

THE POLITICAL CRISIS IN KENYA: A CALL FOR JUSTICE AND PEACEFUL RESOLUTION

HEARING BEFORE THE SUBCOMMITTEE ON AFRICA AND GLOBAL HEALTH OF THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS SECOND SESSION

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FEBRUARY 6, 2008
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Serial No. 110-211
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Printed for the use of the Committee on Foreign Affairs



Available via the World Wide Web: <http://www.foreignaffairs.house.gov/>

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U.S. GOVERNMENT PRINTING OFFICE

40-658PDF

WASHINGTON : 2008

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WEDNESDAY, FEBRUARY 6, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA AND GLOBAL HEALTH,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m. in Room 2200, Rayburn House Office Building, Hon. Donald Payne (chairman of the subcommittee) presiding.

Mr. PAYNE. We are going to wait a few more minutes to see if the ranking member will arrive. As you all know, it was Super Tuesday yesterday; and many members, especially from the west coast, are having a difficult time returning. They won't be able to get here until later this afternoon. Many of the States represented by members of the committee had elections, and when we planned this, we were unaware that we would have this conflict.

So we will wait a few more moments to give our ranking member an opportunity to come. If he does not get here in a few minutes, then we will begin; and he can make his remarks whenever he arrives. I know he's very interested in the issue and in Africa in general; so, we will wait another 5 minutes or so. Thank you.

[Recess.]

Mr. PAYNE. We will call to order the meeting of the Subcommittee on Africa and Global Health.

Good morning and welcome to the Subcommittee on Africa and Global Health's first hearing of the second session of the 110th Congress.

Today, we will examine the unfortunate and still unfolding political crisis in Kenya, a country that for many is considered a safe place to live, including hundreds of thousands of refugees from Somalia, the Ogaden and Sudan.

Just a few weeks ago, at the height of the crisis, I went to Kenya to assess the situation and to encourage political religious community and civil society leaders to find a peaceful resolution. I visited thousands of displaced children in the Jamhuri showground and met with volunteers from diverse backgrounds. We met and talked to many displaced people. The thing that was interesting was that it was remarkable and encouraging to see Kenyans coming together to help their fellow citizens, a part of the story that we do not hear much about. Indeed, witnessing the violence and meeting the young victims was deeply troubling; yet, I am confident that Kenyans will come out of this crisis united.

Kenyans of different religious, ethnic and economic backgrounds live together. They live together peacefully in a region long marked by civil wars and political chaos; however, Kenya was able to avoid the wars and chaos.

Unfortunately, like millions of Kenyans, more than 170,000 refugees from the Ogaden and Somalia in Kenya will also be affected, because what happens in one place has an impact on the lives of so many others in the rest of the region.

It was not long ago that the people of Kenya demonstrated that democracy works in Africa. Really, they were very elated at a system that would thwart off the dictatorship and allow people's voices to be heard. The 2002 multiparty elections had a positive impact not just in Kenya but also in other parts of Africa. The people of Kenya proved beyond doubt that the power of incumbency and the entrenched cloud of a ruling party will not stop them from bringing change peacefully.

On December 27, 2007, despite the logistical challenges and long lines, the people of Kenya voted in a hotly contested election. More than 14 million Kenyans registered to vote—that is 82 percent of the eligible voters, a very, very high percentage; whereas, in our country, if we reach 50 percent, we are fortunate.

An estimated 2,547 parliamentary candidates were qualified to run in the 210 constituencies, a clear indication of the desire and the determination of Kenyans to participate and to be a part of the political process in the country that they all love so much.

Incumbent President Mwai Kibaki was hastily declared the winner by the Electoral Commission of Kenya (ECK) after a series of highly irregular events which casts significant doubt on his so-called victory.

The election results announced by the ECK, in my opinion, do not reflect the wishes of the Kenyan people. The people of Kenya voted for change. What they were given was the status quo. This is unacceptable.

International and domestic election observers reported serious irregularities, especially in votes tallied by the ECK. In one district, a stronghold of the President, the election results showed a 115 percent turnout; however, the chairman of the commission changed the voter turnout to 85% without any explanation. Election results were declared even when documents were not returned or signed by election officers.

While the vote proceeded in an orderly fashion, the aftermath was a textbook example of how to steal an election. National and international election monitors were barred from observing the vote tally in some places. Returning officers became mysteriously difficult to get in touch with before reporting the vote tally from their constituencies.

The Orange Democratic Movement (ODM) candidate Raila Odinga's lead, which had been reported to be nearly 376,000 votes, suddenly diminished to 38,000. The ODM won 99 seats in the parliament, compared to the President's People National Unity victory of only 43 seats, who won less than half. The opposition not only won the majority of seats in the Parliament, but the President's Vice President and over a dozen of his ministers were defeated in the parliamentary elections.

The European Union (EU) observer mission declared that the 2007 general election had fallen short of key international regional standards for democratic elections. More significantly, the elections marred by the lack of transparency in the processing and tallying of the presidential results, which raises concerns about the accuracy of the final results of the election. Other observers also raised serious questions about the credibility of the election process in general.

In reaction, Kenyans went to the streets to express their frustration and anger. The protest soon turned violent, and violence is still unfolding as we speak. As a result of the unrest, more than 1,000 people have been killed, over 300,000 displaced, including an estimated 80,000 children under the age of 5. Many of these children will die if they are not given the proper medical, nutritional and other attention. Millions more have been adversely affected. And, as we know, tragically, two members of Parliament from the opposition Orange Democratic Movement (ODM) were killed in January, narrowing the five-vote majority to three.

The instability in Kenya continues to threaten and affect the economies of neighboring countries and pose a serious threat to reasonable stability. The Kenyan economy has been hit hard; and recovery will take a long time.

It is important to note that in the wake of the elections while the ECK and the Kibaki government mishandled the 2007 elections, the State Department's response was at best confused and at worst completely inappropriate to the circumstances. A number of statements issued by the State Department not only missed the point, but the actions of some U.S. officials were counterproductive and, in my opinion, one-sided. To my knowledge, no one else in the international community has made such a mistake.

The State Department should have waited on the outcome to determine how to respond effectively. Our diplomatic effort in the wake of the elections has not been stellar. Other international observers waited until the count came in, not as the process unfolded. The election process went well, and people were, in many instances, given the opportunity to vote. And we find that in many instances when elections are fair—as we have seen in Ethiopia and as we have seen in Nigeria, the rigging takes place when the electoral commission gets involved.

So it seems inappropriate to declare an election fair and free and commendable after 1 day or so before the returns have come in. And I wish that we had been less hasty to declare the election fair and free.

Indeed, the response to the Kenyan election crisis proves beyond a doubt that some in the administration are quick to embrace a government that engages in electoral abuse and overlooks rather than condemns its electoral and human rights abuses; and we have to stop that throughout the world. Do you remember the 2005 elections in Ethiopia? Did we condemn the abuses and killings of innocent civilians in Ethiopia after the elections? And where are those elected members of Parliament and the mayor of the capital? Not in Parliament. They were imprisoned for 2 years.

If Prime Minister Meles can get away with a stolen election and imprison the persons who actually won that election while remaining a friend of Washington, you can conclude that, Why not Kibaki?

What are the lessons learned? Very few. Dr. Jendayi Frazer's statement on January 31st about ethnic cleansing played right in the hands of the Kibaki camp, allowing them to portray themselves as victims of ethnic conflict.

The violence is unlikely to end without a mechanism in place to resolve the election dispute. What is happening in Kenya is not, I repeat, not an ethnic conflict. It is a political conflict with ethnic overtones. However, if political leaders in Kenya do not make a serious effort to stop the violence now and address the systematic problems that exist in their political structures, the violence we are seeing could certainly reach a point of no return. Once that happens, it will be very, very difficult for any of the leaders to stop it; it will be beyond their control. The perpetrators of violence will be in front of the so-called leaders.

It is critical that a transitional coalition government is established with a clear mandate to implement necessary reforms, such as, a new Constitution, a new electoral law, a new election, and a new electoral commission, to prepare the country for transparent Presidential elections within 2 years.

And, with that, I will turn to a new member of the committee, a gentleman from Virginia, Representative Wittman, and we are very pleased to have him at our first meeting, Representative Wittman.

[The prepared statement of Mr. Payne follows:]

PREPARED STATEMENT OF THE HONORABLE DONALD M. PAYNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON AFRICA AND GLOBAL HEALTH

Good morning, and welcome to the Subcommittee on Africa and Global Health's first hearing of the second session of the 110th Congress. Today, we will examine the unfortunate and still unfolding political crisis in Kenya, a country that many considered a safe place to live, including the hundreds of thousands of refugees from Somalia, the Ogaden, and Sudan.

Just a few weeks ago, at the height of the crisis, I went to Kenya to assess the situation and to encourage political, religious, community, and civil society leaders to find a peaceful resolution. I visited thousands of displaced children in JAMHURI SHOWGROUND and met with volunteers from diverse backgrounds. It was remarkable and encouraging to see Kenyans coming together to help their fellow citizens.

Indeed, witnessing the violence and meeting the young victims was deeply troubling. Yet, I am confident that Kenyans will come out of this crisis united. Kenyans of different religious, ethnic, and economic backgrounds lived together peacefully in a region long marred by civil wars and political chaos. Unfortunately, like the millions of Kenyans, the more than 170,000 refugees from the Ogaden and Somalia in Kenya will also be affected, as will the lives of so many others in the region.

It was not long ago that the people of Kenya demonstrated that democracy works in Africa. The 2002 multi-party elections had a positive impact not just in Kenya, but also in Africa. The people of Kenya proved beyond doubt that the power of incumbency and the entrenched clout of a ruling party will not stop them from bring change peacefully.

On December 27, 2007, the people of Kenya voted in a hotly contested election, despite the logistical challenges and the long lines. More than 14 million Kenyans registered to vote, that is 82% of the eligible voters. An estimated 2,547 Parliamentary candidates were qualified to run the in 210 constituencies, a clear indication of the desire and determination of Kenyans to participate and to be part of the political process.

Incumbent president, Mwai Kibaki, was hastily declared the winner by the Electoral Commission of Kenya, after a series of highly irregular events which cast sig-

nificant doubt on his so called victory. Let me be blunt. The election results announced by the ECK do not reflect the wishes of the Kenyan people. The people of Kenya voted for change. What they were given was the status quo.

International and domestic election observers reported serious irregularities, especially in vote tallying by the ECK. In one district, a stronghold of the president, the election result showed 115% turnout, but changed by the Chairman of the Commission to 85% without any explanation. Election results were declared even when documents were not returned or signed by officers. While the vote proceeded in an orderly fashion, the aftermath was a text book example of how to steal an election. National and international election monitors were barred from observing the vote tally in some places. Returning officers became mysteriously difficult to get in touch with before reporting the vote tally from their constituencies.

ODM candidate, Raila Odinga's, lead, which had been reported to be nearly 376,000 votes, suddenly diminished to 38,000. The ODM won 99 seats in parliament compared to the president's PNU 43 seats. Not only the opposition won the majority seats in parliament, but the president's Vice President and over a dozen of his ministers were defeated in the parliamentary elections.

The E.U. observer mission declared that "the 2007 General Elections have fallen short of key international and regional standards for democratic elections. Most significantly, they were marred by a lack of transparency in the processing and tallying of presidential results, which raises concerns about the accuracy of the final results of this election." Other observers also raised serious questions about the credibility of the electoral process.

In reaction, Kenyans went to the streets to express their frustration and anger. The protests soon turned violent and it is still unfolding. More than a thousand people have been killed, and over 300,000 displaced as a result of the unrest, including an estimated 80,000 children under the age of five. Millions more have been adversely affected. Two members of parliament from the opposition ODM were killed in January.

The instability in Kenya continues to threaten and affect the economies of neighboring countries and poses a serious threat to regional stability. The Kenyan economy has been hit hard and recovery may take a long time.

It is important to point out that while the ECK and the Kibaki government mishandled the 2007 elections, the State Department's response in the wake of the elections was at best confused and at worst completely inappropriate to the circumstances. A number of statements issued by the State Department not only missed the point, but the actions of some U.S. officials were counter-productive and one-sided. To my knowledge no one else in the international community made such a gaffe.

The State Department should have waited on the outcome to determine how to respond effectively. Our diplomatic efforts in the wake of the elections have not been stellar. Indeed, the response to the Kenya election crisis proves beyond doubt that some in the Administration are quick to embrace a government that engages in electoral abuses and overlook rather than condemn its electoral and human rights abuses.

Remember the 2005 elections in Ethiopia? Did we condemn the abuses and killings of innocent civilians in Ethiopia after the elections? And where are those elected members of parliament and the mayor of the capital? Not in parliament. They were imprisoned for two years. The thinking may be: if Prime Minister Meles can get away with a stolen election and still remain a friend of Washington, why not Kibaki?

What are the lessons learned? Very few. Dr. Frazer's statement on January 31 about ethnic cleansing played right into the hands of the Kibaki camp, allowing them to portray themselves as victims of an ethnic conflict. The violence is unlikely to end without a mechanism in place to resolve the election dispute.

What is happening in Kenya is not—I repeat *not*—an ethnic conflict. It is a political conflict with ethnic overtones. However if political leaders in Kenya do not make a serious effort to stop the violence now, and address the systemic problems that exist in their political structures, the violence we are seeing could certainly reach a point of no return. Once that happens, it will be very difficult to stop.

It is critical that a transitional, coalition government is established, with a clear mandate to implement necessary reforms such as a new constitution, a new electoral law, a new electoral commission, address the root causes of the crisis, and prepare the country for transparent presidential elections within two years.

With that I will turn to Mr. Smith for his opening statement. Mr. Smith.

Mr. WITTMAN. Thank you, Mr. Chairman. It is an honor and privilege to be a part of this committee. And I have no comments at this time. I am here to listen and to learn.

Mr. PAYNE. Thank you very much. If you do that all the time, you will be a great member of this committee. You will grow more tired of people like Mr. Smith and me. Welcome.

We have with us two administration witnesses. Mr. James Swan has been Deputy Assistant Secretary for African Affairs since December, 2006. In this capacity, he is responsible for the Bureau's offices for Central Africa, East Africa and Regional Security Affairs. Immediately prior to this assignment, Mr. Swan was director of analysis for Africa in the Bureau of Intelligence and Research from 2005 to 2006.

A career member of the Senior Foreign Service, Mr. Swan has devoted most of his professional life to countries facing complex transitions, notably in Africa; and we really appreciate your service to our country and to the world.

His overseas experience, before this current position, was as deputy chief of mission in Kinshasa, in the DRC, Brazzaville, and Republic of Congo. Earlier than that, he was the Somalia watcher in Nairobi, Kenya and chief of the political section in Cameroon. He also worked in other places, in Haiti and Nicaragua, and was in the DRC when it was Zaire in the late 1990s.

He holds a bachelor of science from Georgetown, a master's from Johns Hopkins in advanced international studies and a master's from the National War College.

So we certainly welcome you again, Mr. Swan.

Our second administration panelist will be Mr. Gregory Gottlieb, who is the Deputy Assistant Administrator for USAID with oversight of humanitarian assistance. He has served USAID as Deputy Director of the Office of Foreign Disaster Assistance—we refer to it as DART of the OFDA—and the Office of Transitional Initiatives (OTI). His overseas posts with USAID include Kenya, Sudan, Ethiopia and Malawi.

Mr. Gottlieb has also worked in Malaysia, Uganda, Bangladesh, with the U.N. and other NGOs. He holds a graduate degree in law and public administration.

We thank you also for coming.

We will start with Mr. Swan. He will give us a 5-minute report, and we may ask for an update on Chad at a later time, but let's deal with this problem right now. Thank you very much.

STATEMENT OF MR. JAMES C. SWAN, DEPUTY ASSISTANT SECRETARY, BUREAU OF AFRICAN AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. SWAN. Good morning, Chairman Payne, Congressman Wittman. While I am always happy to come before you to discuss developments in Africa, clearly the events that have led to this hearing represent a sad chapter in Kenyan history. With your permission, I would like to introduce my written testimony into the record.

Mr. PAYNE. Without objection.

Mr. SWAN. I will make a brief oral statement on the current situation in Kenya, outline our policy in response to this situation and

discuss United States views on the issues we believe should be the focus of Kenyan leaders' attention as they negotiate the way forward.

First, I want to underscore that the United States has important interests in Kenya. These include promoting democracy and good governance, supporting Kenya's economic development and improved health for its people, and maintaining its role as a stable partner and contributor to peace and security in the region and beyond, including in the areas of counterterrorism.

On December 27, 2007, Kenya held Presidential, parliamentary and local elections. The Presidential race and many of the parliamentary races were hotly contested and emotions ran high. But the campaign season was largely peaceful, although there were isolated incidents of violence and incitement, including through vernacular radio. The United States spoke out strongly against such developments during the campaign.

While parliamentary and local government elections were generally considered credible, there were serious irregularities in the Presidential elections, notably at the national level.

When the Electoral Commission of Kenya, or ECK, announced Mwai Kibaki as the winner of the Presidential election on December 30th, violence intensified in many parts of Kenya as supporters of opposition leader Raila Odinga viewed the ECK results as illegitimate. This problem of post-election violence has since evolved to include ethnic violence, excessive use of force by the police, vigilante justice and opportunistic criminal activity.

The current political crisis has claimed, according to today's reports, more than 1,000 lives and resulted in the displacement of more than 300,000 people. Human rights violations and gender-based violence have increased. The violence and its secondary effects have seriously damaged Kenya's previously robust economy and, more importantly, threatened to derail Kenya from the path of democracy, development and regional leadership that it had been on before the elections.

At this critical time in Kenya's history, our top policy priority is to bring a swift end to the violence. We are pressing both sides to participate constructively in the ongoing negotiations led by former U.N. Secretary General Kofi Annan.

In addition to doing all they can to stop the violence, parties must reach a political agreement which we think should be based on equitable power sharing that will allow the country to move forward and to address critical longer term reforms, including constitutional reform, land reform and rebuilding the Electoral Commission of Kenya.

Stability in Kenya requires immediate action and genuine leadership from both President Kibaki and oppositional leader Odinga. They must put the best interest of the Kenyan people first.

As we support the Annan-led negotiations and work to ensure they bear fruit, we are also looking at a range of options to pressure individuals, particularly those who incite violence or obstruct the negotiations. The decision to act and the tools to be used will depend on events on the ground.

The American and Kenyan people have a long tradition of partnership. We want to continue that partnership, but that requires

that Kenyan leaders quell the violence and make important political compromises. We call on both sides to honor their duty to the Kenyan people and tackle the difficult but necessary reforms that lie ahead.

Thank you, Mr. Chairman, Congressman Whitman. I look forward to responding to any questions you may have.

[The prepared statement of Mr. Swan follows:]

PREPARED STATEMENT OF MR. JAMES C. SWAN, DEPUTY ASSISTANT SECRETARY,
BUREAU OF AFRICAN AFFAIRS, U.S. DEPARTMENT OF STATE

INTRODUCTION

Good morning, Chairman Payne, Ranking Member Smith and Members of the Committee. While I am always pleased to come before you to discuss Africa, the events that have led to this hearing are sorrowful and will someday be written as one of the darkest chapters in Kenya's history. To begin, I'd like to give you an overview of U.S. government interests in Kenya. I will then brief you on the background of the current situation in Kenya and on what our policy is in response to the crisis. Finally, I would like to share with you U.S. views on elements that we believe Kenya's leaders should consider as they seek a resolution to this crisis.

U.S. GOVERNMENT INTERESTS IN KENYA

The United States has long had a close and productive relationship with Kenya, and we value this partnership highly. Our core interests in Kenya include promoting democracy, human rights, and good governance; supporting Kenya's economic development; maintaining its role as a stable partner and contributor to peace and security; and expanding regional counterterrorism cooperation. Kenya functions as a regional platform for U.S. programs elsewhere in the region (for example, it hosts USAID's regional program in East and Central Africa, which covers 16 countries). Food aid for seven other countries transits Kenya. It is also a regional center for trade, investment, and tourism.

BACKGROUND ON THE SITUATION IN KENYA

The roots of the current crisis are long and old. From Kenya's 1963 independence from the United Kingdom, 29 years elapsed before Kenya's first multiparty elections in 1992. Former President Daniel arap Moi served from 1978 to 2002. From 1992–2002, he was able to hold power largely because the opposition was weak and divided. In both the 1992 and 1997 elections, ethnic violence flared in many areas of Kenya during the campaign and electoral process. It has also flared independently of the electoral cycle, particularly around questions of land ownership. In 2002, President Moi was constitutionally barred from running for reelection and President Mwai Kibaki was elected in what are largely regarded as Kenya's first free and fair competitive multiparty elections. The 2002 elections were generally peaceful, although some isolated incidents of violence did occur. Since the advent of multiparty elections in 1992, Kenya had been on a trajectory towards increasingly credible and competitive elections. Between 2002 and 2007, Kenya experienced a significant increase in the growth of independent civil society and in freedom of the press.

Election planning and management in Kenya is the responsibility of the Electoral Commission of Kenya (ECK), which has 22 commissioners and a permanent professional staff. There was a pre-existing "gentlemen's agreement" dating from the Moi era that the President would consult with Parliament on the appointment of commissioners, although Kenyan law does not require consultation with Parliament. However, in 2007, Kibaki broke with that tradition when he alone appointed new commissioners as the terms of the previous commissioners expired. The political opposition and donor partners, including the United States, raised concerns about this trend and its potential impact on the credibility of the election. In early December 2007, he reappointed ECK Chairman Samuel Kivuitu, who enjoyed broad respect at the time, for an additional term. Apart from Kivuitu, who was originally appointed to the ECK by Moi in 1992, all the commissioners were selected by Kibaki without consultation with Parliament. We would also note that in June 2007, the ECK rejected a U.S.-funded computerized results reporting system on the grounds that human staff were more reliable at reporting results than computers.

On December 27, 2007, Kenya held presidential, parliamentary, and local government elections. More than 2,500 candidates contested for 210 parliamentary seats. The parliamentary elections in most constituencies were judged to be credible by

local and international observers. Similarly, few problems were reported with the local government elections, which received less scrutiny by observers. There were nine candidates for President, although only three (President Kibaki of the Party of National Unity (PNU), Raila Odinga of the Orange Democratic Movement (ODM), and Kalonzo Musyoka of the Orange Democratic Movement-Kenya (ODM-K)) were considered serious contenders, and Musyoka trailed far behind the two leading candidates. The campaign season in Kenya is fairly short, with the most intense activity during the last three months before the election. Overall, the campaign period was peaceful and orderly. We monitored the press closely during the campaign, and noted an increase in hate speech disseminated primarily by text messages. There were some minor incidents of violence during the campaign with scuffles between supporters of different parties, although the campaign was generally peaceful. For example, both PNU and ODM held peaceful campaign rallies throughout the country, including rallies in Nairobi's Uhuru Park with more than 200,000 people in attendance. One disturbing trend we noted was violence targeting women candidates. Several female candidates were attacked in incidents that appeared to be politically motivated and resulted in serious injuries. Ambassador Ranneberger spoke out strongly and immediately against these attacks, and visited one of the victims in the hospital.

