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Policy Brief

On Kenya Elections September 2021



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About Peace Actor's Forum:

The Peace Actors Forum (PAF) is a network of individuals, national and international organizations engaged in peacebuilding work in Kenya. PAF was formed in 2013 to promote coordination among peace actors involved in conflict mitigation and peacebuilding. PAF mobilises the local peace capacities and networks in support of peace and wider governance reforms by undertaking various analytical, capacity building and advocacy activities. PAF is coordinated by a team of Co-Convenors supported by a Steering Committee and the Secretariat is hosted by Pamoja for Transformation Trust.

Acknowledgement:

This Policy Brief was developed by the Peace Actors Forum (PAF) on behalf of International Alert. Special appreciation goes to the following: Rabindra Gurung, George Grayson and Daisy Kosgey from International Alert and Cyprian Nyamwamu, Leah Kimathi, Chris Wakube and Stephen Kadenyo the PAF technical team for their support in writing and reviewing the document. The development of the Policy Brief was made possible by the support from the Dutch Ministry of Foreign Affairs. The contents of this report are the sole responsibility of International Alert and do not necessarily reflect the views of the Dutch Ministry of Foreign Affairs or the Dutch Government.

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About This Report:

Elections in Kenya often intersect with multiple pre-existing conflicts in the country, typically bringing the situation to a head. It is feared that the ongoing political tensions signal a high risk of violence in connection with the 2022 elections. This policy brief puts the current conflict in context and presents reflections and recommendations from a series of dialogues among peace actors working across civil society in Kenya.

Since 1963, the Kenyan political landscape has hinged on and been driven by pacts between elites representing different, mostly ethnic, identity groups. The tragedy is that most, if not all, of these so-called “political Memoranda of Understanding (MOUs)” have ended up being dishonoured, leading to acrimony, feelings of betrayal and inter-ethnic political conflicts. The current political situation is built on the foundations of the 2013 electoral pact between President Uhuru Kenyatta and Deputy President William Ruto. This pact was dishonoured in the eyes of the latter’s supporters by the 2018 “Handshake” between Kenyatta and opposition leader Raila Odinga. The “Handshake” brought the dispute over the 2017 elections to an end and birthed the Building Bridges to Unity Initiative (BBI). With the BBI agenda (and a planned constitutional referendum) on hold after it was declared unconstitutional in a ruling by the High Court and the Court of Appeal, there is a risk that the 2018 “Handshake” may become yet another of these dishonoured political MOUs.

This policy brief is based on a series of dialogues with peace actors across Kenya that took place during the early part of 2021, facilitated by International Alert and the Kenyan Peace Actors Forum. These dialogues sought to identify the peace and security challenges within the current operating context for those working on peacebuilding within civil society, government and the private sector. The findings of these dialogues were used to model different scenarios for peace and security in Kenya, as the country moves towards the 2022 elections. This policy brief outlines the risks identified in those discussions and presents recommendations to the Government of Kenya, the Independent Electoral and Boundaries Commission (IEBC) and the wider community of peace actors, with a view to mitigating these risks.



Background:

Elections and Conflict in Kenya

While violent conflict remains a feature of Kenya's socio-political landscape, it peaks in intensity and impact around the time of elections. Kenya has repeatedly experienced election-related violence in 1992, 1997, 2007 and 2017. This electoral violence is driven by political manipulation of ethnic differences against a background of other structural causes, including lingering historical grievances (e.g. over land and other economic resources), and a stalled national conversation on wider societal injustices. These grievances are instrumentalised to mobilise people, frequently along ethnic lines, and play on a fear of exclusion from political power which confers many economic benefits. These historical issues largely remain unresolved and latent, and are exacerbated by limited trust in many institutions, particularly the police.

The 2022 elections will take place in the long shadow of the "Handshake" between President Uhuru Kenyatta and opposition leader Raila Odinga on 9th March 2018, which ended the dispute over the results of the 2017 elections. However, a key factor of electoral violence in Kenya has been the way in which these elite compacts or "political MOUs" serve to exclude certain sections of society and then create division when they collapse. Tensions in the current political environment arise from the fact that the "Handshake" superseded a political MOU between Kenyatta and his Deputy President William Ruto, in which it was agreed that Kenyatta would back Ruto for two terms in office after the expiry of his constitutional mandate in 2022.

