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THE IMMEDIATE AND UNDERLYING CAUSES AND CONSEQUENCES OF KENYA'S FLAWED ELECTION

HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICAN AFFAIRS

OF THE

COMMITTEE ON FOREIGN RELATIONS
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THE IMMEDIATE AND UNDERLYING CAUSES AND CONSEQUENCES OF KENYA'S FLAWED ELECTION

THURSDAY, FEBRUARY 7, 2008

U.S. SENATE,
SUBCOMMITTEE ON AFRICAN AFFAIRS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Russell D. Feingold, chairman of the subcommittee, presiding.

Present: Senators Feingold, Bill Nelson, Cardin, and Lugar.

OPENING STATEMENT OF HON. RUSSELL D. FEINGOLD, U.S. SENATOR FROM WISCONSIN

Senator FEINGOLD. I would like to call the committee to order.

Good morning, everybody. The hearing will come to order. And on behalf of the Senate Foreign Relations Committee Subcommittee on African Affairs, I welcome all of you to this hearing on the Immediate and Underlying Causes and Consequences of Kenya's Flawed Election.

I am honored to be joined in a little while, by my colleague and the ranking member of this subcommittee, Senator Sununu; and when he arrives, I'll invite him to make some opening remarks.

By now we've all seen the gruesome photos and heard the tragic stories of the brutal violence that has erupted throughout Kenya. Hopes were high in the runup to that country's fourth multiparty elections held on December 27, and Kenyans actually turned out in record numbers to cast their votes in the extremely close race between incumbent President Mwai Kibaki, and the leader of the opposition Orange Democratic Movement, Raila Odinga.

Excitement at advancing Kenya's democratic progress turned sour when results were delayed. Then, when Kenya's Electoral Commission declared Kibaki the victor and proceeded to hurriedly swear him in 2 days later, that hope and excitement turned to rage as the world watched the entire democratic process begin to unravel and historical grievances gave way to outbreaks of brutal violence that continue today.

With volatile neighbors like Somalia and Ethiopia and Sudan, Kenya has often been considered relatively stable, and even a model of democratic and economic development in the region.

Although even before this crisis the country was not without its problems, Kenya is an important partner for the United States.

But the lack of progress in addressing a number of deep-rooted problems, including political marginalization, land disputes, and endemic corruption, appear to have taken a toll.

By many accounts, the situation in Kenya could still get much worse, and is beginning to have negative repercussions beyond its own borders. That is why it is essential that the United States and wider international community devote the necessary attention, assistance, and diplomatic pressure to help pull Kenya from the brink of disaster, and bring that country back to the path toward stability, democracy, and development.

Given our strong relationship with Kenya, it's particularly important that the administration act in a fair and balanced manner that actively supports the people of Kenya and their right to a government that truly represents them, and seeks to address the fundamental grievances that have contributed to the brutal violence. The administration cannot overlook or ignore the complexities of this crisis; for doing so will only allow them to fester and reemerge again in the future.

This hearing will explore both the short- and long-term causes of the recent political and social unrest in Kenya, and what must be done to address these problems, and how the United States can contribute to these solutions.

In an attempt to present a balanced assessment of what has gone wrong, and how to fix it, we have invited two panels of distinguished witnesses, to focus on U.S. policy to date, and how our Government can best support Kenya and international stabilization efforts.

First we'll hear from Assistant Secretary of State Jendayi Frazer, who just returned from Africa last night. We will also hear testimony from Katherine Almquist, the Assistant Administrator for Africa at the U.S. Agency for International Development.

I've asked them to explain how the United States has sought to strengthen democratic and judicial institutions, while also consolidating the Kibaki government's commitment to good governance. The subcommittee will be also interested to hear how much, and what kind of, assistance the U.S. is prepared to provide in both the immediate and long term.

A second panel of nongovernmental witnesses will offer additional perspectives on the underlying causes of the recent unrest, and the potential impact of these events throughout Kenya and the region.

Mr. Christopher Albin-Lackey is a senior researcher for Africa at Human Rights Watch and has just returned from a research assessment of the human rights situation in Kenya, so he has seen firsthand the human rights and humanitarian impact of the post-election crisis.

Dr. Joel Barkan is professor emeritus of Political Science at the University of Iowa, and a senior associate at the Center for Strategic and International Studies here in Washington.

And finally, we will hear from David Mozersky, who—since July 2006—has been the International Crisis Group's Horn of Africa Project Director here in Washington, after working for Crisis Group's Nairobi office for more than 4 years.

We're glad you're all here today, and we appreciate your willingness to testify on this timely issue. Thank you, and welcome. I look forward to your testimony and to our subsequent discussion.

Before I turn to my colleagues for their opening comments, I also want to briefly acknowledge the wide interest that Kenyans have taken in this hearing. My office has received numerous calls, visits, and faxes from Kenyans in the United States, as well as in Kenya, who wanted to share their insights into the current crisis.

At this time, I would like to ask that these formal submissions we have received from some of these groups and individuals be included in the official record of this hearing. I think it's important to note the broad range and diverse perspectives on the causes and solutions to the current crisis in Kenya. And so, I will do so if there is no objection. Without objection.

Finally, I want to offer my sincere welcome and appreciation to the Kenyans in the audience this morning. I know that some of you have traveled long distances to be here, and that many of you are personally involved in what is going on in your country, so I am grateful for your interest and attendance.

Now, I'm very pleased to introduce the ranking member of the full committee, who has been devoted to issues concerning African nations throughout his career, Senator Lugar.

Senator LUGAR. Well, thank you very much, Mr. Chairman. I do not have an opening statement, but simply applaud the timeliness of your calling and chairing this hearing. I look forward, along with you, to hearing our distinguished witnesses, and participating in the questions and answers with them.

Thank you very much.

Senator FEINGOLD. Thank you, Senator Lugar.

And Senator Ben Cardin, also a member of the subcommittee and member of the full committee, obviously. Senator Cardin, your opening remarks.

STATEMENT OF HON. BENJAMIN L. CARDIN, U.S. SENATOR FROM MARYLAND

Senator CARDIN. Thank you, Mr. Chairman, for conducting this hearing. I do have an opening statement and I would ask that it be made part of the record.

Just to make a brief comment—I think there was great hope that the elections of 2007 would add to Kenya's progress toward democracy. It was going to be a competitive election, and I think we all were looking forward to the results of that election. But, unfortunately, the elections were flawed. And the violence that has taken place in that country, we need to pay a great deal of attention to it.

But I would just urge us to look at ways in which we can provide greater assistance to countries, to make sure that their election process is not flawed. I think our monitoring needs to be stronger, to try and prevent this type of activities in countries that have too often led to violence. You can't condone the violence that's taking place, and we need to do everything we can to bring it to an end.

But, I do think we need to pay more attention to these countries, and I look forward to the hearing.

[The prepared statement of Senator Cardin follows:]

PREPARED STATEMENT OF HON. BENJAMIN L. CARDIN, U.S. SENATOR FROM MARYLAND

Mr. Chairman, I thank you for holding this important and timely hearing today on a topic that has captured the world's newspaper headlines for the past month. The United States and the Republic of Kenya have enjoyed well-developed long-standing relations and it is important to our country to assist in returning peace to that nation.

The post-election violence in Kenya took many international observers by surprise. However, when one recalls similar outbreaks of civil war in Liberia and most recently the Ivory Coast, the seeds for violent disruptions were planted some time ago.

The problem in Kenya, as with some other African states, is that tremendous emphasis is placed on elections because the stakes are usually very high for both winners and losers. Often, the hopes of whether a nation conducts much needed reforms for economic growth or political stability rests on the election of the appropriate leadership.

Conversely, as is the case with Kenya, if an election is perceived as continuing business as usual and stifles political and economic reform and opportunity, a powder keg can be lit with devastating consequences.

Mr. Chairman, the situation in Kenya did not have to turn out like this. The 2007 elections began with great promise and transparency. Several polls showed the opposition Orange Democratic Movement (ODM) candidate, Raila Odinga, leading the incumbent Party for National Unity (PNU) candidate, Mwai Kibaki. In fact, many of Mr. Kibaki's advisors thought he was going to lose the December contest.

The parliamentary elections went smoothly and the ODM was able to gain a majority of seats. However, the Presidential election was seriously flawed and lacked transparency. While the ODM was leading in most areas, the final ballot tabulation resulted in a victory for the ruling PNU.

Electoral Commission of Kenya (ECK) Commissioners, ECK staff and international election observers reported serious irregularities, especially in vote tallying. The ECK hastily declared Mr. Kibaki as the winner and less than an hour after this decision he was sworn in again as President. The European Union observers said "a lack of adequate transparency and security measures in the process of relaying the results from local to national level questioned the integrity of the final result." Election observers from the East African Community also raised concerns about the elections.

Mr. Chairman, unfortunately the initial response from the U.S. State Department initially added to the confusion. The followup response acknowledged discrepancies but failed to condemn a process most Kenyans believed to be rigged. The U.S. finally commented that the aggrieved parties to the elections should pursue legal remedies and make their case publicly. This is the approach favored by Mr. Kibaki.

Perhaps the State Department truly underestimated the depth of anger and frustration of the Kenyan people. Upon the outbreak of violence, it appeared Assistant Secretary of State for Africa, Jendayi Frazier, tried to get the two sides to agree to a political settlement. This perspective failed to grasp the totality of the situation as the Kenyan capital city and country side continued to burn.

Thankfully Mr. Chairman, two Ghanaians stepped into help mediate the situation. First, African Union President John Kefir attempted to broker dialogue between Mr. Kibaki and Mr. Odinga. Then, former United Nations Secretary General Kofi Annan entered as mediator. Mr. Annan is trying to broker a durable peace agreement that would allow reconciliation talks to continue, end political violence and establish a truth and reconciliation commission to explore electoral and other inequities.

Approximately 1,000 people have died since the violence began in late December 2007 and 500,000 people have been displaced. The Kenyan economy, largely based on agriculture and tourism, is grinding to a halt as goods can not get to the market place and tourists fear entering Kenya.

Mr. Chairman, the United States must assist Mr. Annan's peace efforts and apply pressure on the two Kenyan political parties to begin working together to spread calm and cooperation throughout the land. To do otherwise will be to drive Kenya to further violence with the potential to spill over into an already violent and volatile region.

Senator FEINGOLD. Thank you, Senator Cardin, for your attendance, and participation.

And now we turn, with perfect timing, to Assistant Secretary Frazer.

STATEMENT OF HON. JENDAYI FRAZER, ASSISTANT SECRETARY, BUREAU OF AFRICAN AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC

Ms. FRAZER. Thank you, Chairman Feingold, and I apologize for being late this morning.

Good morning, Mr. Chairman, Ranking Member Sununu, members of the committee. While I'm always happy to come before you to discuss Africa, this hearing comes at a tragic time for the Kenyan people.

As requested by the committee, I've submitted for the record a longer statement that outlines the current political crisis and its underlying causes.

Before turning to your questions, I would like this morning to briefly touch on the causes of the crisis, and to share our views on the path that Kenya's leaders can take out of this crisis, and how the United States can contribute to helping Kenya move forward.

I ask that you accept the longer statement for the record. Thank you.

While the immediate spark for the current situation is the flawed Presidential election on December 27, there are also deeper underlying causes of the violence and political turmoil that are gripping Kenya. These causes include long-term social and economic inequalities, concentration of power in the executive branch, and weaknesses of critical institutions like the judiciary and Parliament.

The international community supports Kofi Annan's mediation as a way to resolving the electoral and political crises and to start to address these more fundamental institutional and socioeconomic problems in Kenya.

On the immediate crisis, even before the Electoral Commission of Kenya, the ECK, announced Mwai Kibaki as the winner of the Presidential election on December 30, violence erupted in Kisumu, and after the announcement, interethnic violence started, especially in the Rift Valley.

Most of the violence since then, has affected Nyanza and Western Province, Central and Southern Rift Valley Province, and areas of Nairobi.

The first type of violence that occurred was more spontaneous, looting and violent protests, triggered immediately before and right after the ECK announcement. We cannot rule out that there was preorganization and an inquiry into the violence is necessary to establish the facts.

This kind of violence has diminished, but can be triggered anew by events on the ground, as demonstrated by a wave of riots following the murders of opposition members of Parliament, Melitus Were and David Too, on January 29 and 31.

There was also, immediately following the ECK announcement, a pattern of organized violence, especially in the Rift Valley, aimed at driving out Kikuyus from the area. We have also seen troubling use of excessive force by police against civilians.

Finally, we more recently have witnessed the emergence of retributive, community-based violence in reaction to earlier ethic clashes. Evidence that the Mungiki criminal organization is being

reorganized as the Kikuyu militia for revenge against non-Kikuyus, is a new dynamic that we cannot tolerate.

We are also gravely concerned about the reports of increased incidents of sexual and gender-based violence, and about the vulnerability of IDPs who have already been victimized.

At this unprecedented and critical juncture in Kenya's history, our top policy priority is to bring an immediate end to the violence. The government and opposition leaders have the responsibility to do everything in their power to stop this violence.

The parties also need to negotiate in good faith, with Annan's facilitation, to reach a political agreement that will allow a measure of peace and economic stability to return to Kenya, and to create a stable platform for addressing the essential, longer term reform projects and interethnic reconciliation.

Civil society and the business community have, so far, largely played constructive roles in moving Kenya forward, and their voices should be heard and respected. Our message to the parties is consistent and strong—stop the violence and negotiate in good faith toward a political solution. We are also looking at a range of options against those who either incite violence or are obstructive to the negotiation process.

There can be no impunity for inciting, supporting, or participating in violence. Before this crisis, Kenya was on a productive path toward an open, democratic society, as evidenced by the 2002 Presidential elections and the 2005 constitutional reform. The Kenyan people want and deserve to return to this path, and we will remain engaged at the highest levels to help them get there.

The United States has many interests at stake, and will remain active in helping the Kenyan people and their leaders to resolve this crisis.

Thank you. I will be happy to take any questions you may have.

[The prepared statement of Ms. Frazer follows:]

PREPARED STATEMENT OF HON. JENDAYI E. FRAZER, ASSISTANT SECRETARY, BUREAU OF AFRICAN AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC

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 toward 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 3 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 multiethnic 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 fulfill 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 two-thirds 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, U.K., EU, and individual EU member states, to support former U.N. 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.

Senator FEINGOLD. Thank you.

Ms. Almquist.

STATEMENT OF KATHERINE J. ALMQUIST, ASSISTANT ADMINISTRATOR, BUREAU FOR AFRICA, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, WASHINGTON, DC

Ms. ALMQUIST. Chairman Feingold and members of the committee, thank you for the opportunity to appear before you today.

I would like to submit written testimony for the record on the contributions that the U.S. Agency for International Development has made toward strengthening democracy in Kenya, including the support we provided during the runup 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.

I will summarize some of the key points now, thank you.

Unrest in Kenya, of course, not only threatens the well-being of Kenyans, but also humanitarian and commercial operations throughout the entire region, potentially affecting more than 100 million lives, according to some analysts. Neighboring countries are experiencing shortages of fuel and other essential supplies, due to insecurity along the Kenyan section of the Northern Corridor, one of the most important transport routes in Africa. Addressing conflict in Kenya, therefore, will be critical to the stability and health of the entire region.

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. Kenya's long-term challenge with respect to democracy has been to reorient the political system away from its focus on powerful individuals—specifically whoever happens to be President—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; 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 needs 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 deconcentrate power and create a more democratic system of checks and balances.

USAID's democracy program in Kenya is one of our most mature development programs in Africa, with economic cooperation going back as far as the late 1950s and early 1960s. The overarching goal of the program is to build a democratic and economically prosperous country by assisting it to improve the balance of power among institutions of governance, promote the sustainable use of its natural resources, and improve rural incomes.

USAID programs also improve health conditions, provide access to quality education for children of historically marginalized populations, and promote trade and investment programs.

In fiscal year 2007, the United States provided over $500 million in assistance to Kenya and will do the same in fiscal year 2008.

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 re-

forms, monitor government activities and prevent and resolve conflict.

We do this both with the Government of Kenya and nongovernmental organizations, in close collaboration with other donors and under the leadership of the U.S. Ambassador to Kenya.

In the testimony I have submitted for the record, I provide substantial detail on these programs. Therefore, I would like to highlight just two of them now—legislative strengthening, and political competition and consensus-building.

The goal of our work in legislative strengthening is to improve the effectiveness of Kenya's Parliament. To achieve this objective, we work through our partner, the State University of New York, to strengthen key parliamentary committees. Program activities contribute to improving Parliament's oversight of the national budget and corruption-related issues. The focus of USAID support is the departmental communities that shadow government ministries, address budget issues, and play watchdog roles.

Our elections and political processes program was part of a multidonor 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 our efforts. The International Foundation for Election Systems or "IFES" had been providing assistance 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—the technical skills of the ECK staff.

We also channeled funding through the Joint Donor Elections Assistance Program, managed by the United Nations Development Program. This program focused on increasing the efficiency and professional management of the electoral process; enhancing information available to voters; 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 included political party strengthening and opinion polling. We also 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.

Our support for the recent elections in Kenya was an integrated program, and notable achievements were realized. These 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 concludes that 70 percent of incumbent Members of Parliament were overturned in their reelection bids, and those elections were largely perceived not to have significant issues.

Voter registration for the elections exceeded expectations, with more than 1 million new voters registered in 2007 alone. Yet, when we look at what happened with the final vote tally for the Presidential elections, these positive achievements are overshadowed.

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 current thinking.

We are conducting a careful review of our existing programs in Kenya to decide how we might redirect resources to address these newly identified needs. For most of these priorities, we have existing programs in place that can absorb additional funding, and thus our implementation efforts should proceed fairly quickly.

First, we believe it is imperative to increase our democracy and governance programs, and I anticipate that we will be able to double this program shortly. We are in the middle of a number of funding decisions, and I expect that we can identify additional resources very quickly to support the team in Nairobi.

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.

We have plans to support a number of initiatives in the area of the failure of the Electoral Commission to carry out a transparent and accountable process; and the need for constitutional reform to address underlying grievances, including the need to limit power of the executive, strengthen the legislature, reform the judiciary and address land reform.