In view of Kenya's history of ethnic violence, during the campaign period, the United States engaged in advocacy efforts aimed at promoting credible, peaceful elections with competition based on issues, not ethnic affiliation. For several years before the elections, USAID programs provided capacity building and technical assistance to the Electoral Commission of Kenya (ECK), political parties, youth and women candidates, and civil society groups. The United States was the largest donor to the UN Development Program's (UNDP) \$11.3 million comprehensive election assistance program. Components of the program focused on combating election-related violence, which included working with the ECK's district-level Peace Committees to get early warning of problems and to respond to incidents of violence. Other key elements of the UNDP program included civic education, media training and monitoring of media coverage, and enhancing the effectiveness of domestic observation efforts. We also engaged in public awareness and advocacy activities. For example, Ambassador Ranneberger gave a major speech at the University of Nairobi in May 2007 highlighting the need for peaceful participation in the democratic process. The Mission fielded observer teams for the party primaries in November (a first for international observation efforts in Kenya) and sent over 100 people into the field to observe the elections on December 27. U.S. observers were sent to every province in Kenya. Prior to Election Day, the Secretary of State made calls to the three main candidates to urge them to call on their supporters to participate peacefully and to honor the results as announced by the Electoral Commission of Kenya. Assistant Secretary Frazer and Ambassador Ranneberger were also in frequent contact with the leading presidential candidates.

International and domestic observers concur that the balloting and tallying processes at the level of the local polling stations appeared to meet international standards although there were constituencies in both ODM and PNU areas where rival parties were not able to observe due to intimidation and one case in Nyanza province where a PNU observer was killed. Kenyans turned out in large numbers to vote (turnout was over 70 percent nationwide), and the voting itself was generally peaceful. Once votes were counted at the polling station level, the ballots and results were sent to the constituency-level tallying center. The reporting officer for each constituency then tallied the results and transmitted them to the national tallying center in Nairobi. At the national center (located at the Kenya International Conference Center), ECK officials were to tally and announce publicly the constituency-level results. The consensus among observers is that serious irregularities likely occurred primarily at the national level. There were also concerns about tallying irregularities at the constituency level, and about long delays in transferring reporting documents to the national center. While some local-level ballot stuffing likely occurred (as evidenced by exceptionally high turnout rates in some areas), the serious flaws in the election took place at the national center as reporting results forms from the constituencies appear to have been altered, destroyed, or otherwise manipulated. A major pause in the counting on December 29, at a point where opposition candidate Raila Odinga was leading the vote tally at the ECK center, sparked widespread concerns among voters and neutral observers. As late-reporting constituency results were announced, ending the pause, Kibaki pulled ahead. Even if the pause was innocent, it provoked suspicions and decreased popular faith in the electoral process. Observers also noted discrepancies in some cases between the results as publicly announced at the constituency level and the results announced by the ECK from the

national center for the same constituency. Observers also alleged the direct involvement of some ECK officials in election fraud at the national level.

Unfortunately, due to tampering with reporting documents and the destruction of most physical ballots before the official results were announced, it is impossible to determine who would have won the presidential election in the absence of the noted irregularities.

The ECK announced Kibaki as the winner of the presidential election around 6:00 p.m. local time on December 30. The Kenyan Constitution prescribes that a person elected as president in accord with the Constitution shall assume office as president as soon as he is declared the winner; therefore, Kibaki was sworn in as president a short time later. Almost immediately after the announcement, rioting intensified at the Coast, in Nairobi, Kisumu, and the Rift Valley and the government announced a ban on live media broadcasts and on public demonstrations. The ban on live media broadcasts was lifted on February 4. From December 30 on, Kenya has experienced violence throughout the country, although the most heavily affected areas are western Kenya (Nyanza and Western provinces), the central and southern parts of Rift Valley province, and the Nairobi area. There have been several types of violence. The first wave of violence was generated by disorganized and spontaneous protests before and in the immediate wake of the ECK announcement. These protests led to killings, looting, arson, rape by civilians, and killings of civilians by police. At this time, demonstrations have largely subsided, but can easily be reignited by events on the ground. For example, the January 29 murder of Nairobi-area member of Parliament Merlitus Were (ODM) touched off riots in his constituency. On January 31, member of Parliament David Too (ODM) was murdered near Kericho. Too represented a constituency in an area of Rift Valley province that has experienced serious inter-ethnic violence. The deaths of these two members of Parliament reduced the opposition's slim majority in Parliament from a margin of five seats to three. Beginning on December 30, but continuing up to the present, there was also planned and organized activity aimed at driving out members of certain ethnic groups from their homes. This type of civilian violence was concentrated in the central part of Rift Valley province and was carried out by Kalenjins against Kikuyu residents and business owners. Another type of violence that continues to occur is the excessive use of force by police against civilians. This type of violence was particularly noted in Kisumu, in western Kenya, where police shot unarmed civilians. An additional type of violence, which began to flare up in earnest around January 25, is retributive, community-based violence sparked in part by the harrowing testimonies of internally displaced persons who were affected by the wave of violence in Rift Valley province and elsewhere. Precise statistics are unavailable, but we find estimates of more than 900 killed and 250,000 internally displaced to be credible. Throughout the crisis, the President, the Secretary of State, and others in the Administration condemned all forms of violence, calling on politicians to urge their supporters to remain calm, and urging the police to maintain public safety and refrain from the excessive use of force.

U.S. POLICY IN KENYA

Given the events I have outlined, it is apparent that Kenya is at an unprecedented critical juncture in its history. As a longtime friend and partner of Kenya, our top priority is to help bring an end to the terrible violence that I have described, so that a measure of peace and stability can return to Kenya and so that the economic activity that is the lifeblood not only of Kenya but of the entire region can resume. Kibaki, Odinga, and other political leaders all have a responsibility to stop the violence, and we expect them to live up to this responsibility. We are also encouraged by and support the role of civil society in peace building and interethnic reconciliation. Second, Kibaki and Odinga need to reach a political agreement that will allow the country to move forward and that will create a platform for addressing critical longer-term institutional reforms and interethnic reconciliation. Stability in Kenya requires immediate action from both Kibaki and Odinga: 1) that the President and his party offer tangible access to power and authority to the opposition, 2) that Raila Odinga and his party engage seriously with the government in an effort to find a compromise, and 3) that both make every effort to denounce and delegitimize the violence perpetrated in their names. The closeness of the election and its deep flaws make a winner-take-all solution to the government a non-starter. Power sharing is an essential element to a viable short-term solution for Kenya. Kenyans themselves should determine the precise nature and framework of the resulting political solution. Critical reforms for Kenya should include constitutional reform, land reform, and reforms of the electoral commission, police, and judiciary.

We view the ongoing negotiations mandated by former African Union Chairman John Kufuor and led by former UN Secretary General Kofi Annan and the panel of eminent African experts (Benjamin Mkapa of Tanzania and Graca Machel of Mozambique) as the best avenue for bringing the parties together in dialogue. To that end, the Secretary has been in contact with Mr. Annan. From January 4–10, Assistant Secretary Frazer visited Kenya and conducted intensive meetings with the parties, where she reiterated the message that they must stop the violence and both come to the table with flexible and constructive positions to find a way forward for the benefit of the Kenyan people. She also met with civil society and business leaders and visited Eldoret and Kisumu to meet with church leaders and victims of the violence. In the immediate post-election period, Ambassador Ranneberger also engaged in intensive meetings and dialogue with the principals and their close advisors. He remains in constant contact with Kibaki, Odinga, and their inner circles, as well as with civil society, business leaders, religious leaders and other influential figures in Kenya.

THE WAY FORWARD

Some Kenyans and other advocates in civil society and elsewhere have called for a recount of the votes, as well as for new elections. For the reasons I discussed earlier, we believe that an accurate recount is impossible. However, an impartial investigation into the nature of electoral fraud perpetrated would help pinpoint necessary reforms and, if such reforms were enacted, might help to restore the faith of the Kenyan people in the democratic process. We believe the focus should remain on the Annan mediation effort that includes addressing the political crisis resulting from the elections. Given that the ECK now lacks credibility with the Kenyan people some sustained effort would be required to stage a new and credible election. We would caution against moving toward a poorly-prepared or administered election, though we see the decision on how to proceed in this area as fundamentally for Kenyans to decide.

As we observe the Annan negotiations unfold and remain optimistic that they will bear fruit, we are also looking at a range of options to pressure individuals, particularly those who incite or support violence, as well as those who might prove obstructive to the negotiations. The decision to act will depend on events on the ground and how certain key individuals contribute or fail to contribute to devising a political solution to the crisis. The negotiations remain an African-led effort, but with strong U.S. support and leadership in the international community. We continue to work closely with our partners in the international community, including the UK, EU, and individual EU member states, to support Annan's efforts and to consult on the way forward. Our statement that there will be "no business as usual" with Kenya absent a resolution to the crisis has since been echoed by our international partners.

OUR MESSAGE

As a friend and partner of Kenya, we urge its leaders to put the common welfare of all its people and national interests first. As they seek to resolve this crisis, they must ensure first and foremost, an end to the deplorable violence and suffering of the Kenyan people. Second, there needs to be an equitable political solution to the crisis that reflects the fact that both sides have significant support among Kenyan voters. In the longer term, institutional reforms are needed so that critical Kenyan institutions like the judiciary and electoral commission can play the constructive roles they were designed to fill. Concerns of civil society and the business community must be heard and respected. Kenya needs meaningful constitutional reform that redresses the current imbalance of power among the three branches of government. The ECK will need to be completely overhauled to ensure that it is credible, transparent, and impartial.

The United States and Kenya have a long tradition of partnership. We want to continue our close ties to Kenya, but this requires that its leaders take the necessary steps to quell the violence and make political compromises. Past failure to address some of the issues outlined above (notably the balance of power in government) have contributed to the current crisis. We call on Kenya's political leaders to honor their obligation to the Kenyan people and tackle these difficult but necessary reforms.

Mr. PAYNE. Thank you very much.
Mr. Gottlieb.

STATEMENT OF MR. GREGORY GOTTLIEB, DEPUTY ASSISTANT ADMINISTRATOR, BUREAU FOR DEMOCRACY, CONFLICT, AND HUMANITARIAN ASSISTANCE, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. GOTTLIEB. Chairman Payne, Congressman Wittman, thank you for the opportunity to appear before you and to discuss USAID's provision of humanitarian assistance to Kenya. I have a brief oral statement that summarizes my full written statement which I submit with your permission.

Mr. PAYNE. Without objection, thank you.

Mr. GOTTLIEB. The Kenyan people have been caught in the middle of violence that erupted across the country following dispute of Presidential elections in December. Tension between supporters of President Kibaki and opposition candidate Odinga resulted in violence and looting, causing deaths, displacement, damage to homes, small businesses and disruptions in commercial and humanitarian traffic.

Insecurity and roadblocks also interrupted cross-broader trade and the delivery of humanitarian assistance between Kenya and Somalia, Uganda, Sudan and the Democratic Republic of the Congo. The episodes of violence, looting, and displacement have evoked tensions from previous Presidential contests in 1982 and 1997 and reignited long-standing grievances ranging from land tenure to constitutional reform.

The areas most affected by the violence include Nairobi and portions of Nyanza, Western and Rift Valley provinces. While early incidents occurred in areas where groups supporting President Kibaki live in close proximity to supporters of opposition candidate Odinga, subsequent clashes have taken on a more organized and worrisome character.

The situation in Kenya is extremely fluid. Between January 23rd and 29th, violence escalated in previously affected areas and spread to new locations, including Naivasha and Nakuru towns. Even those already displaced are targeted. The Government of Kenya's National Disaster Operations Center has confirmed 921 deaths resulting from post-election violence as of February 4th, including 191 deaths since January 23. The Kenya Red Cross Society confirms 325,000 internally displaced persons, which does not include those who are sheltering in place and not in camps.

USAID has been following the humanitarian situation since its inception. The USAID assessment team has received multiple reports of threats to groups sheltering at police stations, schools, churches and other settlement sites. Multiple sources point to the retaliatory nature and interconnectedness between violence in Nakuru, Naivasha and renewed attacks in other areas; and USAID staff are concerned about the potential for further deterioration in security and humanitarian conditions.

Escalating insecurity, attacks on commercial trucks and passenger vehicles and the destruction of rail lines have repeatedly blocked ground transport in western Kenya and threatens to obstruct major access routes within Kenya into neighboring countries.

While the temporary lull has allowed increased fuel exports in recent days, general insecurity blocked all fuel exports from Kenya

to Uganda, Rwanda, Tanzania, Burundi, southern Sudan and the DRC on January 28th.

The World Food Program reports that the Kenyan military is scheduled to provide armed escorts for commercial and humanitarian convoys traveling between Nairobi and Malaba beginning February 6th in an effort to improve access on this critical transport route to the west.

Local media reports say that fuel prices have risen in Uganda as much as 300 percent.

Beyond the immediate humanitarian impact, the post-election crisis has significantly impacted people's income-generating activities and resulted in substantial livelihood and asset losses. The World Bank has estimated that up to 2 million Kenyans may be driven into poverty from the effects of violence and political upheaval.

Burned fields and businesses, unharvested crops, market disruptions and looting are expected to have long-term consequences. Kenya's tourism industry, which represents approximately 25 percent of the economy, agriculture, small business, and casual laborers are most affected.

Response priorities must adapt to reflect changes in the size, location and duration of displaced and vulnerable populations. As of today, the political crisis remains unresolved; and relief agencies are reporting widespread fear of reprisal attacks and reluctance among IDPs to return home.

Medium- and long-term response strategies must address settlement options for IDPs unable to return home as well as support for host communities receiving large but as yet unconfirmed numbers of people moving to ancestral homelands.

Let me just address USG assistance. It is the obligation of the international community and the policy of the United States to provide humanitarian assistance wherever it is needed. USAID has provided more than \$5.2 million so far for emergency humanitarian response activities. Immediate priorities for USG assistance include protection, water, sanitation and health, shelter, camp management and interventions, targeting the displaced and affected host communities in Nairobi and western Kenya.

A disaster assistance response team is conducting field assessments, liaising with the U.N. and international relief organizations and engaging with other donors to identify evolving priority needs. The team is working alongside partners such as World Food Program, the High Commissioner for Refugees, UNICEF, and the Kenyan Red Cross Society, Catholic Relief Services and others.

USAID established a rapid response mechanism with Catholic Relief Services which works with local organizations to meet identified gaps in services within 24 hours. This could include providing shelter and household kits to Kenyans who have left their homes with nothing but the clothes on their backs or rehabilitating a well for a community that lacks a sufficient supply of potable water to meet the needs of the influx of IDPs.

Our partner, International Medical Corps, is using mobile clinics to provide emergency health services and hygiene education to more than 70,000 affected Kenyans in the Rift Valley province. Security permitting, these clinics are able to provide medical services

for up to 300 patients a day, many of whom are suffering from upper respiratory, chest infections, malaria and diarrhea. However, there is a concern about the fear of access by many of the IDPs to these clinics.

The World Food Program has distributed more than 1,600 metric tons of emergency food relief to 181,000 displaced and an additional 161,000 vulnerable beneficiaries affected by the crisis. It should be noted the United States is the largest donor to WFP in Kenya.

Additionally, the U.S. Department of State's Bureau of Population, Refugees and Migration has pledged fiscal year 2008 support to UNHCR and the International Committee of the Red Cross.

In response to the complex humanitarian emergency in Kenya, a USG interagency task force convened in Nairobi to coordinate the short, medium and long-term response activities that will be necessary to mitigate the political, economic and social consequences of the current crisis. We are also working to ensure that USG programs work with and strengthen the very robust civil society in Kenya, including the Kenyan Red Cross and Government of Kenya mechanisms, rather than working in ways that would bypass these national assets.

As I stated previously, it is the obligation of the international community to provide humanitarian assistance wherever it is needed. With help from the United States and the international community, Kenyans caught in the middle of the violence will move their country to a place of peace and stability, thereby reestablishing their position within the community of African nations working toward democracy and economic prosperity.

Mr. Chairman, I will close my remarks at this point and will be happy to answer any questions you may have.

[The prepared statement of Mr. Gottlieb follows:]

PREPARED STATEMENT OF MR. GREGORY GOTTLIEB, DEPUTY ASSISTANT ADMINISTRATOR, BUREAU FOR DEMOCRACY, CONFLICT, AND HUMANITARIAN ASSISTANCE, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Thank you Chairman Payne, Ranking Member Smith, and members of the Subcommittee for the opportunity to appear before you and to discuss USAID's provision of humanitarian assistance to the people of Kenya who have been so greatly affected by post-election violence.

The Kenyan people have been caught in the middle of indiscriminate violence that erupted across the country following disputed presidential election results in December. Tension between supporters of President Mwai Kibaki and opposition candidate Raila Odinga resulted in violence and looting—causing deaths, displacement, damage to homes and small businesses, and disruptions in commercial and humanitarian traffic.

Insecurity and roadblocks also interrupted cross-border trade and the delivery of humanitarian assistance between Kenya and Somalia, Uganda, Sudan, and the Democratic Republic of the Congo. The episodes of violence, looting, and displacement have evoked tensions from previous presidential contests in 1992 and 1997, and re-ignited longstanding grievances ranging from land tenure to constitutional reform.

The areas that have been most affected by the violence include Nairobi and portions of Nyanza, Western, and Rift Valley provinces. While early incidents occurred in areas where groups supporting President Kibaki live in close proximity to supporters of opposition candidate Odinga, subsequent clashes have taken on a more organized and worrisome character.

It is important to view the current situation in the context of Kenya's strong economic growth and development over the past seven years.

KENYA BEFORE POST-ELECTION VIOLENCE

The USAID program in Kenya is one of our most mature development programs in Africa, with economic cooperation going as far back as Kenya's pre-independence in the late 1950s and early 1960s. USAID has a substantial program in Kenya, as it is the linchpin for trade and economic development throughout East and Southern Africa. The overarching goal of USAID assistance is to build a democratic and economically prosperous Kenya by assisting the country to improve the balance of power among its institutions of governance, promoting the sustainable use of its natural resources, and improving rural incomes by increasing agricultural and rural enterprise opportunities. USAID assistance is also used to improve health conditions, provide access to quality education for children of historically marginalized populations, and promote trade and investment development programs. In FY 2007, the U.S. Government provided over \$500 million in assistance to Kenya, of which \$368 million was PEPFAR funds.

When it comes to emergency assistance to Kenya—with the exception our assistance after the bombing of the U.S. Embassy in Nairobi in 1998—the focus has historically been on short-term response to incidents of drought and floods, as well as episodes of civil unrest. Since 1997, Kenya has experienced several seasons of failed rains that caused widespread crop failure and water scarcity. Then there were years when flooding destroyed crops, farmland, livestock, and damaged roads and infrastructure. Cumulatively, the intermittent crises have exacerbated vulnerabilities arising from politically motivated interethnic conflicts over land, scarce water, and pasture resources.

Quoting from the Congressional Budget Justification for FY08, “Kenya has the potential to become a transformational country and achieve improved standards of living, improved quality of life, and more transparent, less corrupt and more participatory democratic governance.”

While Kenya seemed mostly on the right track prior to the elections, the events that followed suggest that underlying political grievances, corruption, and an imbalance in power among branches of government were too deeply rooted to prevent the current destruction and violence.

CURRENT SITUATION

The situation in Kenya is extremely fluid and continues to change on a daily basis. Beginning on January 23, violence escalated in previously-affected areas, and spread to new locations including Naivasha and Nakuru towns. Even those already displaced are targeted. The Government of Kenya's National Disaster Operations Center has confirmed 895 deaths resulting from post-election violence as of January 28, including 165 deaths since January 23.

The USAID assessment team has received multiple reports of threats to groups sheltering at police stations, schools, churches, and other settlement sites. Multiple sources point to the retaliatory nature and inter-connectedness between violence in Nakuru, Naivasha, and renewed attacks in other areas, and USAID staff are concerned about the potential for further deterioration in security and humanitarian conditions.

Escalating insecurity, attacks on commercial trucks and passenger vehicles, and the destruction of rail lines has repeatedly blocked ground transport in western Kenya and threatens to obstruct major access routes within Kenya and to neighboring countries. The UN World Food Program (WFP) reports that insecurity prevented all fuel exports from Kenya to Uganda, Rwanda, Tanzania, Burundi, southern Sudan, and the Democratic Republic of the Congo on January 28. Local media report that fuel prices have risen 300 percent in Uganda in January.

Beyond the immediate humanitarian impact, the post-election crisis has significantly impacted people's income-generating activities and resulted in substantial livelihood and asset losses. The World Bank has estimated that up to 2 million Kenyans may be driven into poverty from the effects of violence and political upheaval following the disputed election results.

Burned fields and businesses, un-harvested crops, market disruptions, and looting are expected to have long-term consequences. Kenya's tourism industry, which represents approximately 25% of the economy, agricultural sector, small businesses, and casual laborers are most affected. The tourist industry has almost completely come to a standstill, and up to 120,000 people may lose their jobs in this sector before the end of March. Such losses will mean decreased income and increased food insecurity for the millions of Kenyans who live without a financial safety net.

Response priorities must adapt to reflect changes in the size, location, and duration of displaced and vulnerable populations. As of late January, the political crisis remains unresolved, and relief agencies are reporting widespread fear of reprisal at

tacks and reluctance among some internally displaced persons (IDPs) to return home. Medium and long-term response strategies must address economic recovery, social reconciliation, and possibly include the resettlement and relocation of IDPs unable to return home. Further assessments are expected to inform planned recovery, reintegration, and reconciliation activities.

DISPLACEMENT

Although media reports indicate that as many as 300,000 people have fled their homes and found temporary shelter in camps or with host families, USAID field staff note that efforts to quantify Kenya's newly displaced population are complicated by insecurity, continued movements, and unpredictable access to affected areas. In addition, many IDPs have been absorbed by host communities, and mechanisms to identify, locate, and track these vulnerable populations are not yet in place. The recurring cycles of violence are likely to impact IDPs' decisions regarding future movement and the possibility of returning home.

USAID is concerned by an emerging trend of camp closures and evictions of internally displaced persons in Kenya, which contravenes widely-accepted humanitarian principles. USAID staff have received multiple reports of local officials attempting to close temporary settlement sites currently hosting IDPs without establishing an alternate settlement option, providing transport out of the area, or giving advance notice to the humanitarian relief community. In addition, our team has received reports of increased threats against IDP populations who have settled at police stations, schools, churches, and temporary accommodation centers in Rift Valley, Nyanza, and Western provinces.

Protection is of the utmost concern, particularly for vulnerable groups such as women, children, and elderly persons. Concerns range from the potential for further violence, a reported increase of sexual and gender-based violence in recent weeks, and vulnerabilities associated with dense temporary settlements in a context of heightened inter-group tensions. Longer-term issues include assisting victims and witnesses of violence to recover from psychological and medical trauma, and providing appropriate counseling and psychosocial services, particularly to affected children and adolescents. USAID has prioritized the funding of protection-related activities and is working with implementing partners to incorporate protection strategies across all programs for the post-election crisis.

UNICEF estimates that between 80,000 and 100,000 children now live in camps for the internally displaced. Renewed violence beginning January 23 has led to an overall decline in school attendance, particularly among primary school children, and the Ministry of Education is reporting a shortage of teachers willing to report to work out of fear for their personal security. The violence will have a long-term impact on the lives of many students.

HUMANITARIAN NEEDS

USAID staff reports that the international humanitarian community is meeting the immediate needs of Kenyans displaced by the violence. However, additional support is needed to meet evolving needs in camp management, health, nutrition, protection, conflict mitigation, and early recovery over the next 12 to 18 months.

Camp Coordination and Camp Management

The Kenya Red Cross Society (KRCS) and UNHCR are working with other aid agencies to identify gaps and assist with training, technical support, and information management, as well as to provide psychosocial support to IDPs and refugees residing in camps.