Another source of division is the Building Bridges Initiative (BBI) ushered in by the "Handshake". The BBI has caused major rifts within the ruling party because it was perceived by allies of the Deputy President as an effort to undermine his 2022 presidential bid.¹ This perceived violation of the 2013 electoral pact has fed into a "hustler vs dynasty" narrative, which seeks to create political divisions along class lines, pitting the actions of Kenyatta and Odinga - as sons of Kenyan political dynasties - against ordinary Kenyans, hustling to make a living. This narrative has been driven by the Tanga Tanga political formation aligned with the Deputy President, but has also been directly linked to class-based violence in many parts of the country.

The taskforce formed to lead the BBI process published its report on 16th October 2020, setting out several recommendations, including changes to the 2010 Constitution of Kenya to create new executive offices and new parliamentary constituencies.² The Constitutional Amendment Bill 2020, which would have prompted a referendum on these proposed changes, was passed by 43 county assemblies and approved by both houses of parliament. It was headed for presidential assent when the whole process was halted on 13th May 2021 by a ruling of the High Court, in which the entire BBI process was declared unconstitutional and rendered null and void. The judgement was appealed in the Court of Appeal, where the ruling was upheld on 20th August 2021. At the time of writing, the Attorney General has indicated that he will go to the Supreme Court to challenge the Court of Appeal ruling.³

¹ Philip Onguny (2020) The politics behind Kenya's Building Bridges Initiative (BBI): Vindu Vichenjanga or sound and fury, signifying nothing?, *Canadian Journal of African Studies / Revue canadienne des études africaines*, 54:3, 557-576, DOI: [10.1080/00083968.2020.1832898](https://doi.org/10.1080/00083968.2020.1832898)

² Report of the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report, https://e4abc214-6079-4128-bc62-d6e0d196f772.filesusr.com/ugd/00daf8_bedbb584077f4a9586a25c60e4ebd68a.pdf

³ <https://www.standardmedia.co.ke/the-standard-insider/article/2001421336/court-silences-bbi-reggae-tune-in-a-landmark-10-hour-verdict>



Election-related Conflict Risks in 2022

The following outlines some of the key risks that could give rise to violence in connection with the 2022 elections.

1. Heightened political tensions and insecurity

One of the emerging peace and security concerns is the current context of heightened political tensions, which has led to numerous incidents of political violence between candidates and the supporters of different political parties. This was observed during by-elections held in Nakuru, Kakamega, Eldoret, Kisii and Bungoma counties in March 2021.⁴ Police officers lobbed teargas following violent incidents. In Matungu Constituency in Kakamega County, an election official was allegedly assaulted.⁵



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Kenyans hold up "Vote No" flyers during a rally. © TONY KARUMBA/AFP via Getty Images

⁴ Centre for human rights and Policy studies: Report No 1 April 2021 Spotlight on security and Kenya's electoral environment: Sep 2020 to Mar 2021

⁵ Star team (2021) "Chaos, arrests and bribery claims mar by-elections," The Star, 5 March, <https://www.the-star.co.ke/news/2021-03-04-chaosarrests-and-bribery-claims-mar-by-elections/>

2. Lack of trust in institutions

There is widespread distrust in many of the public institutions involved in managing elections, including the IEBC, the police and the judiciary. More specifically, there are concerns over the capacity and independence of the IEBC. The High Court ruling on the BBI also raised questions about its constitution, and has fuelled the perception – held by certain sections of the political class - that the judiciary is anti-government. In the light of police conduct during the March by-elections, there is a risk that the police may be perceived as biased in terms of how they respond to violence, as exemplified by the Nakuru by-election. They also run the risk of being perceived as unable to mitigate violence. An example of this occurred in the Matungu Constituency by-election, which saw the harassment of a female election official and widespread violence. Lack of trust in the institutions and perceptions of bias can create a vicious circle: regions or areas are labelled as hotspots, thus justifying the allocation and deployment of more police personnel, thereby reinforcing the perception. This lack of trust in institutions can spur violent conflict because people believe that these institutions will not protect their interests. For example, delegitimisation of the judiciary, or its portrayal as biased and partial, can encourage people to resort to violence and intimidation as a way of settling scores rather than using the courts to resolve their disputes. This mirrors the situation in 2007/8, when the ODM alliance refused to go to court to settle their electoral dispute because they perceived the judges to be biased in favour of the Party of National Unity (PNU) party and government.