In particular, Parliament has been critically important, and will be critically important, to achieving a political solution. We have plans to support the new Speaker of Parliament, in addition to our ongoing parliamentary strengthening program, and will be working with our team in Nairobi to provide resources for increasing political dialogue in the forum that Parliament can provide for national reconciliation.

Civil society has also coalesced with impressive efforts to promote dialogue and national reconciliation across ethnic and party lines, and providing support to several key umbrella groups will strengthen their efforts to promote dialogue and build pressure for a political solution.

These groups will need resources to pull people together through specific dialogue and reconciliation programs, and we have a number of plans in place to support these initiatives.

Second, 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.

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. We are planning to support activities that will provide seeds and other agricultural inputs and tools, rebuild grain warehouses, extend seed capital for reengagement in other income-generating activities.

Third, since longstanding 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 are already 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 we anticipate increasing our assistance in this regard.

Let me now turn briefly to the humanitarian situation. My colleague, Deputy Assistant Administrator for Democracy, Conflict and Humanitarian Assistance, Greg Gottlieb, testified yesterday before the House Foreign Affairs Committee on the humanitarian situation in Kenya. We have copies of his testimony for those wishing to have a more in-depth report, and I would also ask if it is acceptable to the committee that his testimony be submitted for the record, as well.

In brief, the situation in Kenya is extremely fluid. USAID has responded to this situation with more than $5.2 million in emergency humanitarian assistance. Thus far, immediate priorities for this assistance have included protection, water and sanitation, health, shelter, and camp management interventions, targeting displaced population in stressed host communities in areas of Nairobi and western Kenya.

I am happy to provide additional information on the humanitarian situation in Q&A if that would be of interest.

Mr. Chairman, and members, USAID is actively engaged in reviewing how we can further redirect our existing programs, and identify additional resources to meet the more critical needs, following this post-election crisis. And we look forward to continued opportunities to keep you informed on our efforts in this regard.

Thank you.

[The prepared statement of Ms. Almquist follows:]

PREPARED STATEMENT OF KATHERINE J. ALMQUIST, ASSISTANT ADMINISTRATOR FOR AFRICA, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, WASHINGTON, DC

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 runup 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 multiyear 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 preindependence 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 govern-

ment-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 reorient 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 deconcentrate 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 preindependence 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 nongovernmental 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 anticorruption 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.

Anticorruption activities include support for both nongovernmental and governmental efforts to enhance citizens' engagement in anticorruption reforms and to strengthen the government's capacity to deliver on its anticorruption 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 2-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 anticorruption, 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 3–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 longstanding 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 multiparty elections. Our current democracy and governance program was part of a multidonor 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 runup 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 subcommittee'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 percent of incumbent Members of Parliament failed in their reelection bids;
- A record number of women were elected;
- Voter registration exceeded expectations, with more than 1 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 8 hours) to vote; and
- 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 turnout 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 redirect 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 startup 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 development of 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 of 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.

Second, 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 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, 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, 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 reengagement 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.

Third, since longstanding 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

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 U.N. and international relief organizations, and engaging with other donors to identify evolving priority needs.

The USG is the largest donor to the U.N. 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 reprogram 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 subcommittee on our progress in this regard.

Senator FEINGOLD. Thank you, Ms. Almquist.

We'll begin with 10-minute rounds.

Secretary Frazer, thank you for your testimony and for coming to testify before the subcommittee so soon after your return from the region.

Just, before we begin with Kenya-related questions, I would like to raise a one-time sensitive issue with you. On December 13, Chairman Biden sent a letter on my behalf, requesting cables in the Ogaden Region of Ethiopia. The letter contained the specific number of each requested cable, which I would assume makes it quite simple for these communications to be located and delivered.

It is now February 7, nearly 2 months later, and these cables have still not—are still not delivered. What's taking so long for these cables to be delivered? As you well know, part of my job is to conduct oversight, and I have requested these cables accordingly. I understand you've been traveling quite a bit recently, but surely the sign-off procedure to get these cables to the chairman of the Africa Subcommittee isn't that difficult. I would like to know when these cables will be delivered.

Ms. FRAZER. Mr. Chairman, it is my understanding that that issue of responding to your request is being vetted through the State Department. It's not an issue that my Bureau clearly handles alone, and as soon as that vetting is completed, then I would imagine that you would get the answers that have been requested. But, certainly my Bureau is not the one that is the final signoff on providing cables, by number, to the committee.

Senator FEINGOLD. Who has the final sign-off?

Ms. FRAZER. I don't know, but I know that it's being vetted through the building. The lawyers will have to have a look at that. There are bigger issues that the State Department, as an institution, working with the Congress, will have to address. And that's not something that my Bureau is responsible for.

Senator FEINGOLD. OK, well I hope the vetting happens quickly. I recommend that these cables are delivered as soon as possible. We've already lost too much time, and quite possibly, too many lives in that situation.

Let's turn to the issue at hand and discuss Kenya. Given your trip to Kenya in the aftermath of the elections, what do you see as the major points of concern for resolving this political crisis? How are we working with former U.N. Secretary General Kofi Annan to support his current mediation efforts and what precise contributions are we making to these negotiations?

Ms. FRAZER. Thank you for that question.

I think that the key for progress is the willingness and the good faith of the leadership of the PNU, Mwai Kibaki's party, and of ODM, Raila Odinga's party, and their mediators.

We are supporting Kofi Annan's mediation. We began supporting it even before it started, with Secretary Rice, and the U.K. Foreign Secretary Milliband issuing a statement welcoming the AU initiative under John Kufuor, to negotiate with these parties.

When John Kufuor decided that he would have Kofi Annan as a lead mediator, we again welcomed that. We met and talked to both Kufuor, as well as Annan; Secretary Rice has spoken to both as well. We have provided ideas for them. We have also pushed the different parties, Kibaki and Odinga, directly. We've tried to build and help civil society voices speak up, to put the pressure of their

constituents on them. And so we've been working very directly, diplomatically, with the mediators themselves, as well as the parties and the broader society.

Senator FEINGOLD. Assistant Secretary, do you agree that the crisis in Kenya has serious strategic implications for the United States, and to follow on that, do you agree that the ability to anticipate crises, like this one in Kenya, can be as important to defending America's interests as the ability to respond to crises after they've unfolded?

Ms. FRAZER. Certainly, the United States has key strategic interests—we have an interest in Kenya regaining its role as a stable, democratic, and economically viable country in East Africa. We have an interest in ensuring that Kenya resolves its political challenges in a way that contributes to reconciliation by the broad majority of Kenyans, and restores international confidence; and we also must protect our strategic relationship with Kenya, especially on regional conflict resolution, where it impacts us directly.

Kenya has been a key partner particularly on the implementation of the Comprehensive Peace Agreement in Southern Sudan, as well as on counterterrorism cooperation.

Yes; I do believe that it's important to anticipate these challenges, and I recall that when I testified as the Assistant Secretary nominee, I raised the issue of how elections throughout Africa become flashpoints of conflict, and that we need to strengthen them, institutionally, to be able to manage these elections.

And certainly, since becoming Assistant Secretary, I've put an emphasis on trying to support electoral commissions, the judiciary, the independent media—all as key institutions, as well as political parties, for managing these elections. This problem in Kenya can actually be seen throughout all of Africa. And so, we have anticipated such challenges.

Senator FEINGOLD. Well, how does the State Department work with other U.S. agencies—including the intelligence community—to actually anticipate these kind of crises, and what resources are you using, or should you be directing toward achieving that goal?

Ms. FRAZER. Well, we certainly—with our intelligence community, but also with our diplomats on the ground talk to all of the parties. We are aware of orientations of different political parties and their response. Secretary Rice spoke to both sides, saying to them that they both must be willing to accept defeat. She had that message for a reason. But we certainly work with the intelligence community, but also—I would just emphasize—with our diplomats on the ground. Our Ambassador had been making speeches in the lead-up to this election, trying to influence Kenyan leaders, as well as civil society on how they respond to any particular outcome of the election.

Senator FEINGOLD. I understand that visa bans may be under consideration, in fact I've heard recent information on this just prior to the hearing—for certain members of the Kenyan Government and/or the opposition party. Can you share your criteria for such consideration, and who you might be considering?

Ms. FRAZER. Yes, thank you. For the most part, we of course rely on the judgment of our Embassy on the ground, because they're in-

volved in dealing with these leaders and government as well as opposition on a daily basis.

But, there is certain evidence—we monitor the radio, we look in newspapers—of those who are inciting and continuing to incite violence, and they would be the first target of our effort to impose a visa ban. And so, the Embassy will generate a list of names, that list will then come back to Washington, and we will review it. But again, we would heavily rely on the Embassy on the ground for determining who should be on the list.

Senator FEINGOLD. Thank you.

Ms. Almquist, as you know, the USAID—that's the American taxpayers, of course—funded an exit poll, conducted by the International Republican Institute in Kenya. I'd like to ask you both about why this report—actually from both of you, but you in particular—why this report has not been made public? Does USAID and the State Department have a view as to whether or not it should be published? Why hasn't it been published?

Ms. ALMQUIST. Mr. Chairman, I'll have to look into that for you and provide you an answer back. I'm not clear why we haven't made that report public.

Senator FEINGOLD. Ms. Frazer.

Ms. FRAZER. I haven't discussed it with IRI, and so I don't know why they haven't made their report public. I think that, again, we have been focusing on the mediation by Kofi Annan. We've been preoccupied with trying to end the violence, but certainly we can ask IRI if there's a reason for them not making——

Senator FEINGOLD. Given the urgency of this——

Ms. FRAZER [continuing]. Important public——

Senator FEINGOLD [continuing]. I don't consider either of those to be serious answers. This is a very delicate thing.

Ms. ALMQUIST. Mr. Chairman, I——

Senator FEINGOLD. I really do hope you'll immediately get back to me on this.

Ms. ALMQUIST. Yes, sir. And, to my knowledge, we have not asked IRI not to make the report public, but I believe there's a question of confidence for IRI in the results of the exit poll, but we'll immediately get you an answer on that.

Senator FEINGOLD. I'm sure we'll be worse off if it's repressed, rather than getting it out and talking about whatever problems there might be.

We have been hearing from the President for several years now about—this is to Ms. Almquist again—about Kenya's strategic importance to the United States, and the State Department's fiscal year 2008 budget justification called this year a "critical year" for Kenya.

Yet, United States foreign assistance to Kenya is overwhelmingly—in fact, almost 90 percent of the total—concentrated in HIV/AIDS programs, which of course, I have strongly supported. While this epidemic is certainly a major challenge for Kenya, we've seen in the last few weeks that it is not the only serious obstacle to Kenya's stability and development.

Similarly, the United States Government's democracy governance program in Kenya has had a narrow focus on elections, but the conflict that has broken out in Kenya has been largely fueled by many

people's views by a sense of economic injustice. Do you think the United States Government has been overly focused on HIV/AIDS and elections in Kenya, rather than investing in strengthening critical institutions across a number of sectors, and could the United States have done more to invest in programs that might more effectively have prevented the current conflict from breaking out?

Ms. Almquist.

Ms. ALMQUIST. Mr. Chairman, thank you for that question.

We have been seeking to increase our development assistance, non-HIV/AIDS related, to Kenya. It's one of 7 countries that both the State Department and the U.S. Agency for International Development have prioritized in our last couple of budget cycles, and we continue to do that. It is critical—not just for the Kenyan people, but for the entire region—that it grow economically and that it continue on its path to democracy.

Economic growth is a key area for us in our development program. We seek to build linkages between the HIV/AIDS program which—as you rightly point out—is very large. We think that's appropriate for the scale of the HIV/AIDS crisis there, and shouldn't detract from, or be a tradeoff against other development priorities.

Having said that, we are reviewing the economic growth strategy that we have in Kenya right now, which has been focused on natural resource management, and increasing agricultural productivity, as well as boosting Kenya's participation in international trade, and other means for increasing its own resource base.

We think livelihoods, as I said, is going to be critically important going forward, as well as land reform, specifically the land tenure system. We had already invested in an effort with DFID and Swedish SIDA, to support a land reform strategy process. This now needs to be implemented and carried forward, and we're seeking to identify additional resources to do that.

I believe that within our budget, we will be able to prioritize that further, going forward, and we do recognize the critical importance of the underlying tensions here.

Thank you.

Senator Lugar.

Senator LUGAR. Thank you very much, Mr. Chairman.

Secretary Frazer, I'm curious as to what kind of a reception you received from the Kenyan Government and the opposition party when you arrived. You went promptly—at the direction of our government—to that country, and I'm just curious, does this make any difference to Kenyans? Was your presence, or our interest at that point, really a factor, in terms of their consideration of what was occurring in the country?

Ms. FRAZER. Thank you, Senator Lugar.

I was well-received by both the government and the opposition, as well as the broader Kenya society, I believe. At the time that I arrived, only Bishop Tutu had come to Kenya. He left the day before I arrived. He played an extremely important role in bringing church leaders together, to try to put pressure, again, on both sides.

My presence helped to clarify that the government recognized that there were irregularities. I think there is additional need to continue to make them aware of that. After my first meeting with

President Kibaki, he issued a statement saying that the government was prepared to power-share. He phrased it "a government of national unity," later it became "a coalition government." But it was the first public statement on his part that power-sharing was necessary to resolve this crisis.

On the opposition side, again, I was well received. I had several meetings with Raila Odinga—what is called the pentagon—the political leadership around him, as well as more in his party. And they also came out and publicly called off certain demonstrations which were creating a sense of insecurity in the public. We put pressure on the government to allow for freedom of the press, to allow live bands.

We made sure that Raila Odinga would be given a voice. We actually arranged for his statements to be broadcast live. And so, I think on all sides, there was an appreciation of the U.S. role, and our effort, and the fact that we were quick to respond to the crisis in Kenya.

Senator LUGAR. Well, following that, however, Kofi Annan as you pointed out, is still there and others as well, attempting to mediate—is the election situation one in which regardless of how the election was conducted, there was a disposition, in your judgment, in the country before the election, not verging toward civil war, but at least those who were dispossessed, those who were not doing well, historically, were there tribal divisions—in other words, was the election a proximate cause for existing divisions that local leaders or others were fomenting? So that even if at the top, you're visiting with the Presidential candidates, and even as Ms. Almquist has testified, maybe 70 percent of the parliamentary situations where there is really no dispute. Because fundamentally, the country has shown it is really not prepared to think in a unified way—this is a proximate cause for people going their own way, settling things by force or other devices, within the country.

Ms. FRAZER. I think that the problems in Kenya are very complex. And I think that we've seen that the country is prepared to come together, in the voice of civil society, in the voice of the media and the spontaneous effort, the "Save our Beloved Country" campaign. Ambassador Ranneberger participated in live call-in shows. Even while the violence was taking place, people were calling for their leaders to act responsibly and to end the violence.

And so, I think that yes, there are definitely very deep-seated divisions that any politician can mobilize on an ethnic basis. I think there are deep concerns and grievances that have to be addressed. But I do believe that Kenyan society can pull through this, with responsible leadership.

I think that the question of responsible leadership is one that is not at all clear, that both sides have not yet decided that the way out is through negotiations. They are participating in this process, but we are calling on them to do so in good faith, with the result being that they can help pull their societies back from the brink of this polarization and this ethnic conflict.

Clearly, whenever such violence is unleashed, the dynamic can get out of the hands of any particular leader, or any of the political leaders. So there is a tremendous danger in Kenya right now that

the communities will go at each other, out of control of their political leadership.

Senator LUGAR. To what extent are communications in Kenya sufficient that people throughout the country would have some understanding of the crisis? At least in these dimensions. Obviously, the contention, politically, is evident, but our press now is carrying stories of even American companies, quite apart from companies elsewhere, hesitating to invest more in Kenya, or even discussion withdrawing their support.

And thus, the unemployment you have described—both of you—in your testimony, is being exacerbated by predictions that a great deal more is to come. In other words, what was coming to be a success story of sorts, relatively speaking, is rapidly unraveling. So that, regardless of who is contending out on the hustings, there's going to be much less around the table at that point to deal with.

Now, if that's not understood by most people in Kenya, that's too bad. While these contentious problems may have been going on historically for a long time, at least the degree of unity until now in Kenya had led to a great deal of new investment and progress, which is perceived by some, but not by all.

That's why I'm wondering—are the leaders able to communicate out to the hustings for everybody to call it off? In other words are the emotions at this point, such that people are simply determined to have it, even if the pie grows a great deal smaller. I ask this because I agree with the chairman—clearly we probably should be doing more in terms of our assistance in economic reform, other things, in addition to the important HIV/AIDS, PEPFAR program.

But we're coming in, really, as everybody else is going out. In other words, in the investment climate, as such, we could prop up a few situations, and do some teaching about economic reform, but maybe not to a receptive audience. So, tell me about communications—what kind of leadership is there?

Ms. FRAZER. There's certainly a vibrant media in Kenya that I would say reaches all parts of the country. And so, if the leaders put out unequivocal statements to end the violence, it would have a positive impact. And if they did it jointly, as they've been asked to do by Kofi Annan, it would have even a more magnifying, positive impact.

The problem is that both PNU and ODM are sending mixed messages. On the one hand, you will have one leader go out, even the principals, to say something positive about reconciliation, and then the hard-liners on their teams convey a different message. And so they're sending out mixed signals.

Again, as I said, civil society has been much more responsible, and much more positive, which is why part of our strategy is to try to elevate that voice of civil society groups. Whatever their solution—and there have been—from the day I arrived in Kenya, a million proposals, well, not a million but many proposals handed to me from all sides, trying to find a solution, and they all had a common element to them, which is negotiation, reaching out, messages of reconciliation. So, I think that if we can bolster the voice of civil society and help it to remain, continue that responsible voice of saving Kenya, their beloved country, that the media can play a very constructive role in solving this crisis.

Senator LUGAR. What further leadership on our part, obviously, Kofi Annan's leadership is tremendous. But the reason I started by asking what kind of reception you had is really—what is the influence of the United States in Kenya at this point? And I ask this, this is a long time ago but I remember vividly, the Philippine election of 1986. Clearly, great dispute about the outcome. A million people out in Edsa, and so forth.

