

Testimony by Deputy Assistant Secretary for African Affairs James Swan

“The Political Crisis in Kenya: A Call for Justice and Peaceful Resolution”

House Committee on Foreign Affairs

Africa and Global Health Subcommittee Hearing

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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.