Early Recovery

Beyond the immediate humanitarian impact, the post-election crisis has significantly impacted people's income-generating activities and resulted in substantial livelihood losses. Burned fields and businesses, un-harvested crops, market disruptions, and looting are expected to have long-term consequences. Host communities are stretching limited available resources to meet the needs of IDP populations, yet this approach will be limited without substantial support from the international community.

In addition, all programs should be designed with the ongoing conflict in mind, and should engage affected populations to minimize, address, reduce, and/or mitigate tensions and conflicts.

Health

UNICEF, in collaboration with the Kenya's Ministry of Health, is addressing health needs throughout violence-affected areas and conducting polio and measles

immunization campaigns in all IDP sites. USAID staff visited the GOK-managed Nakuru health clinic, which has provided emergency and referral health services to more than 4,000 patients since January 4. According to health staff, diarrhea, respiratory infections, malaria, and dehydration remained the most pressing health concerns.

Emergency Relief Commodities

The U.N. Shelter Cluster, in conjunction with GOK officials and KRCS, will continue to conduct needs assessments in new IDP sites to determine if additional relief commodities are required.

Nutrition

Nutrition is not a critical humanitarian need at this time, but relief agencies are actively monitoring the situation. The U.N. Children's Fund is conducting nutrition screening and has identified approximately 7,500 cases of moderate malnutrition and 70 cases of severe malnutrition to date. To address potential gaps in the management of severe malnutrition resulting from the crisis, the U.N. Nutrition Cluster designed a minimum package of nutrition services for affected people, as well as tools for rapid assessment, screening, and monitoring of the nutrition situation.

USG RESPONSE EFFORTS

It is the obligation of the international community to provide humanitarian assistance wherever it is needed.

USAID has provided more than \$4.7 million for emergency humanitarian response activities since January 3, 2008. Immediate priorities for USG assistance include protection, water, sanitation, health, shelter, and camp management interventions targeting displaced populations and stressed host communities in areas of Nairobi and western Kenya.

In response to the complex humanitarian emergency in Kenya, a USG Inter-Agency Task Force convened in Nairobi to coordinate USAID/DCHA, USAID/Kenya, USAID/East Africa, U.S. Embassy, and other USG response efforts.

A Disaster Assistance Response Team (DART) from USAID's Office of U.S. Foreign Disaster Assistance has deployed to Kenya and is working in concert with the U.S. Embassy and USAID Kenya and East Africa Missions to coordinate the U.S. response effort. The DART is conducting field assessments, liaising with UN and international relief organizations, and engaging with other donors to identify evolving priority needs.

The USG is the largest donor to the UN World Food Program in Kenya. In close coordination with the Kenya Red Cross Society, WFP has distributed more than 1,226 metric tons of emergency food relief, valued at approximately \$1.3 million, to affected populations in Nairobi and western areas of Kenya.

Additionally, the U.S. Department of State's Bureau of Population, Refugees, and Migration has pledged FY 2008 support to UNHCR and the International Committee of the Red Cross (ICRC) to address refugee needs across Africa, including the initial emergency response to the refugee/IDP situation in Kenya and Uganda. Contributions to UNHCR and to ICRC will be made as soon as funds are formally available.

In addition to addressing the immediate humanitarian needs of affected populations, short, medium, and long-term response activities will be required in order to mitigate the political, economic, and social consequences of the current crisis. The USG Inter-Agency Task Force based in Nairobi is working to ensure that current emergency programs help reinforce our development programs.

The Government of Kenya, several Ministerial departments, local disaster response committees, churches, and national relief organizations demonstrated substantial capability during rapid response efforts for displaced and affected populations. However, emergency needs quickly overwhelmed existing capacity and these organizations required additional support. All programs should work with and strengthen the very robust civil society, including the Kenyan Red Cross and Government of Kenya mechanisms, rather than working in ways that would bypass these national assets.

OTHER DONORS

The response from donors has been robust. The UN's Central Emergency Response Fund authorized \$7,022,854 towards the Inter-Agency Standing Committee's Humanitarian Emergency Response Plan and Flash Appeal, which was well-allocated towards priority emergency sectors. As of January 30, 2008, other donors have provided \$24.5 million in support to the U.N., International Committee of the Red Cross, the Kenya Red Cross Society, and NGOs responding to the crisis. These con-

tributions, in concert with the expected USG contributions of nearly \$8 million, will largely meet the immediate humanitarian needs as outlined in the Flash Appeal and the KRCS appeal. The total requested for these core emergency sectors under those appeals was \$49,193,154 million. To date, \$43,776,138 has been pledged or committed leaving a gap of \$5,417,016. However, OCHA is revising the appeal as more detailed information on the scope of the evolving crisis is reported, and the humanitarian needs have shown to be more extensive than initially estimated. Therefore, we expect the funding requirements and funding gap to increase.

Additional mid-term needs for early recovery and education were identified in the Flash Appeal. Nearly \$8 million was requested for these sectors; resources have not yet been pledged or committed.

Donor	Amount	Sector	Recipient Agency
Australia	\$877,193	Food, medicines, shelter and protection	KRCS, ICRC, UNHCR
Canada	\$1,019,368	ICRC preliminary appeal	KRCS
CERF	\$7,022,854	Camp coordination and management; emergency health; protection; logistics; water and sanitation; shelter and non-food items; food	UN & NGOs
China	\$300,000		KRCS
Denmark	\$43,305		KRCS
DFID (UK)	\$5,972,000	Food, shelter, water and emergency healthcare	KRCS, ICRC
ECHO	\$8,093,415	Shelter, water, sanitation, emergency healthcare, basic household equipment, hygiene products, food, logistics	UN, NGOs and KRCS
France	\$291,545	Health, food	Action Against Hunger and other NGOs
Germany	\$1,350,770	Health, emergency relief supplies	German Red Cross, ICRC, World Vision Kenya, German Agro Action
Ireland	\$728,863	Non-food items	Trocaire
Italy	\$358,600	Assistance for Kenyan refugees in Uganda	IFRC
Japan	\$200,000		ICRC
Korea	\$200,000		UNICEF and OCHA
Netherlands	\$2,207,295	Emergency relief supplies, water and health	KRCS
Norway	\$2,189,949		UN, KRCS, ICRC & NGOs
Safaricom	\$72,174		KRCS
Sweden	\$356,526		Red Cross Sweden
Switzerland	\$183,023	Logistics	ICRC, KRC
Turkey	\$100,000		WFP
UNDP (Bureau for Crisis Response and Recovery)	\$100,000		Early Recovery Cluster

WHERE DO WE GO FROM HERE

As I stated previously, it is the obligation of the international community to provide humanitarian assistance wherever it is needed. Some donors have hinted that they are not planning to contribute additional funding to assist with the post-election crisis in Kenya.

It is only with the assistance of the international community that Kenyans can move their country to a place of peace and stability. Such assistance can assist

Kenya to reestablish its position within the wider community of African nations working toward democracy and economic independence.

Mr. PAYNE. Thank you very much.

Let me thank both of you for your testimony.

We certainly see that there is a tremendous amount of interest here, and there is an overflow room in 2255 where I understand there are as about as many people there as we have here. We apologize for this room. The Foreign Affairs regular committee room is being renovated and is therefore unavailable.

Let me just start—Mr. Swan, on December 27th, as we know, on December 27, 2007, millions of Kenyans went to the polls in Kenya's fourth multi-party elections with the hope of strengthening the institutions of democracy and, most important in the view of many observers, of bringing change. Please give us an overview of the pre-election environment, and let me just ask you several quick questions.

Has the administration recognized the Kibaki government as democratically elected? And does the administration believe that Kibaki's agents stole the election? And does the administration believe that what is occurring in Kenya is ethnic cleansing, as stated by the Assistant Secretary?

Just give us a general response. Thank you.

Mr. SWAN. Certainly. Thank you very much, Mr. Chairman.

First, with respect to the run-up to the election, as I noted in my testimony and as you mentioned in your testimony as well, sir, that the pre-election period, that while hotly contested and very contentious and indeed closely fought, was, nonetheless, a relatively peaceful and successful campaign period. Parties were able to hold meetings. They were able to campaign quite freely. To the extent that there were issues of concern, there was some low-level violence, principally affiliated with primary selection of candidates within certain parties.

As I mentioned, there were some areas of concern with respect to statements that could be viewed as inciting certain groups in the country that were not being transmitted by the major media, but in some cases there were indications of vernacular radio and even, in this modern world, text messaging within certain communities. But, overall, the campaign period was handled quite well with the run-up to the election. It was obviously a narrow contest right down to the wire.

I think if there was another area of concern that we had in that period there were some problems with access to political activity on the part of certain women candidates seeking to vie for office, and our Ambassador certainly took very strong steps to signal our concern over that.

With respect to the approach that the United States took in the run-up to the election, I want to stress that our mission in Kenya was very active in promoting a free and fair contest and seeking to achieve a free and fair contest by helping the Kenyan actors who would obviously need to make that happen. Many months ago, in fact, on May 10th, our Ambassador gave a very significant speech at the University of Nairobi in which he set out the importance of Kenya moving ahead with a free and fair election, and signaled at that time that it was very significant that the Kenyan participants

in those elections avoid appeals to ethnicity, that they seek to campaign in a free and fair fashion, and that they respect a code of conduct that had been agreed among different candidates.

And so as long ago as some 6 months prior to the election there was a serious effort to signal the importance of the elections and the importance that they be fair; and, following that, we undertook a number of efforts to signal to the principal candidates and others the importance of a free and fair contest.

Our Ambassador also sent letters to the candidates several months prior to the election stressing again the importance of the contest being fought well and fairly. Prior to the election, Secretary Rice also called the two candidates, stressing the importance of respecting the Kenyan Constitution and respecting the elements of the electoral code and ensuring that the contest was fairly and freely fought.

As you have noted and as we have stated very clearly, there were very serious irregularities at the national level, particularly in the vote tabulation. There were other irregularities in the voting, in the contest, both in opposition strongholds and in government strongholds; and, as a consequence, these irregularities have obviously attracted tremendous attention and, on the part of many, called into question the credibility of the results.

Our statements in the aftermath of the election make very clear our concern over these serious irregularities and very clear our determination that there should not be recourse to violence in terms of seeking further competition among the different Kenyan actors. I think our overall statements in the aftermath of the election are certainly consistent with that.

We have clearly also taken a leadership role in the aftermath of the election in terms of supporting African efforts to resolve this political crisis and this situation of violence. As you probably know, Assistant Secretary Frazer personally traveled to Kenya and spent approximately 1 week meeting with the senior leadership in Kenya and pressing the principal protagonists to engage in direct dialogue to find a way to move forward on these issues.

I would be happy to come back to that in the future, sir.

With respect to the other questions that you raised, President Kibaki has been sworn in as President of the country. We typically don't recognize governments but states, but his government is there, and we are operating with that government.

However, as you noted in your testimony, Assistant Secretary Frazer has made very clear that for us it will not be business as usual either with the government or with the opposition until there is progress in resolving that crisis. And I think that is another example of our leadership inasmuch as that standard, that position of no business as usual, has quickly been picked up by a number of other international partners of Kenya. I think this is a case where United States determination of how that engagement should work in consultation with others has helped lead an international community perspective on the approach.

With respect to the other issues that you raised, sir, as I said, we have been very clear that there were serious irregularities, particularly in the vote tabulation. Unfortunately, as a consequence of a lack of chain of custody of many of those records, we think it

would be difficult to conduct a recount or otherwise determine with certainty who would have won in the absence of those irregularities, but we have been very clear from the beginning that serious irregularities have taken place.

And, finally, sir, I think, with respect to Assistant Secretary Frazer's statements, she was speaking, as you may know, of her own eyewitness experiences in the Rift Valley and was describing circumstances in which she spoke with individuals from certain communities who had been approached by individuals from other ethnic communities and warned to leave, threatened that they must leave; and it was, in essence, an effort to remove them, to cleanse them, in her view, from the areas in which they lived. So that was the context in which that statement was made. And—

Mr. PAYNE. But don't you feel that Kenya is a very large place and you have situations happening in all parts, none of which are good, and to focus on one area, to therefore make it appear that it is only happening from one group to another, I think tends to, therefore, give that group the license to say, you see, we are the victims.

And I also heard you mention that you want to hold the opposition accountable also, which I think is important. However, you seem to put the opposition on the same level as the government.

Now the opposition didn't steal the election. From what it looks like, if you take the MPs that won, if you take the sitting ministers who lost from the Kibaki government, it appears that the opposition won. But, as you mentioned, it is going to be difficult to reconstruct that.

However, if you therefore have an equal weight on both, when the government is the one that appointed 19 of the 22 commissioners, the government is the one that collected all the ballots, the government is the one that locked the doors to not allow people to come in to review it, the government is the one that declared the victor and swore the President in even without playing the national anthem to get it over with, how can you therefore hold both parties equally?

I think that Mr. Raila's party has to be held accountable, but if we do that, then it appears—and I know the first statement was we will take it to the courts. But it was a dispute between the speaker and another person in the last election in '97 or '02, and it took until '07 before it was resolved. Now if you are going to depend on the courts of Kenya to resolve the election, that will be rolled into 2010.

And so I think that some of the statements appeared not to show the gravity of the behavior of the Government of Kenya. It is almost like we have an equal, level playing field between the opposition and the ruling party and they should all try to come together. If we continue to have a policy—kind of a benign policy, why would the Government of Kenya try to make any changes?

Mr. SWAN. Well, back to your first question first, Mr. Chairman.

Again, Assistant Secretary Frazer, while she was personally in Kenya, focused on these issues and these concerns, traveled to the Rift Valley and personally witnessed certain incidents. And so her description of what was happening in those communities was based

on her eyewitness view of what was happening in a particular location.

But I think, if you review our statements, it is very clear that we have condemned violence throughout the country and signaled very strongly, certainly in my testimony—and I think any serious review of our statements since the election and indeed in the run-up to the election would signal that we have urged all communities to avoid this form of violence. And I think we have been strongly on the record about that.

Mr. PAYNE. Our time is running out. Just one quick curiosity I have. With the returns not in and seeing the big swing from the several hundred thousand plurality to a 35,000 plurality to a then defeat, why did we hastily accept the election before the returns were in?

Mr. SWAN. We did not hastily accept the election before the returns were in. There was certainly no statement about the victor prior to the vote. Indeed, our statement from the Embassy was very clear that we congratulated the Kenyan people on the successful campaign and were very quick to indicate our concern over the irregularities in the balloting. So there certainly was no decision taken with respect to the outcome of the election prior to the announcement by the Electoral Commission of Kenya.

Mr. PAYNE. Maybe it should have been reversed, commend the people second. But the people did the right thing. The government did the wrong thing.

Mr. SWAN. That's right.

Mr. PAYNE. But when you commend—that is what was wrong in my opinion—I think it just sends the wrong message. It is a technical thing in something this grave. I am not trying to be a Monday morning quarterback. It is just that when one commends the people—and there is no doubt that the people knew, came out, registered and voted—someone can take the government as a representative of the people and conclude, illogically, as some pundits have done, that they are commending a government and an election.

My time is certainly about to expire. We will hear from our colleague. Then, I will ask Mr. Gottlieb—I am concerned about the humanitarian side and do want to ask you a question.

Mr. Wittman.

Mr. WITTMAN. Thank you, Mr. Chairman.

A question for Mr. Swan. In light of the irregularities that you speak of, is there a possibility that President Kibaki and Mr. Odinga would step aside and allow others to come in and take part in a power-sharing government, thereby lessening tensions?

Mr. SWAN. We believe that the way forward would include elements of stopping the violence, reconciliation among the parties and among the communities, a power-sharing arrangement to address the immediate tensions in the aftermath of the election and, fourth, efforts to address much more fundamental, long-term causes of the tensions that we see now. And this includes a need for constitutional reform. It includes a need for electoral reform. It includes a need for land reform and redressing some equities or perceived inequities among different communities in the country.

The specific formula for moving ahead on those issues, however, we very much think needs to be in the hands of the Kenyans. That is why we have been so supportive of this African-led initiative. The first initiative got off the ground under African Union former chairman John Kufuor of Ghana but which then mandated former Secretary General Kofi Annan to bring the parties together and to try to work through precisely that sort of agenda. And we were very pleased when Kofi Annan was successful in persuading the two sides to meet to assign three-person negotiating teams and to agree on an agenda that effectively echoes what we just said. That is first addressing the violence; second are humanitarian and reconciliation issues; third, immediate efforts to address the political controversy; and, finally, the longer-term institutional reforms.

The two sides have made progress already with respect to the first two agenda items on ending the violence and moving ahead on the humanitarian issues and reconciliation issues. They have issued joint statements to that effect. And we have seen progress, for example, with the lifting of a ban on live media broadcasts that the opposition had for a long time been calling on the government to do. They are beginning now work on these power-sharing arrangements. We think it is up to them really to determine what the exact formula should be, but certainly what you say would be a possibility for them to consider, but it is a Kenyan issue.

It is clear, however, that the longer-term issues—and Kofi Annan has made this clear as well—will take much longer to address; and he would anticipate that it could be as much as a year before there is progress in resolving some of these deep-seated issues.

Thank you, sir.

Mr. WITTMAN. In light of the progress that they made in the first two or three items that you speak of, do you believe accountability for the violence that has occurred would be important in moving to reconciliation?

Mr. SWAN. We believe very strongly that accountability is critical in this situation. We have noted that the Office of the High Commissioner for Human Rights has dispatched a team lead by a director of that office's Africa Division to conduct a more detailed fact-finding assessment of what has been happening in the country. And we have made very clear and Assistant Secretary Frazer has stated this repeatedly, that we are looking at, and believe others should be looking at, a range of options that could apply pressure to individuals from whatever camp who are inciting violence or who are blocking this essential process of negotiation that the country needs to move forward. So we would agree that there needs to be accountability.

I think the first step is to determine facts on the ground. But we have signaled quite clearly that, indeed, the types of measures that could be considered include a wide-range review of visa eligibility in some cases. Obviously, we have indicated that we are doing a review of certain assistance programs—not at this point to make any determination to halt activities in those areas—but so that we have an understanding of what the tools are that would be available.

In that context, I do want to stress, however, that United States assistance in Kenya is—the vast majority of it, frankly, is for the

President's Emergency Program for AIDS Relief and for other critical development and similar activities but looking at the full range in terms of an internal review so that we would know what tools are available. And I think it is clear to those who may wish to continue to incite violence or obstruct progress on the talks that we do have a lot of tools that could be available unless we see movement.

Mr. WITTMAN. Thank you, Mr. Chairman.

Mr. PAYNE. Thank you very much.

Mr. Gottlieb, I'm concerned about the reported violence on women. The statistics from the Nairobi women's hospital show a steep increase in the admission and treatment for rape, and the Kenyan's women's group of the Nairobi Peace Initiative and the Center for Multi-Party Democracy sent a letter to Kofi Annan raising these concerns. I wonder if USAID has any information that you have received about this question of violence against women as a follow-on of the elections and what sort of assistance are we providing to help victims of sexual or gender-based violence, and have there been any perpetrators arrested to your knowledge and whether this is a systematic thing that is happening?

Mr. GOTTLIEB. Thank you, Mr. Chairman.

Yes, we have had reports of sexual violence in a number of places. What we have tried to do is to at least to address that on the medical side with funding through several U.N. agencies. UNICEF is one. And what we have also tried to do in that regard, particularly around the camps, is to provide some type of protection to people, whether that is to work with local police if and when that is possible, to have internationals in the camps who monitor those camps, international committee. The Red Cross is out there. They do that. We are aware that we can't track every instance that happens, but what we can do at least is to be witnesses to that, report that and to provide the medical care that is necessary if women are raped.

Mr. PAYNE. Thank you.

Just, finally, we are also concerned about the children; and I am wondering whether there are any specific programs that you are dealing with with displaced children through our activities.

Mr. GOTTLIEB. Right. Thank you.

What we are doing through, again, through Catholic Relief Services, UNICEF and others, is to—first of all, we focused on nutrition so every program that we are funding now that deals with nutrition is, of course, directed to make sure that the children are in good shape. We have made sure that high-energy foods have been available: Corn, soy blend.

And in the beginning of the crisis I think, as people moved around a lot, it was hard to understand what the baseline was for where children were in terms of their malnutrition. I think we are beginning to get a handle on at least the conditions of the kids that are now in the more stable camps. Unfortunately, there is still a lot of movement in and out of the camps, which makes it very difficult to treat.

As I said in my oral statement, the World Food Program has managed to make distributions to a number of most of the camps; and so what we are able to at least say is that we have gotten some

basic foods in there. And we are going to have armed escorts in the future so that we are insured that more food is going to arrive in those camps, which is, of course, vital.

But, of course, it is not the only issue. Water is also an important issue, and we know that in many of the camps we are still struggling to bring adequate water. So that is another element to it.

The International Committee of the Red Cross is also there, and part of their protection mandate will be to reunite children with their parents. So we also are supporting them.

Mr. PAYNE. I know the PEPFAR program is very well received in Kenya. I spoke at World AIDS Day a year ago there, and I am wondering whether what is happening now may have an impact on the advancements that we have made in HIV/AIDS and TB?

Mr. GOTTLIEB. I can't confirm that there has been—I can't confirm to the extent of the disruption. But I know you have been to Kenya, you have seen the kinds of work that PEPFAR has done, and you have seen the distributions of the anti-retrovirals. Of course, what we would be concerned with is if people cannot access those drugs.

So what we are doing we have been fortunate with our PEPFAR colleagues to be able to redistribute at least some of their assistance into the camps in terms of health care. So, hopefully, that is an issue I think we are going to have to address, given the rates of HIV. So it is a difficult one because of the fluidity of movements.

Mr. PAYNE. And, finally, actually, as we know it, about half the population of Kenya lives on less than \$1 a day, when many other Kenyans are very affluent; and that is why I continue to say that much of this is not so much ethnically driven. It is poverty, it is democracy being snatched out of the hands of the people who are able to defeat.

The ruling party that ruled for 50 years or so, in multi-party elections several years ago, defeated a referendum to change the Constitution, and so people felt that there was a way to have corrective action against the government.

So I continually say that those were the issues that pushed it. It wasn't like Rwanda, where Tutsis went after Hutus and Hutus went after Tutsis. And it is a byproduct which is growing, and I just want to continually stress that.

I was there and saw it myself during the first week or so in Kenya of this year. And as we saw the contributions that regular Kenyans made at the park where the displaced people were, they were from all ethnic groups. They weren't from any one group. They came and they donated food and clothing and money, and so that was a side of the story that we don't hear about.

But this inequity, this dollar a day when you have such affluence in other parts, I am sure that you would probably agree that that might have added to the tension in the Kibera.

And I wish people in Kenya would just call it Kibera, not Kibera slums. It is tough to go to school everyday and be told that you live in Kibera slums. It is tough enough without having to remind you, and it is just used so often and so much.

It is just part of the name of the area, but there has to be something done. I know USAID can't do it, but I hope, in consultation with the government of the future, that those kinds of issues can

be put on the table and international communities work toward this economic disparity that exists.

Mr. GOTTLIEB. The one thing I think—a couple of things I can say. Over the years, the Kenya Red Cross Society, which is our local partner, has grown much stronger under some very enlightened leadership. And they have over the years seen—at least from the time I lived in Kenya until now—a great improvement. And the Kenya Red Cross Society is supported by Kenyans. So I think in that sense, there is a very positive story happening there, and they are doing a relatively good job of trying to coordinate with the government and with the international community. So there is something good there that can bring Kenyans together.