But at that particular point, the United States, I remember vividly, said to President Marcos, "Cut clean, or go." Now, we had that degree of influence. He went down the river and out to Hawaii.

What I'm asking is: Who has any influence in Kenya? If not us, the U.N.? The French? The British? Or is it simply up for grabs at this particular point, without the kind of influence that might bring resolution with the leaders?

Ms. FRAZER. The United States certainly has significant influence in Kenya. And we are trying to use that influence to push all sides to negotiate in good faith. There are problems within the government side; there are problems within the opposition side. And what we have to do is try to bring leverage to bear, which is why we're reviewing all of our assistance programs. That leverage, of course, will best be applied to the government side.

We're also looking at the visa ban, which gives us some leverage, both over the government and the opposition. And so, yes, the United States does have a key role to play. We feel that we've been seen, so far, essentially as a neutral party who can try to bring these two together, and we are doing our utmost to protect that position.

Of course, the United Kingdom also has significant influence in Kenya, as does the African Union mediation of Kofi Annan. Kofi Annan is respected by all sides. And so I think that we will continue to try to push the negotiation to his table, rather than have parallel tracks of negotiation.

Senator LUGAR. Thank you very much.

Thank you, Mr. Chairman.

Senator FEINGOLD. Thank you, Senator Lugar.

Senator Cardin.

Senator CARDIN. Thank you very much, Mr. Chairman.

And let me thank both of our witnesses for their service to our country.

It's clear that the initiative by Kofi Annan is the best opportunity we have, and I think we all need to be able to support that and move in as much concerted effort as we can to bring an end to the violence in Kenya, affecting the people of that country. I think that's our first priority and to work to the underlying causes that you, Madame Secretary, have brought up.

But I want to go back to the trigger mechanism. Before the December 2007 elections, you acknowledge that elections were flashpoints in African countries. And we clearly knew that this election was a competitive election.

As I look at the reasons why it was declared by the observers not to be fair, open, and free elections, is that there were indications that election results were transferred to the National Election Board, and last minute changes kept the government in power. The ballots were destroyed and there was no transparency in the proc-

ess, that gave no confidence that the results are fair. And that, in fact, the winner was correct.

My question is, Did we anticipate these problems? Were there any efforts make to try to prevent this type of election fraud? There were concerns out in the communities where the ballots were tabulated, but they seemed to be minor, compared to the problems at the national level.

So, I want to know why we were not more prepared to try to avoid another flashpoint election problem in Africa?

Ms. FRAZER. Thank you, Senator Cardin.

Certainly we were prepared, and we have tried to use all levers of U.S. diplomacy to try to prevent a crisis like this. We didn't anticipate, of course, the degree of the innercommunal violence. We certainly did, however, know that if this contest was very close that violence was a probability. That is why we emphasized and told to both leaders that they both had to be prepared to lose.

We certainly tried to strengthen the Electoral Commission. I myself had met with Commissioner Samwel Kivuitu. He was widely respected; we had confidence in his ability.

We understood that the selection of the Commissioners, as allowed by Kenya's Constitution, was a problem, and that there needed to be constitutional reform. In fact, that was one of the issues being debated. All of these leaders have been grappling with the issue of constitutional reform, which gives too much power to the Presidency to select the Commissioners.

We therefore tried to urge changes in how the vote tallying process was reported. And so, all throughout this process, Senator, we have been engaged in trying to support——

Senator CARDIN. But, it seems like it's Democracy 101. You preserve the election records, you don't destroy them. And if I understand what happened in Kenya, the ballots were actually destroyed.

Ms. FRAZER. Well, I know that that's the rumor. I asked Chairman Kivuitu when I was on the ground in those early days, "Is there custody? Where are the ballots? There may be an inquiry; we need to make sure that clearly no one is tampering with those papers." He told me——

Senator CARDIN. Do you have confidence that no one is tampering with them?

Ms. FRAZER. No; I don't have confidence that that's the case. What he told me is that they're locked up, they're being protected. I said, "Are you sure?" And so, yes, it is Democracy 101, to make sure that the issue that is being debated, the electoral tally, the vote, and the reporting sheets, are protected. And we did raise that with the individual who is responsible, as the Chairman of the Electoral Commission, for seeing that that's done. He gave me the assurances that it was, in fact, being protected, but I did not have confidence that that was the case.

Senator CARDIN. One of the hats I wear here in the United States Senate is the Senate Chair of the OSCE, Helsinki Commission. And we spend a lot of time on election monitoring. And election monitoring is important, and in Europe it has been very helpful. We've seen governments fall because of our determinations of fairness of elections. What happened in the Ukraine was you had

an election reversed by the people. But that was a powder keg too, it could have exploded. Hundreds of thousands of people in the streets, but fortunately the violence was very, very minor.

I'm just wondering if, Administrator Almquist, we are spending our money properly under USAID in these countries. Election monitoring is important, but it tells us after a problem has already occurred. And if a powder keg is there, and is going to explode because of elections not being fair and open, it seems to me that it would be better to invest funds to try to get these elections right in the first place, rather than having to get them reversed. Is there a better way to focus our resources to try to prevent these types of circumstances in the future?

Ms. ALMQUIST. Thank you, Senator. Election monitoring was one of the components of our democracy and governance program leading up to the December 27 elections. We identified in 2005, in fact, when we did our last multiyear strategy for Kenya, the need to invest up front in the elections process, leading up to the elections.

We spent $4.6 million in technical assistance for the Electoral Commission of Kenya through IFES and also UNDP. Amongst the kinds of assistance they tried to provide was on the use of appropriate technology for transparency and accountability of the election results.

So, for instance, the ECK, with its own funds, in fact, purchased tamper-proof bags to secure election results and transport them. However, they weren't used consistently in this process.

We provided additional experts when several of the Commissioners raised questions about some of the technologies that we were trying to introduce to the Commission so that they could become more comfortable, more familiar with them and would actually use them, but ultimately—we can provide the assistance, we can share lessons learned and experience from many other places around the world—not just in Africa. But if the Commission doesn't take advantage of that expertise and that assistance and apply it during the course of the elections, then we see the kind of problems that we have now.

We agree, we need to go back and review our program and learn lessons ourselves, to see where we can better focus efforts in the future, but we do think that we correctly identified the ECK as a critical component for the election process. It worked for local elections, for parliamentary elections—everything didn't break down, and so I think we can see some achievements there. But the vote tallying for the Presidential elections was clearly still an issue.

I think that we can all see that there are constitutional reforms needed, with the constitution of the Commission, creating greater checks and balances so that the independence and the neutrality of it going forward is improved over this time around.

Senator CARDIN. I appreciate that answer, and we certainly can not dictate the type of conduct. We can only try to provide some help as to how free and fair elections are conducted.

But it seems to me there should be a clear understanding as to how elections are tabulated, and how records are kept, in a very open, transparent, but safe and secure way. And it seems to me that that's kind of basic. And my concern is whether that type of technical assistance was available to Kenya prior to the December

elections, and whether there was just a disregard for it, or whether we were not as effective as, perhaps, we could have been prior to their national elections.

Ms. ALMQUIST. Senator, we did absolutely provide that assistance through our best civil society organizations in the United States—IFES, the National Democratic Institute, and the International Republican Institute were all involved and received assistance or funds from USAID to provide assistance in various forms to either the Kenyan Government institutions responsible for administering the elections, as well as increasing public awareness about the conduct of the elections and civic education, voter registration efforts, working through the media and civil society so that there would be greater accountability for the government in the process of the elections.

We worked on political party strengthening. We trained more than 200 women in political leadership so that they would be viable candidates to stand for elections. And, in fact, 14 women were elected to Parliament, which is the largest number of women elected, so far. Still not satisfactory out of a 210-member Parliament, but nevertheless, we can see some achievements as a result of the assistance that was provided.

We absolutely need to go back and review those programs, and see what further can be done going forward.

Senator CARDIN. Let me just conclude by saying, we know that elections are flashpoints. It's very important that we get the constitutional reforms, that we get the democratic institutions in these countries, the respect for human rights, the independent judiciary, the independent legislation, and fair elections of local officials—that's all very, very important. We need to concentrate on free and fair elections in the African countries. And it seems to me that we may want to take a look at revising our strategies, as to how we provide technical assistance, knowing how sensitive this issue can be to the stability of these countries.

That's my point, and I do thank you for your response.

And thank you, Mr. Chairman.

Senator FEINGOLD. I thank my colleagues and I thank the first panel. Thank you so much, and I'm going to ask the second panel to come forward.

Thank you very much, and obviously your full statements will be included in the record. And if you could keep your comments to a relative summary of your longer remarks, that would be great.

Let us begin with Mr. Albin-Lackey.

STATEMENT OF CHRIS ALBIN-LACKEY, SENIOR RESEARCHER, AFRICA PROGRAM, HUMAN RIGHTS WATCH, WASHINGTON, DC

Mr. ALBIN-LACKEY. Thank you, Mr. Chairman.

The statement that I submitted into the record goes into some detail about the findings of our recent research mission to Kenya which focused mostly on the police killing of dozens of people in various parts of Kenya, particularly in Kisumu, as well as the nature and the origins of the intercommunal violence that has since followed the elections.

I won't go into too much detail about that, I just want to highlight a few of the broader trends that we think are most important,

and then talk a bit about the process moving forward, and our views on that.

First of all, I think the most important point to highlight, maybe, about the violence is that while, yes, there are many and deep underlying causes of what's going on in Kenya right now, the violence is not spontaneous, for the most part, and can't be considered that way.

There are a lot of reasons why the ground was so fertile for inciting the kind of ethnic violence that's raging across the country today, but much of that violence was, in fact, incited.

What we found again and again in communities that have been affected by violence is that people were told by local leaders that they should react to an unfavorable election result as though it were war, and that, in the aftermath of the election, much of the violence that has followed in recent weeks is increasingly not only incited, but organized in a very detailed manner, by community leaders and by politicians at the local level, at the very least.

Second, aside from the violence itself, perhaps the most disturbing development in all of this has been the very rapid and extreme degree of polarization that's resulted from all of this, just in the space of a few short weeks.

Relations between the groups that are at loggerheads in these conflicts in various parts of Kenya have often been very difficult for a long time, but things have gotten rapidly worse. Even just in the short time we were there, there was a noticeable ratcheting up of the level of ethnic rhetoric, the level of hate speech, common reference to people on the other side of the ethnic divide in parts of the Rift Valley as being "inhuman" and the active use of that kind of rhetoric to justify atrocities that had already happened, and to prepare people to carry out still further violence.

And third, in many of the places where violence has already occurred, there's a very real threat of further and more serious violence. There are tens of thousands of people who have been displaced from their homes, particularly in the Rift Valley. Many of those people are now living in IDP camps that are not well-enough protected. And there are people in communities around the Rift Valley who are actively planning ways to attack those camps if they feel that they can do so, and carry it out successfully.

The Kenyan police, to their credit, have really—have done a great deal to protect people affected by violence across the country, in spite of the brutality with which they've responded to opposition protests, which has to be investigated. But, the police are overstretched, and if it isn't possible for the police to rise to the task of protecting all of the people that need to be protected, who are at risk of future violence, then the Kenyan Government should be exploring ways of asking for outside help to deal with that problem.

Now, moving forward, as has already been said by several people, the Kofi Annan-led mediation effort is the best, and really the only, hope of finding a way forward. And there are many, and very complicated, issues that have to be addressed through that mediation effort.

But there are two things that have to happen immediately, and which actually ought not be the process of protracted wrangling and negotiation. The first is a stop to the violence. And the fact is

that in spite of public statements that really don't amount to anything more than hollow posturing, neither side has done nearly enough to impress upon its supporters on the ground that further violence won't be tolerated.

The fact is that many of the people who are carrying out the violence across Kenya believe that they are doing so in support of the ambitions of their political leaders at the national level, and do not believe that they are doing anything to contradict the wishes of those leaders in carrying out further violence. That has to change. And until the leadership on both sides does that, they have to be made to understand that they will bear a share of the accountability; a share of the blame for any further violence that happens in the coming weeks.

I'm running out of time, so let me just also say that while many of the issues that have to be dealt with are very complex, it's important to remember, and not to lose sight, in the face of all of that complexity, of the fact that the rigged elections were the primary spark for this crisis, and they have to be addressed. And while both sides bear, probably, an equal share of the blame for the violence that's unfolding in the streets, the primary impediment to dealing with the election issue is the Kibaki government. The election results in the Presidential poll have no legitimacy, they have to be the subject of an impartial inquiry, and if that inquiry is inconclusive because the evidence can't be found, or it's been destroyed or tampered with, then the process should end, when feasible, at some point down the line, with a new election. But one way or the other the rights of Kenya's voters have to be safeguarded and upheld at the end of all of this.

Thank you.

[The prepared statement of Mr. Albin-Lackey follows:]

PREPARED STATEMENT OF CHRIS ALBIN-LACKEY, SENIOR RESEARCHER, AFRICA PROGRAM, HUMAN RIGHTS WATCH, WASHINGTON, DC

Thank you, Chairman Feingold, and members of the committee, for inviting Human Rights Watch to participate in this hearing. My name is Chris Albin-Lackey and I am a senior researcher with the Africa Division of Human Rights Watch. Just over a week ago I returned from a research mission that began our ongoing assessment of the human rights impact of Kenya's post-election crisis. We will be carrying out more research on the ground in the coming weeks that will seek to document the effect of the ongoing violence on ordinary Kenyans, identify the individuals most responsible for fomenting it and contribute toward charting a way forward that addresses the underlying causes of the crisis.

Watching the chaos that is threatening to tear Kenya apart today, it is easy to forget that just over a month ago Kenyans lined up in the millions to cast their votes in peace. If those voters' rights had been respected to begin with, the members of this committee would likely have been able to join the world in congratulating Kenya on a tremendous stride toward consolidating its democracy. Instead Kenyans are faced with a sudden tide of violence that threatens to derail hopes of socioeconomic progress in Kenya and damage the prospects of democracy across the continent.

Of course, Kenya's violence has roots that run far deeper than the disputed polls of last December. Underlying causes of the anger and division that have boiled over in recent weeks include longstanding injustices related to land ownership and political marginalization; the failure to enact important constitutional reforms; the political manipulation of ethnicity; impunity for past episodes of violence; and other core issues that successive Kenyan governments have completely failed to address. Whatever way forward Kenya finds from the current impasse must include serious and credible efforts to tackle these issues. It should now be belatedly clear to all of Kenya's leaders just how dangerous a mistake it was to let these issues fester over time.

At the same time, however, the complexity of the ongoing violence must not distract Kenya's leaders or the international community from the problem that was the immediate trigger for the violence—the rigging of the Presidential polls. The solution to the broader crisis must include a guarantee that the right of Kenya's voters to have their freely expressed choice of government respected is upheld in the end.

Because of the number and complexity of the underlying issues and because of the terrible intensity of the ongoing violence, Kenya's leaders and the international community may feel tempted to cobble together a political bargain that sweeps the causes of the chaos back underneath the rug. This would be a serious mistake. Such an attempt would lay the groundwork for future crises, just as the failure to address underlying causes in the past set the stage for today's upheavals.

The international community, including the United States, has a crucial role to play in seeing to it that any political settlement lays the foundations for lasting peace; ensures accountability for the crimes that have destroyed so many lives in recent weeks; and is grounded in an unequivocal respect for human rights and the principles of democratic governance.

KENYA'S DECEMBER ELECTIONS

Kenya's December elections should have been an important milestone for Kenya and for Africa. After a closely fought campaign Kenyans turned out in massive numbers to cast their votes in peace. There were serious irregularities reported on both sides in some areas. However, the most damaging acts of fraud were committed during the final stages of tallying, when the Electoral Commission of Kenya (ECK) presided over what was by all appearances a desperate last-minute attempt to rig the Presidential contest in favor of incumbent Mwai Kibaki.

In the closing hours of the tabulation process a lead of over 1 million votes for opposition candidate Raila Odinga evaporated under opaque and highly irregular proceedings and was transformed into a razor-thin margin of victory for Mr. Kibaki. The result was also entirely at odds with the ODM's successes in the parliamentary vote.

The entire process quickly fell apart in confusion. In the face of public outrage and mounting pressure to reverse the move, four electoral commissioners publicly denounced the apparent fraud. Even the head of the ECK later said that he could not determine who actually won the vote. Nonetheless Mr. Kibaki tried to preempt any challenge by having himself hurriedly sworn in to a second term in office before Kenyans even had time to register their outrage.

Violence erupted even before the announcement of results as concern and suspicion about delays spread through the country. Within hours of the results' announcement Kenya began to slide headlong into the violent chaos that has steadily grown worse ever since.

THE VIOLENT AFTERMATH OF THE DECEMBER POLLS

The violence that has followed Kenya's disputed Presidential poll presents a complex picture that varies considerably across different parts of Kenya. Aside from opportunistic violence and looting the crisis so far has taken on three central dimensions.

First, scores of Kenyans have been shot by police officers in circumstances that were generally unjustifiable and in some cases amounted to extrajudicial killings.

Second, the announcement of the Presidential election results sparked ethnic violence which at first was primarily directed at members of Mr. Kibaki's Kikuyu tribe. That violence has now spawned a proliferation of ethnic-based reprisal attacks, some of them in communities that had been peaceful in the immediate aftermath of the elections. These reprisals are degenerating into a self-perpetuating cycle that has become more difficult to stop with every passing day.

Third, violence has been accompanied by a rapid deepening of polarization characterized by attempts to silence, threaten, and intimidate voices of moderation and dissent including human rights defenders, political dissidents, and ordinary people.

The most important fact that must be taken into account moving forward is that most of the violence cannot be seen as spontaneous. In many cases attacks were actively incited and in some cases directly organized by community leaders, local politicians, and others. At the national level, the efforts of political leaders on both sides to rein in the excesses of their supporters have been woefully inadequate at best. Worse, there are allegations that prominent individuals on both sides have been actively involved in fomenting violence.

(1) Police Violence

The Kibaki government reacted to the public outrage that greeted its declaration of victory in the Presidential poll by imposing a blanket ban on public demonstrations. That ban is patently illegal under Kenyan law. The government tried to defend the ban as necessary to prevent violence in the wake of the polls. As it turned out, however, heavy-handed police enforcement of the protest ban claimed dozens of Kenyan lives in circumstances where the police's use of lethal force was unjustified at best.

