

The Crisis in Kenya Crisis Violence Court (ICC) Referral Reforms and Preventative Efforts

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I. Disputed 2007 Presidential Election: Political & Humanitarian Crisis

From December 2007 to February 2008, Kenya experienced ethnic violence triggered by a [disputed](#)

presidential election held on 27 December 2007. A country with over 70 distinct

[ethnic groups](#)

– the

[five](#)

largest being Kikuyu (20%), Luhya (14%), Luo (13%), Kalenjin (11%) and Kamba (11%) –

Kenya's elections since gaining

[independence](#)

in 1963 have been dominated by ethnic affiliation, resulting in exclusion and discrimination of those affiliated with the opposition.

In the lead up to the 2007 elections, the two coalitions vying for government – the Orange

Democratic Movement (ODM) and Party of National Unity (PNU) - were strongly supported by ethnically-rooted political

[constituencies](#)

. The ODM was backed by Luo, Luhya and Kalenjin, represented in the Nyanza and Western Provinces and Rift Valley; while the PNU was supported by Kikuyu, based in the Central and Eastern Provinces and strongly represented in Nairobi, the Coast Province and Rift Valley.

The turnout for the election between incumbent president Mwai Kibaki of the PNU, ODM leader Raila Odinga and ODM-Kenya's Kalonzo Musyoka was the

[highest](#)

on record, with approximately 70% voter participation. Opinion polls

[published](#)

prior to the election showed Raila Odinga with a narrow lead. However, on 30 December 2007, Kenya's Electoral Commission chairman Samuel Kivuitu

[declared](#)

Mwai Kibaki the winner. Merely hours later, he was hastily sworn in as President. Odinga and the ODM immediately

[rejected](#)

the results, stating the elections had been rigged--a position with which foreign election observer missions, in particular the

[European U](#)

[nion](#)

(EU) election monitors,

[agreed.](#)

The announcement of the results triggered widespread and systematic violence,

[resulting](#)

in more than 1,000 deaths and the displacement of over 500,000 civilians. Clashes were

[characterized](#)

by ethnically-targeted killings of those aligned with the PNU by ODM, and counter-attacks similarly intent on killing people in ODM-aligned communities. Due to the ethnic nature of the crisis,

[violence](#)

was particularly endemic in the Kikuyu-dominated region of the

[Rift Valley](#)

, where

[land inequity](#)

amongst the ethnic communities of Kikuyu and Kalenjin is most prevalent. Following the conflict, evidence arose suggesting that much of the violence had been pre-meditated and planned by politicians and community leaders at both the local and national levels. Kenya's police forces were also

[implicated](#)

, with reports suggesting that they were responsible for almost 40% of civilian deaths.

II. International Response to Halt the Spread of Violence

The severity of the crisis led French Foreign and European Affairs Minister, Bernard Kouchner, to

[appeal](#)

to the United Nations Security Council (UNSC) in January 2008 to react "in the name of the responsibility to protect" before Kenya plunged into a deadly ethnic conflict. On 31 December 2007, UN Secretary-General Ban Ki-moon

[issued](#)

a statement expressing concern for the ongoing violence, calling for the population to remain calm and for restraint to be shown by Kenyan security forces. On the same day, then UN High Commissioner for Human Rights, Louise Arbour,

[called](#)

on the Kenyan Government to abide by its international human rights obligations.

Efforts to peacefully resolve the crisis through dialogue began in the first week of January 2008, firstly by South Africa's Archbishop,

[Desmond Tutu](#)

, on 2 January, and quickly followed by US Assistant Secretary of State for African Affairs,

[Jendayi Frazer](#)

, on 5 January. On 8 January 2008, former African presidents Benjamin Mkapa (Tanzania), Joaquim Chissano (Mozambique), Ketumile Masire (Botswana) and Kenneth Kaunda (Zambia)

[arrived](#)

in Kenya

[ahead](#)

of African Union Chairman, Ghanaian President John Kufuor, for talks with President Kibaki.