In terms of the dollar-a-day concern, certainly for us, we have been active in Kenya on the humanitarian side over the years mostly because of the drought. And most of that work has been in the North, Northeast, along the Somalia side and up in the deserts. We have not been active in the urban area. But perhaps this crisis, if it continues, as I have tried to say in my oral statement, is going to affect a lot of Kenyans and I think it could impact our—what we need to do and how we need to do our humanitarian activities.

Mr. PAYNE. Thank you. I just have one last question for Secretary Swan. The statement that the Assistant Secretary made that the United States will not conduct business as usual in Kenya, does that mean anything? Will we be strong in our suggestion that the government act in good faith?

I am just curious to know what Assistant Secretary Frazer meant with, “We will not conduct business as usual with Kenya.” I am happy to hear it. I just wonder what it means.

Mr. SWAN. Certainly, sir. What it means is that in this tense period in Kenya, both the government and the opposition need to be focused on finding a way forward and participating seriously in negotiations and in getting through this crisis, and that neither the government nor the opposition should feel that they can act without their entire effort and focus being on resolving this crisis and moving forward under the rubric of these negotiations led by Kofi Annan.

What she signaled separately from that statement, as I mentioned, is that we are looking at a range of other measures. I don’t think that anyone doubts that the United States takes tools that could be applied. We have talked about an internal review that we are conducting of our assistance activities. No decisions have been made, and any decision to act alone would of course depend on the evolution on the ground, an assessment where pressure could most usefully be applied.

We have also mentioned publicly the option of considering restrictions on visas. We are reviewing visa eligibility. Again, no action has been taken against particular individuals, but clearly that is a tool that could exist. And, of course, there is a range of other tools—financial sanctions, et cetera—that have been applied in other cases.

So, the point is both sides need to be focused on resolving this crisis. It is not going to be business as usual for us with them, and it shouldn’t be business as usual for them. They should be focused on solving this crisis.

Mr. PAYNE. I know that it seems that a good amount of funds are given to police and military, and I just wonder, since we have been seeing gross excessive behavior on the part of some of the security forces, do Senator Leahy's laws apply to police assistance? And that many times draws the attention to the governments when you start taking away the hardware and police, weapons and training, et cetera.

Mr. SWAN. Certainly, sir. Well first, just to build on my comments earlier to Congressman Wittman—in fact, some 90 percent of the United States assistance program in Kenya is PEPFAR. And other assistance obviously includes development assistance programs, democracy governance programs, et cetera. In fact, I should really cede to Mr. Gottlieb on these issues. But in terms of the assistance on the security side, it is quite limited at this time.

I think it is also important to remember that the Army has, in fact, acted so far very responsibly in this conflict. It has remained in the barracks. It has limited its activities to efforts that have not been controversial or added to the tensions. But as I have said, we are conducting a review and we are looking at all of the tools that might be available to us.

Mr. PAYNE. But I agree that the Army has shown restraint and I hope that that continues; however, I do think that the local policing needs to be looked at.

As you leave, I just want to mention that we have a resolution, H. Con. Res. 238, that we will consider this afternoon in regards to Kenya. The concurrent resolution calls for a peaceful resolution to the political crisis, condemns the violence and urges the parties to fully participate in the dialogue toward an agreement.

The resolution also calls for our President to consider a ban and assets freeze for senior party officials on either side that do not participate in the meaningful dialogue.

So I think we need to start putting some teeth into some of the persons who have responsibility so that we can resolve this issue before it really gets out of hand.

But let me thank both of you for your time, and we will certainly stay in touch with you from the House to monitor and work with the administration in trying to come up with a resolution. Thank you both very much.

As I mentioned, for those of you who are standing there, there is an overflow room, if any of you want to go there, in 2255. However, you are welcome to stay here.

We will now have our second panel. We will ask our three panelists to come forward: Ms. Farrow, Ms. Ndungu and Mr. Kiai. Thank you, second panel, and we will hear you in the order that you are introduced.

We will begin with our Goodwill Ambassador. We are very pleased and fortunate to have with us, today, a person who really needs no introduction because of the work that she has done throughout her life. But we have Ms. Mia Farrow, the Goodwill Ambassador for the United Nations Children's Fund. Ms. Farrow was born in Los Angeles, California. Her father was a writer, director and actor, John Farrow; and her mother, Maureen O'Sullivan, was a famous actress in her own right.

Ms. Farrow is well known for her many critically acclaimed movie roles and for advocacy on behalf of the victims of genocide in Darfur. She really made the term "Genocide Olympics" a word that many Americans and people around the world are looking at because of the behavior of the Chinese Government in Cambodia and their support of the Government of Khartoum and Sudan where genocide is occurring.

And Ms. Farrow has done an outstanding job in advocating for people who have no voice. Ms. Farrow has 14 children that she has adopted; many of them were brought to her home where she raises them. So she is not only doing an outstanding job for them, but she is an advocate for millions of children throughout the world in her position as a special representative of UNICEF. She regularly visits Africa and Asia to promote the health and safety of children.

And I had the pleasure of seeing her in Africa just last month when we were together in several countries, including Kenya. And last August when we passed the Olympic torch, where genocide occurred in Rwanda, and we were there together to highlight the fact that genocide is still going on, even though we said never again. And we really had to make those words stand.

But the work that she has done and continues to do will hopefully soon bring to a close the whole question of genocide. So thank you, Ms. Farrow. And it is an honor to have you with us today.

Secondly, I would like to extend a warm welcome to one of the outstanding Kenyans that we have grown to know over the years, Ms. Njoki Ndungu. She is a lawyer and an advocate of the High Court of Kenya and holds a postgraduate law degree in human rights and civil liberties. Ms. Ndungu began her career in Kenya's Office of the Attorney General, and from there moved to the Institute for Education and Democracy as a program officer for civil and voter rights. In 1995, she began her work as a protection officer with UNHCR Kenya. She joined the Social Democratic Party (SDP) in 1996 and moved with SDP to the National Rainbow Coalition in Kenya in 2002.

Ms. Ndungu was nominated by NARC as a member of the Ninth Parliament where she served on the Parliamentary Committee on Defense and Foreign Affairs, the Select Committee on Constitution and Review, and sat on the Parliamentary Committee on Administration and Justice and Legal Affairs.

As a member of Parliament, she was a proponent of what is now the Sexual Offenses Act of 2006. That act was the first legislative act in East Africa, and perhaps in all of Africa, to have sexual offenses legislated as a violation. It took a great deal of work to get such legislation passed in her country. She is now a private citizen.

And our final panelist today is Mr. Maina Kiai, an advocate of the High Court of Kenya. Mr. Kiai is the chairman of the Kenyan and National Commission on Human Rights, an independent government body established under the U.N.-Paris Principles on the Human Rights Institution. Mr. Kiai was appointed as a commissioner in 2003, and elected chairman unanimously by the other commissioners. Prior to taking up his position with the National Commission in 2003, Mr. Kiai was the director of the Africa programs at the International Human Rights Law Group, now called Global Rights, based here in Washington as of July 2001. He has

served as the African director at the International Secretariat of Amnesty International in London, where he has the record of being the longest serving African director of that organization.

And so we are very, very pleased to have the witnesses, and we will hear from them in the order that they were introduced. Ms. Farrow.

**STATEMENT OF MS. MIA FARROW, GOODWILL AMBASSADOR,
UNITED NATIONS CHILDREN'S FUND**

Ms. FARROW. Thank you. Thank you very much, Mr. Chairman. It is an honor to be here sitting before you again, Congressman Wittman.

I have been invited specifically to address human rights and humanitarian conditions being faced by Kenyans during this current period of post-election violence. I should say I am not appearing in any official capacity as a UNICEF Ambassador, though I am including within my testimony some of the UNICEF recent report on the situation. I have been given permission to show some of my photographs.

Mr. PAYNE. Great. If we could dim the lights a bit without you—

Ms. FARROW. I don't know if this is clear. Is everyone able to see? This is the legendary and beautiful Rift Valley. Perhaps you can see, even from the height of the airplane, the targeted burning of homes in the Rift Valley in and around Eldoret.

You can see numerous homes burnt to the ground. I hadn't realized the magnitude of the burning of homes. This, as we flew into and around Eldoret.

This is interesting for the fact that the destruction is so specifically targeted. You can see the surrounding houses are not burned; yet, this one house is. And as we left the beautiful Rift Valley, houses were still aflame.

This is the Jamhuri showgrounds that Congressman Payne spoke of. When the violence reached Nairobi, particularly Kibera, people began fleeing their homes, and they sought refuge here in this showground. The owner demonstrated remarkable generosity and compassion in offering his property to what were then—I think it was 6,200 internally displaced persons. No one was turned away. They were being received even through the night.

The Kenyan Red Cross teamed up with the National Alliance for Churches, and they were seeking advice from World Relief because as we know, no one had any experience dealing with a refugee population within the borders of Kenya. They had 200 volunteers. People were cooking, trying to meet the needs of these thousands of people, as more were streaming in.

You can see the showground is a somewhat bizarre setting. And it made me wonder as we heard how many latrines were being dug, would our Disneyland suddenly offer its grounds if we had massive amounts of displaced people? Certainly the Kenyans responded with extraordinary generosity. We saw the elderly and the children.

UNICEF estimates there are 80,000 to 100,000 children under 5 that are immediately imperiled by the crisis. And, of course, the numbers are growing.

Now approaching 1,000 people have been killed, it must be said that Kenyans across the ethnic spectrum are victims and are perpetrators. Kenyans of all ethnic tribes had contributed these goods. We saw diapers and food and rice and all sorts of vegetables, donations of all sorts. But they did say there at the showgrounds, they were in desperate need of blankets, mattresses, medication, diapers.

I think it is appropriate to read the UNICEF statement at this moment. It is their current—latest statement of January 29th prepared by UNICEF, UNFPA, UNIFEM and Christian Children's Fund. They participated in an interagency assessment in the emergency affected areas of Kenya. Their main findings were in emergency-affected areas. Sexual violence was clearly part of the post-election violence. In some affected areas, the number of reported cases of sexual violence has more than doubled. NGOs and displaced women expressed serious concern that the emergency would result in increased gender based violence and, in particular, that sexual exploitation would increase further as a result of increased economic desperation of women and girls.

Many women and girls described feeling unsafe and fearful of violence in the camp settings because of poor camp setup, tents for multiple families, men and women all together, little privacy for bathing, et cetera. In some groups, women said they rarely slept at night because they were so afraid of violence in the camps.

In burnt forests in the Rift Valley, women reported that they do not leave the camp even to collect firewood due to intense fears of sexual violence. They are currently burning the fencing surrounding the camp, which is a security risk in itself, as this fence acts as protection. And they fear they will no longer be able to cook once this resource is depleted.

The emergency is exacerbating an existing problem which requires an urgent response. Protection of women and girls from gender-based violence must be prioritized by the Government of Kenya as well as the entire international community.

If we could dim the lights once again. This photograph was taken on the way to Kibera. As Congressman Payne correctly said, referring to Kibera as the Kibera slums, as it is commonly called, is adding insult to injury. It is hard enough living there. It is home to more than 1.5 million people and most of them live on less than \$1 a day.

We saw cars burned, cars overturned. On that day, the little clinic was open. This is an overview of Kibera. It winds like a snake along the edge of Nairobi. And a closer up view of the area. Life was continuing on the day that I visited there. But signs of the violence were everywhere and the feeling—I mean, the little stalls, and marketplaces, were all closed and there were piles of ashes in certain places.

Here we see Kibera. Difficult living circumstances, and I am showing this to show the proximity that—people live in very, very close proximity. So here—I don't know if you can see—the voting preference is very clearly painted on the right-hand side of this woman's portal. Her vote is for Raila. And here is the clinic. It was open that day. It had been closed the previous week. And I think it shut down the following day. A little boy playing. And, you know,

the children are innocent victims wherever there is violence. Our minds turn to the children because there we see them skipping rope, oblivious to the violence around them.

And as the children played, people were piling their goods onto vehicles and leaving. Here is a young mother—this was her entire living room. You can see the left wall and the right curtain which was her bed. She expressed her hope for an end to the violence and a political mediation as soon as possible.

That is the scope of my testimony. Thank you very much.

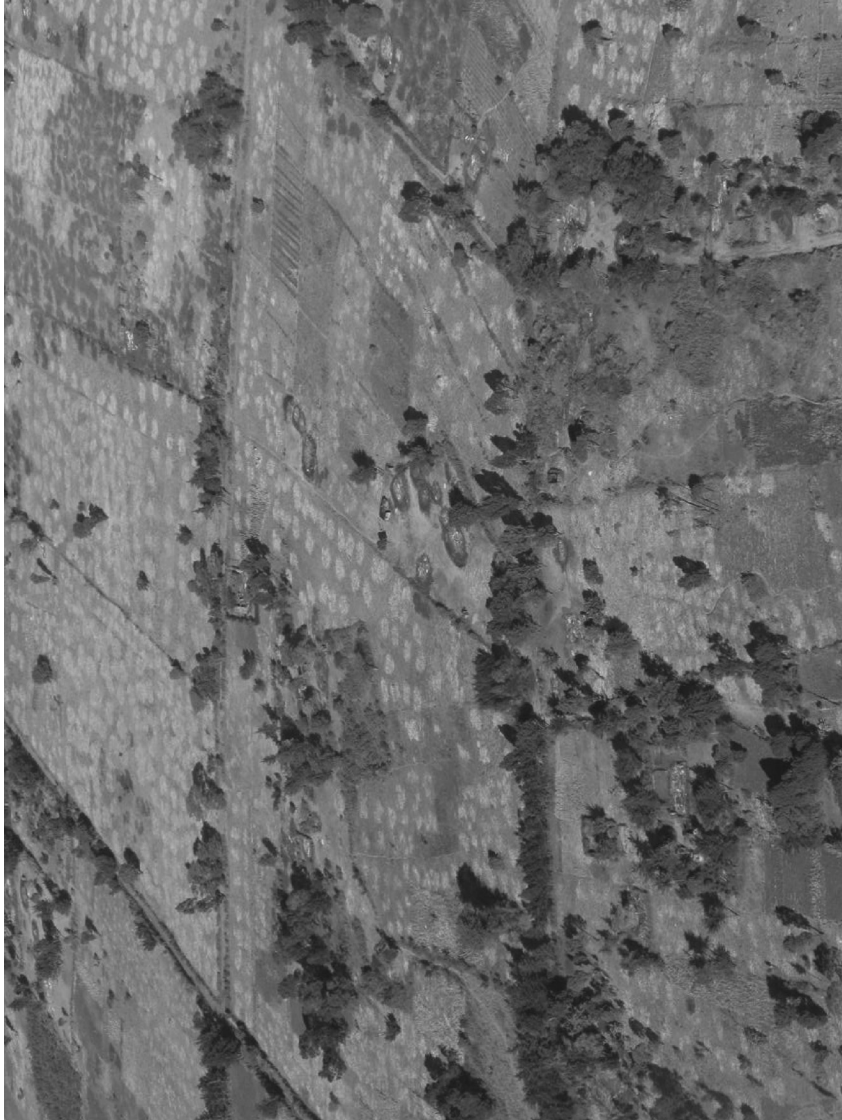
[The prepared statement of Ms. Farrow follows:]

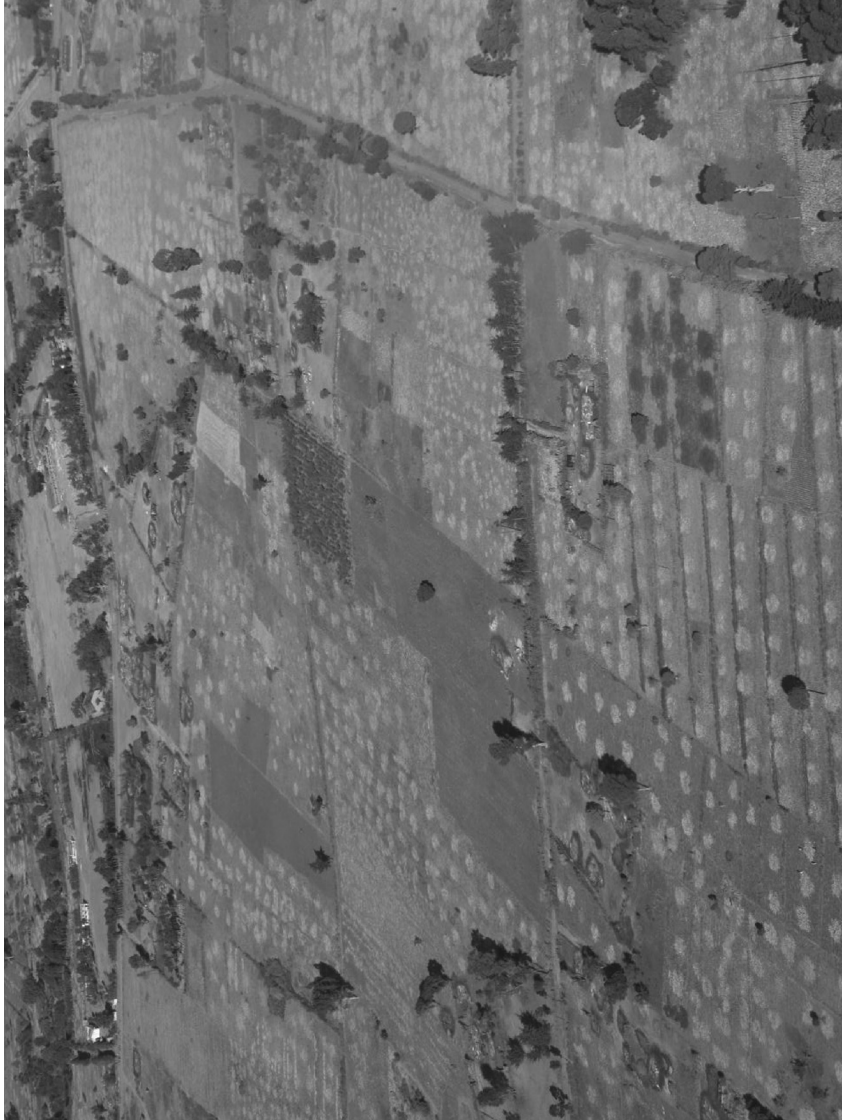


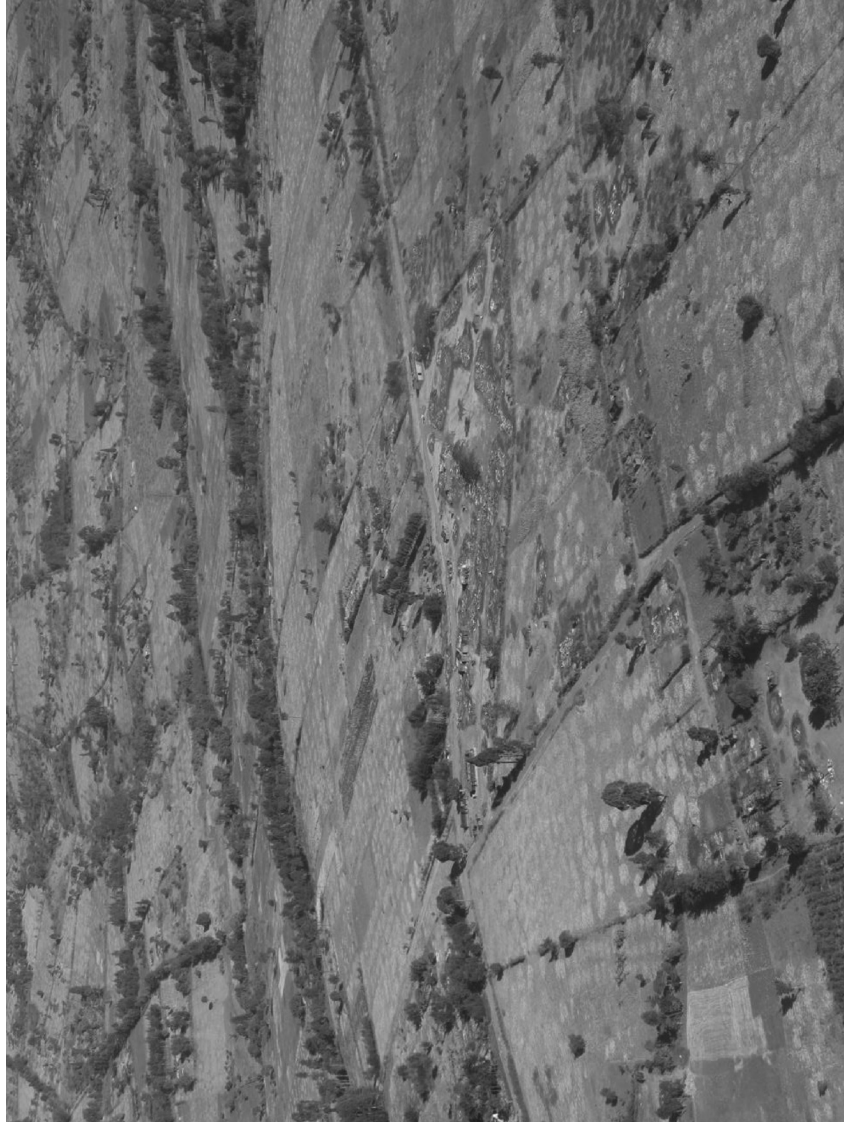


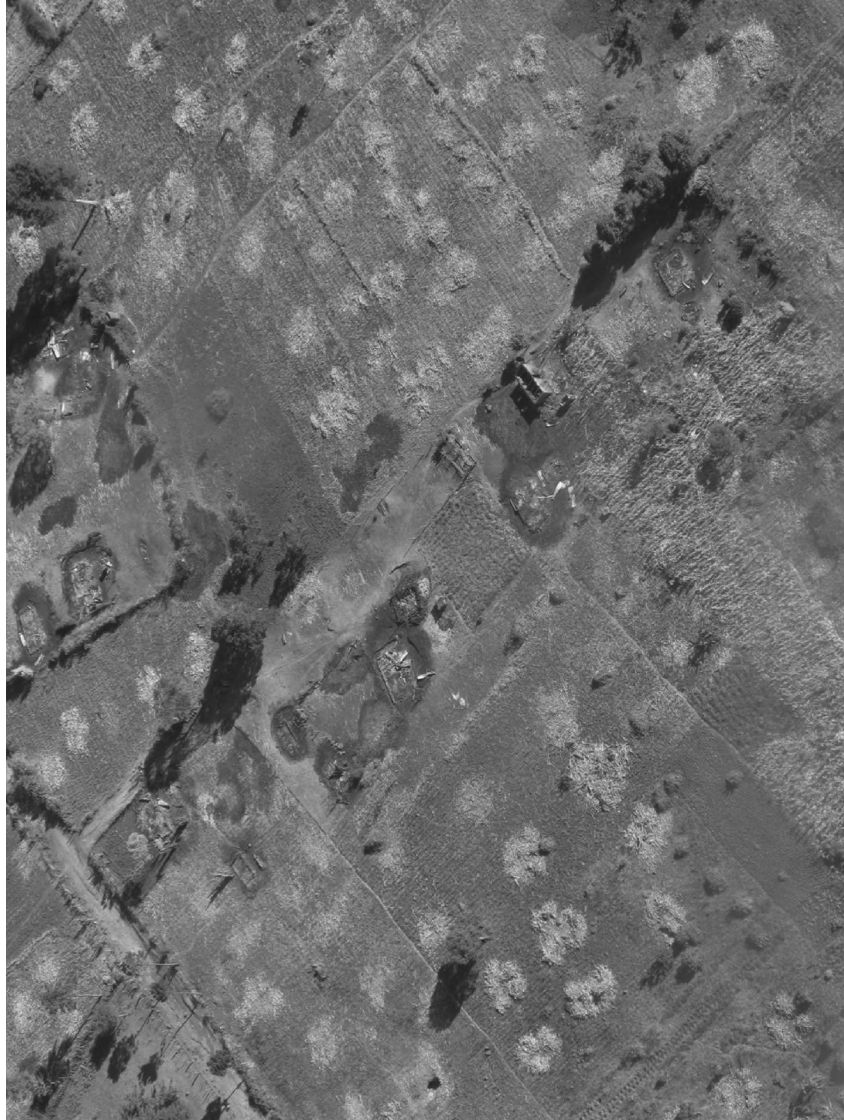












































































Mr. PAYNE. Thank you very much.
Ms. Ndungu.