The most egregious patterns of police brutality were seen in the city of Kisumu on the eastern edge of Lake Victoria. Kisumu is a stronghold of ODM Presidential candidate Raila Odinga, whose family has its roots in the area. Post-election protests there degenerated into violence and looting following the announcement of Kibaki's victory. The police, initially caught off guard, ultimately reacted by using lethal force to disperse the crowds and prevent further looting. The Provincial Police Officer (PPO) for Nyanza province, which includes Kisumu, acknowledged to us that she ordered officers to use live ammunition to disperse looters.

In fact the police in Kisumu went much further than merely using live ammunition to disperse looters. Long after the crowds in the city center had dissipated, police officers drove into the slums and opened fire on any group of people they deemed suspicious. We interviewed several people who were shot while calmly watching the police drive past them; many said they did not flee because it did not occur to them to imagine that the officers would try to gun them down.

We met a 15-year-old boy who was shot from behind one evening while fleeing in terror from policemen who had opened fire without warning at a crowd of ODM supporters in the slums; he spent the night bleeding in the dirt near the side of a road. A week later he remained in constant pain because his family could not afford to see a doctor, buy pain medication, or even find a pair of crutches to help him move around. Another young man lost his leg below the knee when police shot him outside of the store where he worked as a clerk—ironically he had been there with other employees to help protect the store from looters. And one woman described to us how her husband was shot in the back from the window of a police car as he stood talking on the phone near the road. He died, and when she later went to the police to file a complaint she was simply told to go away.

Such stories were disturbingly prolific. The police reacted with the same disregard for human life when faced with fresh protests a week later even after provincial police officials pledged to us that they would cease their use of live ammunition. All told, at least 44 people were shot and killed by the police in Kisumu, many of their bodies stacked high in the local mortuary. Dozens more were shot and wounded. A colleague and I spent a day in Kisumu's slums interviewing victims of this violence on a day when fresh protests were being held and the sound of police gunfire rang through the streets around us throughout the day. The same afternoon Kenyan television showed a police officer in Kisumu shoot a man who had been making faces at him and then walk over to kick the man as he fell to the ground and died. On that day, January 16, eight people were shot dead by police in Kisumu, including a 10-year-old boy playing outside his home.

Kisumu presented the most widespread examples of police brutality and outright murder of civilians but those patterns were not unique. Police in Nairobi shot demonstrators under circumstances that remain largely unexplained on every day that significant opposition protests attempted to convene in the capital. All told, Kenyan police themselves admit to having shot and killed 81 people between December 27 and January 24 and wounded many more. Dozens more police killings have been reported since then.

The police have announced an investigation into these deaths. This is a welcome step but an investigation run solely by the police without independent oversight and control or real transparency will lack credibility.

It is important to highlight the fact that Kenya's police force has made effective efforts to protect many of the people threatened by ethnic violence throughout the post-election period. Those efforts must be encouraged and supported in every possible way by Kenya's Government and by the international community. But the positive actions of the police in that context do not offset the need for investigations and prosecutions in response to the scores of people police shot and killed without any justification.

(2) Ethnic Violence Sparked by the Presidential Polls

When Mwai Kibaki was officially declared the winner of Kenya's Presidential vote, parts of Kenya's Rift Valley erupted almost immediately into widespread inter-ethnic violence. That initial wave of attacks in the Rift Valley was primarily directed at members of Kibaki's Kikuyu ethnic group.

That violence in turn has spawned a series of ethnic-based reprisal attacks in other parts of the country with Kikuyu militias attacking ethnic communities seen as broadly supportive of the opposition. Those reprisal attacks now threaten to spark fresh violence in response and push the situation further out of control. Tens of thousands of people have been displaced in this violence and several hundred killed.

Anti-Kikuyu violence in the Rift Valley

We have carried out detailed research into the nature and impact of ethnic violence in and around the town of Eldoret, which has seen some of the most brutal attacks. It is worth noting that this region has suffered previous waves of ethnic violence in the past, particularly during the 1992 and 1997 elections, but less severe in scale. Those past events established patterns of impunity and political manipulation of grievances that helped fuel the current crisis.

In many communities around Eldoret post-election violence erupted with incredible speed and force. For the most part clashes pitted mobs—made up of Kalenjin and other ethnic communities who are broadly supportive of the ODM—against former neighbors who belong to Mr. Kibaki's Kikuyu ethnic group. The end result in most of the rural communities we surveyed was the complete destruction of every Kikuyu home and the displacement of every last Kikuyu family. Hundreds of people were killed in the process.

In all cases the attacks seem to have been aimed at driving Kikuyu residents permanently away, not massacring them. But in many cases bloodshed was the result. In some communities Kikuyu residents attempted to defend their homes and families and deaths resulted on both sides. In one widely reported incident in Kiamba, not far from Eldoret, at least 30 people were burned alive inside the church they had sought refuge in. We interviewed several young men who participated in the murder of those people. They all insisted that they had not actually intended to kill any of the people inside the church when they set fire to it. But they were just as vigorous in asserting that they would murder any of their former Kikuyu neighbors who dared return.

In some cases violence caught its victims entirely unprepared. In other cases people said they had some warning of what was coming. We interviewed several displaced people whose neighbors warned them after the announcement of results that they would be attacked if they did not leave their homes immediately. One Kikuyu man told us that his young children came home the day after the results were announced and were upset because other children had been taunting them, saying that they were going to have to "move back to where they come from." Later that day the family was forced to flee before a mob that looted their home and then put it to the torch.

Underlying causes, incitement, and organization

The ethnic divisions laid bare in the aftermath of the elections have roots that run much deeper than the Presidential polls. The one issue that is more important to many local Kalenjin communities than any other is the disputed ownership of local land—a problem that no Kenyan Government has made a good faith effort to address since independence. That tremendous failure of governance lies at the heart of the widespread anger that exploded in the wake of the elections.

The land issue, along with long-unfulfilled promises of constitutional reform to address demands for greater local autonomy, created fertile ground to sow the seeds of violence but the Rift Valley's post-election bloodshed did not arise spontaneously. In fact, it is very clear that much of the violence was actively incited and organized, at least at the local level.

We were able to interview people from several different communities who directly participated in attacks on local Kikuyu families. The stories they told us were eerily similar. In community after community, we heard that in the days before the elections community elders, local ODM mobilizers, and other prominent individuals called meetings to urge violence in the event of a Kibaki victory. In many communities people were told the same thing word for word—that if Kibaki was announced as the winner it must mean the polls had been rigged and the reaction should be "war" against local Kikuyu residents.

The violence that followed in the hours immediately after the announcement of Kibaki's victory was the result of incitement that primed communities for a violent reaction but the attacks themselves were not organized in any deeper sense. We spoke with several Kalenjin from small rural communities who told us that the few Kikuyu farms around their homes were destroyed within hours of the announcement of the election results. In other areas the attacks began when word reached

local residents of the destruction in neighboring communities, from which local leaders urged them to draw inspiration.

In contrast to that initial wave of violence, subsequent in the days that followed, were in many cases meticulously organized by local leaders. In many areas around Eldoret community elders called meetings where they urged residents to prepare themselves to band together with groups from neighboring communities to attack larger population centers. In some cases the elders threatened to burn down the homes of anyone who did not attend these meetings. In other cases community leaders demanded that those not participating directly in the violence pay an informal tax to support the young men who did so.

In several cases these planned attacks were ultimately carried out as planned. For example, we interviewed Kalenjin residents from several small rural communities outside of Turbo, a town west of Eldoret. They told us that after burning down all of the scattered Kikuyu farms around their own homes, community leaders called mandatory meetings and instructed people to gather and march on Turbo itself the next day.

The following afternoon groups of young men from numerous farming communities gathered at a central point and marched together toward the town. They were turned away by police but elders and other community leaders organized another attempt for early the next morning. This time the mob caught the police unawares and rampaged through the town. When we visited roughly 2 weeks later, nearly every Kikuyu home and business in the entire town lay in ruins and several thousand displaced people were living under police guard in a tent camp just outside the town. In Eldoret town itself, some of the town's relatively few remaining Kikuyu homes were burned down almost every night we spent there.

Reprisal attacks and the ongoing proliferation of violence

The initial strife in the wake of the election largely took the forms described above but the picture has quickly grown considerably more complex. Stories of anti-Kikuyu violence around Eldoret and in other places have sparked reprisal attacks every bit as brutal in other parts of Kenya. Kikuyu militias in Naivasha, Nakuru, and other towns have led pogroms targeting local communities of Luo, Luhya, and other minority groups seen as being associated with the ODM and, by extension, with violence against Kikuyu elsewhere in the country.

An especially worrying development has been the assassination of two ODM Members of Parliament, one representing the Nairobi constituency of Embakassi and another who won the Rift Valley seat of Anapuria. These killings provoked further clashes, especially in the southern Rift Valley between Kalenjin and Kisii communities.

In the districts of Trans-Nzoia and Molo, fighting which preceded the election has begun anew after a brief lull. We estimate that at least 70 more people died last week alone. The Kenyan Red Cross has revised its estimate of 800 total deaths and now believes that at least 1,000 people have lost their lives.

By all appearances this latest phase of violence is no more spontaneous than the Rift Valley violence that helped to spark it. The Kikuyu militias responsible for the bulk of the atrocities seen in recent days are well organized. Most worrying of all are reports that some of the violence is being carried out by the widely feared Mungiki sect.

The Mungiki are a brutal criminal gang that promotes a violent brand of Kikuyu chauvinism. In 2007 the group was driven underground and badly weakened through a bloody and abusive government campaign aimed at its suppression. Kenyan National Commission of Human Rights alleges that Kenya's police summarily executed hundreds of suspected Mungiki members in the process.

By most accounts it seems clear that the Mungiki have rapidly rebuilt their strength in recent weeks and that they have done so largely unchallenged by the police. It is not yet clear whether this is due to some level of official complicity or if it has been possible simply because the police are so badly overstretched trying to contain the growing violence. There are allegations that highly placed individuals close to the Kibaki government have helped reactivate the Mungiki to help carry out violence against ethnic communities that are broadly supportive of the ODM. Those allegations must be fully investigated.

This emerging cycle of reprisals carried out in response to violence in other parts of Kenya has the potential to perpetuate itself independently of the direction of political events. Each new set of clashes tears Kenya's rapidly widening ethnic divisions wider still and ratchets up the level of public anger on all sides. The more this violence spreads and takes on a dynamic of its own, the harder it will be to bring a halt to, even if a political settlement is ultimately reached between the government and the ODM.

The cycle of reprisal and counterreprisal has already seen bloodshed spread to parts of Kenya that were peaceful in the immediate aftermath of the elections. Many of the communities worst affected in recent days, like Nakuru and Naivasha, were initially peaceful even as Eldoret, Kisumu, and Nairobi's slums were burning. If a political solution to the crisis is not reached soon, there is every reason to worry that violence will spread to still new corners of the country, becoming harder to contain as it draws more and more people in.

The impact of violence on affected populations

Hundreds of Kenyans have lost their lives in the bloody aftermath of the elections; most estimates now put the total number of people killed at above 1,000. But the impact of this violence on the communities it has targeted extends well beyond the number of people who have lost their lives.

The Kenyan Red Cross now estimates the total number of displaced people to be 304,000. Entire communities have been uprooted. In many communities around Eldoret every last Kikuyu resident has been chased away and their homes destroyed behind them. We interviewed dozens of people living in IDP camps in that area and the overwhelming majority told us they did not think they would ever be willing to return to their former homes. Unfortunately the reasons for that reticence are only too obvious. In many communities around Eldoret, residents who had burned down their Kikuyu neighbors' homes and run them off told us flatly that they would murder anyone who attempted to return and rebuild their lives. The same fears will be felt just as acutely by the many communities of Luo, Luhya, and other groups that have been driven from their homes by Kikuyu militias in other parts of Kenya.

There are dimensions to this catastrophe that have not yet been uncovered. Most notably, widespread patterns of gender based and sexual violence have accompanied the broader chaos in some areas but it is not yet clear just how many women have suffered such attacks. Some experts believe that the violence has led to a spike in HIV infections due to sexual violence. Reports from several hospital mortuaries indicate that large numbers of men have been forcibly circumcised or mutilated in other ways before being murdered. And there are real threats of further violence against people whose lives have already been torn apart. We interviewed many people around Eldoret who said that they were planning attacks on local displaced persons camps that had not yet been executed only because those camps are guarded by police and military personnel. But the fact is that the security forces are already overstretched and the risk of violence against displaced persons is real. Two weeks ago 18 displaced people were murdered during an attack by armed militiamen on an IDP camp at Kipkelion.

(3) Growing Polarization and Silencing of Dissent

Apart from the terrible impact of the violence itself the most disturbing trend revealed by our investigations has been an astonishingly deep and rapid polarization along ethnic lines across much of Kenya. This trend has been fueled by concerted attempts to spread disinformation and hate speech that legitimize further violence in the eyes of many. Increasingly, human rights advocates and other individuals on all sides who denounce ongoing violence have been targets of intimidation and threats that have partly succeeded in silencing moderate voices so badly needed in many communities.

This rapid polarization is illustrated vividly by the situation around Eldoret. Following the initial burst of post-election violence, false stories of horrible atrocities committed by local Kikuyu began circulating by rumor and by SMS. Many of these stories bordered on the absurd, but in many of the communities we visited the tales were regularly cited in defense of the violence local residents had meted out to their Kikuyu former neighbors. In one small village we interviewed young men who admitted that they had helped burn down the homes of all the Kikuyu families in the area. In defense of their actions they told us they had heard that a Kikuyu man had attacked and disemboweled a Kalenjin milk seller in another part of the Rift Valley.

Such stories follow a common pattern in that they generally concern events purported to have taken place in communities far enough away that local residents have no independent way of finding out that they are false. In this, they display a significant degree of coordination. In addition to justifying violence that has already taken place, some disinformation is being spread with the goal of encouraging further violence. In Eldoret we were confronted with rampant rumors that displaced persons camps were populated almost entirely with armed Kikuyu militia members who were planning brutal reprisals against local Kalenjin communities. These rumors were patently untrue but they appeared to succeed in generating considerable local sentiment in favor of attacking the camps.

That disinformation has been combined with growing patterns of hate speech to make violence seem acceptable to people in many communities. In parts of the Rift Valley it has become increasingly common to hear Kikuyu people referred to as "inhuman" due to their alleged brutality. The same language has been deployed in reverse to justify reprisal attacks carried out by Kikuyu militias in other communities.

All of this has combined with the stark brutality of ongoing violence to polarize communities along ethnic lines to a much deeper extent than had been the case prior to the elections. In many areas people on both sides told us that they no longer believed it possible to live with their former neighbors across the ethnic and political divide. These sentiments are especially worrying in the longer term because they will make it very difficult to reverse the ethnic segregation that has resulted from the violence due to displacement in many areas.

In the face of all of this, many Kenyans attempting to act as voices of moderation have found themselves faced with threats and intimidation when they try to speak against the violence going on around them. This includes human rights defenders in all communities, who have increasingly been verbally attacked for their perceived failure to stand in solidarity with their own ethnic communities.

Prominent Kikuyu human rights activists have received death threats after taking strong public stands against the fraudulent elections. SMS messages and online petitions accusing some of being traitors to the Kikuyu community have been circulated widely. In Eldoret, some of the activists we worked with are now being threatened with violence for their attempts at exposing and denouncing the violence that has been carried out against local Kikuyu residents. Similar examples are becoming more numerous. Beyond the immediate threat to the lives and safety of these individuals, the trend threatens to contribute to the spread of polarizing rhetoric and hate speech by silencing the people best positioned to argue against it.

The Kibaki government has announced an effort to track the source of hate speech spread by SMS and other means and this is a welcome step so long as the investigations are impartial. It has also lifted a ban on live broadcasts which is important because the ban was not only illegal but also helped create a climate ripe for disinformation. It is imperative that everything possible be done to stop the spread of such incitement now; the longer hate speech and polarizing rhetoric are allowed to take root without interference from competing points of view, the harder it will be to reverse the damage and the easier it will become to incite further violence across the country.

Resolving the crisis: Peace with accountability and justice

The first priority for Kenya is bringing about an end to violence and attending to the urgent needs of the thousands who have been affected by the crisis. But beyond a prolongation or worsening of civil strife there is another immediate danger: The temptation to attempt to secure short-term peace without addressing the real causes of the crisis. Such an attempt would likely end in failure and would certainly prove destructive in the longer term.

The international mediation effort led by Kofi Annan has established the right framework for talks moving forward. Both sides to the political dispute have agreed in principle that in addition to taking urgent steps to end the violence, the underlying causes of the crisis must be addressed. Annan himself has publicly insisted that any agreement must ensure accountability for abuses on both sides along with a credible process of reconciliation. The talks will also seek to address the underlying issues that led the election to boil over into violence.

The primary impediment to realizing the potential of this agenda is Kenya's political leadership. Neither side has made any serious effort to bring about an end to violence.

The government and the ODM leadership have both made public appeals for peace but it is abundantly clear that this message has not filtered down as a priority to the local leaders who continue to foment violence.

The Kibaki government has until now reacted to mediation efforts with cynicism and intransigence, clinging to the untenable position that it won the election fairly and will, therefore, not contemplate any settlement that does not legitimize its hold on power. Instead of working to resolve the issues the Kibaki government has occupied itself with using the violence as a tool to bludgeon the ODM leadership with as-yet unsubstantiated accusations of sponsoring ethnic cleansing and other international crimes.

Practically speaking, progress on resolving the election issue is a prerequisite for progress on all of the other issues. The Kibaki government clearly stands as the primary obstacle to addressing that issue and must be pressured into giving ground so that broader progress is also possible.

The Annan-led mediation process is the best hope of finding a way out of this morass. It is also the only hope currently on offer; there is no fallback plan if that effort fails. It is therefore imperative that the international community, including the United States Government, bring all possible pressure to bear on both parties to work in good faith to find a lasting solution to the crisis. That pressure should specifically be aimed at giving substance to what must be the four key pillars of any viable political settlement.