Despite all mediation attempts, no one was able to

[broker](#)

a successful peace agreement.

On 10 January 2008, former UN Secretary-General Kofi Annan – heading the African Union Panel of Eminent Personalities,

[including](#)

Mozambique's Graça Machel and Tanzania's Benjamin Mkapa - was

[accepted](#)

by both the ODM and the PNU as the African Union Chief Mediator. Following Annan's

[meetings](#)

with both parties' negotiation teams, individual discussions with Kibaki and Odinga, as well as dialogue between all three actors, mediation efforts led to the signing of a power-sharing

[agreement](#)

on 28 February 2008. The agreement established Mwai Kibaki as President and Raila Odinga as Prime Minister, as well as the creation of three commissions – the Commission of Inquiry on Post-Election Violence (CIPEV), the

[Truth, Justice and Reconciliation Commission](#)

and the

[Independent Review Commission on the General Elections](#)

. This rapid and coordinated reaction by the international community was [praised](#)

as “a model of diplomatic action under the Responsibility to Protect.”

III. CIPEV Report and International Criminal Court (ICC) Referral

On 15 October 2008 CIPEV – also known as the Waki Commission (after Commission Chairman Philip Waki) - published its

[Final Report](#)

on the post-election violence. The Report stated that the cycle of government impunity was at the heart of the post-election violence, and recommended the creation of a special domestic tribunal with the mandate to prosecute crimes committed.

In July of 2009, CIPEV

[sent](#)

the names of six individuals deemed most responsible for the post-election violence to the Prosecutor of the International Criminal Court (ICC) following two failed government attempts to establish a tribunal. Then ICC Prosecutor, Luis Moreno-Ocampo, having received the names from the Waki Commission,

[met](#)

with Kibaki and Odinga on 5 November 2009 and

[announced](#)

the opening of the ICC investigation – marking the first time the Prosecutor brought a case *proprio motu*

(of his own volition). The six referred suspects, also known as the ‘Ocampo Six’ were Uhuru Kenyatta, Francis Muthaura, and Mohammed Ali from the government; and William Ruto, Henry Kosgey and Joshua Sang aligned with ODM. Kenyatta and Ruto had both previously

[announced](#)

their intention to run in the 2013 Presidential Elections. The official commencement of an investigation into the possible perpetration of crimes was then

[announced](#)

on 26 November 2009.

IV. Post-Crisis Reforms and Preventative Efforts

a) Adoption of a new constitution (2010)

Following the end of the crisis, the Kenyan government began taking steps towards ensuring that widespread violence would not reoccur in the next presidential election. On 4 August 2010, the Kenyan public

[voted](#)

to accept a new draft constitution, with 67% of Kenyans approving the referendum. The

[constitution](#)

[devolves](#)

power to local governments, provides the Kenyan people with a bill of rights and paves the way for land reform. In particular, the new

[constitution](#)

vests coherent executive authority with the president rather than splitting power between the president and prime minister, as was previously the case. It also strips the presidency of certain powers and patronage that previously

[allowed](#)

for centralized control within the office of the President. Under the new

[constitution](#)

, the electoral commission is considered independent and beyond presidential control. Another provision of the new governance framework set forth by the enactment of the new constitution is the mandatory creation of a

[designated seat](#)

for Kenyan women, with one required from each of the newly formed 47 counties.

b) Internal Reforms and Implementation of Preventative Steps

Electoral Procedures

Pursuant to the stipulations of the August 2010

[constitution](#)

, the Independent Electoral and Boundaries Commission (IEBC) was

[formed](#)

and tasked with overseeing implementation of a variety of electoral reforms, as well as the monitoring of elections and dissemination of important information to the Kenyan populace, such as new registration processes and logistical details for polling centers on election day. Other IEBC mandates include ensuring credible, free and fair elections. To this end, the IEBC conducts and supervises referenda and elections, the registration of voters, the regulation of political parties, voter education, the settlement of electoral disputes, and modernization and reformation of the electoral process and its systems.

