance. In a recent editorial, two former U.S. ambassadors to Kenya described the Kenyatta government as "prickly and defensive," advocating that President Obama focus his agenda in Kenya on "a reinvigorated economic and development partnership, improved counterterrorism and renewed American support for Kenyan civil society and other organizations that are working to safeguard political freedoms and promote more accountable governance."[48]

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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.

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

[46] 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.

[47] 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.

[48] Johnnie Carson and Mark Bellamy, "Obama's Chance to Revisit Kenya," New York Times, July 20, 2015.

U.S. Assistance

The Administration's FY2016 foreign aid request includes more than $630 million specifically for Kenya, much of it for health programs. Kenya also benefits from various regional programs and is a focus country for several presidential initiatives, including the Global Health Initiative, Feed the Future, Power Africa, and the new Security Governance Initiative (SGI).

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

($ in millions)

Account, by Year	FY2011 Actual	FY2012 Actual	FY2013 Actual	FY2014 Actual	FY2015 Request	FY2016 Request
Development Assistance (DA)	75.8	92	92.9	93.5	90.9	84.2
Economic Support Fund (ESF)	-	4.8	-	-	-	-
Food for Peace (FFP)		77.5	-	86.4	-	-
Global Health Programs (GHP)—State	498.8	241.5	277.4	371.7	371.7	456.7
Global Health Programs (GHP)—USAID	75.3	78.2	79.4	83	81.4	81.4
Foreign Military Financing (FMF)	1	1.5	1.1	1.2	1.2	1
International Military Education & Training (IMET)	0.9	0.9	0.8	0.7	0.7	0.8
International Narcotics Control & Law Enforcement (INCLE)	2	2	1.8	2	1	1
Nonproliferation, Antiterrorism, Demining & Related Programs (NADR)	8	1.2	6.2	1.5	6.3	5.3

Account, by Year	FY2011 Actual	FY2012 Actual	FY2013 Actual	FY2014 Actual	FY2015 Request	FY2016 Request
NADR—Overseas Contingency Operations (OCO)	-	7.8	-	5	-	-
TOTAL	**661.8**	**507.2**	**459.5**	**645**	**553.1**	**630.3**

Source: State Department 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.

Kenya is one of the largest recipients of U.S. security assistance in Africa, with aid from the State Department and Department of Defense (DOD) totaling more than $40 million annually in recent years. Such funding appears set to expand under the Administration's new Counterterrorism Partnerships Fund (CTPF). Kenya is the largest African recipient of DOD "train-and-equip" counterterrorism assistance, totaling more than $188 million in the past decade, much of it focused on helping Kenya secure its border with Somalia and supporting its AMISOM deployment. That aid has risen in recent years, from over $20 million in FY2013 to over $80 million in FY2015 (this includes just over $47 million recently notified under the CTPF). Kenya also received more than $2 million in DOD counternarcotics assistance from FY2013 to FY2015. Kenya's military also receives assistance through the State Department's Foreign Military Financing (FMF) program, and through regional programs like the Global Peacekeeping Operations Initiative (GPOI) and the Partnership for Regional East Africa Counterterrorism (PREACT). 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.

Kenya is one of the top global recipients (and the largest in Africa) of State Department Anti-Terrorism Assistance (ATA), which supports border and coastal security and law enforcement programs. ATA supports counterterrorism training for the Kenyan police. International Narcotics Control and Law Enforcement (INCLE) funds support various rule of law programs, including efforts to strengthen the institutional capacity and improve accountability of the police services. The new Security Governance Initiative is expected to focus on coordinated border management, administration of justice, and police human resource management. Congress has periodically expressed concern with reports of abuses by Kenyan security forces, 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.

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