(1) Leadership to End the Violence

It is not enough for political leaders on both sides to make public statements denouncing violence. The leadership of both sides has failed to forcefully communicate to their supporters that further violence will not be tolerated, let alone encouraged. Supporters of both sides have been actively involved in fomenting and organizing violence. As of now we have no hard evidence that directly implicates the leadership on either side in sponsoring these abuses but both should support further investigations and prosecutions of any individuals who have played such a role. Hollow public posturing is no substitute for real efforts to rein in violence.

There is every reason to hope that a more sincere and urgent effort to rein in violence on the part of both sides' leadership would have a rapid impact. Around Eldoret, for instance, it was the universal opinion of local civil society groups, community leaders and even the people who had been carrying out violence that a clear signal from the ODM leadership that the violence must stop would bring about its end. Whether justified or not, as of now many of the people carrying out violence on both sides across Kenya do not believe they are going against the wishes of their political leaders. Until that changes the political leadership on both sides will bear a share of the responsibility for every life lost and every home destroyed.

This action must be immediate and unequivocal. A more robust effort on the part of Kenya's political leaders to rein in the violence would still achieve results. But it is not clear how long that will remain the case. If the violence continues to spread and to take on a dynamic of its own, leaders on both sides may lose all remaining power to contain it.

(2) Electoral Justice

The violence raging across Kenya has fed on grievances that run far deeper than the results of the Presidential election. Nonetheless it remains true that any durable solution to the crisis must address the spark that set it off. This is true for a number of different reasons.

The peaceful conduct of voting last December was a testament to the fact that Kenyans believed it possible to effect change through the ballot box in spite of all the underlying tensions that have now been laid bare. If the electoral dispute is addressed through a political bargain that does not uphold the democratic rights of Kenya's voters many will lose their faith in the democratic process as an avenue of peaceful change. And, moving forward, Kenya's Government will not be able to heal the wounds the past few weeks have opened up if it is not seen as legitimate and accountable to Kenya's citizens.

Just as importantly over the longer term, failing to restore the integrity of Kenya's nascent democracy will have wider repercussions—not just in Kenya but across Africa. Especially coming on the heels of Nigeria's brazenly rigged April 2007 polls and with a looming electoral charade in Zimbabwe at the end of March, an internationally brokered deal that legitimizes a fraudulent election in Kenya will serve to embolden would-be autocrats across the continent.

An immediate rerun of Kenya's Presidential election is not feasible given the more urgent need for healing. The collapse of the electoral process has also highlighted the need for key constitutional and electoral reforms that must precede a new election. But the framework that is ultimately agreed on should ensure a transparent and independent investigation into what went wrong with the December poll. It should also guarantee that a new election will result if that emerges as the best way to ensure that Kenya's Government is elected rather than the product of controversy and fraud.

(3) Accountability and Reconciliation

The underlying grievances and societal divisions highlighted by the violence in recent weeks may have been fertile ground for violence, but as discussed above, that violence was not simply the spontaneous product of popular anger. Much of the suffering and bloodshed unleashed in recent weeks was actively incited and even organized by individuals in positions of responsibility and power. They must be investigated and held to account for the crimes they have helped sponsor. That accountability must also extend to the Kenyan police, whose crimes have left bullet-riddled bodies piled high in mortuaries in Kisumu, Nairobi, Eldoret, Mombasa, and else-

where. Accountability for those most responsible for all manifestations of Kenya's post-election violence is the only way to ensure that violence will be remembered as an intolerable aberration as opposed to a dangerous new trend.

At the same time, processes of accountability must be supported by deeper efforts at reconciliation and truth-telling to heal divides that have torn whole communities asunder. Kofi Annan called this week for some form of truth and reconciliation commission for Kenya and for U.N. investigators to look into the catalog of human rights abuses. The Kenya National Commission for Human Rights has already launched an investigation. Any further investigations should take care to support and complement rather than undermine that effort.

(4) Addressing the Deeper Causes of the Violence

In the longer term, the broader context of the ongoing violence and human rights abuse must be addressed. Comprehensive reforms to Kenya's governance structures and laws are needed to redress grievances that have simmered since colonial days, tackle endemic corruption and change the zero-sum nature of political competition. The existing political process is an opportunity to make progress on some of these issues. But more than that, a process that does not guarantee changes in these areas will not eliminate the danger of future bloodshed and will not deliver the kind of peace and justice that Kenyans want and need.

Vice President Kalonzo Musyoka is scheduled to arrive in Washington today. That visit will provide the administration with a perfect opportunity to deliver its expectations in direct and public form and to articulate the consequences that will follow if both sides do not live up to their responsibilities.

Specific recommendations to the U.S. Government

Along with the African Union and Kenya's other international partners, the U.S. Government has an important role to play in putting pressure on Kenya's political leadership to negotiate a solution to the crisis and to do everything possible to rein in violence while it is still possible to do so. It is essential that what political leverage international players have, be used to ensure that the Kibaki government commits itself to negotiating in good faith with a view to solving the crisis, something that they have made no significant move to do until now. There are a number of ways that the administration can put pressure on both sides to take action on key issues or provide assistance in addressing them.

The administration should:

—Communicate to both parties that a negotiated solution to the crisis must include, at minimum:
  —An independent and public investigation into the allegations of fraud that derailed the elections;
  —A framework for constitutional and electoral reform aimed at addressing underlying causes of the current violence;
  —Accountability for those most responsible for fomenting and carrying out human rights abuses on all sides since the elections;
  —A process of truth-telling and reconciliation as called for by Kofi Annan;
  —If the actual results of the Presidential poll cannot be reconstructed, a guarantee of new elections after an interim period sufficient to put credible polls in place and conduct them in a peaceful manner.

—Publicly commit that sanctions will be put in place against any political leader from either side who acts in a manner that impedes a negotiated settlement. Sanctions could include visa bans against political leaders and their associates. The U.S. Ambassador to Kenya has publicly stated that anyone guilty of fomenting violence would be denied visas along with their families. The threat of sanctions should extend to those whose implication in human rights abuses is credibly established.

—Support an international component to investigations into post-election violence. This could include support for the work and recommendations that will be made by the U.N. human rights fact-finding mission due to arrive in Kenya shortly. The U.S. should also call for international investigations to complement and support the ongoing work of the Kenyan National Commission for Human Rights.

—Push for the immediate publication of all available information on the outcome of the election. The administration should urge the International Republican Institute to publish polling data it amassed during the election and should also urge the European Union's election observation mission to publish its final report as soon as possible. Suggestions that this information should not be published to avoid inciting further violence are misguided and undermine efforts to address the election issue during negotiations.

—If Kenya's overstretched police force cannot adequately protect Kenyans at risk of further violence, the administration should press the Kibaki government to seek international assistance in fulfilling that responsibility.

Senator FEINGOLD. Thank you very much, Mr. Albin-Lackey.

Dr. Barkan.

STATEMENT OF DR. JOEL D. BARKAN, AFRICA PROGRAM, SENIOR ASSOCIATE, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, WASHINGTON, DC

Dr. BARKAN. You can hear me now? Time is short, so I'm going to condense my remarks, you have my full statement for the record.

They are basically grouped under four headings: The elections in historical perspective, the political stalemate, the violence and economic losses, third, the process for breaking the stalemate, and what the U.S. should do to support the Annan effort.

I want to pay particular attention to the third and fourth points, and also perhaps—given the questioning of the first panel—take some questions later about our democracy assistance program, with which I have been involved with in the past, particularly in Kenya.

As for the election itself, as you noted in your opening statement, Senator Feingold, we had had three previous elections, starting with one that was not very good in 1992. There was improvement in 1997, still better in 2002—there were great hopes this time that there would be another step up, and this would, indeed, be the crowning achievement in Kenya's torturous and long quest for democratic governance.

I think in retrospect, and the classic 20/20 hindsight, we were a bit complacent and we need to acknowledge that. And as you've seen in my statement, I've suggested three areas here where we might have done a better job, particularly in terms of scrutinizing the register of voters prior to the election, and perhaps jumping on the problems there that were articulated by the Chairman of the Electoral Commission himself.

Second, as Assistant Secretary Frazer noted, we placed great emphasis on the Chairman, who is indeed a highly competent individual, but it's the classic case of putting all your eggs on an individual, rather than looking at an institution. And there were 5 new Commissioners appointed before the election and it's questionable about their neutrality.

And finally, we expected that the domestic monitoring effort, where the United States had put considerable resources in recent years, would be as robust as it was, certainly in 2002, and sadly it was not. Not every polling station was covered, and in fact, it was about the level that it was in 1997. It was also rife with divisions. Nonetheless, you should if you have it available, look at the final statement by the Kenya Domestic Observer form, because they lay out very clearly where the election went off the rails.

Now, the final, perhaps, and most important point to be made about the election, is why it's impossible to argue with certainty that Raila Odinga won the election, it is possible to argue with near certainty and evidence that Mwai Kibaki did not win.

This was, obviously, a highly contested election. The results, as the previous speaker noted, are illegitimate, but they're illegitimate

on both sides, and therein lies the nub of the problem. Neither one of these individuals can govern by themselves, there must be a power-sharing deal, and therefore the real issue is: How do you move from where we are now to such a deal?

At current, there is a stalemate, unfortunately, and it's really almost a classic academic situation of whether this stalemate will evolve into a mutually hurtful stalemate which will make the hard-liners on both sides more forthcoming.

One might have thought that by now, President Kibaki who relies for certainly the financial aspect of his political base on the Kikuyu business community would have been more forthcoming, because Kenya does have a robust middle-class and business community, it is disproportionately Kikuyu and it largely supported Kibaki in the elections. This group is actually very frustrated that they can not get through to the hard-liners, and that, in turn, suggests that more needs to be done—particularly by the international community—to push those people along.

My time is rapidly eroding. I want to turn next to the key nub of the problem. It's constitutional reform, but we need to focus very specifically on what we're talking about here.

It is not only the Imperial Presidency, as suggested by Assistant Secretary Frazer, it is also dealing with a 50-year issue as to whether and to what extent there will be a devolution of power in Kenya, some sort of federalism, if you will, that will accommodate the group rights of the various smaller, ethnic minorities.

And until that's grappled with—and I lay out the various points in my testimony that need to be settled in this regard, I'm afraid there will not be a permanent peace in that regard.

Finally, what should the United States do? Well, I think we need to be much more aggressive and it needs also to be acknowledged that we got off on the wrong foot. We actually congratulated the Electoral Commission of Kenya on Saturday the 29th of December, at the very moment that the election was going off the rails. We congratulated the Commission on its fine job—that was a misstep—we were behind the eight ball, and we should have swung immediately behind the call by the European community's observer delegation to support a forensic audit.

The question is, Where are the ballots now, and can that audit be conducted? I can address that in the question period.

The final point I want to make here is that we need to come down very hard on the hard-liners. And here I'm talking specifically of instituting with immediate effect, in coordination with the EU and the U.K., travel bans and asset freezes on the hard-liners, including members of their families, because a number of these people are studying in the United States and in Europe. More public diplomacy in support of civil society, and also public diplomacy in support of a group of 105 parliamentarians who have stepped up to the plate here and are actually initiating their own initiative, a sort of track two initiative, on their own.

We also need, perhaps, to be more aggressive in respect to dealing with hate speech. And finally, I can discuss the aid issue in the question period, but I would say now that our DG program—while it has been in Kenya for 15 years—has been running out of cash. We have an excellent program in support of the Kenyan Par-

liament, it's begun to show results, but that program is largely out of money now, and it's now cofinanced by the British, who have stepped up to help us out, because we haven't been devoting sufficient funds to what is, actually, a success.

Thank you.

[The prepared statement of Dr. Barkan follows:]

PREPARED STATEMENT OF DR. JOEL D. BARKAN, AFRICA PROGRAM, SENIOR ASSOCIATE, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, WASHINGTON, DC

Chairman Feingold, Senator Sununu, thank you very much for inviting me to appear before the Subcommittee on African Affairs this morning to share my assessment of the current situation in Kenya and its consequences for the future of democracy in that country, and in the region. My knowledge of Kenya and its tortuous quest for democracy is based on following its politics since my first visit to the country as a student in 1962, my academic research, and my work there for USAID as the first democracy and governance advisor in the early 1990s, and subsequent work there for USAID and the World Bank.

Time is short so I am going to condense my remarks into a series of bullets under four headings: (1) The 2007 elections in historical perspective. (2) The political stalemate, violence and economic losses that have followed the elections. (3) The prospects for breaking the stalemate under the African Union mediation effort led by Kofi Annan. (4) What the U.S. should do to support the Annan effort. Before doing so, however, I want to commend you, Mr. Chairman, and your fellow Senators for the resolution on Kenya passed by the Senate last Tuesday, January 29. I hope this will encourage the administration to be more proactive in its effort to encourage a negotiated and lasting settlement to the current crisis.

The Elections in Historical Perspective: Expectations vs. "20–20 Hindsight"

- The elections which triggered the current crisis were the fourth since Kenya returned to multiparty politics in 1992, and were to be the crowning event in the country's 20-year struggle to establish democratic governance.
- Each of the two previous elections held in 1997 and 2002 were better than the one that preceded it, and the expectation and hope was that the 2007 elections would also be better than the last. The 1992 election—Kenya's first multiparty election in 24 years—was a "C minus" election despite heavy engagement by the United States. The playing field before the election was not level. The electoral commission was neither independent nor neutral. Opposition candidates were continuously harassed. And there was widespread violence in the western Rift Valley on a scale equal to that which has occurred during the past month—nearly 1,500 killed, and roughly 250,000 Kikuyu settlers displaced from their homes in the western Rift Valley. The one bright spot in that election was that for the first time in Kenya's history, roughly 8,000 domestic observers established a toehold in the electoral process with the active diplomatic and financial support by the United States and like minded donors.

  The 1997 election was better but still flawed—a "B minus" election. It was also associated with violence but the number of domestic observers nearly doubled, and the election was preceded by a series of "miniconstitutional reforms" that enlarged the electoral commission to include commissioners nominated by the opposition and other reforms—most notably that the then-President of Kenya, Daniel arap Moi, would no longer nominate 12 members to the National Assembly on his own, but on the recommendation from Kenya's political parties to reflect the proportions of seats each party won in the elections. This resulted in a near parity of seats between government and opposition in the National Assembly. From that point onward, Moi could no longer govern Kenya on his own. Most notably, and with U.S. support, the National Assembly began to emerge as a legislature to be reckoned with, and a check on executive power.

  The 2002 election was better still—a "B plus/A minus" election—the logistics were better; harassment of opposition candidates all but ceased, all polling places covered by an increasingly robust and sophisticated cadre of 24,000 domestic monitors, and Kenya experienced its first alternation of government via the ballot box (though not the defeat of the incumbent President) since independence. That election brought Mwai Kibaki to power as head of a broad based panethnic coalition in which Raila Odinga campaigned tirelessly for Kibaki and arguably won him the election. Unfortunately, their alliance was short lived as Kibaki chose to rely heavily on a small group of elderly cohorts from his own ethnic group, the Kikuyu, and two related groups, the Embu and the Meru. The

result was both an ethnic divide and generational divide that polarized the country and set the stage for the current standoff. (For details see my 2004 article, "Kenya After Moi" in Foreign Affairs at www.foreignaffairs.org and my more recent articles, "Too Close to Call: Why Kibaki Might Lose the 2007 Election" and "Breaking the Stalemate in Kenya" at www.csis.org/africa which I submit for the record).

- Notwithstanding Kenya's polarized political climate, the expectations for the recently concluded elections were very high. Although polls indicated that the election was too close to call and that the temptation to engage in fraudulent practices by both sides was therefore very high, most Kenyans as well as the international community believed that the leaders of both of the two largest parties [the Party of National Unity (PNU) and the Orange Democratic Movement (ODM)], and the Electoral Commission of Kenya (ECK) would rise to the occasion. These expectations were based on five considerations: (1) Kenya's fine record at democratization during Kibaki's Presidency, arguably the best since independence. (2) The country's resurgent economy. (3) The preelection campaign which was largely ″free and fair″ though there were some isolated incidences of violence. (4) The preparations for the elections by the ECK and the near universal confidence in its chairman, Samuel Kivuitu. (5) The expectation—especially by the international community—that the effort by domestic monitoring organizations would be as robust as in 2002.
- In the aftermath of the elections and with "20–20 hindsight" we now know that the international community, including the United States, was overly complacent about how the polls would unfold in at least three ways: (1) The fact that the register of voters was not fully purged of deceased voters was largely ignored by advisors responsible for following the runup to the election. With the voters rolls inflated by 5–10 percent, a fact acknowledged by the chairman of the ECK 3 weeks before the election, the prospect for inflating the vote without getting caught was very real. (2) Too much focus and emphasis was placed on the person of Sam Kivuitu rather than the ECK as a whole. The international community lobbied hard for his reappointment as chair of the Commission to guarantee a well-administered poll, but paid insufficient attention to the appointment of five new commissioners by Kibaki or the procedures for reporting the vote. (3) The international community also missed the fact that Kenyan civil society failed to reestablish the robust organization for domestic observation that it had mounted in 2002. (4) Last but not least, the United States failed to respond quickly to the problems that unfolded during the 2 days after the election. Indeed just the opposite. The State Department issued a statement of congratulations to the Electoral Commission on its handling of the election on the very day—December 29, 2007—that the election came apart at the seams. That statement was later amended on December 31.
- I was in Kenya as an international observer for the International Republican Institute (IRI) and witnessed what most nearly all other international observers saw: An election that was reasonably well administered on election day—the polls opened roughly on time; the presiding officers were adequately trained; there were adequate supplies of ballots and other required materials; all or nearly all voters who wished to vote did so by the time the polls closed; the counting of the paper ballots at the polling stations was transparent. The problem occurred in the tabulation of the vote at the ECK office at each parliamentary constituency, and in the reporting and tabulation of the total vote at the ECK headquarters back in Nairobi.
- Fraud in the form of inflating the vote was arguably perpetrated by both sides, but there is little doubt in my mind that it was far greater by supporters of President Kibaki. For details, one can consult the statements and reports by KEDOF, the Kenyan Domestic Observer Forum, and by the European Union which mounted the largest (over 130 members) and most intensive monitoring operation involving international observers. While it is impossible to argue with certainty that Raila Odinga won the election, it is possible to argue with near certainty and evidence that Mwai Kibaki did not win. Indeed, Kibaki may also have failed to meet the requirement that the winning candidate received at least 25 percent of the vote in five of Kenya's eight provinces, a test Raila Odinga easily passed.
- Although the European Union rightly called for an internationally supervised forensic audit immediately following the election, it does not really matter at this juncture who in fact won the election if in fact it can ever be determined. Rather, the principal outcome of the election was that neither Kibaki and the

PNU nor Odinga and the ODM was supported by more than 43–46 percent of the population. Neither side can govern Kenya by itself.