Additional important electoral reforms included the

[reorganization](#)

of Kenyan geographical regions into 47 distinct counties, each with a governor, senator, district

Assembly and a mandatory seat allocated for the representation of women. Other new requirements stipulate that any presidential candidate must

[secure](#)

at least half of the popular vote in the general election, as well as at least 25% of the vote in 24 of the 47 districts. This requirement was meant to mitigate the ethnically and geographically-centered politics of the past by necessitating a wider base of support that cuts across traditional ethnic, geographic and political cleavages.

Police and Security Sector Reform

As it was

[reported](#)

that the police were responsible for one third of the killings during the 2007/08 crisis, significant reforms were needed to

[train](#)

the police to ensure such crimes did not reoccur and that human rights were upheld. As such, in 2011 the parliament

[passed](#)

two police reform bills: the first bill combined the previously separate Kenya Police and Administration Police under one governing structure to strengthen capacity and accountability, as well as established a civilian National Police Service commission to recruit and train police, with the capacity to also hold disciplinary proceedings. The second bill

[established](#)

civilian oversight authority to handle complaints and ensure accountability.

Despite efforts to catalyze changes in the police and security sector, reforms were slow to begin. Initially, the government undertook the establishment of an ambitious framework which the International Center for Policy and Conflict in Africa

[noted](#)

in 2013 was meant to “establish and elaborate an effective system of democratic regulation and oversight of security services.” Yet, as Amnesty International highlighted in their 2013

[report entitled](#)

[Police Reform in Kenya: “A Drop in the Ocean”](#)

the framework was not fully implemented, and the capacity of security personnel remains an inherent problem. In light of the apparent lack of accountability for the 2007/08 post-election violence, Amnesty International

[stated](#)

in the aforementioned report that steps were taken to cover up and politically manipulate cases against security personnel. Consequently, Human Rights Watch

[reported](#)

in their February 2013 press release entitled

Kenya: Ensure Violence Free Polls,

that Kenyans “view the police as ineffective and corrupt.”

V. The ICC Investigation Moves Forward (2010 – 2012)

As the Kenyan government pursued domestic reforms and efforts to prevent a reoccurrence of violence, the Prosecutor of the ICC moved ahead with the investigation into potential crimes committed during the 2007/2008 post-electoral crisis. On 31 March 2010, the request to commence an official investigation submitted by the Prosecutor was

[authorized](#)

by the ICC Pretrial Chamber, thus clearing the way forward for the investigation. The Kenyan government

[challenged](#)

the ICC's jurisdiction on 31 March 2011, arguing that the new constitution opened up the possibility for national pursuits of justice. However, the ICC

[rejected](#)

the Kenyan admissibility challenge due to a lack of evidence of a genuine and capable national legal process.

On 23 January 2012, Pre-Trial Chamber II (PTC II) of the International Criminal Court

[confirmed](#)

the charges of crimes against humanity against four of the Ocampo Six. The first case is against government's Uhuru Kenyatta and Francis Muthaura, and the second against William Ruto and Joshua Sang. Meanwhile, the ICC announced they were

[dropping](#)

the cases against Henry Kosgey (ODM's Deputy Party Leader and Chairman) and Mohammed Ali (former Police Chief) due to insufficient evidence.

VI. The Electoral Campaign and the Presidential Election (2012 – 2013)

Amidst massive efforts to overhaul and reform the Kenyan political and governmental landscape and an ongoing investigation at the ICC, campaigning for the 2013 presidential elections was taking place. As candidates vied for support, two prominent figures – Uhuru Kenyatta and William Ruto – who hailed from historically contentious ethnic groups, decided to join forces and consolidate the power of their respective constituencies. Kenyatta hails from the Kikuyu and Ruto from the Kalenjin ethnic groups, which had

[committed](#)

gross human rights violations and attacks against one another during the 2007/2008 clashes and had been long-time adversaries in the Rift Valley over land rights and other grievances.

