

TESTIMONY OF

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“THE IMMEDIATE AND UNDERLYING CAUSES AND  
CONSEQUENCES OF FLAWED DEMOCRACY IN KENYA”

Chairman Feingold, Ranking Member Sununu and other Members of the Committee, I appreciate the opportunity to appear before you today to discuss the contributions that the U.S. Agency for International Development (USAID) has made to date toward strengthening democracy in Kenya, including the support we provided during the run-up to the December 27 elections; our perspective on the current post-electoral crisis and efforts to address it; and next steps for USAID in Kenya. My testimony builds on the analysis that Deputy Assistant Secretary for African Affairs Jim Swan has provided on the short- and longer-term causes of the recent political and social unrest in Kenya.

Before I address your questions about the post-electoral situation and what must be done to address the problems Kenya is facing, I would like to take a few minutes to share with you the assessment of the state of democracy in Kenya upon which our programs have been based, as well as some specifics about our efforts to strengthen democratic and judicial institutions in Kenya. First, the assessment:

Assessment of State of Democracy and Equality in Kenya

When we developed our last multi-year strategy for Kenya in 2005, we assessed that the country’s democratic promise had been tarnished by the reality that personal rule within the executive continued to eclipse the rule of law. The rise of personal rule began during the tenure of Jomo Kenyatta, the first President, with the dismantling of the pre-

independence constitution, its protections for minorities, and its institutional checks and balances. This paved the way for abuse of executive power and privilege that has tended to reinforce ethnic divisions by giving unfair advantage of opportunities to selected ethnic groups. While there is agreement that constitutional reforms are necessary in Kenya, there is no clear consensus on the ideal institutional arrangement for the country. This was demonstrated during the referendum of November 2005, when a majority of Kenyans voted against a government-supported draft constitution. The proposed constitution would have improved protections for individual rights, while maintaining a high degree of executive control with minimal devolution of authority.

Further exacerbating the governance climate in Kenya is a system of public administration that is slow, ineffective, inefficient, and less than transparent. These factors result in implementation delays, financial leakages, misallocation of resources, and difficulty in ensuring that the Kenyan taxpayer receives good value for money. The lack of strong management systems also facilitates corruption, which is endemic both at the national level and at the level where the average citizen interacts with local regulatory authorities and services providers.

The events since December 27 have largely undermined many of the gains that Kenya had made in consolidating its fragile democratic system since it held its first fully democratic and free and fair elections in 2002. The 2002 elections marked the end of the 24-year rule of President Moi. Kenya's long-term challenge with respect to democracy has been to re-orient the political system away from its focus on powerful individuals—specifically whoever happens to be president, his power brokers and advisors—and concentrate instead on three key tasks:

- Developing effective and accountable governance institutions that are flexible enough to represent Kenya's diverse society,
- Creating a set of fair, equitable rules by which political processes can be governed and fostering respect for the rule of law, both of which are essential to allowing institutions of government to interact in a way that represents the common interests of the Kenyan people, rather than the interests of the powerful few, and

- Providing ample political freedom for civic organizations, the media, and ordinary citizens to express and organize themselves peacefully and monitor the performance of their government.

We agree with most Kenyans that their constitution is outdated and needs to be revised to reflect the need for greater power sharing. The current standoff on the subject of constitutional reform stems in part from the inability of Kenya's political class to reach a consensus on how to de-concentrate power and create a more democratic system of checks and balances.

Let me turn now to the question of what USAID has been doing, based on this assessment, to strengthen democratic and judicial institutions in Kenya and to consolidate the Kibaki Government's commitment to the principles of free elections, rule of law and human rights.

#### USAID's Democracy and Governance Programs in Kenya

USAID democracy program in Kenya is part of one of our most mature development programs in Africa, with economic cooperation going as far back as the country's pre-independence days in the late 1950s and early 1960s. We have a substantial overall 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.