- That in turn means that some form of power-sharing deal is imperative to resolve the current crisis.

Stalemate, Violence, Economic Loss

- The political stalemate resulting from the elections is slowly becoming a "hurting stalemate," but until both sides recognize the costs in both lives and economic losses neither side will begin to negotiate seriously over a power-sharing deal. This is the reality of the present situation and the challenge to former U.N. Secretary General Kofi Annan as he tries to mediate an agreement for the modalities of negotiations. In the meantime the costs to Kenya mount.
- The extent of the violence occurring across Kenya has been vividly brought home by the international media, and by the reports issued by such respected organizations as the Kenya National Human Rights Commission, the Kenya Human Rights Commission, Human Rights Watch, and the International Crisis Group: More than 1,000 have been killed and more than 300,000 people displaced from their homes. Although the toll has only now reached the total of the violence that occurred in the runup to the 1992 elections, it is more widespread geographically, and its perpetrators and victims are Kenyans on both sides of the political divide and members of at least five ethnic groups—the Kikuyu (especially in the western Rift Valley and in the town of Kisumu), the Luo (in Nairobi), the Kalenjin (in Nakuru and Naivasha), and the Luhya and Kisii in scattered areas. While the initial violence immediately following the election may have been spontaneous, it is clear that most of the present violence is organized, politically motivated, and conducted by informal militias and gangs.
- The police have also clearly contributed to the current situation of unrest. It is also unclear whether the police including its paramilitary units have the capacity to contain further outbreaks of violence. Rather it will require an intensive effort at the grassroots by prominent political leaders including members of the Kenya National Assembly (i.e., MPs) to persuade their followers to put down their weapons and return to their homes. If there is a bright sign in the current crisis it is that there is now such a group of 105 MPs known the IPPG II,[1] that is beginning to directly engage the population in this way. The IPPG II is also committed to enacting constitutional reforms to resolve the crisis and achieve a lasting peace.
- The economic costs of the crisis are mounting at roughly $500 million a week and now exceed all the economic aid that Kenya receives annually. Kenya's thriving tourist industry is all but dead. Kenya's horticultural exports have been adversely affected as have Kenya's prospect for attracting foreign direct investments to accelerate the growth of an emerging call-center industry. Shares on the Nairobi Stock Exchange have dropped 25 percent while the Kenya shilling has fallen 13 percent against the dollar. The ripple effects are spreading throughout the region—to Uganda, Rwanda, eastern Congo, and the Southern Sudan as these landlocked states cannot move their exports and imports through the Port of Mombasa. Gas in Kampala, Uganda is now reported to be $15 a gallon.

Breaking the Stalemate: Will the Annan Mission Succeed?

- As indicated above, the current political stalemate will not be resolved nor will a permanent peace be restored without a negotiated arrangement for power sharing between the two sides. What does power sharing mean? First, it does not mean a mere sharing of positions in a government of national unity (GNU). While this may be one mechanism for moving to a permanent settlement it is not the objective of Raila Odinga and the ODM. Indeed, they have been there before—following the 2002 election. Instead, any lasting power-sharing agreement will require an agreement on institutions—the conclusion to Kenya's long delayed quest for a new constitution, a quest that has unfolded in fits and starts since 1992.
- While the Annan mission has focused on four sets of issues—(1) ending the violence; (2) dealing with the humanitarian crisis; (3) dealing with the political crisis; and (4) addressing long-term socioeconomic grievances—only the third and the fourth will restore order. However, it is unclear whether and how, under

[1] IPPG II refers to the first Inter-Parties Parliamentary Group (IPPG I) that diffused the violence and later passed a package of "mini" constitutional reforms prior to the 1997 elections.

item (3) Annan and the rival negotiating teams are focusing on three sets of constitutional issues that must be ultimately be resolved. These are:

1. *Establishing the institutional modalities to guarantee that future elections in Kenya are "free and fair" and will not be compromised like the just concluded poll.* These include but are not limited to: (i) The future method of appointment of members of the Election Commission of Kenya, their terms of office, etc. (ii) Procedures to insure the future accuracy and integrity of the register of voters. (iii) Procedures beyond the current procedures to insure the future accuracy and transparency of the tabulation and reporting of the vote from the polling stations to the public. (iv) Procedures for auditing the vote should disputes arise. (v) The resolution of other issues including the design of Kenya's electoral system—whether it should retain the present system of "first past the post," whether more parliamentary constituencies should be established, whether constituency boundaries should be redrawn, etc.—also need to be determined.

2. *Redressing the balance of power between the executive and legislative branches of government.* Although the Kenya National Assembly has in recent years expanded its powers, Kenya remains a Presidential system with most power concentrated in the office of the President. Whether Kenya will now adopt a parliamentary system of government as Raila Odinga has called for in the past or whether there will be modest changes to the constitution is hard to determine. The retention of a Presidential system, however, will, at a minimum require the repeal of the President's power to prorogue, suspend, and dissolve Parliament, and a constitutional amendment that specifies that MPs will henceforth be elected for fixed terms of 5 years. Other outstanding issues are whether the National Assembly will ratify judicial appointments, approve borrowing by the government, as well as Parliament's role in the budgetary process.

3. *Devolution and Federalism.* The most contentious issue is whether and in what forum Kenya will be restructured as a federal political system, and if so what the balance of powers between the center and subnational units of government will be. The issue has been the focus of all constitutional debates in Kenya for more than 50 years, and must be resolved on the basis of consensus and a negotiated settlement. Kenya is today a centralized political system, and the continuation of this arrangement is strongly favored by President Kibaki and the PNU, and especially by the Kikuyu which are the largest (22 percent) and most prosperous of Kenya's 42 ethnic groups. Raila Odinga and the ODM, however, favor some form of devolution as the mechanism for accommodating the needs and addressing the grievances of Kenya's other groups, none of which constitute more than 12 percent of the population, and most of which are poorer compared to the Kikuyu.

Discussion in Kenya over federalism or Majimbo as it is termed in Swahili is highly emotional. It need not be, and the Annan team, or its successor must diffuse the emotive aspects of federalism by disaggregating it into its various components as details to be negotiated and resolved. These include (i) the number of regions or states to be established to accommodate group interests; (ii) the assignment and balance of powers between the Central government and the states; (iii) the determination of boundaries; (iv) determination of the sources of adequate revenue for the regions or states; and (v) the rights of ethnic minorities residing within any new states or regions. The experience of India and Nigeria suggest that the resolution of these issues can go a long way in reestablishing peace in a multiethnic and plural society.

- It is unclear as of this writing whether the rival negotiating teams representing the ODM and the PNU and meeting under the guidance of Kofi Annan will reach agreement on these issues. While the costs of the current stalemate are clearly "hurtful" to both sides, the main impediment to serious negotiations and a viable agreement are the small group of "hard-liners" in both camps who still do not accept the need for true power sharing to resolve the crisis. This is especially true of the hard-liners around President Kibaki. While Raila and ODM have informed Kofi Annan that they are willing to negotiate the thorniest of issues to resolve the crisis, the team representing the PNU have not. Indeed, their modus operandi appears to be that of stalling for time. Evidence of this intent is the PNU's rejection on Monday of Cyrill Ramaphosa of South Africa, as the mediator to succeed Kofi Annan and to hammer out a final agreement. What is puzzling, and very disturbing is that as the human and economic costs continue to mount, including costs to the Kikuyu business community that has heretofore supported Kibaki, that the hard-liners around him seem prepared to bear these costs.

What the United States Can and Should Do To Restore Political Stability in Kenya

- Although the United States was embarrassingly slow to recognize the shortcomings of the elections, the two visits to Kenya by Assistant Secretary of State Jendayi Frazer, and the administration's coordinated effort with the United Kingdom and the European Community to support the Annan mission are to be commended. That said, we need to be much more proactive in pressuring the hard-liners on both sides, especially those surrounding President Kibaki and perhaps Kibaki himself to engage on the most difficult issues. We must impress on both sides that neither can govern until the issues outlined above, including the need to amend or replace Kenya's current Constitution are the basis for long-term peace, a return to economic growth and democracy.
- In this regard the United States should:

  1. Articulate with greater specificity what issues need to be resolved. This is not rocket science as they have been the focus of constitutional discussions in Kenya for many years.

  2. Offer technical assistance, as required, to facilitate the negotiation of the details of the aforementioned constitutional issues (especially on the contentious issue of devolution) as well as the reestablishment and reconfiguration of the electoral commission and electoral procedures.

  3. Institute, with immediate effect, travel bans and asset freezes on the hard-liners and coordinate such targeted sanctions with the United Kingdom and European Union to insure their efficacy. Extending such bans to family members of hard-liners including those whose sons and daughters are residing in the United States and Europe should be considered. The possibility of targeting of the personal economic interests of hard-liners within Kenya should also be explored and if viable pursued.

  4. Public diplomacy in support of Kenyan civil society to pressure their leaders to resolve the crisis. This would include support for such diverse groups as the Kenya Human Rights Commission, the Kenya Private Sector Alliance, the Kenya Association of Manufacturers, and the recently formed group of more than 200 CEOs who are growing increasingly impatient with the failure of the country's political leaders to resolve the crisis.

  5. Public diplomacy in support of the group of 105 members of the National Assembly who have initiated the IPPG II coalition to resolve the crisis. IPPG II represents a classic "track 2" opportunity and should be supported as it holds out the prospect of moving faster than the Annan effort and passing its own solutions in Parliament.

  6. Continue public diplomacy by Ambassador Michael Ranneberger on local FM radio, especially stations that broadcast to distinct ethnic communities, to dampen down the violence. Step up monitoring of such stations and consider selective jamming those that broadcast hate speech. Explore what technical assistance (i.e., software), if any can be provided to Kenya's mobile phone providers such as Safaricom to block text messaging that promotes violence between ethnic groups.

  7. Suspension of aid? This should only be done as a last resort recognizing that "the aid card" in Kenya is a much smaller percentage of the Government of Kenya's recurrent budget than it was during the 1990s when the international community, including the United States, suspended aid on a number of occasions to expedite political and economic reform. That said, the importance of aid, both humanitarian and financial, will rise as the economy declines and the revenues generated by the efficient Kenya Revenue Authority decline.

Thank you Mr. Chairman for your affording me the opportunity to discuss my views on this crisis.

Senator FEINGOLD. Thank you, Doctor.

I want to note that Senator Bill Nelson has joined us, and I'm pleased to have his participation.

And now we'll turn to Mr. Mozersky.

STATEMENT OF DAVID MOZERSKY, HORN OF AFRICA PROJECT DIRECTOR, INTERNATIONAL CRISIS GROUP, WASHINGTON, DC

Mr. MOZERSKY. Thank you very much.

I want to express, once again, the appreciation of the International Crisis Group for the attention of the committee to the cri-

sis in Kenya, and particularly the efforts of Senator Feingold and Senator Sununu for submitting the recent legislation on Kenya's electoral crisis and for organizing this hearing.

The recent post-electoral violence in Kenya marks a devastating setback to the advancement of democratization in Africa. The past 5 years have seen Kenya strengthen its democratic credentials, and grow and expand its economy. Kenya has been a hub of stability in the region, leading peacemaking efforts in neighboring Sudan and Somalia, accommodating regional refugee flows, and hosting international diplomatic and humanitarian efforts for the troubled region.

December's contested election has changed this dynamic, unleashing waves of violence triggered initially by President Kibaki's questionable electoral victory.

But the violence that erupted in the Nairobi and Mombassa slums, and in the Rift Valley over the past 2 weeks has touched deeper fault lines, and illustrates the depth of the wounds created by Daniel arap Moi's divided rule policies during the 1990s, and the urgent need to address land and wealth inequities.

Without a comprehensive and sustained high-level international response, Kenya risks following many of its neighbors toward becoming a collapsed or failed state. Led by the U.S., the international community must push the parties to end the violence, and allow a return to democracy.

For a comprehensive and sustainable solution, the starting point of the negotiations must be the recognition of electoral irregularities by both parties, and the invalidation of the election results. The crafting of a power-sharing agreement to guide a transitional phase leading to new elections then follows.

The negotiation agenda for a period of transition should not only be about the sharing of executive powers between ODM and PNU, but should include a complete institutional reform agenda, including the creation of an effective oversight mechanism for Parliament, and genuine independent judicial capacity to counterbalance the powers of the Executive.

This constitutional overhaul should be accompanied by a complete review of the electoral regulations, so as to prevent any repetition of the December 2007 scenario.

Two instances of rigging appear to have taken place during the vote tallying process—one at the constituency level and one at the Central Electoral Commission. The first happened throughout the country. With returning officers in their respective home provinces who tampered with the vote count and sent inflated returns for their preferred candidate.

The second was organized in Nairobi, within the Electoral Commission premises. At that point, the results were changed arbitrarily to give Kibaki a 230,000-vote victory.

Parliamentary results further suggest that the Presidential election had been rigged. Kibaki's PNU won only 43 seats, while ODM won 99 seats, 7 shy of an absolute majority.

Immediately after Kibaki's victory was announced, spontaneous riots broke out across the country. Supporters of the ODM turned their anger on those perceived to be supporters of Kibaki—mainly

members of the Kikuyu tribe. Hundreds were killed in less than 24 hours.

The Rift Valley has been the region most affected by the violence. There has been widespread violence in the north Rift region of western Kenya, principally in Eldoret and the surrounding districts, an ODM stronghold.

The violence in this region was triggered by the disputed elections, but has its roots in a long-festering anti-Kikuyu sentiment within certain segments of the Kalenjin communities.

It is possible that some of the violence was organized. A militia called the Kalenjin Warriors, whose membership and leadership is blamed for orchestrating much of the anti-Kikuyu violence, seems to have been reactivated. Several senior Kalenjin figures who were in power in the 1990s and who are now ODM leaders, have been linked to this militia.

It also appears that some senior government figures have been mobilizing the Mungiki sect, a Kikuyu religious cult with a long history of brutal killings and organized crime. Many of the gruesome killings which occurred in the Nairobi slums and in the towns of Nakuru and Naivasha between January 24 to 27, have been attributed to members of this sect.

Kenya is at risk of a speedy escalation of ethnically based violence leading to pogroms and revenge killings all over the country. The imbalance of power between an entrenched head of state and a leader of the opposition, makes negotiations of a political settlement difficult. A quicker, credible judicial process to settle the electoral dispute is not available. ODM likely calculates that in case the international mediation fails, its only hope of keeping alive a political negotiation will lie in its capacity to raise the stakes through violence and civil disobedience.

Convincing Kibaki and the PNU to make concessions will require external pressure, and guarantees that some of the interests and the security of its constituencies—notably Kikuyu businessmen, and the migrant communities—will be safeguarded.

The U.S. should play a leading role in this respect, and follow up its initial statement that business as usual would not be tolerated, with a clear and direct pressure on the individuals blocking the political process. Targeted sanctions, including travel bans and asset freezes against hard-liners influencing PNU decisionmakers in the corridors of power should be considered. And aid freeze is a good political message, but is unlikely to deliver rapid results.

Threats of international legal prosecutions against individuals responsible for the crimes against humanity, committed both in the Rift Valley and in Nairobi, should also be considered. Including by bringing to Kenya representatives of the Office of the Prosecutor of the International Criminal Court.

External pressure alone may not be enough. The critical additional factor is the business community. Creating additional pressure for a resolution from the Kikuyu business establishment should be supported. By having ODM provide assurances about economic policies, commitment to liberal reforms and to the provision of security to properties and businesses established in the Rift Valley.

The challenge today is threefold. First, dealing with the contested elections by negotiating a political transition, leading to a new democratic election. An internationally supported investigation should be carried out into the nature and extent of the recent electoral theft, and aim at improving upon the weaknesses of the last election.

Second, negotiating a political agreement on the institutional arrangement to be set up for the transition period, including power sharing between ODM and PNU within the executive branch with the creation of the position of a Prime Minister and the clear definition of executive powers, particularly on the allocation of government resources, and the appointment of senior government officials. A constitutional amendment will have to be passed to institutionalize the President/Prime Minister powers.

Third, urgent steps must be taken to end the violence and reverse the dangerous rise of ethnic militias, and the momentum of interethnic killings. An internationally supported Judicial Commission of Inquiry should be established, with the mandate to collect information on the responsibilities into the violence and recommend the vetting of any politician and civil servant found implicated in the perpetration of crimes against humanity from holding any public office, pending the conclusion of criminal proceedings.

Finally, a credible institutional framework and process should be established for the negotiated disarmament and dismantlement of all party-supported militias, and the safe return of refugees and the internally displaced.

Thank you very much.

[The prepared statement of Mr. Mozersky follows:]

PREPARED STATEMENT OF DAVID MOZERSKY, HORN OF AFRICA PROJECT DIRECTOR, INTERNATIONAL CRISIS GROUP, WASHINGTON, DC

I want to express once again the appreciation of the International Crisis Group for the attention of the committee to the crisis in Kenya, and particularly the efforts Senator Feingold and Senator Sanunu for submitting their recent legislation on Kenya's electoral crisis and for organizing this hearing.

The announcement that the incumbent President Mwai Kibaki was the winner of Kenya's Presidential elections has plunged the country into an unprecedented political, security, and humanitarian crisis. Within 4 days of the proclamation of the contested results by the Electoral Commission of Kenya (ECK), protest riots, repression by security forces and revenge killings by supporters of both camps had caused over 600 deaths and reportedly created over 250,000 internally displaced persons (IDPs). By 5 January 2008, the United Nations estimated that up to 500,000 Kenyans were in need of food. The country's economy came to a halt, and regional countries reliant on the Mombasa highway as their main supply route suffered shortages of fuel and other essential commodities. Beyond the loss of life, the loss for the Kenyan economy was evaluated by Minister for Finance Amos Kimunya on 8 January as Ksh 60 billion, close to $1 billion U.S. dollars.