3. Tension at political party primaries

Another potential flashpoint is the political party primaries, which were highly contested in the 2013 and 2017 election cycles. The primaries are usually marred by manipulation, intimidation, bribery of voters and violence. This pattern is likely to continue as the country prepares for the 2022 general elections, with political parties driven not only by ethnicity, but also by personalities identified with specific ethnic and regional interests. Many governors and other county-level elected officials are also reaching the end of their two-term limit, fuelling additional tensions over political succession in many ethnic communities. These party-primary contests will influence cohesion across many counties.⁶

4. The ongoing COVID-19 pandemic

The COVID-19 pandemic has had a considerable economic and health-related impact in Kenya. Based on the government plans currently in place, it is unlikely that there will be a fully vaccinated population by the time of the elections, and COVID-19 restrictions may affect how the election is run. This situation raises several risks for peaceful elections. Any attempts to use COVID-19 restrictions to curtail the election activities of some parties would likely be seen as part of an election rigging strategy.⁷ Furthermore, there is already a sense that COVID-19 protocols and guidelines are implemented inconsistently, depending on who is involved. This is caused by a perception that those who support the “Handshake” are able to ignore restrictions, while those who oppose the BBI process experience strict reinforcement of the protocols, as illustrated by the cancellation of their events. An example of this was seen after the disruption of a rally in October 2020 in Murang’a County, when the police were accused of selectively enforcing COVID-19 regulations on public gatherings in favour of BBI proponents.⁸

⁶ One of the more consequential succession and supremacy tussles will be the one involving the Speaker of the National Assembly and the governors of what has come to be called Mt. Kenya West or simply the Kikuyu governors, in which the Speaker Justin Muturi has galvanised the Meru, Tharaka Nithi and Embu governors and politicians around a constructed Mt Kenya East block of ethnic communities. In addition, we have seen supremacy battles among Luyhia, Kalenjin, Kisii, Maasai, Kamba, Coastal communities and the Somali in the northeastern region, especially after the demise of Garissa Senator Yussuf Haji.

⁷ In the Ugandan elections of January 2021, the Opposition cried foul when the NRM government seemed to be using the COVID-19 protocols to shut down opposition rallies and meetings accusing it of not being compliant to the protocols while the president was travelling the country holding meetings that the government was paying for the necessary materials and equipment such as health and sanitary items, bigger venues among others for complying with the COVID-19 protocols. Many opposition activists and innocent passers-by were killed or maimed in the security operations targeting Opposition functions and meetings.

⁸ Mueni, J. (2020) “IG Mutiyambai denies enforcing the law selectively as Ruto feels targeted,” Capital fm, 21 October, <https://www.capitalfm.co.ke/news/2020/10/ig-mutyambai-denies-enforcing-the-law-selectively-as-ruto-feels-targetted>

5. The future of the Building Bridges to Unity Initiative

At the time of writing, the Building Bridges Initiative had been thrown into limbo by the High Court ruling, but it remains a source of political tension. The judicial process has three possible outcomes: a) the case at the Supreme Court takes too long, making it unfeasible to hold a referendum before the 2022 general election, b) the Supreme Court grants a stay and a referendum is held before the 2022 general election, or c) the constitutional amendments are carried through parliament and actually lead to a change in the constitution. Any of these scenarios is likely to prove divisive. For example, if the BBI referendum is permitted to go ahead, it will risk creating conflict over how the 70 proposed new constituencies are distributed. A BBI referendum would probably trigger political mobilisation ahead of the 2022 general election, and with it a renewed standoff between Tanga Tanga and the Kieleweke formation aligned to the President. It is likely that this would particularly affect areas that seem to be split down the middle, such as Mt. Kenya/Central Kenya, Kisii/Nyamira, Western Kenya and the Coastal counties. These are areas that will be viewed as “vote-rich” regions without strong presidential candidates in the 2022 elections.