USAID has been pursuing a modestly-funded, albeit carefully targeted democracy and governance program in Kenya of about \$5 million a year. Our program has worked to increase the transparency and effectiveness of Government of Kenya institutions; promote more transparent and competitive political processes; and increase the capacity of civil society organizations to lobby for reforms, monitor government activities, and prevent and resolve conflict. We do this both with Government of Kenya

and non-governmental organizations, in close collaboration with other international development partners and under the leadership of the U.S. Ambassador to Kenya, in four principal areas: Good Governance, Civil Society, Conflict Mitigation and Reconciliation, and Political Competition and Consensus-Building. Let me describe some of the key components of these programs:

### Good Governance

Our work in good governance emphasizes two critical areas: Legislative function and processes; and anti-corruption reforms.

The goal of USAID support in the first area is to improve the effectiveness of Kenya's Parliament. To achieve this objective, we work through our partner, the State University of New York (SUNY), to strengthen the Parliamentary Service Commission and key parliamentary committees. Program activities contribute to a more open and participatory budget process and to improving Parliament's oversight of the national budget and corruption-related issues. The focus of USAID support is the Departmental Committees that shadow government ministries, address budget issues, and play watchdog roles. This approach also allows USAID to target the committees addressing the policy issues critical to achieving the overall USG strategy. USAID is also working in close collaboration with the U.S. Congressional House Democracy Assistance Commission. The House Democracy Assistance Commission program complements and strengthens our ongoing assistance to the parliamentary committees.

Anti-corruption activities include support for both non-governmental and governmental efforts to enhance citizens' engagement in anti-corruption reforms and to strengthen the government's capacity to deliver on its anti-corruption reform pledges. Working with civil society, the program promotes greater public awareness of corruption issues, improves access to information regarding government processes, and increases demand for reform. In collaboration with public sector institutions, the program strengthens enforcement and oversight units such as the Department of Public Prosecutions, the Judicial Service Commission, and the Parliamentary watchdog committees. To professionalize the Department of Public Prosecutions, USAID supports specialized training for the prosecutors assigned to the Department's Anti-Corruption, Economic Crime, Serious Fraud, and Asset Forfeiture Units. Support to the Judicial Service

Commission underwrites the establishment of a Secretariat whose mandate encompasses the promotion of ethics and integrity within the Judiciary, including oversight of Judges' and Magistrates' appointments, promotions, and disciplinary actions. USAID support to both the Department of Public Prosecutions and the Judicial Service Commission contributes to the GOK's Governance, Justice, Law, and Order Sector reform program.

USAID also supports the GOK's Public Financial Management reform program, concentrating on closing loopholes and increasing transparency in the public procurement system by providing technical assistance to finalize the new procurement regulations. Activities in this Program Area are closely coordinated with the two-year MCA Threshold Program administered by USAID that supports the newly-established Public Procurement Oversight Authority to implement the GOK's new procurement regulations, launch e-procurement procedures, and pilot the procurement reforms in the health sector.

### Civil Society

Under this program component, USAID supports civil society organizations to advocate for policy and legislative reforms as well as to monitor GOK performance. Civil society organizations conduct legal and policy analysis to inform their advocacy issues, including anti-corruption, access to information, procurement reforms, privatization, and gender equality. Civil society organizations also assist in drafting and overseeing the implementation of key legislation. Examples include the Freedom of Information Bill, the Public Officers' Ethics Act, the Public Procurement and Disposal Act, the Sexual Offenses Act, and the Political Financing Act. To support such legislation, civil society organizations also pursue ongoing consultations with Members of Parliament, key government agencies, relevant private sector stakeholders, other civil society organizations and citizens. In response to a marked decrease in civil society capacity since 2003 that occurred when many senior civil society advocates took positions in the Kibaki administration, USAID, through its partner Pact Inc., is deepening and intensifying support to civil society by offering more grants to local organizations, expanding the range of eligible partners to include more private sector groups, professional organizations, and membership organizations, and providing more targeted and frequent training and technical assistance to improve civil society organizations' leadership, advocacy, networking, and management capacity.