The violence that erupted in Nairobi and Mombasa slums and in the Rift Valley illustrate the depth of the wounds created by Daniel arap Moi's divide and rule policies during the nineties and the urgent need to address the redistribution of land and other sources of wealth in the country. There is no possible return to the business as usual and laissez-faire attitude favored by Mwai Kibaki. Radical institutional and economic reforms are needed, a legitimately elected government should remain the goal and an internationally monitored transitional justice and disarmament process will be necessary to heal the wounds of two decades of interethnic violence and prevent its resumption.

The international community reacted swiftly to contain the crisis and pressure Kenyan leaders to end the violence. After initially endorsing the results, the State Department backtracked and questioned their credibility. U.K. Prime Minister Gordon Brown called the rival parties to exercise restraint, end the violence and sup-

ported mediation efforts led by AU Chairman and Ghanaian President, John Kufuor. Assistant Secretary of State for Africa Jendayi Frazer visited the country to support the international efforts toward a settlement. A first round of discreet shuttle diplomacy produced an agreement of principles on the process necessary to obtain a political settlement. However, hard-liners in the Kibaki camp prevailed over the President and convinced him to disown the document.

The international pressure and other appeals for calm from national leaders and civil society organizations led to a rapid halt to the violence which lasted for several weeks, as tens of thousands of Kenyans moved to unsupported and unsecured sites. By 22 January however, a spiral of revenge killings resumed in the Rift Valley bringing the death toll to over 1,000. All Rift Valley communities have been affected. The Kikuyu settlers of the Nandi Hills were initially targeted by Kalenjin youths supporting Raila Odinga's Orange Democratic Movement (ODM), but the crimes against humanity committed by these youths against women and children in and around the town of Eldoret have since been replicated by the mainly Kikuyu Mungiki sect in the towns of Nakuru and Naivasha, where Luo and Kalenjin women and children have also been burnt alive. Kisii, Luo, and Luhya settlers of the Rift Valley have also become the victims of Kalenjin youths, in a general environment of total collapse of state authority

The situation in the country remains extremely tense and volatile as the protracted political crisis endures. Before leaving Kenya, AU Chairman Kufuor announced that former U.N. Secretary General and Nobel laureate Kofi Annan, former Tanzanian President Benjamin Mkapa, and former Mozambican First Lady Graca Machel would continue the negotiation. Soon after their arrival on 22 January, the Annan team convened a meeting between Raila Odinga and Mwai Kibaki. They committed to a negotiated settlement to the crisis, and to the official beginning of the negotiations at a later date based on a four point agenda: 1. Ending the violence; 2. Ending the humanitarian crisis and guaranteeing the resettlement of IDPs; 3. Finding a settlement to the political crisis; 4. Finding solutions to the unequal distribution of land and wealth in the country.

The Raila Odinga-led ODM, which won 99 of the 210 parliamentary seats against 48 for Kibaki's Party for National unity (PNU), put on hold its calls for mass action and for the boycott of Kibaki's establishment businesses and products. Emboldened by national and foreign electoral observer's conclusions that the Presidential polls were rigged and the declaration of Mwai Kibaki's victory was illegitimate, ODM has maintained that Kibaki should step down and its leader Raila Odinga be declared the winner, or for a forensic audit of the polls results and the organization of a rerun within a short period of time.

Mwai Kibaki's PNU coalition, which includes the former ruling party KANU, and now ODM–Kenya, third-place Presidential contender Kalonzo Musyoka's group, benefits from the fait accompli and the powers granted to the Presidency by the Kenya Constitution and is determined to gain time. Its leaders have called on the opposition to petition the courts and seek redress through the legal process. It accused ODM of having planned and premeditated the violence, and maintains that the situation is under control and there is no power vacuum in the country.

Although calm has partially returned and violence is now limited to skirmishes in some areas of the Rift Valley, reports of militia mobilizations and arming on both political sides have been confirmed. Kalenjin, Luo, and Luhya gangs are being armed in the Rift Valley, Nyanza and western Kenya, while the Mungiki sect has renegotiated its support from the Kibaki establishment, and received finances and weaponry to execute revenge killings against opposition supporters. Both parties are gearing up for a possible violent showdown, which would spread much further than the outburst of violence witnessed in the immediate post-electoral period.

This violence has shattered Kenya's reputation as a haven of stability. The grisly images that have emerged have illustrated the fragility of a national fabric in which the disparity between the rich and the poor remains one of the biggest in the world. Kenya will need more than a political settlement to restore its people's trust in their government and rebuild the foundations of a stable democracy.

I. THE RIGGING OF THE PRESIDENTIAL ELECTION

All national and international observers, including the Kenya Democratic Elections Forum (KEDOF), EU, the Commonwealth Secretariat, the East African community, and IRI, reported in their respective statements that while the vote and count of the ballots at constituency level largely took place in an orderly and satisfactory manner, the tallying and compiling of the results proved highly questionable and shed doubts on the validity ECK chair Samuel Kivuitu's announcement on 30

December.[1] The best and most detailed illustration of the rigging that occurred was provided in the testimony of four national observers who participated during the night of 29 to 30 December, with ODM, ODM–K, PNU party agents and five ECK commissioners in a review of the contested results within the premises of the Kenyatta International Conference Center (KICC) tallying centre in Nairobi.[2]

The delays in the announcement of Presidential results were the first indicators reported by the parties, national and international observers that irregularities were most probably going on. The Presidential ballots are traditionally counted and tallied first in polling stations and polling centers. Their late announcement, notably after the parliamentary results had already been announced, raised suspicions that the figures were being tampered with. The ECK chairman claimed on Saturday, 29 December that he had lost contact with some of his returning officers who had switched off their phones. He could not explain the delays in providing the returns as some of the expected results were from nearby constituencies, in Nairobi and Central province.[3] Under pressure from ODM agents pointing out that some results being announced by the ECK's tallying centre at KICC differed from those announced at constituency level, the ECK chair agreed to have an audit of the results already announced with two political party agents for each Presidential candidate and five national observers.[4]

Despite the blatant irregularities and anomalies in the reporting of the Presidential results brought to his attention on 29 and 30 December, ECK chair Samuel Kivuitu announced the results of the contested constituencies on the morning of 30 December, disregarding the audit results performed during the night. He sanctioned as valid results which appeared to have been tampered with.[5] Sammy Kirui, an ECK contractor participating in one of the tallying teams located within the ECK national centre, came out to the media with ODM senior leaders soon after the results announcement and explained how in his team the results were indeed tallied illegally, unverified, unsupported by the required statutory documentation (form 16, 16A, and 17) signed or stamped by returning officers and confirmed by party agents, and then transmitted to the computer room for compilation by his team leader.[6]

Two instances of rigging appear to have taken place during the tallying process: One at constituency level and one at central ECK level. The first happened throughout the country, with the posting of returning officers by ECK commissioners in their respective provincial strongholds, who tampered with the results of the vote count and sent Nairobi inflated returns for their preferred candidate and deflated results for his opponent. The discrepancies between results and turnouts of the parliamentary and Presidential elections, the reported expulsion of party agents from tallying rooms and the extremely high turnouts (over 95 percent) recorded in some constituencies are the signs of such rigging, both in ODM and PNU strongholds.

The second instance of rigging was within the ECK premises in Nairobi. The results were arbitrarily changed to give Mwai Kibaki a 230,000 vote victory. The disappearance of returning officers in PNU strongholds in particular, and the lack of either stamps or proper signatures of party agents on the statutory forms presented in the last 2 days of the count are damning indications of rigging. From 29 December onward, senior ECK officials heading tallying teams and running the computer

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[1] Kenya Elections Domestic Observation Forum (KEDOF), "Preliminary statement and verdict of the 2007 Kenya's general elections," 31 December 2007; European Union Elections Observation Mission (EUEOM), "Preliminary statement: Doubts About the Credibility of the Presidential Results Hamper Kenya's Democratic Progress," 1 January 2008; Commonwealth Secretariat, "Kenya General Election 27 December 2007: The Report of the Commonwealth Observer Group," January 2008; East African Community Observer Mission, "Report on the Kenya General Elections December 2007," January 2008; International Republican Institute, "Statement on Post-Election Violence in Kenya," 2 January 2008.

[2] Kenyans for Peace with Truth and Justice (KPTJ) coalition, "Countdown to Deception: 30 Hours That Destroyed Kenya," 17 January 2008.

[3] Crisis Group witnessed the statement.

[4] During the audit, party agents agreed that the results of 44 constituencies already announced were untrustworthy, as they were not supported by the adequate legal documentation. Nineteen additional results were yet to be announced. The ECK file for Maragwa in Central Province for instance, was presented to a national election monitor with 16A forms bearing a consistent turnout for the Presidential election of 115 percent for almost all polling stations. ECK officials later decided to manually change these results and make them credible, by reducing the figures to present ultimately a 85.27-percent turn-out. Cf. KPTJ, "Countdown to Deception," op. cit.

[5] See for all details of the recorded irregularities by constituency and the attitude of the ECK during that night, the detailed log of events recorded by National obervers in KPTJ, "Countdown to Deception" op. cit.

[6] Crisis Group interview with Sammy Kirui, Nairobi, January 2008. Under threat, Sammy Kirui has been forced to flee the country.

rooms changed results coming from the constituency tallying centers or endorsed results which had already been changed, and gave instructions to subordinate staff to accept and compile them without the supporting documentation.[7] They succeeded in having ECK commissioners and its chair announce questionable results which ultimately reversed Raila Odinga's lead in the vote tallying and gave the victory to Mwai Kibaki.

As reported by national monitors, it is almost impossible to determine with certainty what would have been a faithful ballot tallying. Rigging occurred both at constituency and central level and only a recount of every ballot might be able to tell what the exact election results are, provided the ballots may not have been tampered with themselves. However, the discrepancy of 325,131 votes between the total Presidential vote tally and parliamentary returns,[8] just slightly more than the margin by which Kibaki defeated Raila, and the fact that results announced by the ECK at KICC do not tally with those reported by the media and/or observed by KEDOF agents at the constituency tallying centers casts a significant doubt over Mwai Kibaki's victory.[9]

The day after the announcement, ECK officials publicly conceded as much. Four commissioners issued a press statement on 3 December recognizing that "some of the information received from some of our returning officers now cast doubts on the veracity of the figures."[10] The chairman himself added on 1 January: "Concerns about these situations [i.e., turnout discrepancies and alleged irregularities] cannot be dismissed off hand. They call for investigation."[11] The ECK officials, however, maintained that on 29 and 30 December, despite the reported irregularities and inconsistencies, they had no other choice than announcing the results as required by law, and that a settlement of the dispute would have to be found in front of a court of law. Alternatively, the chairman added "if the parties in the dispute so agree an independent impartial team of eminent men and women can be empowered to study and inquire into the whole matter. It should have the power to make a finding as to the effect of any anomalies it may find. Their decision should be binding on the disputing parties."[12]

Kenya thus found itself on the eve of 30 December 2007 in the middle of a dangerous political crisis. As Mwai Kibaki was hurriedly sworn in at State House and flown to a coastal military base,[13] the Minister for Internal Security suspended all live media broadcast in the country. ODM immediately rejected the results announced by the ECK chair and refused to recognize Mwai Kibaki as the new President of the country. It also dismissed election petition judicial procedures as having no credibility, the judiciary being under control of the incumbent President.[14] Parliamentary results comforted the opposition in its conviction that the Presidential election had been rigged. PNU won only 43 seats—slightly over 20 percent of the total number of elected seats in Parliament—with 18 of these seats being in Central province and 25 in the rest of the country. ODM won 99 seats, 7 seats away from the absolute majority. Twenty-three Cabinet Ministers lost their seats, often to complete newcomers, and the official ECK results named Raila Odinga the winner in six provinces out of eight.

II. THE SECURITY CRISIS

Immediately after the ECK announcement, spontaneous riots broke out across the country, mainly in Nairobi, Kisumu, Eldoret, and Mombasa. Supporters of Raila Odinga turned their anger on those they perceived to be supporters of Kibaki, mainly members of the Kikuyu Tribe. The ferocity and speed of the violence caught many by surprise. Hundreds were killed in less than 24 hours. Houses and shops were set ablaze. Thousands of people began fleeing the clash-torn districts and towns. By the second day of the riots, Kenya appeared to be back to the dark days of state-sponsored ethnic clashes under Daniel arap Moi.

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[7] Crisis Group has seen copies of ECK statutory forms manually corrected to increase Mwai Kibaki's returns.

[8] It was of 50,192 votes in 2002.

[9] KPTJ, a "Countdown to Deception," op. cit.

[10] "Press Statement" by Amb. Jack Tumwa, D.A. Ndambiri, S.K. arap Ngeny, J. Matagaro, 31 December.

[11] "Press Statement" by S.M. Kivuitu, Chairman, Electoral Commission of Kenya, parliamentary election results, 1 January 2008.

[12] "Press Statement" by S.M. Kivuitu, op. cit.

[13] Crisis Group interview, Mombasa, January 2008.

[14] In the case of Mwau Kibaki's petition against Daniela arap Moi's election in 1997, the Court of Appeal decided to strike out the petition 3 years after it had been filed because Daniel arap Moi had not been served personally. "Moi Petition Ruling Criticized," The Nation, 23 November 2000.

The worst of the violence, in which hundreds have lost their lives and thousands have been displaced, stopped relatively rapidly. The lack of preparedness and reaction from the security services in the Rift Valley province however, raises questions about their complicity in the attacks. The violence ended following calls by ODM leadership to stop it, not because the police or paramilitary services intervened efficiently to contain it.

A. Protest and Repression

Much of the violence was sparked off by the outrage felt by ODM supporters who saw victory literally snatched from their leader on live television. This outrage quickly took on an ethnic character with Luo mobs venting their anger on their Kikuyu neighbors, and Kikuyu youths quickly assembling for revenge against any non-Kikuyu in their residential area. Nairobi's Kibera slum, a predominantly ODM stronghold in Raila Odinga's own parliamentary constituency, was the epicentre of much of the violence in the capital. Gangs of youth armed with machetes and clubs attacked their neighbors. Shops, kiosks, houses, and garages were set on fire. Close to 50 people were killed in the Kibera mayhem, according to estimates by the Kenya Red Cross and other aid agencies, mainly from machete and gunshot wounds. There have also been reports of dozens of women raped.

Other slum districts of Nairobi with a mix of Luo and Kikuyu residents, such as Mathare, Korogocho, Huruma, Kariobangi, and Dandora, were also rocked by the violence. Dozens have been killed and police have been deployed there in large numbers to separate the warring groups. The officially outlawed Kikuyu Mungiki sect also emerged only hours after the Presidential vote was announced, beheading and mutilating Luos and Luyha residents in the Kariobangi and Karindundu slum areas, near Korogocho. A police source told Crisis Group that on the morning of 31 December, police officers from Kasarani Police Station collected 38 bodies from the wider Kariobangi area, all believed to be Luos forcibly "circumcised" and left bleeding to death.[15]

The role of the police in quelling the riots has been questionable, with considerable evidence that officers have been taking sides in the violence. Kikuyu youths in Mathare 4A area report that non-Kikuyu policemen watched helplessly as their houses were torched and property looted. The most police officers did, they claim, was to fire in the air to scare away mobs. Non-Kikuyu victims make similar claims citing numerous examples of people being hacked with machetes and their property looted as policemen merely watched or mocked the victims. In many cases, decisive action from the police came only when officers thought their tribesmen or people who voted alongside their own communities were under siege.[16]

One of the towns worst affected by the violence is the lake-side town of Kisumu in western Kenya, the heartland of Raila Odinga. Again most of those killed and displaced are Kikuyus, although scores of Luo youngsters are said to have been shot dead by the police. The police in Kisumu are blamed for contributing to the high number of fatalities. A BBC reporter said he counted 40 bodies in Kisumu General Hospital morgue, most of them with bullet wounds. Forty-four fatal casualties from bullet wounds have been confirmed by the Nyanza General Hospital.

B. Escalation in the Rift Valley

The region that has been most affected by the post-election violence in Kenya is the Rift Valley. There has been widespread violence in the north Rift region of western Kenya, principally in Eldoret and the surrounding districts. This region is another ODM stronghold; the base of key Raila ally and opposition firebrand, William Ruto. The new violence in the north Rift region, though triggered by the disputed elections, has its roots in a deeply entrenched and a long-festering anti-Kikuyu sentiment within certain segments of the Kalenjin, particularly the Nandi and Kipsigis communities, who felt aggrieved by the preference given to the settlement of Kikuyu settlers in their home areas after independence.[17]

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[15] 15 Crisis group interviews, Nairobi, January 2008.

[16] There are many exceptions. A police officer in charge of Dandora Police Post is singled out by all interviewed, for ordering his men to form a human barrier between combatants from the Luo and Kikuyu communities. The officer managed to avert fighting between the Kikuyu who reside in Dandora areas 1, 2, and 3 who wanted to attack their Luo neighbors who dominate the area.

[17] Daniel arap Moi, a Tugen from Baringo, was appointed Vice President by Jomo Kenyatta in 1969 precisely to quell Nandi and Kipsigis opposition to the settlement schemes that brought tens of thousands of Kikuyu settlers into the north Rift Valley. The land which was redistributed to the Kikuyu settlers and grabbed by senior Kenyatta Government officials in the north Rift is part of the traditional Nandi and Kipsigis homeland from which they had been forcibly

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It is certainly possible that some of the violence was indeed organized. A militia group called the Kalenjin Warriors, whose membership and leadership is blamed for orchestrating much of the anti-Kikuyu violence in the Rift Valley, seems to have been reactivated. Several senior Kalenjin figures in power in the nineties, and now ODM leaders, have been linked to this militia.[18]

In other areas of western Kenya and the Rift Valley, underlying motivations for the violence were not necessarily election related but may also have been linked to the longstanding competing interests for the access to land and jobs in the country. In Kitale, violence has been directed mainly against the homes and food reserves of workers for commercial farms, but has left the commercial infrastructure largely untouched. Saboat Land Forces have reportedly driven out non-Kalenjins (including Luhyas, Luos, Kikuyus) to take over their lands and jobs in the Mount Elgon area. Kipsigis mobs targeted all non-Kipsigis workers in the tea estates of the Kericho area, including Luos, Luhyas, and Kisiis.

