

KENYA: THE MAKE OR BREAK YEAR

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2012 will be the year that Kenya either transitions into a unified, progressive state or regresses to a fragmented society characterized by the type of ethnic divide that existed before the 2007 general elections. It will be the year when either constitutionalism is entrenched in society or poor governance and impunity continue unabated. Four issues—the International Criminal Court Process, the 2012 general elections, the implementation of the devolved constitution, and the war on Al-Shabaab—will be particularly important in influencing the economic, political and social developments in the country.

The International Criminal Court (ICC) Process

Following the 2007–2008 post-election conflict that resulted in over 1,300 deaths, hundreds of injuries and thousands of displaced persons, the International Criminal Court (ICC) named six Kenyans as the main instigators of the violence. Their hearings were completed in 2011, with the final decision confirming the charges, but no announcement yet of whether the six will face a full trial. Kenyans have varying opinions on how the process was conducted. Many interpret it as overtly political. In particular, some critics believe the process targeted prominent individuals who would otherwise be presidential candidates in 2012. This view gained support during the initial hearings as it appeared the ICC had not conducted particularly thorough investigations. Others, including members of the defendants' communities, viewed the accusations through an ethnic angle. This is why the process, if viewed as unfair, could split the country along ethnic lines. The fact remains, however, that crimes against humanity were committed and that failure to punish the main culprits would mean continuing a culture of impunity. The ICC's decision, expected early in 2012, will confirm the charges or not. But the decision itself, and how the government and Kenyans react to it, will impact the future of the country in both the short and long-run.

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The 2012 General Elections

Kenya expects to hold national elections under the recently promulgated constitution and, while debate continues as to the exact date on when they are to be held, many expect the High Court of Kenya will set them for 2012. The elections will not only include the races for the positions of the presidency, deputy presidency and membership of the national assembly, but because of the new constitution and the devolved structures it calls for, they will also include the positions



of senators, county governors and many other local representatives. How the elections are managed will be critically important in determining the future of the country. Kenyans will either accept the results and communities will unite behind their elected president and other leaders, or they will consider the process unfair and resort to conflict similar to that seen in 2007-2008. Even more important is whether the general election will produce forward-looking, progressive leaders who are committed to supporting the implementation of the new constitution.

Implementation of the Devolved Constitution

Kenya has adopted complex devolved structures of governance. The constitution has created a new level of government—the county level—to be headed by an executive governor. In total, there are 47 counties that vary widely in terms of population, income levels and capacity. While in theory the devolved structures aim to improve the governance of the country, increase citizen participation and improve accountability, implementing the constitution's aims—work set to commence in 2012—will be a momentous challenge and will be a major factor impacting the prospects of the country. Some fear that devolution could exacerbate regional inequalities and, in some cases, increase polarization between communities within the same counties.

War on Al-Shabaab

At the end of 2011, Kenya was heavily involved in the war against the Al-Shabaab terrorist organization deep inside Somali territory. While other countries and international organizations have committed support towards the dismantling of the terror group, Kenya's involvement remains the most substantial. In addition to the costs of its resource commitments, its efforts come with heightened risks—including increased terror activities that target Kenyans and an influx of refugees from Somalia to Kenya. Whether the war concludes successfully in 2012 will impact the country's peace and economic performance prospects.

Summary

These highlighted issues will be critical to Kenya's future in 2012 and for many years to come. All are important challenges that have serious risks for the country. Alternatively, these challenges could be turned into opportunities to build a stronger, more progressive nation. Of all these issues, the one dealing with the ICC process is the most daunting; it should be addressed carefully both by Kenyans and the international community. Given the violent election in 2007, it is also absolutely critical that the country be fully prepared to ensure electoral fairness and transparency in 2012 and to deal appropriately with any instigators of violence. Finally, in the war against Al-Shabaab, Kenya must continue to seek international cooperation against the terror group and aim to return its troops home before the end of 2012.