## Conflict Mitigation and Reconciliation

USAID is also active in promoting conflict mitigation in conflict-prone parts of Kenya, particularly the marginalized Northeastern Province and parts of Coast Province. For example, we have implemented a program to raise the national profile of these regions and support mediation, negotiations and peace-building interventions at the local level; and we support the efforts led by the Government of Kenya to develop a comprehensive national policy on conflict management and peace building. This bilateral program is reinforced by associated cross-border efforts managed by our regional Mission for East Africa, based in Nairobi, and by specific interventions to increase government services in those marginalized areas through our education and health programs. We are about to commence a special program, funded under Section 1207 authorities, which will continue focus on border areas and marginalized groups prone to extremist influences. In the border areas with Somalia, we work closely with other agencies in a three-D approach of democracy, defense and development.

The post-election reality in Kenya in which conflict is flaring up in many other parts of the country, particularly the Rift Valley, will clearly require us to examine how we can expand these efforts to address the underlying drivers of post-electoral violence, among which are clearly long-standing grievances about unequal access to power and resources. I will mention some of our plans going forward in a moment, but first want to describe the final area of our democracy and governance program in Kenya—one that is central to this current crisis.

## Political Competition and Consensus-Building

Under this component, our democracy and governance team concentrates support in two key areas: Elections and political processes; and political parties.

Kenya does not have a long tradition of multi-party elections. Our current democracy and governance program was part of a multi-donor effort to help Kenya set the stage for credible presidential, parliamentary and local elections in 2007. Developing the capacity of the Electoral Commission of Kenya (ECK) was central to USAID's electoral program. IFES--formerly known as the International Foundation for Election Systems but now just as

“IFES”--had been providing support to the ECK since late 2001, but our support through IFES has now ended. Activities focused on providing appropriate technology for more efficient and transparent elections administration while improving the skills of the ECK technical staff. Additional USAID funding was channeled through the 2007 Joint Donor Elections Assistance Program managed by the United National Development Program (UNDP). The overall goal of this program was to contribute to the achievement of free and fair presidential and parliamentary elections in Kenya. The program focused on: increasing the efficiency and professional management of the electoral process; enhancing information available to voters empowering them to make informed choices; increasing citizens’ knowledge of the electoral process; improving the accuracy of media reporting on electoral issues; reducing incidences of electoral violence; and enhancing the effectiveness of domestic observation.

Other contributions in this area were channeled through the National Democratic Institute and the International Republican Institute for political parties strengthening and opinion polling, respectively. The political parties program focused on: promoting coalition and consensus building; support to the development of parties’ policies and programs; and mainstreaming women and youth agendas in political parties. The opinion polling program focused on improving the quality of the polling data and advancing the use of reliable data to inform policy decisions and advocacy efforts. Finally, we contributed to the deployment of resident observers and a high-profile international observation delegation to undertake an impartial and independent assessment of the conduct of the elections, as part of a broader international observation effort.

In the run-up to the elections, we also sponsored highly successful civil society efforts to encourage the active participation of young voters, and to encourage a peaceful voting day.

Before moving on to some of the Sub-Committee’s other questions, let me take a moment to reflect on some of the impacts of our electoral assistance program and some of our lessons learned.

Our support for the recent elections in Kenya was an integrated program and notable achievements were realized. The achievements are easy to identify when the results of the parliamentary elections are isolated from those of the

presidential election. The parliamentary elections truly reflected the will of the Kenyan electorate and evidence of such includes:

- 21 Cabinet Ministers lost their seats
- 70% of incumbent Members of Parliament failed in their reelection bids
- A record number of women were elected
- Voter registration exceeded expectations, with more than one million new voters registering in 2007 alone
- the highest voter turnout in Kenyan history, particularly among youth
- Voters were more educated, not only on how to vote, but on the actual campaign issues. This was the first time any significant issues-based campaign platforms were widely available and discussed. [N.B. This is based on substantial anecdotal evidence; however, a formal evaluation has not been conducted.]
- Election Day was peaceful, some individuals waited patiently for long periods (in excess of eight hours) to vote.
- No international or domestic observers expressed concerns over the parliamentary elections.

Yet, when we look at what happened with the final vote tally for the Presidential elections, these positive achievements are overshadowed.