Kenyatta and Ruto

[formed](#)

a joint-ticket under the Jubilee Coalition and positioned themselves opposite the standing Prime Minister, Raila Odinga, who headed the Coalition of Reform and Democracy (CORD). This development inevitably led to the ICC investigation

[becoming](#)

a central campaign issue and an exceptionally

[divisive](#)

one. The Kenyatta-Odinga contest was viewed as the primary competition in the race, as the two factions incorporated most major ethnic, political and geographic constituencies between them. As FIDH noted in their February 2013

[press release](#)

entitled

Run up to Kenya's 2013 General Elections

, both camps emphasized and

[exploited](#)

these cleavages among the Kenyan populace during the campaign season.

a) The ICC and the Campaign

The charges against Kenyatta and Ruto were and still are controversial among Kenyans, and the presidential election was seen by many as a

[referendum](#)

on the ICC. Initially, there was some

[doubt](#)

as to whether or not Kenyatta and Ruto were legally permitted to run for office due to newly-designed and implemented

[requirements](#)

based on good character and integrity, which many believed disqualified two people facing charges of crimes against humanity. The Bureau of International Reporting

[reported](#)

that public support for the ICC charges had dipped to 54% amidst the campaign, during which time, according to International Crisis Group in their May 2013

[report](#)

Kenya After the Elections

, the ICC charges were used by some to construct a narrative of discrimination and persecution against African leaders and against specific ethnic groups.

b) The Election

As the 4 March 2013 elections approached, international attention turned to Kenya and early steps were taken to maintain the integrity of the election and enhance security. The focus on Kenya emanated from civil society, regional organizations and governmental actors, as the prevention of a relapse into violence became a key objective for many stakeholders. Several civil society and intergovernmental organizations dispatched teams to assist with and oversee the March 2013 polls. As monitoring is crucial to determining election results, the

[Carter Center](#)

, the

[Citizens' Coalition for Electoral Democracy in Uganda](#)

, the [Elections Observation Group](#), as well as intergovernmental organizations including the [East African Community](#) and [African Union](#) announced delegations to observe and monitor the elections of 4 March 2013.

UN officials and agencies were also active in voicing their concern and support for the 2013 elections to run peacefully. UN Secretary General Ban Ki-moon [called](#) upon all leaders to “abide by legal mechanisms and to send a clear message to supporters that violence of any kind would be unacceptable.” Mr. Adama Dieng, the UN Special Adviser on the Prevention of Genocide, traveled in February 2013 to Nairobi, where he [spoke](#) to the Kenyan authorities about the responsibility to protect citizens by preventing violence and strengthening the capacity to respond if necessary. Dieng also recognized the improvements, including measures such as the National Cohesion and Integration Commission to check hate speech. The UN Office of the Prevention of Genocide and the Responsibility to Protect, in coordination with the International Conference on the Great Lakes Region, also [held](#) a five-day workshop during Mr. Dieng’s trip on RtoP and the prevention of inter-communal violence to support Kenya’s National Committee on the Prevention of Genocide. Additionally, the Office for the Coordination of Humanitarian Affairs [formed a humanitarian contingency](#) and, with the Special Rapporteur on the human rights of internally displaced persons, [urged](#) both national and international actors to coordinate efforts in emergency preparedness and to prevent massive displacement.

Despite discontent over the ICC charges and the persistent, albeit decreased, [use](#) of ethnic identity and traditional animosities throughout the campaign, the elections, held on 4 March 2013, proceeded relatively peacefully. There were [reports](#) of intermittent clashes on a small scale in certain areas, such as the Tana River Delta, but overall the polls were [declared](#) relatively peaceful, free and fair, particularly when juxtaposed with the 2007/2008 elections.

In advance of the voting, there was a [consensus](#) that neither Kenyatta nor Odinga, who had clearly established themselves as the front-runners,

would garner the necessary majority of the vote needed to secure the presidency. A run-off was

[expected](#)

and

[plans](#)

had been made for that eventuality. As it turned out, Kenyatta

[garnered](#)

50.07% of the vote, narrowly achieving the majority threshold.