**STATEMENT OF MS. NJOKI NDUNGU, FORMER MEMBER OF
PARLIAMENT, NAIROBI, KENYA**

Ms. NDUNGU. Thank you very much, Mr. Chairman. I would like to introduce my witness statement for the purpose of the record of the committee, and just to say that I have been asked to answer three questions: What led to the political crisis in Kenya; what was the post-election violence, whether it was spontaneous or planned; and what kinds of reforms and measures are necessary to resolve the crisis?

Mr. Chairman, I think the current crisis in Kenya prima facie, on the face of it, appears to be an election dispute. But a close study reveals a country that has been forced to own up to a deep-rooted, simmering conflict that has been there since colonial Kenya when actually the killings, evictions, displacement, landlessness, and the divisions in types of tribes were actually introduced. That is the genesis of the problem that we have in Kenya.

And these historical injustices have not been addressed by either the Kenyatta, Moi or Kibaki Governments, and the inequalities between the citizens of Kenya remain. In particular, the challenges of landlessness, gender equality, youth unemployment, the widening gap between the extremely wealthy and the extremely poor, and the marginalization of some communities has been exacerbated by the manner in which politicians conduct their political rallies by hyping up the expectations of Kenyans and promising to redress these issues overnight, whereas a structured and systematic approach with realistic timelines is required to do so.

Again in the past, resolving issues around truth and justice, particularly around issues of corruption and past violence, has also meant that the political class on both sides of the divide would have to give up their own in a no-sacred-cows policy, which neither has been able to or is, up to this time, willing to do.

At this point, I would like to, you know, just point out that the Ndungu report on land grabbing in the past adversely named 100 members of Parliament sitting on both sides of the House in the last Parliament. Many of those politicians are still sitting on both sides of the House in the current Parliament.

Now, signs of trouble to the current crisis started long before the elections. Most notable, we have to talk about the recurring violence, murder and evictions that have happened in the Rift Valley before the general elections in 1992, in 2002, and in Likoni in the coast province in 1997. All of these events were politically instigated, where none of the main organizers have been prosecuted even though they have been identified through a report of the Akiwumi Commission, and some of those perpetrators are still sitting in the National Parliament.

Further, no concentrated efforts to address peace building among the different communities or to return the displaced in 1992, 1997 and 2002 has been done, and that has increased the impunity that we have witnessed in terms of pre-election violence in Kuresoi and the violence that we saw in Eldoret eventually in December.

I want to say, Mr. Chairman, that hate speech was and is still rife in political rallies, on some vernacular radio stations, in short text messages and on the phone, e-mails and even in the blogosphere till today.

And another problem that we had way before the elections is because of politicking and posturing on narrow agendas—for example, the members of the Orange Team still smarting from whatever issues that were real or unreal on the contentious MOU did make the 2005 referendum about teaching Kibaki a lesson. And, indeed, oblivious Kenyans did throw away the draft Constitution, not knowing that that Constitution would have introduced new structures for a power-sharing arrangement between a President and a Prime Minister, the reduction of Presidential powers, the increased parliamentary vetting of public appointments to deal with the land question. And therefore, if that Constitution was passed in 2005, the tragedy of the last few weeks would have been avoided.

I have to admit that even where the Orange Team were responsible for saying no in 2005, the government side is also guilty of politicking and posturing and has frustrated the enactment of the minimum package, which, passed last year, would have ensured the professionalism and the independence of the ECK and would have reduced the powers of the winner who takes it all.

Finally, the political class did dilly-dally and did not adopt the recommendations by a task force led by Professor Makau Wa Mutua to set up a Truth, Justice and Reconciliation Commission which would have resolved many of the past injustices through a peaceful mediation.

Mr. Chairman, the spark that was to ignite the violence that we have seen was the Presidential poll result. There were ominous signs that the poll was going to be problematic. Over the last 4 months before the poll was held, media houses reported weekly opinion polls that indicated it was a very, very tight race between Kibaki and Raila, and many coined the phrase “too close to call.” And indeed both Kibaki and Raila got over 4 million votes each out of 8 million votes cast, but neither got 50 percent of the vote.

Conversely, this means that over 40 percent of the electorate rejected either candidate. Both sides engaged in electoral malpractices. And I want to emphasize—both sides.

There was abnormal turnout in both Kibaki strongholds and Raila strongholds. And in addition to this intense situation, the Electoral Commission of Kenya proceeded to tally the Presidential vote in a manner so careless that no reasonable person can be certain who actually won the Presidential poll. Many questions were raised about the tallying. There were many discrepancies, illegalities, that in fact the chairman himself, during the process of tallying, continually referred to the possibility of results being cooked and voiced concerns about unexplained disappearances of polling officers with results in certain areas. Yet despite all these anomalies, he still went ahead to declare a result.

To date, Kibaki's PNU and affiliates are convinced that he won and that Raila was never going to accept the loss anyway. Raila's ODM and his supporters are convinced that the poll was stolen with the help of ECK. What a powder keg. And on top of this, the problem is that the winner takes it all.

Mr. Chairman, I would like to talk about the violence. The violence that has happened in Kenya since the election poll can be categorized as five distinct types. First, there was the spontaneous outrage and protest, of a result, perceived to be massively flawed. So we did have demonstrations, people coming out, venting anger. There was destruction of property and lives lost. There was a lot of running battles with security forces and some of the protestors—most of the fighting took place between what we call distinct ODM and PNU supporters. Most of the incidents were recorded between the nights of the 28th of December, right up to the 6th of January, widespread throughout the country, with hot spots in Kisumu, Mombasa, Eldoret and Nairobi slum areas.

Mr. Chairman, there was a second type of violence which was the organized and orchestrated violence at certain communities living in their opponent strongholds. These violent incidents, composed of organized groups of youth targeting and killing other Kenyans on their basis of ethnicity and perceived, although not necessarily real support of their opponent. I am saying this because it is interesting that it is a known fact that many Kenyans discarded what we call the three-piece pattern of voting where you vote for the President, the MP, and the Councillor on the same ticket, and therefore it is impossible to know actually who exactly voted for whom. And indeed some exit polls have shown that some Kikuyus voted for Raila and some Luos voted for Kibaki, et cetera. So it doesn't necessarily mean that people from one community necessarily voted for one or the other of the candidates.

This second kind of violence was organized. The youths were traveling around in lorries. They were targeting specific properties, they were attacking persons on the basis of their identification cards which tells you which community they are from, or at least you can try and make out what community. There were leaflets that were printed and circulated, warning families to leave.

The violence started in Eldoret and spread to other areas of Uasin Gishu District and spilled over into Nakuru District. Similar attacks are reported in Nyanza, western Nairobi. There is sufficient intelligence to suggest that such violence, particularly in the Rift Valley, was planned, financed, and implemented with the knowledge of some political actors. There is further evidence to suggest that some vernacular FM radio stations had, prior to the election, sent coded messages on air that pointed to the eviction of some political committees from their homes, whatever the outcome of the election, and that is a damning indictment that the election result was used as a pretext for preplanned evictions. It is clear that many, many crimes against humanity have taken place under this category.

The third category, Mr. Chairman, is that there were revenge attacks against the violence I have talked about in the second category. And those revenge attacks take on the same features as the attacks for which they were to revenge: Evictions, robbery, destruction of property, loss of life and limb, preceded by leaflets and SMS sent to would-be victims. It is also true that in this particular category, some crimes against humanity are taking place during the revenge attacks.

The fourth kind of category of violence is police violence and the excessive use of force. As the police did struggle to cope with the rising violence and insecurity, they have in some places been overwhelmed, and they have stated that they have used live ammunition as a result. However, there have been many cases of cruel and excessive force, use of live bullets, and there are rogue officers that have killed innocent protesters. In particular, the forces used in Kisumu during the first 2 weeks after the elections should be subject to an inquiry to establish whether any crimes against humanity did take place.

Fifthly, Mr. Chairman, the fifth and last category of violence is done by criminal gangs and lawlessness. Criminal elements have taken over many parts of Kisumu, Eldoret and elsewhere. There is wanton destruction of railways and roads where gangs rob and extort money from members of the public at will.

Concerns have been raised as to whether the increasing unemployment which has resulted in the violence will lead to increased criminal activity. Mr. Chairman, I want to say that many of the displaced are women and children who have horrific stories to tell about the mayhem and violence.

A particular concern of mine is the sexual attacks on women. In the initial attacks, particularly in violence category 1 and 2, many women were gang-raped in their homes while fleeing to safety. Many have no access to post-exposure prophylaxis or to ARVs, which should be administered within 72 hours; otherwise, which the risk of HIV infection is very high. Many rapes and sexual assaults are now happening in the IDP camps where the environment is still high risk. Many women and girls are being sexually exploited in exchange for food, clothing and medicine, and further degradation of women has been seen in some places by attempts of some gangs to strip women of clothes when they are wearing trousers.

There have been efforts by an Nairobi Women's Hostel, supported by urgent action fund, to set up crisis centers for rape victims, but they have not been able to go outside Nairobi.

Now, the question is what next? Mr. Chairman, I want to say that the arbitration team led by Kofi Annan must stay in place not only during the mediation, but to ensure that the outcome of any agreements that are reached. The ultimate responsibility lies with the local leaders, but there are too many vested interests for them to be left alone to ensure complete compliance of whatever agreement comes. So the arbitration team must supervise the entire process to the end, even if it is until the next election.

There must be a political settlement reached by the two parties, that must contain specific constitutional and legal proposals, that must be in an agreed package, that must be immediately passed into law as soon as Parliament opens. And the political settlements should contain clear reforms dealing with security, civil service, and judicial reform, and the settlement must contain a mechanism for transitional justice that should be entrenched into the Constitution.

Specifically I would like to go into the constitutional and legal reforms. In terms of election reforms, I do believe that the Electoral Commission of Kenya, as currently constituted, should be disman-

tled and a new independent body reconstituted, staffed by a professional Secretariat and headed by a leaner number of commissioners who should be appointed through a process of parliamentary vetting.

This new commission should be set up immediately and embark on new reforms, including the redrafting—the redrawing of constituency boundaries and redress of past gerrymandering and inequitable distribution of constituency and wards in this country. This has been a very serious political problem which has not been resolved.

The commission should then begin after to prepare elections for Parliamentary, Presidential and civic elections that need to be held within at least 24 to 36 months. Parliament should also ensure that election reforms include an MMPR, Mixed Member Proportional Representation, to include issues of gender equity and minorities.

We need to also seek constitutional changes in executive power reforms, which should include a power-sharing arrangement where the head of state and the head of government share the reins of power, with the more powerful ministries being shared between them. This power-sharing arrangement should include a mechanism that makes it possible for all of the regions of Kenya to be represented in the executive arm of government.

We already have a blueprint for this. The provisos of the executive chapter in the Bomas draft, read together with the amendments in the Naivasha Accord, should be adopted and passed by Parliament through the Constitution amendments package. The judicial reform—I have already suggested which amendments can be made, including the judicial service bill which will allow independents of the judiciary from the executive. Civil service reform must be done. This also is vital as the head of state and head of government apply a power-sharing arrangement.

We should also ensure that the appointments of military—key positions in the military, police and security intelligence are shared out, as well as the Parliamentary appointments of permanent Secretaries and Ambassadors.

The Kenya National Commission of Human Rights, which is chaired by Mr. Kiai here, and the Anticorruption Commission should be entrenched in the Constitution to give them independence.

Mr. Chairman, land reform is an issue that must be urgently addressed. There must be an independent constitutional commission on land to be set up, and there is an urgent need for land redistribution. And in this case, the government must, as they did at the time of independence, go ahead and purchase land from individuals and multinationals and be able to redistribute this to those who are displaced and those Kenyans who are landless.

There is a poverty index that was introduced by Kibaki's Government, and this can be used to ensure that the poor do benefit, and not the wealthy, as has been done in the past. There must be a work ethic, however, that is engineered to ensure that those who get land are able to work the land and able to get bounty from the land.

I have talked about transitional justice and the need to set up and establish a Truth and Justice Reconciliation Commission. And I have brought the report of the task force that had advised to set up the commission, and I would like to submit this report to your committee for reference.

Mr. PAYNE. Without objection.

[NOTE: The information referred to is not reprinted here but is available in committee's record.]

Ms. NDUNGU. Other immediate actions must be the immediate demobilization of the youth. Now, we need to recognize that 89 percent of the population of Kenyans are under the age of 31, many of them without gainful employment. So there is need for implementation of a Marshall Plan for the youth. And this must include a modern—what we call a Swyneerton plan. Swyneerton was a gentleman who established a plan that was to bring in the Mau Mau from out of the field and to be able to put them into gainful employment and into a situation where they can start to own assets and property, away from the violence and into some structured kind of employment. So that must be done.

The intergeneration gaps that are in Kenya need to be addressed. The fact is that there is a traffic jam. That is what I call it. There are a lot of older people in Kenya who are in government, since independence time and are still in those jobs when there are much younger, more qualified, more dynamic people who should be in those positions.

And we must have some kind of transition, including whether or not there needs to be an attractive package so that there is outward movement of the older generation and an inward movement of the younger generation.

Mr. Chairman, I would like to point out that I do believe one of the problems also that has contributed to this problem is what I call a "masculinity in crisis." For the last decade, it has become obvious that many men are finding it difficult to move from the traditional and cultural roles to the modern roles in a fast-growing economy like Kenya. And as women increasingly become bread winners, young men, particularly in the rural sector, spend their time in marketplaces chatting, discussing politics. They eat three meals a day, but they don't have anything to do. And therefore the movement from the marketplace to the roadblocks should not have come to any surprise.

And I think that we need to ensure that as we focus on the advancement and empowerment of women, an intervention has to be made to reinstate the new male model around engaging in gainful employment and equal relationships as part of society's expectations of a progressive and modern Kenyan man. This will deal with some of the problems that we are seeing.

Finally, we need to have reconstruction, immediate resettlement of displaced people, reinvestment, restoration of our national image, and validation of cultural and traditional mechanisms for peace and justice and for national healing.

Finally, Mr. Chairman, I would like to state firmly and categorically, Kenya is not another Rwanda. Many peace initiatives and humanitarian interventions are being done by Kenyans for Kenya. To this end, I would like to ask that international pressure or

intervention should not in any way involve sanctions that will hurt the poor. The pressure to act should be on the political class in re-deeming the image and reputation of Kenya as a stable and peaceful country. As Kofi Annan has said, the leaders on both sides must make hard choices. The pressure to act, then, must affect them as individuals to ensure that this is done. I thank you.

Mr. PAYNE. Thank you very much. That is a very complete testimony.

[The prepared statement of Ms. Ndungu follows:]

PREPARED STATEMENT OF MS. NJOKI NDUNGU, FORMER MEMBER OF PARLIAMENT,
NAIROBI, KENYA

INTRODUCTION:

The current crises in Kenya, *prima facie*, seems to be an Electoral dispute but a close study reveals a Country that been forced to own up to a deep rooted simmering conflict affecting political, economic, social and cultural aspects of the Nation State itself.

The cause of the current political crises in Kenya is two pronged. First, the poorly managed electoral process dealing with the Presidential Poll result. This acted as a trigger for the Second more entrenched and deep rooted problem that manifested itself in the explosion of violence of a magnitude unknown in post-independent Kenya. The simmering anger that was ignited is a result of a combination of historical injustices from the time of Kenya's colonial past, and the failure of successive governments of Kenyatta, Moi and Kibaki to address comprehensively the problems of inequality of its citizens.

In particular the challenges presented by landlessness, gender inequality, youth unemployment, the widening gap between the extremely wealthy and extremely poor citizens and the marginalization of some communities. Further political campaigns hyped up expectations of Kenyans in promising to redress these issues overnight whereas a structured and systematic approach with realistic time-lines is required to do so. Resolving the issues around truth and justice, particularly around issues of corruption and past violence also meant that the political class on both sides of the divide would have to give up their own in a no "sacred cows" policy which neither was/is willing to do.¹

Signs of trouble were evident long before the Election in 2007. Most notable is the recurring violence, murders and evictions that happened in the Rift Valley, just before the General Election in 1992² and 2002, and in Likoni, Coast Province in 1997. All these events were politically instigated, with none of the main organizers, although they have been identified by the Akiwumi Commission, prosecuted.³ There has been no concentrated efforts address peace building among different communities and to return or resettle displaced persons. Both these factors have lent to the impunity that is being witnessed of those who started the violence in Kuresoi in November before the General Election and eventually in Eldoret in December 2007. Hate Speech was and is still rife in political rallies, on vernacular FM Radio stations, SMS (short text messages), Emails and in the blogosphere.

Further, politicking and posturing on narrow agendas, such as the contentious MOU⁴, rather than focusing on national interest, led to the rejection by oblivious Kenyans of the new draft Constitution in 2005, who threw away its proposed new structures for power sharing between a President and Prime Minister, the reduction of presidential powers, increased parliamentary vetting of public appointments and institutions to deal with the land question, devolution of resources, and addressing the inequalities of the marginalized. If that Constitution was in place, the tragedy of the last few weeks would have been avoided.

The same politicking and posturing but from the opposite end frustrated the enactment of the minimum reform package which would have ensured *inter alia* the professionalism and independence of the ECK, and would have reduced the powers

¹The Ndungu Report which investigated Land grabbing in the past, adversely named over 100 MP's sitting on both sides of the House in the last Parliament. Most are still political 'Big Wigs' in the current standoff.

²Official statistics in 1992 clashes alone report 779 dead and 50,000 displaced.

³Among them key ODM politicians who are currently members of the current Parliament.

⁴The Orange team for the No Vote was led by NARC leaders led by Raila who felt short-changed on the MOU.

of the winner-who-takes-it-all.⁵ Finally, the political class dillydallied and did not adopt the Recommendations by the Task Force led by Professor Makau Wa Mutua, to set up a Truth, Justice and Reconciliation Commission which would have resolved many past injustices through a peaceful mediation.

THE ELECTION:

The Spark that was to ignite the violent unrest was the presidential poll result. There were ominous signs that the poll would be problematic. Over the last 4 months before the poll media houses were reporting weekly Opinion polls that indicated that it was a tight race between Kibaki and Raila and many coined the phrase 'too close to call'. In Kenya, this should have sent out a blaring warning that it was too close for comfort. And indeed both Kibaki and Raila got over 4 million votes each (out of over 8 million votes cast) but neither got over 50% of the vote. Conversely this also meant that over 40% of the electorate rejected either candidate. Both sides engaged in electoral malpractices: there was abnormal voter turnout in both Kibaki's and Raila's strongholds. In addition to this tense situation, the Electoral Commission of Kenya proceeded to tally the presidential vote in a manner so careless that no reasonable person can be certain, (including all observers present), who actually won the presidential poll.

Many serious questions were raised during the tallying and the announcement of the Presidential results as there were clear discrepancies, illegalities, and disparities with regard to the results released by the ECK. The ECK Chairman himself had during the process of tallying, continually referred to the possibility of results "being cooked" and voiced concerns about the unexplained disappearance of polling officers with the results in certain areas. However, with all these anomalies he still went ahead and declared a result. Kibaki's PNU are convinced he won and that Raila was never going to accept loss anyway. Raila's ODM are convinced the poll was stolen with the help of the ECK. What a powder keg and then top it up with the fact that the winner of this election (which is too close to call, with all manner of confusion unprecedented in a Kenyan Election), takes all.

THE VIOLENCE.

The Reported violence can be categorized in five distinct types:

1. *Spontaneous outrage and protest against a result perceived to be massively flawed.*

Many demonstrations, some organized and others sporadic riots in protest of the poll result. Many of these took place in mainly cities and towns often leading to running battles with security forces (police). Some protestors vented anger in the destruction of property and lives were lost. Some fighting in this instance took place between known PNU and ODM supporters. Most of these incidents were recorded between the nights of the 28th December 2007 to the 6th January 2008 and were widespread all over the country with hotspots in Kisumu, Mombasa, Eldoret, and Nairobi's Slum Areas.

2. *Organized and orchestrated violence targeted at certain communities living in their opponents strong hold;*

These violent incidents composed of organized groups of youth (read ODM) targeting and killing other Kenyans on the basis of their ethnicity and perceived although not necessarily real supporters of their opponents (read PNU)⁶. The youths traveled around in Lorries, targeting specific properties and attacking persons based their identification cards. There were leaflets printed and circulated warning families to leave. The violence started in Eldoret spreading to other areas of Uasin Gishu District and Spilling over into Nakuru District. Similar attacks are reported in Nyanza, Western and Nairobi. There is sufficient intelligence to suggest that such violence particularly in the Rift Valley was planned, financed and implemented with the knowledge of some political actors. There is further evidence to suggest that some vernacular FM Radio stations had prior to the Election sent coded messages that pointed to the eviction of particular communities from their homes, whatever the outcome of the election—a damning indictment that the

⁵ Justice Minister, Martha Karua, undermined all efforts by the Committee on the Administration of Justice and Legal Affairs to midwife this minimum package in the House.

⁶ This is interesting, particularly when it is a known fact that many Kenyans discarded the 3-piece suit that is vote for President, MP and Councillor only from one party, so it is impossible to know who exactly voted for whom. However, several exit polls indicate that many kikuyus in Nairobi voted for Raila, and luyhas for Kibaki etc

election result was used as a pretext for pre-planned evictions. It is clear that many crimes against humanity have taken place.

3. *Revenge attacks following (2) above*; As revenge attacks began they take on the same features as the first attacks, only this time PNU versus ODM. Evictions, robbery, destruction of property, loss of life and limb. Preceded by leaflets and SMS sent to would be victims. It is also clear that crimes against humanity are taking place during the revenge attacks.
4. *Police violence and excessive use of Force* As the police struggle to cope with the rising violence and insecurity, they have in some places been overwhelmed and state they have used live ammunition as a last result. However there have been many cases of cruel and excessive force, use of live bullets and rogue officers killing innocent protestors. In particular the forces used in Kisumu during the first 2 weeks after the elections should be subject to an inquiry to establish whether crimes against humanity have taken place.
5. *Criminal Gangs and general lawlessness*. Criminal Elements have taken over many parts of Kisumu, Eldoret and elsewhere. There is wanton destruction of railways and road, where gangs rob and extort money from members of the public. Concerns have been raised as to whether increasing unemployment has led to the increased crime (There have been massive job layoffs in the formal sector—an estimated 500,000 jobs on the line, and many casuals have been laid off. The unemployment in the Informal Sector will increase this figure ten-fold).

In general most of the displaced are women and children who have horrific stories to tell of the mayhem and violence. Almost 1000 lives have been lost and over 500,000 persons are displaced.