We believe in the main that our electoral programs in Kenya were well-designed and targeted, but that weaknesses inherent in the structure and staffing of the Electoral Commission, in particular, caused some of the assistance we and other donors provided to that body to fail to make the intended impact. We feel we made the right choice in focusing our assistance on strengthening the ECK's ability to administer the elections; the record high voter registration and turn-out as well as the absence of serious procedural problems during most of the process are proof that much went well. It is disappointing, and indeed tragic, however, that the ECK ultimately failed the Kenyan people by obscuring the final vote count for the presidential election.

#### What Must be Done: Next Steps for USAID

You have asked what must be done to address the problems Kenya is now facing and how the United States can contribute to these solutions. Let me describe for you our preliminary thinking, based on recommendations from

the U.S. Mission in Nairobi. To determine the feasibility of moving forward on these recommendations, we have been conducting a careful review of our existing programs in Kenya to decide how we might re-direct resources to address these newly identified and critical needs. For most of these priorities, we have existing programs in place that can absorb additional funding and thus start-up would be relatively quick:

First, we believe it is imperative to increase our democracy and governance programs. It is generally recognized by Kenyans across the political spectrum that constitutional and electoral reforms are essential to address the issues that have arisen from the elections crisis. These include the failure of the Electoral Commission to carry out a transparent and accountable process, and the need for constitutional reform to address the underlying grievances revealed in the crisis--including the need to limit power of the executive, strengthen the legislature, reform the judiciary, and address land reform, among other issues.

Among the activities we plan to fund are the following:

- Support to and awareness-raising about possible political solutions currently under mediation.
- Monitoring and reporting on the implementation of any political settlement to the electoral crisis, and holding parties accountable to the agreement.
- Research, dissemination, and policy advocacy by Kenyan civil society for national dialogue and constitutional reform regarding the underlying issues propelling the current crisis—for example, devolution of authority, executive authority, electoral reform and land policy.
- Post-election assessment to document the events leading up to and after the elections and to garner lessons learned from the electoral process.
- Public opinion polling to monitor citizen perceptions of the key issues, the commitment of the contentious parties to resolve the crisis, and progress toward a sustainable political settlement.

Parliament has emerged as critically important to achieving a political solution. With the ODM having elected the speaker and with the parliament almost evenly divided, the parliament is a forum for dialogue and for forcing cooperation between the two sides. The new speaker is an impressive political figure who is working to achieve a political solution. Demonstrating increased support for him and his desire to intensify reform in the parliament will directly contribute to efforts to achieve a political solution.

While we have an ongoing parliamentary strengthening program, we are considering ways to expand support for bipartisan efforts focused on national reconciliation and streamlining legislative operations. Among the activities we plan to fund are the following:

- An expansion of the orientation program for new members of parliament to address conflict resolution and reconciliation. Members of parliament are often seen as the source of local conflict and are routinely accused of exacerbating ethnic tensions. We are proposing to expand the orientation workshop to explicitly address post-conflict reconciliation and mediation issues. These sessions would address current tensions among parliamentarians and develop their individual capacity to more effectively and sensitively address their constituents.
- Creation of an Inter-Party Parliamentary Forum. The current political crisis emanating from the outcome of the just-concluded general elections has resulted in significant animosity and mistrust between the two main political parties. The new Speaker of the Kenyan National Assembly has requested support for this Forum, which is intended to facilitate policy dialogue within parliament, and between parliament and other interested key stakeholders. The focus of this dialogue would be on issues of national concern and potential mediated agreements arising from current efforts to develop a negotiated settlement to the current political crisis.

Civil society has coalesced with impressive efforts to promote dialogue and national reconciliation across ethnic and party lines. Providing support to several key umbrella groups will strengthen their efforts to promote dialogue and build pressure for a political solution. These groups need resources to pull people together through specific dialogue and reconciliation programs.