The results were immediately

[contested](#)

by Odinga and other contenders, who leveled charges of fraud and electoral irregularities. In a welcome change from the 2007 elections, Odinga

[took](#)

his complaints regarding the electoral results to Kenya's Supreme Court. The results were

[confirmed](#)

by the IEBC on 9 March and the Kenyan Supreme Court later

[corroborated](#)

the IEBC decision,

[dismissing](#)

the claims made by opposition groups. A joint statement was

[released](#)

by election monitors from the European Union, African Union, Carter Center and other monitoring groups stating that despite some confirmed irregularities and discrepancies, the election was overall legitimate and that the various monitoring groups supported the results. Although Odinga expressed '

[dismay](#)

' at the Court's decision, he maintained that his "belief in constitutionalism remain[ed] supreme". His

His

[response](#)

to the results and ruling – along with Kenyan's newfound trust in the judicial system – were crucial to avoiding violence, and were

[praised](#)

by the international community.

VII. Developments since the Elections

a) Background on the trials before the ICC

On 8 March 2013, just four days after the election, the ICC

[announced](#)

that the trial of Uhuru Kenyatta would commence on 9 July 2013 and that the trial for Ruto and Sang would begin in late-May of 2013. These trial dates were further

[delayed](#)

as the ICC

[announced](#)

in early-June 2013 that the proceedings for Ruto and Sang would be pushed back to 10 September 2013. Following the same pattern, the Court

[announced](#)

on 20 June 2013 that the trial of Kenyatta would be pushed back to 12 November 2013.

[Ruto, Sang](#)

and

[Kenyatta](#)

filed motions against the requirement to participate in proceedings in person at The Hague, as this would significantly impede their ability to fulfill respective public office duties, and

[motioned](#)

to move the trials in a city closer to home, such as Arusha, Tanzania. While the Chief Prosecutor Fatou Bensouda initially voiced reservations to

[Kenyatta's](#)

and

[Ruto and Sang's](#)

requests of holding the entire trial in either Tanzania or Kenya, she still left the possibility open of holding portions of the trial elsewhere. On 18 June, the judges

[granted](#)

Ruto permission to participate in-absentia for the trial and

[advised](#)

that it be partially held in Tanzania and Kenya; however, Bensouda

[appealed](#)

this decision on 24 June 2013.

On 2 May 2013, Kenya's UN ambassador

[sent](#)

an official letter to the Security Council

[calling](#)

for the UNSC to not only defer the case, but to terminate it altogether,

[arguing](#)

that it posed a threat to international peace and security. While the UNSC is able to defer ICC cases for up to 12 months in accordance with

[Article 16](#)

of the Rome Statute, the UNSC

[does not](#)

have the authority to terminate cases on behalf of the Court. Kenyan officials, including Ruto, were quick to

[distance](#)

themselves from the letter, noting the governments continued willingness to cooperate with the Court. Nonetheless, the UNSC held an

[informal dialogue](#)

with Kenya on the ICC issue on 23 May 2013, though it did not move to defer the proceedings.

b) Start of the trials and subsequent requests for deferral

The Ruto and Sang trial officially opened on 10 September 2013, with both leaders pleading [not guilty](#)

. A few days after the trial began, the

[shooting](#)

at Westgate Mall in Nairobi, which lasted from 21 to 24 September, led to Kenyatta being granted a request to

[excuse himself](#)

from being present the entirety of his trial proceedings, so that he could attend to matters of national security. Ruto was also

[excused](#)

for a period of time in order to respond to the aftermath of the crisis, but was ultimately [required](#)

to return to The Hague one week later.

