

**Testimony by Assistant Secretary for African Affairs Jendayi Frazer  
“The Immediate and Underlying Causes and Consequences of Flawed  
Democracy in Kenya”**

**Senate Committee on Foreign Relations  
Subcommittee on African Affairs Hearing  
Dirksen Senate Office Building room 419  
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## **INTRODUCTION**

Good morning, Chairman Feingold, Ranking Member Sununu and Members of the Committee. Thank you for the opportunity to discuss with you the current situation in Kenya. While I am always pleased to come before you to discuss Africa, this is unfortunately a tragic time for the Kenyan people. Before examining specific questions you may have, 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, particularly the underlying causes of the recent violence and political and social unrest. Finally, I would like to share with you U.S. views on elements that we believe Kenya's leaders may wish to consider as they seek a resolution to this crisis, and how the United States can contribute to such a resolution.

## **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 main interests in Kenya include promoting democracy 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 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 AND UPDATE ON ELECTIONS**

Kenya gained its independence from the United Kingdom in 1963, but did not hold its first multiparty elections until 1992. Former President Daniel arap Moi served from 1978 to 2002. Although Moi began his tenure as the authoritarian leader of a single-party state, he was in power during Kenya's transformation to a multiparty, pluralistic, and far more democratic nation.

Kenya's extensive, sophisticated civil society that is so active today in insisting on transparency and respect for democratic rights grew in confidence and resolve in the 1990s, in part because of the role it played fighting for an expansion of political space. Activists challenged the government in court, scholarly investigators criticized

centralized government, and journalists competed to report such information. To be sure, the path was not smooth and setbacks were common. Still, the trajectory was clear and upward. Kenya was a society that was maturing politically.

In both 1992 and 1997, 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 multiparty elections. The 2002 elections were generally peaceful, although some isolated incidents of violence did occur. Following the advent of multiparty elections in 1992, Kenya was on a path towards increasingly credible and competitive elections. Between 2002 and 2007, Kenya experienced an even greater increase in the growth of independent civil society and in freedom of the press. Regardless of the outcome of the current political crisis, we expect civil society to continue to play a vital role in Kenya.

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 local government elections. 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 short, with the most intense activity during the last three months before the election. Overall, the 2007 campaign was peaceful and orderly. Both the incumbent PNU party and Odinga's ODM held peaceful campaign rallies throughout the country, including rallies in Nairobi's Uhuru Park at which more than 200,000 people attended. We monitored the press closely during the campaign, and noted some inflammatory campaign statements disseminated primarily by cell phone text messages. There were some minor incidents of violence between supporters of different parties. 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 incidents of gender violence, and visited one of the victims in the hospital. Prior to Election Day, Secretary of State Rice made calls to the two main candidates to urge them to call on their supporters to participate peacefully and to honor the results of the election.

Kenyans turned out in large number to vote (turnout was over 70 percent nationwide), and the voting itself was generally peaceful. International and domestic observers concur that balloting and tallying at 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 where a PNU observer was killed. Once votes were counted at the polling station level, the ballots and

results were sent to the constituency tallying center. The reporting officer for the constituency then tabulated the results and transmitted them to the national tallying center in Nairobi. At the national center (located at the Kenya International Conference Center), officials of the Electoral Commission of Kenya (ECK) tabulated and announced constituency results. The consensus among observers is that 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. As late-reporting constituency results were announced by the ECK, Kibaki pulled ahead. Unfortunately, due to loss of reliable custody of election documents and the destruction of most physical ballots, it is now impossible to determine who would have won the presidential election in the absence of these irregularities.

Before and after the ECK announced Kibaki as the winner of the presidential election on December 30, violence erupted at several places around the country, primarily in Rift Valley province, western Kenya, and poor suburbs of Nairobi. To date, an estimated 900 people have died and some 250,000 have been internally displaced as a result of post-election violence and intimidation.

## **UNDERLYING CAUSES OF KENYA'S CRISIS**

While sparked by the irregularities in the vote tabulation, the current crisis is rooted in long-term social and economic inequalities, some of which have their origins in the colonial era. Kenya is a multi-ethnic society, with 42 distinct ethnic groups. At 22 percent of the population, the Kikuyus are Kenya's largest and most geographically dispersed ethnic group. Jomo Kenyatta, an ethnic Kikuyu, became the first post-independence president of Kenya. Since the days of Kenyatta, Kikuyus have been perceived by many Kenyans to dominate business, civil service, military leadership, the judiciary and higher education. This perception of overrepresentation of Kikuyus in positions of power has been a long-term festering issue in Kenya.

Kenya's constitution concentrates most power in the executive branch. The Kenyan constitution provides that electoral disputes should be determined by the courts. However, the opposition's perception that the courts are biased undermines the judiciary's ability to fulfil its constitutionally mandated role. Parliament is vulnerable to executive veto, and legislators have not generally opposed presidential initiatives. The parliament is made up of 210 elected legislators and 12 more nominated by the president and the opposition. Its ability to influence policy is limited by the strong executive authority of the president. The president decides when to convene parliament and when to dissolve it, and only has to call it into session once a year. Parliament does have significant control of Kenya's budget. Parliament can vote a no-confidence motion against the president, but this step requires a 2/3 majority. As it stands now, neither the legislature nor the judiciary effectively balance executive power.