Our ongoing conflict prevention and mitigation program, as currently designed, is not the right vehicle to respond to the conflict related to the political crisis. Therefore, as part a National Dialogue, Healing and Reconciliation Program, we anticipate extending grants to civil society and media organizations to do the following:

- Bring groups together to dialogue and build consensus around issues to be addressed in the national reconciliation process.
- Support local level initiatives, particularly in hotspots and IDP camps, to stop violence (including sexual and gender-based violence), promote reconciliation, and provide a voice into the national dialogue.
- Train media personnel on conflict sensitive reporting and ethical standards; and
- Support national campaigns on peace and reconciliation and awareness rising on possible solutions under mediation.

Our staff in Kenya is already reviewing proposals from a number of civil society and media groups in these areas.

Our Ambassador in Kenya has also been clear that he wants to expand U.S. public diplomacy programs to find ways to support outreach and positive messaging efforts by key civil society organizations. This would greatly support our civil society activities as well.

Secondly, beyond the immediate humanitarian impact, the post-election crisis has significantly impacted peoples' income-generating activities and resulted in substantial livelihood and asset losses. The World Bank has estimated that up to two 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 percent 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 the tourism sector before the end of

March. In addition to the detrimental impact on Kenya's previously strong economy, such losses will mean decreased income and food insecurity for the millions of Kenyans who live without a financial safety net.

It will be critical, therefore, to help restore the livelihoods of many households in Kenya that have been forced to abandon their farms, small businesses and other means of livelihood. Since the areas most affected by violence are heavily dependent on agriculture—and constitute the heart of Kenya's bread basket—agricultural inputs and equipment are essential assets for the affected population to resume productive and economically gainful activities. Among some of the activities that we expect to support in this area are providing seeds and other agricultural inputs and tools, rebuilding grain warehouses, and extending seed capital for re-engagement in income-generating activities.

We are very encouraged that the GOK announced on January 30 the launching of the National Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post-2007 Election Violence. This commitment was reiterated on February 4 as part of a more comprehensive public statement on National Dialogue and Reconciliation made jointly between President Kibaki and Opposition Leader Raila Odinga. While we still need to learn more about this Fund, we understand the objective will be to assist with the return displaced people to their home areas; restoration of their livelihoods; and financing of relevant development projects. USAID will consider the possibilities of also providing support to this effort.

Thirdly, since long-standing issues about land tenure were among the factors fueling the crisis in western Kenya, we believe that supporting reform relating to land tenure and property rights will be critical. There is a compelling need for land reform, leading to the security and regularization of tenure and property rights. A draft national land policy and related implementation plan already are in place, and there has been broad consensus among Kenyans that this draft national land policy reflects national sentiment. USAID is already a partner in the land sector, and even prior to the elections was taking stock of options for expanded support to land reform.

Update on the Humanitarian Situation and USAID Emergency Assistance

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Let me now turn to a brief update on the current humanitarian situation in Kenya. My colleague, Deputy Assistant Secretary for Democracy, Conflict and Humanitarian Assistance, Greg Gottlieb, testified yesterday before the House Foreign Affairs Committee in significant detail on the humanitarian situation in Kenya. We have brought copies of his testimony for those wishing to have this more in-depth report.

In brief, 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. Populations continue to receive threats of renewed attacks targeting local residents, displaced populations, and personal and private property. 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.

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

In terms of the USAID response to this situation, we have provided more than \$4.7 million for emergency humanitarian response activities to date. 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 the various USAID teams 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 USAID Kenya and East Africa Missions and other USG agencies 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.

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

## Conclusion

As I believe I have outlined in substantial detail, we are actively engaged in reviewing how we can re-program existing programs and identify possible additional resources to address the critical needs that Kenya currently faces. We are most clear on our immediate next steps in the democracy and governance and national reconciliation arenas, and are working hard to clarify what we can do to address such crucial underlying issues as land tenure and land reform. In the meantime, we are also working hand-in-hand with donors and other organizations on the ground to deliver critically-needed humanitarian assistance and to assess what more must be done to ease the transition for displaced Kenyans by helping to restore their livelihoods and return families to their homes.

We look forward to continued opportunities to inform the Sub-Committee on our progress in this regard.