Of particular concern are the sexual attacks on women. In initial attacks (Violence category 1 and 2) many women were gang raped in their homes or while fleeing to safety. Many have had no access to Post Exposure Prophylaxis or ARV's which should be administered within 72 hours without which the risk of infection of HIV is very high.⁷ Many rapes and sexual assaults are now happening in the IDP camps, where the environment is still high-risk. Further many Women and Girls are being sexually exploited in exchange of food, clothing and medicine. Further degradation of women has been seen by attempts of some gangs to strip women wearing trousers.

WHAT NEXT?

1. The Arbitration team lead by Kofi Annan must stay in place not only during the mediation but to ensure the outcome of any agreements that may be reached. Although the ultimate responsibility lies with local leaders there are too many vested interests amongst them to assure the Kenyan Citizens of complete compliance. The Arbitration team must supervise the entire process to the end. ie. until the next Presidential Elections are held.
2. The political settlement reached by the two Parties must contain specific constitutional and legal proposals that should be in an agreed package to be immediately passed into law as soon as Parliament re-opens.
3. The political settlement should also contain clear reforms dealing with Security, Civil Service, and Judicial Reform.
4. The settlement must also contain a mechanism for Transitional Justice and a Commission on Land that should be entrenched in the Constitution.

WHAT THE POLITICAL SETTLEMENT SHOULD CONTAIN:

A. CONSTITUTIONAL AND LEGAL REFORMS.

ELECTORAL REFORMS

The Electoral Commission of Kenya as currently constituted should be dismantled and a new independent body reconstituted, staffed by a professional secretariat and headed by a leaner number of Commissioners. The Members should be nominated from the parliamentary political parties, through a proportional representation formula to be declared by the Speaker.

The Commission should be set up within 30 days of the passing of the Constitutional amendments and embark immediately on key electoral reforms including the

⁷ Unconfirmed reports state that there are more than 1,500 women rape victims within the camps in Nairobi area.

redrawing of constituency boundaries (which should be its independent mandate) and redress of past gerrymandering and inequitable distribution of constituency and wards in the Country.

The Commission should then begin preparations for a General Election, of Presidential, Parliamentary and Civic Elections to be held within 24 months from the date of the passing of Constitutional Amendments. (This date should be incorporated in the constitutional amendments package and in the written political settlement).

Parliament should ensure that Electoral Reforms contain a clause to introduce together with the Constituency First-past-the-post, a formula for distribution of seats on a Mixed Member Proportional Representation (MMPR) to ensure representation of minorities and marginalized groups, and a specific reference to gender equity.

EXECUTIVE POWER REFORMS

A power sharing arrangement must be introduced, where the Head of State and the Head of Government share the reins of power. The more powerful Ministries should be held equally by their individual parties. The Provisos of the Executive Chapter in the Bomas Draft Constitution as read with the Naivasha Accord as agreed by the Parliamentary Select Committee in November 2004 (with or without negotiated changes) should be adopted, and passed by Parliament through the Constitutional Amendments Package.

JUDICIAL SERVICE REFORM

The already drafted Judicial Service Bill should be part of the legal package of proposed legislation agreed during the political settlement and immediately passed into law when Parliament reopens. This will give the Judiciary the necessary financial Independence it needs from the Executive. Further the powers of the Judicial Service Commission should be amended so as to give Parliament the necessary vetting powers in the appointment of Judges.

CIVIL SERVICE REFORM.

Permanent Secretaries and Ambassadors should be appointed through a Process of Parliamentary vetting. The Head of State and the Head of Government should apply a power sharing arrangement on Ministries that have security and defence oversight and accordingly decided the appointment of key positions in the Military, Police and Security Intelligence.

The Kenya National Commission on Human Rights and the Kenya Anti-Corruption Commission should be entrenched in the Constitution to ensure strict independence from the Executive and other arms of Government.

B. LAND REFORMS.

This is a critical issue that must be addressed urgently and comprehensively. An independent Constitutional Commission on Land must immediately be set up. On its immediate agenda is the urgent need for land redistribution. In order to do this the Government would have to purchase land from private individuals and multinationals that own large tracts of arable land and create new settlement schemes. To his credit President Kibaki did introduce ranking of the neediest through a poverty index. This must be used inter also to ensure land resources are used to help the poor. However a work ethic must also be engineered so that the beneficiaries of such settlement extract bounty from the land. Justice must also be done. Where in the past sale of land took place between willing buyer, willing seller, there can be no justifiable excuse for the latter to evict the seller. While addressing the past and comprehensive land policy is urgently needed and needs to be placed before parliament for adoption. Finally there is need to rethink the Kenyan culture with regard to land ownership. Dialogue should be encouraged to think about title of property that is not necessarily land. Housing development and High rise apartment buildings away from agricultural must be the way into the future.

C. TRANSITIONAL JUSTICE.

In 2003 a taskforce on the establishment of a Truth, Justice and Reconciliation Commission went around the Country taking views from members of the Public. The public was unanimous that there was urgent need for such a Commission. The terms of reference for the Commission are to investigate political assassinations and killings, Massacres and possible Genocides, Political Violence, Politically instigated ethnic clashes and violations of economic, social and cultural rights. (The full report of the Task Force is herewith attached). The urgency of the need to set up this Com-

mission is self explanatory. It is a critical institution through which Kenya can find itself and learn to forgive.

D. OTHER IMMEDIATE ACTIONS.

1. Immediate Demobilizing of gangs of youth: Recognizing that 89% of the population are Kenyans under age 31, many without gainful employment there is need for immediate implementation of the Marshall Plan for the Youth, This must include a modernized 'Swyneerton' Plan where young people can engage not only in gainful employment but in ownership of assets and property.
2. The intergenerational gaps must be closed: There is need to retire from public service any person who was a young Kenyan at the advent of independence. There has been a tendency of the 'wazee's to sit on jobs and opportunities which were available to them when they were younger, creating a traffic jam effect: anger and frustration of a waiting in the line younger generation. An attractive package for retirement should be offered to encourage outward movement of the older generation. The same should be done in terms of holding of political office.
3. Masculinity in crises: For the last decade it has become obvious that many men are finding it difficult to move from traditional and cultural to modern roles in a fast growing developing economy such as Kenya. Increasingly women are breadwinners, while young men, particularly in the rural setting spend their time in the market places, mostly discussing politics. The movement from the marketplace to the road blocks for violence should then not come as any surprise. As we focus on the advancement and empowerment of women, an intervention must be made to reinstate the new male model around engaging in gainful employment and equal relationships as a part of society's expectations of a progressive and modern Kenyan man.
4. Finally, there are immediate challenges of Reconstruction, Resettlement of displaced, Reinvestment, Restoration of our national Image, and validation of traditional and Cultural mechanisms for peace and justice and for national healing.

Finally I would like to state firmly and categorically that Kenya is not another Rwanda. Many peace initiatives and humanitarian interventions are being done by Kenyans for Kenya. To this end international pressure should not in any way involve sanctions that will hurt the poor. The pressure to act should be on the political class in redeeming the image and reputation of Kenya as a stable and peaceful country. As Koffi Annan has said the leaders on both sides must make hard choices; the pressure to act then must affect them directly as individuals to ensure that this is done.

Thank you.

I would like to acknowledgments the use in this analysis of writings, thoughts, and discussions of with Cabral Pinto, Mugambi Kiai, Betty Murungi, Vital Voices—the Women's Agenda, Women in Kenya Together (WONET), Urgent Action Fund, Jane Kiragu. John Mbaria, et al.

Mr. PAYNE. Mr. Kiai.

STATEMENT OF MR. MAINA KIAI, CHAIRMAN, KENYA NATIONAL COMMISSION FOR HUMAN RIGHTS, NATIONAL COMMISSION ON HUMAN RIGHTS

Mr. KIAI. Thank you very much. Thank you very much, Mr. Chairman. I have the benefit of having a lot of the comments I had having been said. So I will be quite brief in this presentation.

I speak here today on behalf of the Kenyan National Commission on Human Rights, as well as for Kenyans for Peace through Truth and Justice. We are a coalition bringing together more than 50 human rights, legal and governance groups in Kenya. Kenya is at a crossroads that will mean either the complete disintegration of the country or the beginning of a new, more democratic, sustainable nation, suited to the needs and aspirations of the Kenyan people in the 21st century.

In a deeply painful and costly manner in terms of lives lost and destruction wrought, the crisis in Kenya has given us a unique opportunity to move forward in a way that we have been advocating for the last 20 years. In a sense, we are at our own civil war movement that the U.S. was at in 1861. And just as that Civil War was pivotal in establishing and solidifying the democratic credentials of the United States, this moment for us could lead us to much greater heights, if properly handled both domestically and internationally, and hopefully also avoid the civil war element that the U.S. went through.

In this context, the mediation going on under the leadership of Kofi Annan, Graca Machel and Benjamin Mkapa is really the last best chance for Kenya to move forward. Whatever can be done to keep the players at the table and keep them there in good faith is critical. And efforts that delay or subvert the talks, whether through insensitive statements and actions or by trying to prolong the talks through acts of filibustering, must be condemned. Consistent regional and international pressure is necessary, especially on the hardliners who think that the crisis will blow over. The consequences of the failure of the mediation efforts are too dire to imagine, not just for Kenya but for the entire subregion.

What is going on in Kenya is a political crisis with ethnic manifestation, as you so said, Mr. Chairman, because our politics is organized ethnically. Clearly there are cleavages and differences in our society that have erupted brutally to the surface, but these have erupted due to the failure of peaceful means of resolving and addressing these differences, including the failure of elections and political reforms that were promised to Kenya in the 2002 elections.

The crisis in Kenya was foreseeable. In March 2007, the National Commission submitted a memorandum to President Kibaki, urging him to maintain the gentleman's agreement that had been in place since 1997 whereby all Parliamentary parties made nominations for appointment to the Electoral Commission of Kenya. We argued that unilateral abandonment of the agreement would likely invite chaos and instability if the election was disputed. And moreover, since January 2006, we witnessed consistent attempts by the state to reduce democratic space and instill fear in society.

We know now that about 1,000 people have been killed in the 1 month since violence erupted. This compares with 3,000 people killed between 1992 and 1998 in the state-instigated clashes. During that same period of 1992 to 1998, more than 300,000 people were internally displaced and most have not returned to their farms and homes. And this is exactly the same number we have had in the last 1 month.

Part of the reason why militia, and militias on both sides, have been so potent and dangerous is that they arose from the earlier violence of the 1990s and were never demobilized, nor was there a process to deal with the root causes of that violence, with the Kibaki Government choosing to sweep the matter under the carpet despite campaign promises to the contrary.

With grievances bubbling and fermenting close to the surface, it was relatively easy to reactivate these militias, using methods similar to those used in the 1990s. And most important, the pay-

masters and planners of the 1990s violence were never held accountable. It is estimated that in the month since the crisis started, the Kenyan economy has lost about US\$3 billion and about 400,000 jobs. Moreover, the crisis has affected severely the economies of Uganda, Rwanda, DR Congo and Southern Sudan, and could bring them to ruin if not checked.

You will note, Mr. Chairman, that all these nations have a history of violence and conflict that could be easily awakened by economic collapse in Kenya.

We have observed the five forms of violence that my colleague, Ms. Ndungu, has gone through, so I won't go into them except perhaps to say that militia action is on both sides. There has been militia action supporting the ODM, but also militia action supporting PNU in Nakuru, Naivasha, which are areas of the Rift Valley, and in Nairobi.

I would also like to say that the police element has been interesting because the police has been uneven in the way it has been implementing itself and its work. In some stronghold ODM areas, the police have been shooting to kill, while when confronted with pro-PNU militia, they opted to negotiate with the groups. And we know that in the Eldoret area, the police largely stood by and watched as pro-PNU supporters were killed and the houses burned. So we have seen an unevenness issue which for us is very disturbing.

Now, we have said the violence is neither genocide nor ethnic cleansing. The root of the problem is not that different ethnic groups decided they could no longer live together. The root of the problem is the inability of peaceful means to address our grievances. Now, for this to be genocide, there would have to be either state complicity or state collapse, and the first obligation would be for the state to provide adequate security for those at risk. Instead, we have uneven and selective policing with emphasis on preventing Raila Odinga from holding protests in Nairobi, rather than protecting IDPs and others at risk across the country.

We therefore strongly believe that the quickest and most effective way to reduce the violence is progress in the current talks.

Now, it is clear to us that the flagrant effort to steal the Presidential election was the immediate trigger for the violence. Everybody, all independent observers, have said so. In addition, it is important to note that there are only six countries that have recognized or congratulated Mwai Kibaki since that election. And I will name them for you, to understand the kind of company that Mwai Kibaki is keeping. These are Somalia, Zimbabwe, Swaziland, Morocco, Uganda and Kuwait. Those are the only countries in the world. It cannot be that everybody in the world is wrong, with one side, plus the six countries, right.

Now, since 1992, Kenya's elections have been progressively better and fairer, culminating in the 2002 elections, which were the best ever and the 2005 constitutional referendum. The effect of this progression is that Kenyans finally believed in the power of the vote as a way of peacefully resolving our differences, a fact confirmed by voting trends even in the recent Parliamentary elections that saw almost 70 percent of the incumbents lose their seats.

When this sense of empowerment was subverted and peaceful legal spaces for protests were disallowed, it is not surprising that frustrations boiled over and violence ensued. We have documented a lot of these facts. And with your permission, Mr. Chairman, I will present them to you on record as well as my written testimony.

But with the benefit of hindsight, there were some steps taken that paint a picture of a well-orchestrated plan to ensure predetermined results. These include, first, President Kibaki's position to abrogate the agreement of 1997 on the formula for appointments to the electoral commission, ensuring that all of the commissions were appointed by him alone.

Secondly, an administrative decision within the ECK to give responsibility to commissioners for their home regions, something that had never been done before, meaning that they as commissioners appointed all the election officials in the constituencies in the home regions in a manner that created conflicts of interest.

Thirdly, the rejection of an offer from IFES to install a computer program that would enable election officials in the constituencies to submit results electronically to Nairobi and then onto a giant screen available to the public, making it virtually impossible to change results. And the response of the ECK was that they trusted humans more than computers in this issue.

Fourth was a decision to abandon the use of ECK staff in the verification and tallying centers in favor of casual staff provided by the commissioners directly.

And finally, a refusal to ensure that election officials in areas with large predictable majorities for any of the candidates came from different areas so as to reduce the likelihood of ballot stuffing.

Now, what is the way forward and what can we all do? I think for us it is important that the way forward must be centered on truth and justice as the only sustainable roads to peace and development. This is the time for Kenya to end the impunity that has been a feature of our history since independence; also to end the winner-take-all, first-past-the-post system.

Specifically, we are calling for an international independent investigation into the 2007 Presidential election process in order to come to closure on those elections, find out who did what and why, who ordered it and promote accountability.

We are calling for an international independent investigation into the post-election violence from citizens and the police—and that is very important, the police—so that there is accountability on all sides.

We are also asking for an interim transitional government to be formed, with limited powers of governance and for a limited time, maximum of 2 years, with Kibaki and Odinga exercising equal powers. And the primary duties of that interim government should be to undertake constitutional reform, especially explore ways of reforming the imperial Presidency, motivate electoral reforms, police reforms, judicial reforms, land reforms, civil service reforms, devolution of power and conduct new elections at the end of its term.

That interim government should be charged with cooling passions and starting the process of reconciliation through a Truth,

Justice and Reconciliation Commission that starts operations immediately after the new elections.

Now, we think that it is important that Presidential elections be held at the end of the interim government's term to inspire confidence in Kenya's electoral processes and really as a sign of the new Kenya. And we also note that a lot of the work for all of these ideas has been done before. Kenya would not be starting from scratch. A lot of documents and commission reports and task forces on all of this, and drafts on constitutional documents, are there.

Now, to ensure that there is good faith in the mediation, it is imperative that the United States Government work with the rest of the international community to maintain pressure on Kenya's leaders to treat the mediation with utmost seriousness. To this end, we welcome United States leadership in raising the crisis in Kenya to the U.N. Security Council and call for pressure at this level to be maintained and, indeed, increased.

We also urge Congress to request the release of the exit poll conducted by the International Republican Institute, without delay, so as to maintain pressure on all sides to negotiate in good faith. In addition, we urge Congress to work with the European Union, to have the EU Observation Mission Report released immediately. In case of continued intransigence from any of the parties, we call on Congress to impose travel bans on the hardliners on both sides, and especially those implicated in instigating violence, whether through militia or through the police. And we urge that these travel bans be extended to hardliners in the civil service and their immediate families. It is important that they understand what we are going through in Kenya. And if the families are in school in America, they don't know what we are going through.

Finally we are asking that assets of the hardliners and those involved in violence should be traced and those assets frozen. And we also believe that U.S. military and security assistance be frozen immediately, and that any assistance from the United States should be channeled through nongovernmental agencies. I thank you for this opportunity and I welcome questions.

[The prepared statement of Mr. Kiai follows:]

**U.S. HOUSE OF REPRESENTATIVES
HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBMITTEE ON AFRICA AND GLOBAL HEALTH**

DATE: WEDNESDAY, FEBRUARY 6, 2008
TIME: 10.00 A.M
SUBJECT: THE POLITICAL CRISIS IN KENYA; A CALL FOR JUSTICE & PEACEFUL RESOLUTION
NAME: MAINA KIAI
TITLE: CHAIRMAN, KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

BACKGROUND

1. Thank you for this opportunity to discuss the crisis in Kenya. My name is Maina Kiai and I am the Chairperson of the Kenya National Commission on Human Rights (KNCHR), an independent state body charged with protecting and promoting human rights in Kenya. Previously, I served as founding Executive Director of the Kenya Human Rights Commission, a non-profit organization based in Kenya; Africa Director at Amnesty International in London; Africa Director at the International Human Rights Law Group (now Global Rights) based here in Washington DC; and Research Fellow at TransAfrica Forum also here in Washington DC. I speak on behalf of the KNCHR, as well as for Kenyans for Peace through Truth and Justice (KPTJ), a coalition bringing together more than 50 human rights, legal and governance groups in Kenya.
2. Kenya is at a cross-road that will mean either the complete disintegration of Kenya or the beginning of a new, more democratic, sustainable nation suited to the needs and aspirations of the Kenyan people in the 21st Century. In a

deeply painful and costly manner—in terms of lives lost and destruction wrought—the crisis in Kenya has given the country a unique opportunity to move forward in a way that we have been advocating for the last 20 years. In a sense, Kenya is at its “civil war” moment that the US was at in 1861. Just as that war was pivotal in establishing and solidifying the democratic credentials of the US, this moment could lead Kenya to much greater heights if properly handled both domestically and internationally.

3. In this context, the mediation currently going on under the leadership of Kofi Annan, Graca Machel and Ben Mkapa is the last best chance for Kenya to move forward. Whatever can be done to keep the players at the table, and keep them there in good faith, is critical. And efforts that delay, or subvert the talks—whether through insensitive statements and actions or by trying to prolong the talks through acts of filibustering—must be condemned. Consistent regional and international pressure is necessary especially on the hardliners who think that the crisis will blow over. The consequences of the failure of the mediation efforts are too dire to imagine not just for Kenya but for the region.
4. What is going on in Kenya is a political crisis with ethnic manifestation because politics in Kenya is organized ethnically. Clearly there are cleavages and differences in Kenyan society that have erupted brutally to the surface. But these have erupted due to the failure of peaceful means of resolving and addressing these differences, including the failure of elections and political reforms promised to Kenya in the 2002 elections.
5. The crisis in Kenya was foreseeable. In March 2007, the KNCHR submitted a memorandum to President Kibaki urging him to maintain the “gentleman’s agreement” that had been in place since 1997 whereby all parliamentary parties made nominations for appointment to the Electoral Commission of

Kenya. We argued that unilateral abandonment of the agreement would likely invite chaos and instability were the elections disputed. Moreover, since January 2006 we witnessed consistent attempts by the state to reduce democratic space and instil fear in society.

THE EXTENT OF THE CRISIS

6. Some 1000 people have been killed in the one month since violence erupted on December 30, 2007. Note that 3000 people were killed between 1992 and 1998 in the state instigated clashes in the country. During that same period, more than 300,000 people were internally displaced, most of whom have not returned to their farms and homes. In the month since the elections, an additional 300,000 people have been internally displaced.
7. Part of the reason why militia—on both sides—have been so potent and dangerous is that they arose from the earlier violence of the 1990s and were never de-mobilized. Nor was there a process to deal with the root causes of that violence, with the Kibaki government choosing to sweep the matter under the carpet, despite campaign promises to the contrary. With grievances bubbling and fermenting close to the surface, it was relatively easy to reactivate the militia using methods similar to those of the 1990s. Most important, the paymasters and planners of the 1990s clashes were never held accountable.
8. It is estimated that in the month since the crisis started the Kenyan economy has lost about US \$3 billion and about 400,000 jobs. Moreover the crisis has severely affected the economies of Uganda, Rwanda, Eastern DR Congo, and Southern Sudan and could bring them to ruin if not checked. All these nations

have a history of conflict and violence that could be reawakened by economic collapse.

9. We have observed 4 forms of violence:
 - i) Spontaneous uprisings of mobs protesting the flaws in the presidential elections. These mobs looted, raped and burnt down buildings in an anarchical manner.
 - ii) Violence organized by ODM-supporting militia in the Rift Valley that was aimed at perceived political opponents. The initial militia action attracted organized counter-violence from PNU supporters especially in Nakuru, Naivasha areas of the Rift Valley, and Nairobi.
 - iii) Excessive use of force by the police in ways suggesting “shoot to kill” orders against unarmed protesters mainly in ODM strongholds including Kisumu, Kakamega, Migori, and the Kibera slum of Nairobi. Policing has been uneven in its implementation. In some strong ODM areas, the police have been shooting to kill, while when confronted with pro-PNU militia, they have opted to negotiate with the groups. However, in the Eldoret area, the police largely stood by and watched as pro-PNU supporters were killed and their houses burnt.
 - iv) Local militia in pro-PNU areas, on receiving internally displaced persons (IDPs) from the Rift Valley, have mobilized in sympathy and turned on perceived ODM supporters, killing them, and burning their houses.
10. The violence is neither genocide nor ethnic cleansing: The root of the problem is not that different ethnic groups decided they could no longer live together. The root of the problem is the inability of peaceful means to address

grievances. For this to be genocide there would have to be either state complicity or state collapse and the first obligation would be for the state to provide adequate security for those at risk. Instead we have uneven and selective policing with emphasis on preventing Raila Odinga from holding protests in Nairobi rather than protecting IDPs and others at risk across the country. We therefore believe that the quickest and most effective way to reduce the violence is progress in the current talks.