6. Resurgence of gangs and militia in political violence

There have also been concerns over a resurgence in the involvement of gangs and militias in political violence in connection with the 2022 elections.⁹ This is due in part to experiences from previous elections, when politicians mobilised gangs (such as the Mungiki in Central Kenya) and militia to provide security and intimidate political opponents and their supporters. The President’s 2020 annual report to Parliament on the state of national security asserted: “Whereas the threats posed by Mungiki [have] significantly declined, there was a re-emergence of activities by its remnants in parts of Nyeri, Murang’a, Kirinyaga, Kiambu, and Laikipia counties. This was partly attributed to the support of the outlawed group by some political leaders coupled with the Mungiki leader’s quest to reassert his position as the sect leader.”¹⁰

7. Inter-communal conflict

There has been a rise in inter-communal conflict since 2020. These conflicts have largely been driven by livestock raids, longstanding land and boundary disputes, banditry and tensions over water and pasture. The situation was compounded by the emergence of large-scale commercial herders moving from northeastern parts of the country due to harsh climatic conditions. Recently the clashes have been largely confined to the counties of Marsabit, Isiolo, Samburu, and Laikipia, Migori, Wets Pokot/Elgeyo Marakwet and Turkana, with violence affecting the local security situation, especially along the Isiolo-Samburu border.¹¹ However, such conflicts could be easily instrumentalised by conflict actors during the election period.

⁹ Daily Nation Newspaper article 15th July 2021 by Mwangi Muiruri

¹⁰ Executive Office of the President (2020) Annual Report to Parliament on the State of National Security, March 2020,

¹¹ Executive Office of the President (2020) Annual Report to Parliament on the State of National Security, March 2020



Conclusion: Recommendations

This policy brief highlights the critical peace and security risks facing Kenya as it moves towards the 2022 elections. Kenya must address the various underlying factors that undermine its security, such as poverty, marginalisation, environmental degradation and corruption. It will also need to address a general climate of injustice, increase its ability to resolve conflicts in a sustainable manner and ensure that institutions are trusted and effective. In the absence of such measures, peace will at best be short-lived and at worst, impossible to achieve. There are, however, more immediate actions that can be taken to ensure that the risk of election-related violence is reduced in 2022.



Recommendations to the Government of Kenya

- 1** The Government of Kenya must empower its own peace structures, the County Peace Forums and local Peace Committees, as well as strengthen bodies like the National Cohesion and Integration Commission (NCIC). Adoption of the National Cohesion and Peacebuilding Bill 2021 would enhance the ability of these bodies to curb ethno-political hate speech and clarify their role during the electioneering period.
- 2** The Government of Kenya should identify immediate political reforms that can boost trust in the electoral processes and increase space for peaceful resolution of conflicts. While a referendum is likely to be tense in the current context, some changes could be achieved without going down this route. For example, consideration could be given to the possibility of bringing in legislation to extend the presidential election petition from 14 to 30 days, which would create more time for the resolution of disputes.
- 3** The Government of Kenya should strengthen the Independent Policing Oversight Authority (IPOA) and provide it with sufficient resources to ensure that the police use appropriate methods in dealing with political demonstrations and crowd control, and to guarantee that police officers are held accountable for their actions. Effective election security can be also promoted by leveraging the legitimacy of Nyumba Kumi initiatives and other community-based structures.
- 4** The Government of Kenya should coordinate with various international development partners and friendly nations to ensure sufficient availability of vaccines against COVID and speedily move towards vaccinating populations. This may reduce COVID-related risks such as health emergencies and insecurity among people during the election period, and may also help to allay suspicion among certain sections of society that COVID and associated restrictions could negatively impact the integrity of the elections.