The relationship between the government of Kenya and the ICC grew even more

[strained](#)

in the following days. For example, the Kenyatta trial had been originally scheduled to

[commence](#)

on 12 November 2013. However, on 21 October, a few days after Kenyatta was granted a leave of absence, the AU and the Kenyan government asked the UNSC to

[consider](#)

a one-year ICC deferral on both the Ruto and Kenyatta cases. This request grew out of an extraordinary summit the AU held on 12 October 2013, in which the AU also

[contemplated](#)

the possibility of withdrawing from the ICC completely, and Kenyatta

[accused](#)

the Court of “race-hunting.”

After

[discussing](#)

the possibility of further delaying Kenyatta’s trial, the UNSC ultimately

[rejected](#)

the AU’s request on 15 November,

[with](#)

seven member states voting in favor, and the remaining eight abstaining. On its own, however, the ICC did

[agree](#)

to postpone Kenyatta’s

[trial](#)

until 5 February 2014, so as to give the defense enough time to [prepare](#) its case and allow the prosecutors the opportunity to [examine](#) new evidence.

Not deterred by the UNSC's rejection of an ICC deferral, the AU [announced](#)

on 18 November its intentions to seek an [amendment](#)

to the Rome Statute that would give sitting heads of state [immunity](#)

from prosecution at the ICC, thereby circumventing the decision to deny a one-year deferral. This, along with a

[number of other amendments](#), was immediately [opposed](#)

by several NGOs. At the 2013 ICC Assembly of State Parties (ASP) Conference, which concluded on 27 November, this and other suggested revisions to the Rome Statute were officially [voted down](#)

. In the meantime, the Ruto and Sang trial [resumed](#)

hearings on 21 November 2013. When the Court adjourned on November 29 for December break, it had [heard](#)

from nine witnesses.

On 19 December 2013, Prosecutor Bensouda [called](#)

for a delay in the Kenyatta trial, citing a need to gather new evidence following the withdrawal of two key witnesses. In response, the ICC

[announced](#)

on 23 January 2014 that it would hold a status conference on 5 February – formerly the start date for the trial. At this time, the court would [hear](#)

the prosecutor's request for a 3-month adjournment, and the President's previously confidential request for the case to be terminated 'on the grounds of insufficiency of evidence'.

At the African Union Summit in late-January 2014, opposition to the ICC took a [back seat](#)

to the crises in South Sudan and the Central African Republic. The AU did, however,

[express](#)

'disappointment' in the UNSC's refusal to defer the trials, and urge members to 'speak with one voice' against the prosecution of sitting presidents. Kenyatta also

[thanked](#)

the AU for their support in approaching the UNSC. In early February,

[comments](#)

made by the former ICC Prosecutor Luis Moreno-Ocampo further strained relations between Kenya and the ICC. His

[revelation](#)

that foreign diplomats had asked him to prevent Ruto and Kenyatta from running in the 2013 elections led Kenyan MPs to

[call](#)

for termination of the 'politically motivated' ICC cases.

Speaking at the status conference on 5 February 2014, prosecutors

[argued](#)

that the exhaustion of their available leads made Kenyatta's financial records – documents that might reveal whether he funded post-election violence – crucial to the case. The prosecution accused Kenyatta's defense team of

[obstruction](#)

, a charge his lawyers

[deny](#)

. Meanwhile, the trial of Ruto and Sang continued into March, with Ruto

[accused](#)

of making 'coded' demands for ethnic killing. In February and March 2014, much debate centered over Bensouda's

[application](#)

to subpoena witnesses, prompted by the

[withdrawal](#)

of seven prosecution witnesses in 2013 in a country characterized by widespread

[witness intimidation](#)

. The Kenyan

[Attorney General](#)

maintains that compelling witnesses to testify would violate both the Rome Statute and Kenyan Constitution, while the victims' lawyer

[argues](#)

this is not the case. The prosecution

[submitted evidence](#)

of 'intimidation, bribery and other improper influence' on 17 February. At the time of writing, the ICC had not ruled on either the continuation of the Kenyatta case or the witness summons.

c) Civil society advocacy regarding the trials before the ICC

Many Kenyan civil society organizations have stood firm in their support of the ICC and the

need to hold to account those responsible for the commission of atrocities in 2007 and 2008.

