

At a Glance

AN EDUCATIONAL TOOL BY THE INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT

Q&A: THE RESPONSIBILITY TO PROTECT (RtoP) AND KENYA

Note: For more details on the crisis, as well as sources and links for all the information provided below, please visit our “Crisis in Kenya” page at www.responsibilitytoprotect.org.

Q: What happened in Kenya following the 2007 elections?

A: The crisis in Kenya was triggered by the December 2007 presidential election. Two coalitions - the Orange Democratic Movement (ODM) and the Party for National Unity (PNU) – dominated the election, each supported by ‘ethnically-rooted political constituencies’. Opinion polls suggested that the leader of the ODM, Raila Odinga, would win by a narrow margin; three days later, however, the Electoral Commission declared the election for the incumbent, Mwai Kibaki of the PNU. Kibaki was hastily sworn in, while Odinga, the ODM, and international observers contested the election results. Within hours, arson and riots spread across the country. While Kenya had experienced unrest in past elections, the violence following the 2007 vote was unprecedented. By January 2nd, the death toll was estimated to exceed 300 people. Violence continued for close to two months, pitting PNU supporters – mostly of the Kikuyu ethnic group – against the Luo, Luhya and Kalenjin ODM supporters in ethnic-based and often premeditated attacks. It is reported that 500,000 people were displaced and over 1,000 lost their lives due to the crisis.

Q: Why did the international community have a RtoP in Kenya?

A: In 2005 (see box at right) UN Member States agreed that they had a responsibility to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing (collectively known as mass atrocities). In the first few days of the conflict, the two sides accused one another of ethnic cleansing and genocide. On 1 January 2008, 50 Kikuyu were burned alive in a church, in an event referred to as the Eldoret massacre. In the month of January, the ethnic killings continued, with numerous reports throughout the country. On 29 January 2008, Francis Deng, Special Advisor on the Prevention of Genocide at the time, said that, while the violence did not amount to genocide, the atrocities could easily escalate to ‘dangerous levels’. The following day, the U.S. Assistant Secretary of State for African Affairs said the situation in the Rift Valley was ‘clearly ethnic cleansing’.

Q: How did the international community uphold its RtoP?

A: The international community’s reaction to the violence in Kenya was both swift and coordinated, so much so that Human Rights Watch called it “a model of diplomatic action under the Responsibility to Protect”. Here, we summarize how actors responded.

Regional efforts:

After several resolution attempts by the AU chairman and several former African presidents, as well as by Archbishop Desmond Tutu and US Assistant Secretary of State of African Affairs, Jendayi Frazier, Odinga and Kibaki finally agreed to meet with the African Union Panel of Eminent Personalities, led by former UN Secretary General Kofi Annan. Following extensive mediation efforts, the sides reached a power-sharing arrangement on 28 February 2008 whereby Kibaki was instated as President and Odinga as Prime Minister. The agreement also established three bodies to investigate the causes of the violence.

At the United Nations:

Secretary-General Ban Ki-Moon visited Nairobi to support the AU political dialogue on 1 February 2008. He and then-UN High Commissioner for Human Rights, Louise Arbour, both issued statements calling on the government to abide by its international human rights obligations and urging peace and restraint. On 6 February 2008, the Security Council issued a Presidential Statement supporting ongoing negotiations, deploring the violence, and calling for those responsible to be brought to justice.

Civil Society:

The post-election violence solicited a robust response from domestic organizations such as Concerned Citizens for Peace (CCP) and Kenyans for Peace, Truth and Justice (KPTJ), who pressured groups to end the violence, engaged in international advocacy, and assisted with mediations. International civil society organizations also condemned the killings and the police’s use of force.

THREE PILLAR FRAMEWORK OF THE RESPONSIBILITY TO PROTECT

United Nations (UN) Secretary-General Ban Ki-moon established the three-pillar framework of the Responsibility to Protect (RtoP, R2P), in his 2009 Report *Implementing the Responsibility to Protect*:

- **Pillar One:** The state bears the primary responsibility to protect their population from genocide, war crimes, crimes against humanity and ethnic cleansing.
- **Pillar Two:** The international community, i.e. the UN, regional organizations, governments and civil society, must assist states in fulfilling their protection obligations.
- **Pillar Three:** When a state manifestly fails to protect its population or is in fact the perpetrator of these crimes, the international community has a responsibility to take collective action in a timely and decisive manner to prevent or halt the commission of mass atrocities. Such action must be on a case-by-case basis using a broad range of political, economic, and humanitarian measures and should peaceful means prove inadequate, coercive measures, including the use of force as authorized by the Security Council and in accordance with the UN Charter.