Recommendation to the Independent Electoral and Boundaries Commission (IEBC)

- 1 The IEBC needs to ensure the transparency and effectiveness of electoral tools and systems, such as voters' registration systems and technology used to administer the elections. It should also articulate how it will ensure the safety and security of voters, candidates, election officials and their families. To this end, the IEBC should provide for timely and transparent procurement of election-related goods and services and inclusive human resource hiring processes.



Recommendations to Peace Actors and CSOs

- 1 Peace actors and civil society organisations should prepare to monitor the referendum (if it takes place), the period leading up to the 2022 general elections, the elections themselves and their aftermath.
- 2 Peace actors and civil society organisations should work with the NCIC and other government agencies to curb incitement, hate speech and ethnic mobilisation, in line with the NCIC's strategy entitled "A violence Free 2022- Roadmap to Peaceful 2022 General elections".
- 3 Local-level early warning and early response facilities should be strengthened as these represent a critical resource for monitoring emerging conflicts and then rapidly deploying (often local) resources to address them.
- 4 Peace actors should identify and shape influential leaders who can be called upon during crisis situations and who, in turn, can influence the political elite towards a peaceful resolution of conflict.

Endnotes

- ¹ Philip Onguny (2020) The politics behind Kenya's Building Bridges Initiative (BBI): Vindu Vichenjanga or sound and fury, signifying nothing?, *Canadian Journal of African Studies / Revue canadienne des études africaines*, 54:3, 557-576, DOI: [10.1080/00083968.2020.1832898](https://doi.org/10.1080/00083968.2020.1832898)
- ² Report of the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report, https://e4abc214-6079-4128-bc62-d6e0d196f772.filesusr.com/ugd/00daf8_bedbb584077f4a9586a25c60e4ebd68a.pdf
- ³ <https://www.standardmedia.co.ke/the-standard-insider/article/2001421336/court-silences-bbi-reggae-tune-in-a-land-mark-10-hour-verdict>
- ⁴ Centre for human rights and Policy studies: Report No 1 April 2021 Spotlight on security and Kenya's electoral environment: Sep 2020 to Mar 2021
- ⁵ Star team (2021) "Chaos, arrests and bribery claims mar by-elections," *The Star*, 5 March, <https://www.the-star.co.ke/news/2021-03-04-chaosarrests-and-bribery-claims-mar-by-elections/>
- ⁶ One of the more consequential succession and supremacy tussles will be the one involving the Speaker of the National Assembly and the governors of what has come to be called Mt. Kenya West or simply the Kikuyu governors, in which the Speaker Justin Muturi has galvanised the Meru, Tharaka Nithi and Embu governors and politicians around a constructed Mt Kenya East block of ethnic communities. In addition, we have seen supremacy battles among Luyhia, Kalenjin, Kisii, Maasai, Kamba, Coastal communities and the Somali in the northeastern region, especially after the demise of Garissa Senator Yussuf Haji.
- ⁷ In the Ugandan elections of January 2021, the Opposition cried foul when the NRM government seemed to be using the COVID-19 protocols to shut down opposition rallies and meetings accusing it of not being compliant to the protocols while the president was travelling the country holding meetings that the government was paying for the necessary materials and equipment such as health and sanitary items, bigger venues among others for complying with the COVID-19 protocols. Many opposition activists and innocent passers-by were killed or maimed in the security operations targeting Opposition functions and meetings.
- ⁸ Mueni, J. (2020) "IG Mutyambai denies enforcing the law selectively as Ruto feels targeted," *Capital fm*, 21 October, <https://www.capitalfm.co.ke/news/2020/10/ig-mutyambai-denies-enforcing-the-law-selectively-as-ruto-feels-targetted>
- ⁹ Daily Nation Newspaper article 15th July 2021 by Mwangi Muiruri
- ¹⁰ Executive Office of the President (2020) Annual Report to Parliament on the State of National Security, March 2020
- ¹¹ Executive Office of the President (2020) Annual Report to Parliament on the State of National Security, March 2020

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