THE ELECTION TRIGGER

11. It is clear that the flagrant effort to steal the presidential election was the immediate trigger for the violence. All independent observers have said that the tallying process was so flawed that it is impossible to tell who won the presidential election. Since 1992, Kenya's elections have been progressively better and fairer, culminating in the 2002 elections which were the best ever, and the 2005 constitutional referendum. The effect of this progression is that Kenyans finally believed in the power of the vote as a way of peacefully resolving differences, a fact confirmed by voting trends in the recent parliamentary elections that saw almost 70 percent of incumbents lose their seats. When this sense of empowerment was subverted, and peaceful legal spaces for protests were disallowed, it is not surprising that frustrations boiled over and violence ensued.
12. We have documented some of the facts and analysis that make clear that the flaws in the tallying of presidential votes rendered untenable the conclusion that Mwai Kibaki was validly elected.
13. With the benefit of hindsight, there were steps taken that paint a picture of a well orchestrated plan to ensure a pre-determined result. These include:

- i) President Kibaki’s decision to abrogate the agreement of 1997 on the formula for appointments to the Electoral Commission ensuring that all the Commissioners were appointed by him alone;
- ii) An administrative decision within the ECK to give responsibility to Commissioners for their home regions, something that had never been done before, meaning that they appointed all the election officials in the constituencies in their home regions, in a manner that created conflicts of interest;
- iii) The rejection of an offer from IFES to install a computer program that would enable election officials in the constituencies to submit results electronically to Nairobi and then on to a giant screen available to the public making it virtually impossible to change results;
- iv) A decision to abandon the use of ECK staff in the Verification and Tallying Centre in favour of casual staff provided by the Commissioners directly; and
- v) A refusal to ensure that election officials in areas with large predictable majorities for any of the candidates came from different areas so as to reduce the likelihood of ballot stuffing.

WAY FORWARD AND ROLE OF US

CONGRESS AND GOVERNMENT

14. At this “constitutional moment” that Kenya has reached, we believe the way forward must be centred on truth and justice as the only sustainable road to peace and development. This is the time for Kenya to end the impunity that

has been a feature of our history since independence, and also to end the “winner take all” “first past the post” system. Specifically, we call for:

- i) An international independent investigation into the 2007 presidential election process in order to come to closure on the elections, find out who did what and why; who ordered it; and promote accountability;
- ii) An international independent investigation into the post election violence—from citizens and police--so that there is accountability on all sides.
- iii) An interim transitional government to be formed with limited powers of governance and for a limited time--between 1 and 2 years—with Kibaki and Odinga exercising equal powers.
- iv) The primary duties of this interim government should be to undertake constitutional reform, and especially explore ways of reforming the current Imperial Presidency; motivate electoral reforms, police reforms, judicial reforms, land reforms, civil service reforms, devolution of power; and conduct new elections at the end of its term.
- v) The interim government should also be charged with cooling passions and starting the process of reconciliation through a Truth Justice and Reconciliation Commission that starts operations immediately after the new elections. It is important that presidential elections be held at the end of the interim government to inspire confidence in Kenya’s electoral processes, and as a sign of the new Kenya.
- vi) It is also important to note that significant work in all of these areas of reform has already been done in various constitutional

drafts and also by Government Commissions and Task Forces so Kenya would not be starting from scratch.

15. To ensure that there is good faith in the mediation it is imperative that the U.S. Government work with the rest of the international community to maintain pressure on Kenya's leaders to treat the mediation with utmost seriousness. To this end, we welcome U.S. leadership in raising the crisis in Kenya at the UN Security Council, and call for pressure at this level to be maintained and increased.
16. We also urge Congress to request the release of the exit poll conducted by International Republican Institute (IRI) without delay so as to maintain pressure on all sides to negotiate in good faith. In addition, we urge Congress to work with the EU to have the EU Observation Mission Report released immediately.
17. In case of continued intransigence from any of the parties we call on Congress to impose travel bans on the hardliners on both sides and especially those implicated in instigating violence whether through militia or through the police. These travel bans should extend to hardliners in the civil service and to their immediate families.
18. Moreover, assets of the hardliners and those involved in violence should be traced and the assets frozen.
19. Finally, it is important that U.S. military and security assistance be frozen immediately. All US assistance to Kenya should be channelled through non-governmental sources.

Thank you for this opportunity to address these matters affecting democracy, peace and security, not just in Kenya but also in the East African region.

Mr. PAYNE. Well, thank you very much, all three of you, for your very complete testimony.

Just in regard to the Commission—and either you or Ms. Ndungu could answer—when President Kibaki appointed the 19 or 20 of the 22 commissioners, was there any complaining from opposition party people of this sort of gentlemen's agreement? The agreement evidently was not written in law, but it was a practice or a tradition. The only problem with gentlemen's agreements is if you have a non-gentleman doing it, the agreement breaks off.

Was there any outcry that the commissioners being appointed violated the spirit of the previous matter in which commissioners were appointed? Was it done over the period of a sort of a long period of time, gradually, or was it done sort of abruptly? Maybe either one of you could try to answer that.

Mr. KIAI. Yes, there was a lot of protest. In fact, there was preemptive protest, if you wish, because when the terms were coming due, it was clear that President Kibaki had this in mind. So there were a lot of warnings being sent to him. This is the context in which we wrote the letter to the President asking him to keep the gentleman's agreement, basically as you said, on the assumption that the gentlemen's agreements are maintained—are kept by gentlemen. And after that, there was a lot of—there was a lot of reaction to it.

But because the terms came due slowly, I mean, they didn't come due all at one go. They came in batches of 10 or 5 at a go, and he would just keep reappointing. But there was a sense then that, you know, this was coming through; and I think everybody knew that the reaction of it would be a nasty one. But I think sometimes it seems like one is talking to walls, speaking to walls rather than anything else.

Mr. PAYNE. With the fact that in 2002, Kenya held its third multiparty election, it seemed like that when Mr. Kibaki was elected President there was a coalition party of NARC. It seemed like there was a relatively smooth transition of power from the former government to the current. What happened under President Kibaki in building the institution for democracy?

Was there a major failure that the international community did not notice? It would seem that since things did move in the right direction, that there would be a continued improvement in the political system in Kenya. And I just wonder, was it noticed or was there concern or what happened?

Ms. NDUNGU. I think, first and foremost, it is important to recognize that in 2002, the gap between the winner and the loser was very big. That was not a close election, and I think it is a factor. I think the problems in Kibaki's government in this first 2 years were around two issues. One, was the issue of the memorandum of understanding MOU, of which unfortunately, there were two different kinds of MOUs that were signed and agreed upon and there was a conflict between the two. There was no agreement between Mr. Raila's team and Mr. Kibaki's team on which of the two MOUs was the valid one.

I think, however to be quite frank, that the situation was also exacerbated by the fragility of the President's health. And this did trigger off, in the first year, a very underhanded succession battle,

which then also in itself petered out when the President's health improved.

So I think that there were very many factors. And I think the international community was also influenced by the intrigue; and they may or may have not contributed to some of the difficulties that were being experienced, depending on what side you believe, which MOU you believed in.

I do think that the first few years of President Mwai Kibaki's term did have many economic and democratic changes in Kenya, but the infighting in the NACC coalition, particularly from the time of the referendum in 2005, it was obvious that there were very many problems that were to come even before we got to the 2007 election.

Mr. KIAI. Do you mind? Can I add on to that, Mr. Chairman?

I think that was very valid, what Ms. Ndungu says, the first year of Kibaki's tenure being one of reform and one in which the national commission was formed in that first year, and you see a number of steps taken to move forward. But I think that toward 2005, 2004 you start seeing the ending of that reform agenda, and especially when corruption became normal again and Mr. Kibaki refused to take action on certain issues of corruption.

But we have gone through—but I think the real test really is after the referendum in November, 2005, when we see the number of steps that were taken trying to reduce the democratic space.

First, there was the misuse of state resources during the referendum campaigns and also in the elections of June, 2006. And this was against the law; and despite the fact that they knew it was against the law, they went on with it.

There were attacks on media freedom, especially the raids by the police on the Standard/KTN group in March 2006, which, as you know, in fact led to Freedom House reclassifying, Kenya downwards, its rankings.

Then there was this idea of mercenaries that came in to Kenya and were issued with deputy commissioner of police badges and had access to all our security installments. These are funny guys who came in. No one knew who they were, but they were walking around and in the ranks of the highest level of the police.

Then we see journalists being taken to court in 2006, being charged with criminal libel laws that no one is using anymore.

We also saw again from that time official intolerance to independent thought, and we see some efforts to deregister some non-profit organization in Kenya, especially those who are seen not to have been supporting the proposed new Constitution.

We see attacks on the Kenyan Commission on Human Rights by the government, especially by the Ministry of Justice and Constitutional Affairs.

We see inaction on Anglo leasing, and people coming back to cabinet who had been credibly linked to the corruption scandals. In fact, at that time we said that the President's call of 2002 of zero tolerance to corruption really became 50 percent acceptance of corruption.

We see in 2007 attempts to muzzle media through the media bill that was being debated by the ninth Parliament and, in fact, the insertion of a clause that would have given the courts chance to

ask the journalists their sources and get them. And just a lot of things. We saw a lot of increases in the emoluments for the head of state and Parliament.

So you see a sense, particularly from January 2006, a sense of reducing political space, reduced democratic space that then leads you to think this will happen.

Unfortunately, none of these things attracted international attention sufficiently. I suppose the fact that Kenya seemed to be generally on the forward trajectory, people didn't see all of these things as major. And, again, as you know, the world is more concerned with elections; and I think that elections show democracy. And, as we have always said, that really the mark of a democracy is what happens between elections, rather than the elections themselves. I think that has been forgotten by most people in the world.

Mr. PAYNE. Thank you very much.

Ms. Farrow, according to humanitarian agencies working in the displacement camps in Kenya, initial research reveals that girls and women in the informal IDP camps trade sex for protection, transportation or they are just raped while going to the latrine during the night.

The Gender Violence Recovery Center in Mombassa recorded an increase in sexual violence being perpetrated against both boys and girls below the age of 18. There is also a concern that sexual violence is being used as a tool to terrorize families and individuals and precipitate their expulsion from the communities in which they live.

Do you know of any efforts being coordinated in response to the gender-based violence that has arisen in the camps and in other insecure communities through the U.N. or UNICEF?

Ms. FARROW. I received this UNICEF report only yesterday. It was drafted on January 29th. This emergency represents an opportunity to address not only the immediate problems caused by the insecurity but also to begin to develop serious, sustained interventions to prevent and respond to gender-based violence. It is very unspecific as to what is being done, and I hope these hearings and whatever reference I can make will initiate an immediate response. Something has to be addressed in a concrete way. I hope UNICEF will be at the forefront of this.

Mr. PAYNE. Right. We know of your interest, and in your travels around Kenya when we were together I know you took time to talk to children and women. And basically what were they saying to you as a woman to another woman?

Ms. FARROW. The women whose photograph is here expressed the same thing that women over and over expressed in my trip to the Kibera area: We need there to be peace. They complained about the injustice of the elections, but, above all, they wanted rapid mediation. There was a complaint that they didn't feel their leaders were listening to them and extreme anxiety. Even when I was checking out of the hotel in Nairobi, the woman behind the desk burst into tears—fearing about what would come.

And this—knowing now that people are afraid to leave their newly-formed camps to gather firewood, this has a terrible resonance for those of us who have witnessed this fear of leaving

camps, women being raped and suffering those same kinds of atrocities when leaving the relative security of the camp.

Mr. PAYNE. So I guess, in general, since you travel in many countries, you see the—as related by Njoki about the gender violence—the glass ceiling that you talk about. I guess we see that in various countries around the world, still alive and well; and, of course, when women are kept down, then the children suffer. And do you think that the U.N. in general or UNICEF has the resources to try to focus on that issue or should that be another part of the U.N. system?

Ms. FARROW. I am not sure what resources UNICEF has, but I believe them to be considerable. And I did not see a presence, a UNICEF presence, in places where I felt that there should be.

For instance, in the Kibera area, there was no UNICEF presence. In Dadab—I know it is slightly off topic—but refugees within Kenya, from other countries, Somalia and the Ogaden, there was no UNICEF presence. This is something I would like to take up with a great organization. Are they overstretched? Have they lost some focus? Why, when the victims are mostly women and children, can there not be more UNICEF presence to address precisely the issue you brought up?

Mr. PAYNE. Thank you.

On the question about the referendum for increasing women in the Parliament that either did not get into legislative process or was defeated, were there more women elected—either one of you—in this past election, and have you seen in addition to the question of the election a setback for women in Kenya's Government?

Ms. NDUNGU.

Ms. NDUNGU. I think that we have seen a backward trend, a reverse trend in terms of the women's participation and representation. In the ninth Parliament there were 18 women out of a house of 222 members. That was 10 elected women and 8 nominated through political parties. The 2007 election has produced 14 elected members; and if the nominations are done correctly, then there should be 6 nominated women, which brings all the women to 20. So, for me, the difference between 18 women and 20 women cannot be said to be progressive.

It is clear that there are fewer women who have been placed in the cabinet that President Mwai Kibaki has appointed. And even on the ODM side, apart from one woman, the women still remain clearly invisible, even those who have been elected.

I want to say, on the issue of sexual violence, I really have not seen politicians from both sides of the house coming out to talk about particular interventions, about the situation of women in these camps and about the situation of women who have been sexually assaulted and who have not been able to access medicines. I did talk to the permanent secretary who is dealing with this issue, intervening at this time.

And, again, even when they were talking with the Ministry of Health, they had not actually talked about including rape kits or dealing with sexual violence, and I hope that since I raised that issue last week that they have now done that.

So I think that Kenya may be pretty advanced in its economy, pretty advanced in terms of democracy apart from the setback, but

on the issue of women's rights and women's representation, Kenya is very, very similar to what we call the Islamist states where women are never seen or heard. And, actually, it is very surprising in the context of Kenya.

Mr. PAYNE. I also think the question of land distribution is surprising in countries where there was apartheid and where there was a changeover in that regard. And, more recently, you hear the question of land in Zimbabwe where you had the Ian Smith regime and when the Mugabe government took over. This question of land distribution was a big issue in Namibia, the same problem, and in South Africa.

But we really have not heard much about the distribution of land in Kenya, a country where the system seemed different than in the apartheid-type countries, where the land was owned by the white minority and that was a very specific and visible problem. I don't know how land was distributed in Kenya, but at some time, I know it is something that we really should take a look at. It is a very serious question, evidently.

Ms. NDUNGU. Mr. Chairman, if I may just say that the one thing that Kenya does share with South Africa or with the south in the United States America in the 19th century is that segregation was legal. And it is true that in the colonial times that they were white settlers who had taken most of the land. Issues from colonial times, such as the issue of land distribution, have not been resolved. The problems do start from there.

Because only 5 percent of Kenya is arable, I think it is time that the Kenyan mind-set needs to start moving away from title of land into title of industrial land development or housing development or high-rise buildings. Because I don't think the time will come when every Kenyan can own a piece of land.

And in terms of our land reform, we, as Kenyans, really need to think about moving. But it is true that we have issues where the white settlers handed over the large chunks of land, like in Zimbabwe, to the wealthy Kenyans. That is the key to the problem of land ownership in Kenya.

Mr. PAYNE. Well, let me thank you.

Let me ask a concluding question to both of you. In your opinion, what is the general view—and it may be difficult to answer the question—of the position that the United States has taken on this issue. Of course, the United States did not steal the election and did not encourage the lack of gentlemen's agreements to go on; however, it is true that the only superpower in the world does flex influence when it wants to; and I just wondered your opinions. What is the opinion of the average Kenyan as to the help that the United States has been giving to resolve the issue of whether they have been an honest, independent broker?

Mr. KIAI. If I may, Mr. Chairman, I think that is an evolving scenario. I think the United States did not begin well. I think the first comment by the Ambassador did not help when they congratulated Kibaki on it, and I think that that put people aside. And it seems from my own intelligence that it seems there was some surprise that the election was as close as that. I think there was a sense in certain quarters within the U.S. Government that President Kibaki would win this easily. So I think that, first of all, one needs

to question who have they been talking to and who they have been meeting within the country.

But then I think, after that, there has been recovery, if you wish. And I think the approach by the role the United States played in terms of asking the United Nations Security Council to discuss Kenya was a good issue, was a good thing, a good step forward.

But we keep urging the United States especially to move ahead, for example, with the exit poll by IRI. Our sources tell us part of the problem is the United States Embassy in Nairobi holding back that report, and I think it is important that that comes out.

The second thing as well is elements of sometimes the United States wants to act on its own, and we keep urging the U.S. to work with EU and the U.K. Especially on this issue. I think that is a better framework that will move forward. But we are encouraged by the last statements of travel bans that the Embassy says it will be considering.

But I think, as you said earlier, actual steps need to be taken; and we are more than ready to give lists on both sides of people who we think are hard-liners, who we think are part of people who are perpetrating some of the violence there. But, as I said, again it includes the police, and it includes violence by the police, because I think the police have been used as a militia in certain forms. When it is called police, it is usually militia.

So I think if the U.S. stays with the U.K. and the EU I think it will get its act together and will be useful in that sense.

But all of us, as you said, Mr. Chairman, are very conscious of the role of the United States as the lone superpower; and so we are all very worried about where it goes. And we would like to see it playing this issue, understanding this is not an easy solution. It is not a quick fix.

In fact, when Jendayi Frazer came to Nairobi and the first statement is about government of national unity, that was scary. Because that was perceiving things as normal and President Kibaki inviting ODM into government, rather than a difficult, hard-choices, tasks to be done where you sit down and share the power and then agree to move forward.

So, for us, government of national unity would really maintain the status quo and just bring people into government as minister for sports and other things like that, which I don't think is useful in addressing the real issues out there in the country.

Ms. NDUNGU. I just want to say—

Mr. PAYNE. Yes.

Ms. NDUNGU. I think for a long time the approach of the United States to Kenya has been very clinical, and I think it does this with a lot of countries in the Third World—if you forgive me—in regards to wanting legislation on antiterrorism, wanting exclusions on article 98 on the ICC. And, unfortunately, Kenya, because it has independence and a very passionate kind of legislature, I think that the approach in approaching Kenyan politics should have been in a different context from the way it has been done and that the United States should have really looked into the local issues in order to also bring in some of the issues that they had wanted.

I also think that perhaps it is time for the United States Government also to relook and to think about its relationship with the

United Kingdom, with particular reference to Kenya, given the history of the British colonial system, whether or not they would like to continually share the same positions that the United Kingdom does take in dealing with Kenya.

But really I think that we do need the intervention of the U.S. You are, you know, the biggest democracy in the world. And in order to bring some of the perpetrators to book in terms of the recent violations, I think that we would need your support and we would need your continued—we would need it to continue to oversee the mediation.

Mr. PAYNE. Well, let me certainly thank all of the witnesses. And, also, Ambassador Farrow, I was just reminded that I sent a letter to Secretary Rice in January asking her to support a gender working group at the United Nations' Security Council to monitor and report on the situation of women in conflicts throughout the world. There is currently not an organization of that nature. And I am also going to have a resolution that I will try to have passed through our Congress urging United Nations to set up a group.

We do monitor where peacekeepers are—you know, some of the atrocities in DRC that were reported from U.N. peacekeepers. And so reports are now due monthly on the behavior of the peacekeepers in various places.

However, in countries where there are no peacekeepers, which are the overwhelming majority, there is no system to sort of monitor what is going on. And so we hope to work with you, and we certainly will be in touch with you as we move forward from the governmental aspect and you move forward from the NGO aspect.

Ms. FARROW. We certainly see the need for that here and in so many places we have traveled. But here is a perfect example; and, in truth, there isn't anything in place.

Mr. PAYNE. Well, let me once again thank all of the witnesses. This was a very informative hearing. I hope that the people of Kenya will be able to move forward and have the violence ending and have the government and the political leaders to begin a reconciliation to come up with a plan that will work.

I also urge Kenyan Americans to have a united front to insist that Kenya as a country needs and the manner in which it should be preserved and Kenya first. We find too much of a breakdown into ethnicity; and until you take Kenya as a country and then all other things are secondary, we are going to find that Kenya will continue to deteriorate. And so that is an appeal that I have.

And so we will certainly be meeting with Kenyan Americans in my State of New Jersey to solicit their opinions and their ideas on how they can have influence on our Government and on Kenya itself.

So, with that, I ask unanimous consent that a submission from Mr. Smith for the record be permitted, as well as a statement by the Unitarian Universalist Service Committee.

[The information referred to follows:]

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER H. SMITH, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Thank you, Mr. Chairman, and thank you to all our witnesses who have come here today. I am anxious to hear your testimony, to examine the dynamic of the

disturbing situation in Kenya, so that we can help identify the best way forward to restore peace and confidence in democracy.

I, like much of the world, was shocked by the violence that followed the December 27 elections in Kenya, a country that has proven to be a great friend and ally of the United States over the years. My heart and my condolences go out to the victims of this violence and their families—over 900 people killed since that fateful election day.

There have been shocking events that few of us expected to see in Kenya: protesters shot by police; gangs with machetes butchering innocents; a crowd of people, including women and children, burned alive in a church. Two opposition parliamentarians have been gunned down since the violence began.

Now, some 300,000 people have fled their homes—have fled their neighbors—and remain displaced. They are virtual refugees within their own country. Aid workers tell us that 80,000 of these internally displaced people are children under the age of five.

The priority for everyone has to be to stop the violence—to stop the killing. In addition, we must examine the context in which the violence erupted.

The broad strokes of what happened during and after the December 27 elections are now well known. Millions of Kenyans voted that day in the country's fourth multiparty elections, and it is a testament to the Kenyan people that 14.2 million people—82% of all eligible voters—were registered to vote. I won't recite the polling numbers or give an autopsy of the election; I'm sure our witnesses will give us ample detail on that account. But suffice it to say that at some point the system went terribly wrong.

The European Union "questioned the integrity" of the final results, and its report said the "elections were marred by a lack of transparency . . . which raised concerns about the accuracy and final results of this election." Election observers from the East African Community also raised serious concerns about the elections. Eventually the United States, too, asserted that "serious flaws in the vote tallying . . . damaged the credibility of the process."

I want to commend Chairman Payne for his leadership on this issue, and I have joined him to co-sponsor H. Con. Res. 283, which calls for an end to the violence and an end to restrictions on the media. It condemns threats to human rights activists and others who are working for a peaceful solution to this crisis. It also calls on President Kibaki and the challenger, Mr. Odinga, to work together for a mediated solution to this crisis. The United States must do all that it can to encourage them to move in this direction. The resolution emphasizes our hope that this dialogue will lead to the establishment of an interim or coalition government that can enact constitutional reform, and establish a mechanism to investigate this crisis.

The solution to this emergency must be a Kenyan solution—but the United States and the international community must do everything possible to compel the two sides to act together for the good of their people.

I hope our witnesses will help us consider today how we can best go about this task, and what other steps we must undertake to ensure a return to peace and faith in the democratic process in Kenya.

STATEMENT FROM CHARLES CLEMENTS, M.D., M.P.H., CEO AND PRESIDENT,
UNITARIAN UNIVERSALIST SERVICE COMMITTEE (UUSC)

THE HUMANITARIAN AND POLITICAL CRISIS IN KENYA

The UUSC Emergency Assessment Mission to Kenya

The Unitarian Universalist Service Committee (UUSC), a human rights and social justice organization based in Cambridge, Massachusetts, sent an emergency assessment mission to Kenya January 20–25 to learn firsthand the extent and causes of the political and humanitarian crisis that has engulfed the country in the aftermath of the flawed presidential election in late December.

My name is Charlie Clements. I am President and CEO of UUSC and a public health physician. The other two members of the mission were Dr. Atema Eclai, UUSC's Program Director and a native Kenyan and the Rev. Rosemary Bray McNatt, a UU minister and co-founder of the UU Trauma Response Ministry. We met with UUSC's NGO partners, humanitarian organizations, religious leaders, leaders of civil society organizations, and community leaders to assess the impact of the crisis on the lives and livelihoods of ordinary Kenyans and to analyze what steps are needed to achieve a durable and peaceful settlement consistent with democratic principles.

UUSC condemns the mounting violence precipitated by the electoral crisis in Kenya, and we are deeply concerned about the growing humanitarian and political crisis that has affected many of Kenya's most vulnerable citizens. We unequivocally support the right of Kenyans to free and fair elections.