Kenya's central government has not adequately focused on equitable distribution of resources or devolution of power and funds to local authorities. In 2003, President Kibaki created the Constituency Development Fund (CDF) in an attempt to address

inequitable resource flows. The CDF allocates funding from the treasury to each of Kenya's 210 constituencies for infrastructure and development projects sponsored by local leaders.

Despite deep-seated political issues, Kenyan civil society has established itself as a vibrant vehicle for the expression of popular will and a means to redress political grievances. Many leading figures in civil society accepted posts in Kibaki's government in 2003, so a new generation of civil society activists emerged and are continuing to build their capacity with assistance from the United States and other donors. Kenya's remarkable economic growth and its social and political stability since independence have also contributed to Kenya's exceptional international stature and regional leadership. However, events since the election have crystallized why fundamental issues must be addressed if Kenya's demonstrated promise is to be realized.

## **BEHIND THE VIOLENCE**

I would like to turn to a question that is on the minds of everyone who cares about Kenya: What is behind the violence, and how can we stop it?

From December 29 on, Kenya has experienced violence primarily in Nyanza and Western provinces, central and southern Rift Valley province, and the poorer suburbs of Nairobi. An initial wave of violence arose from disorganized spontaneous protests before and in the immediate wake of the ECK announcement of President Kibaki's victory. These protests were accompanied by violence, including looting, arson, extortion, intimidation, and rape. The violence that occurred right before and the first few days after the election results announcement has diminished, but continues to spike from time to time. For example, the January 29 murder of Nairobi-area member of Parliament Merlitus Were (ODM) touched off riots in his constituency, and the January 31 murder of ODM Member of Parliament of Ainamoi (Kericho District) David Kimutai Too (a Kalenjin), led to worrisome new violence. There has also been a pattern of organized violence aimed at driving out Kikuyus from Kalenjin areas. We have also seen excessive force used by police against civilians especially in Kisumu. Another troubling development has been the recent emergence of retributive, community-based violence in reaction to earlier ethnic clashes. Since this crisis emerged, we have insisted to all parties in Kenya that violence must stop. Strong statements to this effect have been issued by the President, the Secretary of State, Assistant Secretary Frazer, and our Ambassador in Kenya, Ambassador Ranneberger, which condemn all violence, call on opinion leaders to urge their supporters to remain calm, and insist that Kenyan police maintain public safety and refrain from excessive force. Ambassador Ranneberger has registered our grave concern with the Minister of Internal Security regarding excessive use of force by police and death threats against human rights defenders.

Any internationally acceptable solution to the current crisis should acknowledge that Kenyans have the right to own land anywhere in the country regardless of their ethnicity, and it must also ensure that all groups are confident that they are adequately represented and fairly treated by their government. As events in the Rift Valley show, a stronger and

more representative Parliament and judiciary, and land tenure reforms are critical to end the current crises and prevent future ones.

## **WHAT IS BEING DONE AND THE U.S. ROLE**

It is apparent that Kenya is at an unprecedented 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. 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 create a platform for addressing critical longer-term institutional reforms and political reconciliation.

Stability in Kenya requires immediate action from both Kibaki and Odinga. The President and his party must offer real access to power and authority to the opposition. Raila Odinga and his party must seriously seek a compromise arrangement that will achieve real reconciliation. Both sides must make every effort to end violence perpetrated in their names. Power sharing is an essential element to a viable short-term solution for Kenya. Kenyans themselves must determine the precise framework for an effective political resolution, but it is apparent that it must include constitutional reform, land reform, and reforms of the electoral commission, police, and judiciary.

Some Kenyans and other advocates in civil society and elsewhere have called for a vote recount and new elections. For the reasons I discussed earlier--many of the original ballots and documents were destroyed or altered, and/or the ECK did not maintain adequate physical custody of sensitive documents--we do not believe an accurate recount is possible. However, an impartial investigation into the nature of electoral irregularities might help to restore the faith of the Kenyan people in the democratic process. We believe that the focus should remain on the Annan mediation effort that includes addressing the political crisis resulting from the elections. New elections should not be considered before the ECK is reformed and enjoys broad credibility.

We are also looking at the range of options we could bring to bear against those who incite violence. These options should include an impartial and independent investigation to ascertain individual responsibility, and future accountability to ensure impunity does not prevail. A strong message of accountability, delivered now, will help to deter additional violence. Political reconciliation must be a Kenyan effort, but we and the international community will provide strong support. We continue to work closely with our partners in the international community, including the AU, UK, EU, and individual EU member states, to support former UN Secretary-General Kofi Annan's efforts to facilitate an end to this crisis. On our part, we have made it clear that there will be "no business as usual" with Kenya until there is a real, concerted effort by both the Kenyan government and its opposition to resolve the issues which generated this tragedy.

## **CONCLUSION**

The Kenya we saw before this crisis emerged had made great progress on the path to democracy, development, and regional leadership. Kenyans want and deserve to return to this path. The United States will remain engaged at the highest levels to support resolution of this crisis.