Members of civil society have repeatedly called – and continue to call – for reform, as well as accountability and justice. (*For more examples of civil society activism, see our crisis page*).

Q: What happened after the diplomatic efforts?

A: As mentioned above, after the negotiations the Kenyan government created three bodies to address the post-election violence: the Truth, Justice and Reconciliation Commission, the Independent Review Commission on the General Elections (IREC), and the Commission of Inquiry on Post-Election Violence (CIPEV) – also known as the Waki Commission. These bodies worked to bring about various, much-needed reforms in the country. In October 2008, the Waki Commission published its final report recommending a domestic tribunal to consider crimes committed during the conflict. A new constitution – one that devolved more powers and increased checks on the President – was adopted in August 2010. The electoral system was overhauled to encourage free, fair elections, and discourage ethnic-based politics. In 2011, parliament also passed two security sector reform bills in an attempt to address the excessive force used during the violence. Despite these tremendous efforts, there remains the need to address long-term, underlying grievances of Kenyans, as well as issues such as police reform.

The 4 March 2013 presidential elections were viewed as a test of these reforms. The international community called on Kenyan authorities to prevent a repeat of the 2007/08 violence, and prepared for the worst. While a few isolated clashes were reported, the polls were generally peaceful. This state of affairs was tested when Uhuru Kenyatta of the Jubilee Coalition won 50.07% of the vote and Raila Odinga challenged the result; however, in a welcome turn of events, Odinga took his complaints to Kenya's Supreme Court rather than calling for protests as in 2007, and later accepted its ruling. Kenyatta and his running mate, William Ruto, were therefore elected peacefully.

Q: I hear a lot about the ICC trial in Kenya. What is happening, and how is it related to RtoP?

A: Following two failed attempts to establish a domestic tribunal on the political violence, the Waki Commission referred six individuals to the International Criminal Court (ICC) on 17 July 2009. On 23 January 2012, the ICC confirmed charges of crimes against humanity against four of the six, including Uhuru Kenyatta and William Ruto, who had already announced their intention to run for the presidency in the next election. Proceedings before the ICC have been delayed numerous times. Ruto's trial began in September 2013, but has been dogged by witness withdrawals, as well as alleged witness intimidation and bribery. In October 2013, the African Union and Kenyan government asked the UN Security Council to defer the trials for a year, but the request was ultimately rejected. Kenyatta's trial has been pushed back to October 2014, although his government has called for the case to be dropped entirely.

Within the RtoP framework, the ICC and international and regional justice mechanisms fall under Pillar Three; they are bodies that can, independently or upon referrals by relevant inter-governmental arrangements, undertake measures to prevent and respond to the commission of mass atrocities. By trying individuals regardless of rank or title, these judicial bodies serve to deter would-be perpetrators and end impunity. Accountability is also crucial to post-conflict reconstruction and reconciliation efforts. Given this, the slow progress of the ICC trials is worrying.

Q: What is the situation in Kenya today?

A: Despite the progress made in the six years since the post-election violence, Kenya remains troubled by a number of issues. The country must deal with long-standing ethnic rivalries over land and resources, a police force that has yet to be restructured, and an underperforming economy. In addition to these systemic problems, some fear that if the ICC convicts only Kenyatta or only Ruto, the coalition government will collapse and reignite ethnic violence. Faced with these challenges, it is clear that Kenya is not out of the woods yet.

The logo for the International Coalition for the Responsibility to Protect (ICRtoP). It features the letters 'ICRtoP' in a large, bold, blue sans-serif font. The 'I' and 'C' are connected, as are the 'R' and 'to', and the 'P' is separate.

INTERNATIONAL COALITION FOR **THE RESPONSIBILITY TO PROTECT**

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The International Coalition for the Responsibility to Protect convenes and collaborates with civil society, Member States, and regional and sub-regional organizations to continue close scrutiny of the consistent implementation of the third pillar and develop effective methods to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

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