Politics and poverty at the root

UUSC understands that, far from being driven only by ethnic rivalries, as the media have been reporting, the post-election violence is rooted in deep economic injustice, a skewed distribution of political power, political manipulation of ethnic identities, and the persistent failure by government to respect civil liberties and democratic processes. Long-simmering frustrations caused by economic and political problems have finally reached the boiling point in Kenya.

The benefits of Kenya's rapid economic growth have largely been concentrated among a small elite. An incredible 60 percent of Nairobi residents live in slum areas, and more than half of the people in Kenya live on less than \$2 per day. The daily reality of many Kenyans is shaped by the hardship of inequality and the indignity of poverty, which all too often lead to frustration and hopelessness.

Many hopes had been built up around this election. Late last December, on the eve of elections, ordinary Kenyans believed that their vote must count and be counted. Hard-fought gains won by civic struggles in the 1990s had lifted public hopes, and one observer told us that "this was the best electoral process since independence (1963), whether in terms of registration, campaigns, mobilization of voters, pre-election violence, voter education, or turnout." Across the country, voters tolerated long lines at voting stations because they were both excited and confident; they were committed to exercising their right and responsibility to vote. Election participation has been estimated at 68 to 74 percent in all 'constituencies.'

But collective expectations for a transparent, democratic process were smashed when, despite widespread reports of fraud committed at many polling stations, Mwai Kibaki, declared himself the winner and was secretly sworn in as president. Even while a storm of protest was building in Kenya and internationally, Kibaki appointed his new cabinet, disdainful to the will of the people and to the mediators then en route to Kenya. As we have seen, frustrations from justice long denied can easily escalate into violence. These dynamics, the true cause of the widespread unrest gripping Kenya, have created a severe humanitarian crisis, with grave ramifications for the entire region.

Again and again, Kenyans told our delegation that this crisis is not primarily about ethnicity. It's about fraud. It's about decades of politicians "feeding at the public trough." It's about illegally armed militias who were intentionally set loose to incite violence. At the same time, we were told that, if navigated successfully, this crisis could open an opportunity "to finally resolve the largely ignored issues of ethnicity" that have afflicted the nation since its independence.

An unstable situation

Across Kenya, entire neighborhoods and villages have been burned to the ground. Violence triggered by the flawed election has killed more than Kenyans and estimates of displaced people are as high as 600,000 people. Unrest continues in various parts of the country.

There are serious shortages of fuel, water, food, and other commodities and humanitarian aid agencies have had difficulty assessing the extent of the damage and the number of people affected because of irregular transportation and insecurity.

Since the elections, Kenyans have been ignored in their call for new elections and have been denied the right to protest openly. Instead of heeding the requirements of transparency or rule of law, the government has ordered the police and the military to repress public demonstrations with 'shoot to kill' orders.

Security is a widespread concern. We had many first-hand reports of police standing by as rioters burned houses and stores or 'cleansed' neighborhoods of certain ethnicities.

As reported to us by the Kenya National Alliance of Street Vendors and Informal Traders (KENASVIT), one of our partner agencies in Kenya, the security situation has produced strikingly similar patterns of effects on their lives and livelihoods: some members of the alliance have been displaced from their homes, many have been displaced from their trading sites, some suffered ethnically-focused abuse, a few lost their lives, many were injured or raped, and virtually all lost property due to robbery or arson. Many vendors are operating on drastically reduced incomes due to: shortened working hours, loss of business capital and stock, low customer turnout due to fear and insecurity, heavy military and police presence that also dampens customer turnout, the high cost of merchandise due to the destruction of established

businesses, difficulty using public transportation to collect wares, and difficulty getting access to bank accounts.

We also met with religious leaders—Muslim, Catholic, and Protestant—who acknowledged that while strong voices from each faith have spoken out, they have eroded their own moral authority because they have failed to speak as one and have been seen as partisan.

The NGOs told our delegation that the violence to date could be viewed as a beginning that could escalate out of control. We were told any lull in the violence should not be confused with calm, because it “gives people time to prepare, to gather their energy, to become more organized . . . to be more angry.” One NGO leader warned, “As more and more people find themselves without food because of scarcity and skyrocketing prices, without money because they are unemployed and have exhausted their meager savings, and without hope because our political leaders are in gridlock, the poor will turn on the middle class and this could become class warfare.”

Why the United States must act

Because Mr. Kibaki controls the courts, the police, and other institutions and has prohibited citizens from organizing and assembling, Kenyans need the support of impartial outside parties to achieve electoral truth and justice. We were told by Kenyans that outside assistance is critical, because under the current constraints, their institutions are not capable of resolving this peacefully.

There is growing anger in Kenya about what the United States is not doing. The United States was one of the first nations to congratulate Mr. Kibaki. Although the US has since back-pedaled, in contrast the British government and European Union quickly declared that the election was flawed and have been pressuring Mr. Kibaki to accept mediation. The message being received by Kenyans is that the United States does not want to risk the alienation of Kibaki . . . or as Kenyans are saying, “the United States seems to be interested in peace, but not justice.”

As our delegation ended one session and asked for closing remarks, someone said with great hope, “I think Bush can do something for us. If they [the Americans] could have gone at the speed of the British, Kibaki would be gone by now.” He was referring to strong statements by the British ambassador, who stated publicly that a grave injustice had been done to both the Kenyan people and the Kenyan democracy. He said it must be put right, and threatened that the failure to do so would put millions of dollars in British aid to Kenya at risk.

Kenyan stability is not only crucial for Kenyans, but for the entire Horn of Africa region, for which the country serves as the gateway for international trade. It also serves as the regional transportation and communications hub, for both commerce and the flow of relief. The United Nations warehouses supplies in Nairobi for local and regional distribution. If problems persist, regional humanitarian work in Uganda, South Sudan, and the Congo will be affected.

Kenya has also played a strategic role in the United States’ global security efforts, and it is clearly in the interests of the U.S. government to ensure that peace with justice is achieved.

RECOMMENDATIONS TO ADDRESS THE HUMANITARIAN AND POLITICAL CRISIS IN KENYA

UUSC calls on the United States Government to:

- Deny official recognition of the Kibaki government.
- Hold off on recognizing any Kenyan government until the people of Kenya are given the chance to vote in a truly fair, transparent, and legitimate election.
- Issue unequivocal statements calling for investigation of the recent election
- Join with the United Kingdom and European Union in urging all parties to the conflict to end the cycle of violence and agree unconditionally to accept mediation being offered by Kofi Annan, Graca Machel, and Benjamin Mkapa.
- Urge full support for Kofi Annan’s call for a Truth and Reconciliation Commission to address human rights abuses including gender-based violence.
- Explore sanctions and other effective means of pressing Kibaki that do not involve cutting off aid to NGOs such as the Kenyan Red Cross, while suspending any direct aid to the government of Kenya.
- Commit to development aid and support to help the Kenyan people recover and rebuild from the post-election violence, if the government abides by the terms of the mediation.

- Call for constitutional reforms that will increase transparency, accountability and put in place the governance systems that can represent the democratic desires of the Kenyan people.

Mr. PAYNE. So, with that, the hearing is adjourned. Thank you very much.

[Whereupon, at 12:36 p.m., the subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS

Thank you, Chairman Payne for your leadership in holding this incredibly important hearing on "The Political Crisis in Kenya: A Call for Justice and Peaceful Resolution." The situation in Kenya is perilous and warrants our concern and consideration. I would like to acknowledge and thank the distinguished panels of witnesses, Mr. James C. Sawm, Deputy Assistant Secretary of the Bureau of African Affairs at the U.S. Department of State, Mr. Gregory Gottlieb, Deputy Assistant Administrator of the Bureau for Democracy, Conflict, and Humanitarian Assistance at the U.S. Agency for International Development, Ms. Mia Farrow, Goodwill Ambassador for the United Nations Children's Fund, Mr. Maina Kiai, Chairman of the Kenya National Commission for Human Rights, and Ms. Njoki Ndungu, a Former Member of Parliament from Nairobi, Kenya. I look forward to your insightful testimony.

Kenya has long been an important friend and ally to the United States. While our relationship at times has been strained due to concerns about corruption and human rights conditions in the Sub-Saharan nation, the relationship has been recently renewed and reinvigorated with the advent of multi-party elections in Kenya beginning in 1992. The people of Kenya have shown a lust and commitment for democracy that is unprecedented and set a new standard for the region.

On December 27, 2007, the desire of the Kenyan nation for a meaningful change in politics and the revival of democracy was manifest in the millions of Kenyans who took to the polls. The months preceding the December elections showed opposition candidate Raila Odinga leading in the polls over incumbent President Mwai Kibaki. Amidst domestic and international cries of polling irregularities, the Electoral Commission of Kenya declared President Kibaki as the winner.

It is not the election itself but rather the aftermath of the elections and a way forward that concerns us here today. Election day itself went rather smoothly. The Kenyan Constitution authorizes the establishment of the Electoral Commission of Kenya (ECK). While the ECK is comprised of 22 Commissioners, 19 of the Commissioners were appointed by President Kibaki last year, which is authorized by the Kenyan Constitution. What is not authorized was the appointment of the new Commissioners without proper consultation with opposition parties, which violated the Inter-Parliamentary Parties Group Agreement of 1997. While the ECK quickly declared President Kibaki the winner, the Chairman of the Commission later admitted that he "was under intense political pressure from powerful political leaders and the ruling party." Furthermore, press reports quote the Kenya Electoral Commission Chairman, Samuel M. Kivuitu as stating that "the day he went to deliver the certificate declaring Kibaki the winner, he saw the Chief Justice already at the State House reportedly waiting to swear in Kibaki." The swearing in ceremony itself was so rushed that it is said organizers forgot to include the National Anthem in the program. Mr. Chairman, to call these events "irregularities" as the ECK Commissioners and ECK staff have conceded, is a vast understatement. In order for Kenya to continue moving forward on its current democratic trajectory, elections must be transparent, free, and fair, none of which were seen in the December 27th election.

What is equally disturbing is the United States' reaction to this electoral crisis. While the EU observers criticized the election for its myriad of inconsistencies, on December 30th, the United States government reportedly congratulated President Kibaki for his victory. In a recently released report, the EU concluded, "the 2007 General Elections have fallen short of key international and regional standards for democratic elections. Most significantly, they were marred by a lack of transparency in the processing and tallying of presidential results, which raises concerns about

the accuracy of the final results of this election.” Following both regional and international uproar, the United States seemingly changed its position in January as Assistant Secretary of State for African Affairs, Jendayi Frazer, declared that “serious flaws in the vote tallying process damaged the credibility of the process.” Such inconsistency on the part of diplomatic core of the United States sends a poor message to our friends and allies struggling for democracy across the sea.

As outrage over the electoral results permeated throughout the country, so too did spontaneous demonstrations of anger and ultimately violence. Recent statistics reported by the UN and Kenyan sources state that since late December more than 900 people have been killed and an estimated 300,000 displaced, including some 80,000 children under the age of five. International observers have proclaimed that while some protestors died due to mob violence, many others were reportedly shot and killed by police. While the Kenya military did not engage in riot control for most of January, press reports and Kenyan sources state that Kenyan police and security were given authority to use lethal force to dissipate mobs. In the wake of the disputed election results, the Kenyan government banned demonstrations and initiated media restrictions, which seem to have further stoked the fire.

With the intolerable number of Kenyans dead and displaced, it is imperative that the United States play a meaningful role in resolving the current crises. With two failed international missions, it is time that we rethink our strategy in addressing the current crisis. I look forward to today’s insightful testimony and the discourse of consolidation and resolution that it will produce. Thank you, Mr. Chairman. I yield back the balance of my time.

KENYANS FOR JUSTICE AND DEMOCRACY

Contact: Info@Kenyanforjusticeanddemocracy.com
 Website: www.kenyanforjusticeanddemocracy.com

Statement submitted to the US House of Representatives Subcommittee on Africa and Global Health hearing on the Political Crisis in Kenya February 6, 2008, 10:00 a.m.

Background

Kenyan for Justice and Democracy (KJD) comprises Kenyans in the Washington, DC area and other parts of the United States - challenging the official outcome of the presidential elections of December 2007. KJD does not represent the interest of a particular political party, or candidate. Its major goal is to uphold respect for the democratic process and institutions of democracy such as the electoral commission, the Judiciary and the Presidency. This key element of the democratic process was not adhered to in the tallying of the presidential ballots following the December 27, 2007 elections, and in the final declaration and swearing in of Mwai Kibaki as the winner. Subsequent violence and ethnic tensions currently prevailing in Kenya were triggered by this blatant disregard of the peoples' will expressed through the ballot box.

Evidence of premeditated rigging

- The unilateral appointment of 19 out of 22 Electoral Commissioners by Kibaki immediately before the General Elections to stack the Commission with his acolytes. In the past political parties have nominated candidates for appointment as Electoral Commissioners.
- Kibaki appointed 5 new judges (believed to be partisan) to High Court and Court of Appeal (Court of last resort) only two days to elections. Presidential election petitions can only be heard by the Court of Appeal.
- Young people of voting age in Orange Democratic Movement (ODM) strongholds were denied national identification cards, and were unable to register as voters in time for the General Elections.
- The voters' registered was interfered with-names of voters from presidential candidate Raila Odinga's ethnic community were deleted from the register. Hon. Raila Odinga himself could not find his name on the voters' roll on Election Day.
- Paramilitary officers surrounded the Kenyatta International Conference Center (KICC) and cordoned off surrounding streets. The government was planning to steal elections and was expecting protests from the public.
- Civil servants were actively involved in the campaigns for Kibaki against Civil Service regulations.
- Government attempted to block cell phone text message services to prevent citizens from communicating in the wake of the declaration of Kibaki as the winner of the General Elections.
- Government security personnel were transported to various parts of the country where ODM had massive support to intimidate voters and to interfere with the election process. At least three of these policemen were killed by citizens in Nyanza province a few days before the elections.

A Hopeful People- Betrayed

Kenyans went into the General Elections extremely hopeful and excited about the prospects of a different political dispensation devoid of the corruption, sectarianism, impunity and total disregard of popular sentiment that had characterized the Kibaki regime. The majority of Kenyans-67 percent - believed that the elections would be free and fair.¹ Citizens queued for hours to cast the very important ballot; some for the first time. On these queues every one believed that their vote counted and that, at the end of it all, the outcome would reflect just that: vote counts! But, after hours and days of prevarication and outright animosity against the Orange Democratic Party (ODM) and its officials, the international and local media, international and local election observers, the Chairman of the Electoral Commission ordered all of them out of the announcement hall, and with only the government media present, declared Kibaki president. Earlier, Kenyans had witnessed what had been an assailable ODM presidential candidate Raila Odinga's lead of close to one million votes, shrink to thirty thousand and finally to a two hundred thousand votes deficit. Kibaki had won.

The rightful winner may not have been declared President: Some interesting facts

- 23 of Kibaki's Cabinet Ministers were defeated in the elections- including his Vice-President, and Ministers for Foreign Affairs, Local Government, and Trade.
- The ODM presidential candidate won six of the eight provinces, while Kibaki won only 1 province. The other was split between Kibaki and Kalonzo Musyoka.
- ODM party won 99 parliamentary seats (48 percent) against PNU's 43 (21 percent).
- ODM party won 1,042 (out of 2419) seats representing 43 percent of local government seats against PNU's 441 or 18 percent.
- The ECK Chairman, Mr. Samuel Kivuitu is on record that he does not know if Mwai Kibaki won the elections, and that he declared Kibaki winner under pressure from ODM-K and PNU leaders.² This is a criminal offense under Kenyan law. The Law Society of Kenya has recently struck him off its roll of honor.
- Four Electoral Commissioners declared on national TV that the tallying process of the presidential ballots was full of irregularities, and therefore called to question the integrity of the entire outcome. They called for an independent audit.
- An ECK officer told local and international media that he had witnessed the entire process of ballot manipulation at the ECK tallying center.
- The senior officer in charge of national tallying has sworn an affidavit supporting allegations of rigging and vote manipulation.
- The Attorney General also declared that in view of the dispute surrounding the outcome of the elections, a forensic audit was necessary.

¹ Richard Wike, and Kathleen Holzgart, "Despite Progress and an Upbeat Pre-Election Mood, Ethnic Conflicts Have Long Worried Many Kenyans", Pew Global Attitudes Project. January 3, 2008. Available at: www.pewresearch.org/pubs/678/kenya

² ODM-K presidential candidate, Kalonzo Musyoka, was later appointed Kibaki's Vice-President.

- All the major election observers: European Union, African Union, Common Markets for Eastern and Southern Africa, East African Community, The Commonwealth, the International Republican Institute and the Domestic Monitors group which comprised the Kenyan Civil Society are unanimous that the tallying of presidential ballots was manipulated, and that the process did not meet international standards for free and fair elections. They called for an audit, and recount of the ballots. Most have called for power sharing on an interim basis to prepare for new elections.
- Only one foreign Head of State has publicly congratulated Kibaki after the elections. Ugandan President Yoweri Museveni later said he did it for diplomatic reasons- Uganda relies on Kenya's Mombasa port as its gateway. The US government which had initially congratulated Kibaki withdrew soon after it emerged that the outcome had been manipulated.
- Kibaki was hurriedly sworn in at a subdued private ceremony without the national anthem and the customary invitation of foreign dignitaries, media and the clergy. In 2002 nearly one million people witnessed the ceremony.
- Having watched this blatant rigging for three days impatient citizens burst into chaos. Subsequent delays and actions of the ECK further fueled the conflict in various parts of the country. Over 1,000 people have died, many from police bullets. Over 350, 000 people have been displaced. The effect to the economy and to ordinary lives is immeasurable.
- As a result of these uncertainties, and evidence in the public domain, the governments of US, UK, Australia, France, Canada and major multilaterals such as EU and World Bank have indicated that it is not going to be "business as usual" with the Kibaki government and are reviewing their respective Kenya portfolios.

Twilight robbery; Daylight murder³: Why there should be no confusion

There is a general misconception that the post election violence triggered by the announcement that Mwai Kibaki had won the elections is ethnic cleansing. The cause of violence was not ethnic animosity. It was anger over stolen dreams; shattered hopes. Nevertheless, it is regrettable that it has inflamed existing, and pre- election historical grievances which now have to be factored into any credible resolution of the conflict. But, attention should not be diverted from the real and immediate cause of this conflict that is, the deliberate and blatant disenfranchisement of the Kenyan voter.

While the violence has taken an ethnic dimension, it is important to note that it is more political than ethnic. Supporters of rival political parties have been targeted in areas that were considered "specific party zones". It is important to note that in Kenya support for political party or candidate is preponderantly ethnic. Nevertheless, given the intensity of political activism ahead of the General Elections, and the unprecedented and historic turnout that was witnessed during the elections, it was inevitable that a deliberately falsified would lead to violence.

³ *The Economist's* description of Kenya's flawed elections. See: Jan 3, 2008 issue.

On voting day, voters from various ethnic groups queued on the same line aware that ethnic differences would determine voting patterns- no conflict was reported on the queues or any where else, until after the announcement of the presidential tallies. It is safe to say that the ensuing violence was triggered by the perceived falsification of the presidential election results by an Electoral Commission under pressure, the deliberate muzzling of the press, and the open and blatant connivance of the Chief Justice to hurriedly swear in Mwai Kibaki, even with the final tally in dispute. The ensuing police brutality and the sudden slip of Kenya into a Police State pointed to a well rehearsed plan to subvert the peoples' will. The implementation of an illegal shoot to kill order, a ban on live media coverage of police brutality, continued threats to journalists from a cross-section of media houses, and the recent killing of two ODM legislators are not mere coincidences.

An interim power sharing arrangement

Power sharing arrangement would be a repudiation of democracy considering that there was a clear winner. However, under the current circumstances an interim and transitional arrangement would be a first best option to get the country out of the impasse. Kenyans were clear about the kind of leadership they voted for. They made this clear by electing Mwai Kibaki on a reform platform in 2002. And, when he reneged on many of the pledges, citizens punished his government in the 2005 referendum by defeating the draft constitution. And, by electing 99 ODM members of parliament against PNU's 43, and 1,042 local government candidates against PNU's 441 in the 2007 General elections Kenyans sent a powerful message against the impunity and chicanery of the Kibaki regime. It is the people's verdict; it should be respected. Nevertheless, these are extraordinary time, and extraordinary measures are called for.

Future of Democracy and Rule of Law in Kenya: Implication for United States

The future of democracy and rule of law in Kenya is currently under threat, as is the security of the entire region including the Horn. An unstable Kenya would provide a breeding ground for terrorist elements in the region, and would undermine US- Kenya partnership in the war against terrorism. Kenya is surrounded by mostly fragile states, and has served as a beacon of hope and peace in a region torn by war. Moreover, Kenya is the gateway to Sudan, Uganda, Rwanda, Burundi, Eastern DRC, Somalia, parts of Ethiopia, and North Western Tanzania. These economies have already been adversely affected by the crisis in Kenya. Decades of investment in civic education including support from United States, European Union and several US based foundations now face an uncertain future. Kenya is slowly sinking into abyss, and soon respect for democratic institutions will wane and its place taken by apathy, disdain for the vote and the use of alternative and violent means of acquiring political power. With various suggestions including a military take over being floated around, and citizens' gangs asking for guns, it is clear that if quick action is not taken, democracy may be doing its last rounds in Kenya. And quick action must be one that restores the citizens' faith in democratic institutions, and not one that asks them to live peacefully in a dictatorship. They have rejected it in the past, they always will.

How should the United States Government respond?

Kenya is a key strategic partner of the United States in the war on terrorism, military partnership and future engagement with the region. Any spiraling of the country into violence beyond the present situation will not only threaten Kenya, but also American interests in the country and the region as a whole. The United States cannot afford a “wait and see attitude”. It must be proactive, and be fully engaged both in public statements and also in symbolic and substantive measures in its dealing with the Kibaki regime. Ambassador Michael Ranneberger has so far distinguished himself in this regard as a champion for democracy and rule of law. But much action is still needed especially at more senior levels of the United States Government.

What the United States should NOT do?

- Not recognize the Kibaki government.
- Not deal with the Kibaki government in a way that signals a “business as usual” attitude.
- Not mistake the on going conflict as an ethnic conflict, ethnic cleansing or genocide. Kenya has over forty ethnic communities living side by side in peace.
- Not suggest that the solution to the current problem lies in power sharing only, unless on an interim basis pending a fresh round of presidential elections
- Not assume that Kenyans are merely interested in peace without justice and democracy.
- Not see power sharing as an antidote to the current crisis, and instead seek for a political solution to what is obviously a major political conflict.

What the United States should do?

- Call for a speedy resolution of the political conflict that underlies the more visible social conflict.
- Encourage regional leaders to support the on-going peace efforts mediated by Kofi Annan and the team of eminent Africans.
- Support the creation of an interim power sharing arrangement between Kibaki and Raila to prepare the country for another round of presidential elections.
- Support all the forces of democracy in and outside Kenya with interest in the peaceful and just resolution of the present conflict.
- Mobilize the international community to provide help for rebuilding the areas torn by violence.
- Act as a strong voice within the Security Council of the UN to create awareness on the danger posed to the country and to the region by Mwai Kibaki’s intransigence.
- Encourage and support an internationally supervised recount of the ballot in disputed areas.
- Immediately impose selected sanctions on political elites that have perpetrated the electoral fraud and those known to be barriers to a rapid, just resolution of the current conflict and restoration of democracy in Kenya.