[Kenyan for Peace with Truth and Justice](#)

(KPTJ), a coalition of over 30 Kenyan and East African legal, human rights and other civil society organizations; as well as individual Kenyan citizens, opposed the Kenyan UN ambassador's letter to the Security Council on the 17 of May 2013 in a

[letter](#)

to several UN national missions and Security Council member states.

Since the ICC's decision to hold trials for Kenyatta and Ruto in particular, various members of civil society have voiced support for these prosecutions. For example, in January 2011, the East Africa Law Society (EALS) issued a statement

[condemning](#)

any action on the part of the Kenyan government that would obstruct the ICC's efforts to seek justice for the victims of the post-elections violence. In September 2013, the National Association of Human Rights Activists

[announced](#)

its plans to hold a national conference to garner Kenyan civil society support for the ICC.

Weeks ahead of the Extraordinary Summit of the AU on 11 and 12 October 2013, Human Rights Watch (HRW) sent a letter supported by more than 160 civil society organizations based or with offices in African countries to foreign ministers who would be traveling to the Summit,

[asking](#)

these leaders to support the ICC and to refuse to condone any motions to withdraw from the Court. In addition, the International Justice Project (IJP) and Pan-African Lawyers Union (PALU)

[convened](#)

a meeting of civil society experts in mid-October 2013, asking the AU to continue to support the Court. In November 2013, during the ASP, the African Centre for Open Governance (Africog)

[criticized](#)

Kenya's efforts to amend the Rome Statute and grant immunity to sitting heads of state. Africog had also drafted a letter sent to the UN Security Council, in which the coalition of organizations signed therein

[stated](#)

their disapproval of the Kenyan government's ICC deferral request.

In the wake of the 2014 African Union Summit, African civil society continued its

[protest](#)

against AU members' opposition to the ICC. They were particularly critical of Kenya's role, with the International Commission of Jurists Kenya

[calling](#)

the actions of the government 'disrespectful to African citizens and the victims of serious crimes'. Kenneth Roth, Director of HRW, echoed this sentiment,

[writing](#)

that Kenyatta had ‘conveniently interpreted his narrow victory as a mandate to ignore the legitimate demands for justice of the victims’. The organization further

[criticized](#)

Kenyatta and Ruto for ‘deploy[ing] all the resources of the state toward stopping their prosecution’ in the HRW

[World Report 2014](#)

. Since Kenyatta’s election, the Kenyan government has been

[cracking down](#)

on civil society and the media.

VIII. Conclusion

The outcomes of the trials will have

[consequences](#)

both domestically and internationally.

[According to](#)

Abdullahi Boru Halakhe, a Horn of Africa security analyst and expert, convicting Kenyatta, Ruto and Sang would increase the ICC’s credibility and silence talk of immunity for heads of state.

However, this verdict is

[unlikely](#)

, as even the prosecution calls the situation ‘less and less promising’. It is more realistic to imagine that some or all will be acquitted. The latter would be a setback for the fight for justice both in Kenya and internationally..But to have only Ruto or Kenyatta convicted – although better for the ICC – may be worse for Kenya. Peace in the country remains

[fragile](#)

, with ethnic tensions in the Rift Valley papered over by Kenyatta and Ruto’s political alliance.

Should the coalition collapse, there is a

[risk](#)

of reigniting ethnic violence.

Even if the trials conclude peacefully, Kenya will not be out of the woods. The government has so far failed to address long-standing ethnic

[rivalry](#)

over land and resources. The police force has yet to be

[restructured](#)

and vetted, and remains the

[most corrupt](#)

state institution in the eyes of the majority of Kenyans. In the past year, the

[economy](#)

has grown slower than expected, and the population has become increasingly pessimistic about future growth. Whoever leads Kenya in the coming years will have much to do, even if undistracted by the ICC.