The violent hotspots in the Rift Valley like Burnt Forest, Molo, Enosupukia, are old fault-lines where a complex mix of anti-Kikuyu feeling, land hunger, poverty and government insensitivity has created a veritable tinderbox, which explodes whenever politicians give the go-ahead and provide the necessary logistical and financial support. What makes the violence this time around different seems to be the amount of anger and mutual resentment exposed by the election between the two main tribes, the Kikuyu and the Luo, as well as the rise of Nandi ethnic nationalism in the Rift Valley. This alarming increase in anti-Kikuyu and anti-Luo feelings and Nandi determination to reclaim their land and leadership in the Rift Valley, could eventually precipitate further ethnic clashes unless urgent measures are taken to address the root causes.

Credible sources have told Crisis Group that some senior government figures have begun mobilizing the Mungiki sect, a Kikuyu religious cult, with a long history of involvement in brutal killings and organized crime. The plan, these sources say, is to equip and train the Mungiki so that it can become a powerful auxiliary force for the government. Already, many of the gruesome killings which occurred in the Nairobi slums and in the towns of Nakuru and Naivasha between 24 and 27 January when the violence spiralled out of control, have been attributed to members of the sect.

The return of Mungiki and the Kalenjin Warriors to the national scene is sending dangerous signals to other politicians who might come under pressure to revive their own defunct or "sleeping" militia groups such as the Chinkororo (in southwestern Kenya), the Baghdad Boys and the Taleban (whose membership is predominantly Luo). Kenya would then be at risk of a speedy escalation of ethnically based violence leading to pogroms and revenge killings all over the country.

III. THE SEARCH FOR POLITICAL SOLUTIONS

The imbalance of power relations between an entrenched head of state and a leader of the opposition makes the negotiation of a political settlement to the crisis extremely difficult. Kenya's political and institutional forces are slanted toward and facilitate the goals of the PNU coalition. The Kenya Constitution does not provide a credible judicial process for the settlement of electoral disputes. Once announced as winners, Presidential and parliamentary candidates prepare themselves for lengthy court proceedings if election petitions are filed, but in the meantime they enjoy all the benefits of being in office.

A. The Balance of Forces

President Mwai Kibaki and his aides are firmly in control of the state machinery. They have appointed most senior government officials in the past 5 years—from judiciary to police, intelligence services, administration and the army—and even if discontent may exist within the lower ranks, the prospect of a mutiny, coup attempt or rebellion of a section of the state machinery is unlikely at this stage. The most

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removed by the colonial powers to create space for the white settlers. After independence, Nandi and Kipsigis landless peasants became deeply aggrieved against Kenyatta and Moi as they believed they were being submitted to a second oppression to the benefit of a new type of foreign settlers, the Kikuyu. Throughout the seventies and eighties, Moi only tolerated the rise of Nandi leaders if they accepted the land aggiornamento he had sealed with Kenyatta. Others, like John Marie Seroney in the seventies or Bishop Alexander Muge in the eighties, were severely repressed or killed.

[18] There are credible reports some of the youngsters who were setting Kikuyu houses and shops on fire were brought by lorries to some of the scenes of the attacks. There are also reports some of these young men killed by the police were then found with "wads of crisp banknotes" in their pockets. All these suggest there may have been a level of logistical planning behind some of the violence in Eldoret and the surrounding areas.

significant disobedience that has and may still occur is a section of the security services turning a blind eye on the violence or not obeying orders.

The group that controls decisionmaking at State House,[19] and benefits from state patronage, seems determined to stay in office for the next 5 years with little changes to its system of governance. The PNU leadership's current strategy appears to have six components:

- Tame the ODM bloc through the systematic use of force, extra judicial killings, and intimidation, so as to provide a demonstration of strength, and show ODM it should not expect any concessions;
- Claim that ODM prepared the Rift Valley violence long in advance and that ethnic-based violence had always been their agenda;
- Give priority to finding peace and reconciliation while maintaining that all electoral disputes can only be settled in courts;
- Restore a "business as usual" running of government, so as to progressively weaken the internal and external pressure on the government and increase its legitimacy through a lasting fait accompli;
- Invalidate any claim that the election results may be illegitimate, using its allies within the electoral commission and supporters within the print and electronic media;
- Consolidate a political alliance with the leadership of the central and eastern parts of the country (Kalonzo Musyoka, who hails from eastern province, was appointed as Vice President while reinforcing its own power base and giving it the edge over its "perceived" enemies.

On the other side of the political realm, and despite its victory in Parliament for the election of the speaker, ODM seems to have little option but to use mass action, violence, and the internationalization of the crisis to pressure the government. Its calls for mass action, although not bringing large numbers of demonstrators on to the streets, have produced enough negative images in the international media to keep the international attention alive, maintain the travel ban decided by tourist associations, and generate continuing international political and diplomatic pressure. However, senior ODM officials are also convinced that unless they hurt the Kibaki establishment where it matters most—i.e., their sources of income and properties—they will not agree to make any concessions. The ODM leaders know that time is playing against them, and that they need quick progress to sustain any chance of preserving the possibility of a power-sharing agreement.

ODM's negotiation strategy starts with the invalidation of the Presidential results, the logical basis for their claim to a share of the executive powers. Once the results are declared invalid and the principle of a power-sharing agreement is obtained, they will be in a position to consolidate and build a stronger majority in Parliament, as they too would then have appointments and positions to distribute to smaller parties, possibly to reach the two-thirds majority necessary for constitutional review.

The ODM team has determined that at this juncture, the repetition of the Rift Valley violence against Kikuyu communities would be endangering its political legitimacy and weakening international leverage on the government. But the situation on the ground remains extremely tense, and the Kalenjin warriors are unlikely to easily accept the return of the displaced Kikuyu families to pieces of land they want to acquire. Similarly, Raila is under pressure from hard-liners within his base in Kisumu to settle for nothing else but the Presidency so that revenge can be obtained for the destruction suffered in the recent spike of violence—and the perceived 40 years of marginalization suffered by the Luo community in the country. Both camps have their extremists and militias preparing for a new confrontation. ODM calculates that in case the international mediation fails, its only hope of keeping alive a political negotiation will lie in its capacity to generate nuisance and create leverage through violence.

B. Creating Leverage for a Political Settlement

Soon after the violence started a discreet attempt at securing a political agreement between ODM and PNU was initiated with the support of influential members of the Kikuyu business community, facilitated by the World Bank resident representative, Colin Bruce. This negotiation was already well advanced when U.S. As-

[19] Five individuals are reputed to currently control access to Mwai Kibaki and are responsible for the decisionmaking process: Minister for Constitutional Affairs Martha Karua (Kikuyu), Minister for Finance Amos Kimunya (Kikuyu), a frontman for hawkish businessman and Nairobi University Vice-Chancellor Joe Wanjohi (Kikuyu), Minister for Roads John Michuki (Kikuyu), former Minister of State for Defense Njenga Karume (Kikuyu), and Presidential advisor Nathaniel Kang'ethe (Kikuyu).

sistant Secretary for African Affairs, Jendayi Frazer, arrived on 5 January. The signature of a document detailing principles of agreement was planned the day of AU Chairman John Kufuor's departure, on 10 January, to establish the basis of a process designed to address the root causes of the violence, the electoral dispute, and to provide a solution for a political settlement. But before the signature ceremony could take place, the hard-liners surrounding Kibaki prevailed on him not to sign and terminated the deal.

This document provided two of the essential pillars for the resolution of the crisis: An independent investigation into the validity of the Presidential results, with recommendations on the measures and timeframe to be respected to organize a rerun in the event invalidity was found; and the negotiation of a power-sharing agreement between ODM and PNU while the necessary reforms and preparations for the rerun are being carried out.

In view of the atrocities already committed in the country, and the risks of renewed violence through the mobilization of armed ethnic militias, a transitional justice process as well as disarmament program would be necessary additions in the short term. In addition, it is necessary to address the plight of landless communities and reduce tensions related to the settlement of migrant communities both in Coast province and in the Rift Valley.

The missing elements to force PNU to make concessions are external pressure, and guarantees that some of the interests and the security of its constituencies, notably Kikuyu businessmen and migrant communities, will be safeguarded. International pressure has already been applied but needs to increase.

The U.S. Government should play a leading role in this respect and follow up its initial statement that "business as usual" would not be tolerated with clear and direct pressure on the individuals blocking the political process. Targeted sanctions (travel bans and asset freezes) against individuals influencing PNU decisionmaking in the corridors of power should be considered. These sanctions should include close family members, and the groundwork should be laid for the possible international blacklisting of financial institutions belonging to the establishment, if necessary. An aid freeze is a good political message, but is unlikely to deliver results rapidly, if at all. Threats of international legal prosecutions against the individuals responsible for the crimes against humanity committed both in the Rift Valley and in Nairobi should also be considered, by bringing to Kenya representatives of the office of the prosecutor of the International Criminal Court.

But external leverage alone may not be enough to achieve a breakthrough. The critical additional factor is the business community. Additional pressure from the Kikuyu business establishment should be supported by creating bridges between it and ODM. In order to exercise maximum pressure on the Kibaki clique, Kikuyu business leaders must be given assurances about ODM's economic policies, commitment to liberal reforms and to the provision of security to properties and businesses established in the Rift Valley. It could be proposed that their corporate representatives, including the Kenya Association of Manufacturers and Kenya Federation of Employers be brought into that part of the negotiation which would address the economic policy of the transitional government.

The starting point of the negotiation remains the recognition of electoral irregularities by both parties and the invalidation of the election results. The crafting of a power-sharing agreement to guide a transitional phase leading to new elections then follows. Politicians on both sides are likely to be more interested in consolidating their own share of power than providing the new foundations of Kenya's democracy. Hence the negotiation agenda for a period of transition should not only be about the sharing of executive powers between ODM and PNU, but should include a complete institutional reform agenda, including the creation of an effective oversight mechanism for Parliament and genuine independent judicial capacity to counterbalance the powers of the Executive. This constitutional overhaul should similarly be accompanied by a complete review of the electoral regulations so as to prevent any repetition of the December 2007 scenario.

The content of a comprehensive political settlement should therefore include:

- The launch of an internationally supported investigation into the extent of the electoral fraud leading to recommendations regarding: The impact of the fraud on the validity of the announced Presidential and parliamentary results; options for a settlement of the election dispute (recount, retallying, or rerun); the identification of ECK officers involved in the fraud so as to start judicial prosecutions against them; the legal and constitutional reforms necessary to prevent such fraud in the future and restore the credibility of the Kenya electoral process, including detailed procedures of appointment for ECK officials and other reforms necessary so that the Kenyan judiciary becomes a credible arbitrator of electoral disputes (procedures involved and appointments of judges).

- A political agreement on the institutional arrangement to be set up for the period of transition during which the legal and constitutional reforms necessary to restore democratic governance in the country are going to be carried out, including: A power-sharing deal between ODM and PNU within the executive branch of government with the creation of a position of Prime Minister and the clear definition of his executive powers, particularly on the allocation of government resources, and the appointment of senior government officials; the distribution of ministerial portfolio between the parties; the joint designation of key officials running the Civil Service, Central Bank, Treasury, permanent secretaries, senior officials running the police, the general service unit and the intelligence services, provincial commissioners, and diplomatic representatives. A constitutional amendment will have to be passed for the above-mentioned institutional arrangement to be institutionalized.
- An agreement on the constitutional reform process to take place during the transition, addressing the rebalancing of power relations between the branches of government and the necessary devolution of powers between the Central Government and its local authorities.
- An agreement on the economic policies to be implemented during the period of transition, determined in consultation with key economic stakeholders of the country.
- An agreement on the precise framework and policies to be implemented during the transition, to facilitate the resettlement of IDPs and address the land grievances of communities who supported the violence.
- The establishment of an internationally supported judicial commission of inquiry with the mandate to collect information on the responsibilities in the violence that started on 29 December 2007 and recommend the vetting of any politician and civil servant found implicated in the perpetration of crimes against humanity from holding any public office, pending the conclusion of criminal proceedings.
- The establishment of an independent and internationally supported Truth, Justice and Reconciliation Commission, to find a long-term solution to the ethnic violence that regularly rocks the country. This commission, which has already been endorsed by the parties, should aim to provide accountability and healing for the crimes committed in the post-election violence.
- The establishment of a credible institutional framework and process for the negotiated disarmament and dismantlement of all party-supported militias. Kenya cannot afford to have Kalenjin warriors, Baghdad boys, and the Mungiki sect armed and organized ahead of a new electoral contest. If these militias are not effectively disbanded and disarmed, any new electoral campaign would run the risk of renewed extreme violence.

IV. CONCLUSION

The uneasy calm that currently prevails in Kenya should not be misunderstood for a return to normalcy. The country's protracted political crisis is deeply entrenched and could easily lead to renewed episodes of extreme violence. There is, moreover, more at stake in Kenya than just the collapse of yet another African country. It is the entire liberal agenda—economic and political—which is being tested. If Kenya's economy and democratic process go down the drain, it could create a sense of hopelessness throughout the Continent of Africa.

The regional consequences of the crisis have probably yet to be fully understood. Kenya provides the platform for relief operations in Somalia, Sudan, and is a key anchor for the long-term stabilization of Rwanda, Uganda, and Burundi. Not only would the paralysis of its infrastructure deprive these countries from access to basic commodities, but they would also suffer in the mid to long term from a sustained reduction of foreign investment and see their economic growth seriously hampered. The quicker a solution to the crisis can be found, the better the prospects will be for the entire region to recover and the Kenyan people to regain hope in the future of their country.

Senator FEINGOLD. Thank you all for your testimony, and let me just mention that a number of people have arrived since we began the hearing, many from Kenya. I want to welcome you on behalf of this committee. We welcome you, we welcome your interest, and I just want to reiterate that there's a wide range of materials that we have included in the record that we are considering, in addition to what you're hearing here from the witnesses. I also want you to

know that I promise to remain engaged on this issue going forward, and I'm sure my colleagues will, as well.

Let me begin the first round of questions.

Mr. Albin-Lackey, as you alluded to in your testimony, the violence in Kenya in recent weeks has included what has appeared to be spontaneous protests, as well as more organized violence in the Rift Valley, which President Kibaki has claimed has been orchestrated by Orange Democratic Movement party officials. Have you seen evidence to indicate that the national leadership of the opposition party was involved in planning or carrying out this violence?

Mr. ALBIN-LACKEY. No. We haven't seen evidence indicating the national leadership of the ODM has been involved in organizing this. But, at the same time, I don't think anyone is convinced that there aren't people within the ODM leadership who haven't been involved to one degree or another. Perhaps not through actively organizing violence, but certainly through inciting the kinds of divisions that have led to the violence, subsequently.

It's something that we're still investigating, and more to the point, the Kenyan National Commission for Human Rights is just now launching a very large investigation that's looking into responsibility for organizing and inciting violence across the country, on both sides. And that is in addition to a team that's being sent over by the Office of the High Commissioner for Human Rights. And both of those inquiries working together ought to be getting as much support as possible from the United States, precisely in order to shed light on that question.

Senator FEINGOLD. Do you think that the party leaders—Mr. Kibaki and Mr. Odinga—have the ability to control the various gangs that are creating havoc in some parts of Kenya and to stop their violent attacks?

Mr. ALBIN-LACKEY. It's an open question. It's certainly probably the case that they had more of an ability to do that 2 weeks ago than they do today. And that as this violence starts to take on a dynamic of its own, with reprisals fueling further reprisals, and so on, their ability to put a brake on this is diminishing.

I think that today it's still probably true that if the leadership on both sides made much more of a serious effort to try to reign the violence in, it would have a dramatic and very rapid effect. But time is really of the essence there, and it's not at all clear how much longer that will remain true.

Senator FEINGOLD. There have been credible reports of threats to numerous human rights defenders and prodemocracy activists. What steps are needed to protect human rights defenders and journalists and other civilians who are being threatened, and is there any evidence that people within the Kibaki administration are behind these threats? And who else may be responsible here?

Mr. ALBIN-LACKEY. There have been a lot of threats against human rights defenders that are really part of a broader climate of persecution of voices of moderation on both sides. Human rights defenders and anyone else who has stood up in opposition to violence taking place in many communities have been targeted for threats, for intimidation and other efforts to silence them.

Some of the people that we worked with in carrying out our own research have been facing exactly those kinds of threats, because

they're seen as being overly sympathetic to the rights of people on the other side.

All of that is part of what is, by all appearances, a very organized effort to spread hate speech, including petitions and SMSs accusing people by name of being traitors to their community because of their work to uphold human rights. The Kenyan Government has recently announced that it's trying to investigate the origins of some of that. But frankly, that investigation, to be credible, has to target both sides, and I don't know that at this point the government can credibly investigate both sides.

So, the Kenyan police have to actively try to protect people being targeted for these reasons, and again, as in the situation with the IDPs, the Kenyan government has to free the Kenyan police to ask for assistance where they might need it, in doing so.

Senator FEINGOLD. Thank you, sir.

Dr. Barkan, you were in Kenya as part of the International Republican Institutes Election Monitoring Team. Can you shed some light on why the IRI's poll results have not been published?

Dr. BARKAN. You might ask IRI why they're not releasing the poll. Their position is, is that the results are not yet complete, that there are some methodological issues. My understanding by those who actually conducted the poll are highly competent and I question, really, the extent of the problems.

I think there might have been some concern, initially, of whether this might have contributed to the divisiveness and the violence that's occurred, but my understanding about what the polls contained is essentially another piece of evidence that underlines the point I made in my testimony—that is to say that neither side really commands the legitimacy over half of the population, that it was an extremely close election, and the question of who won or lost by 1 percentage point is not really the issue here, and therefore the results of that poll ought to be released to drive the point home that both sides have to get together.

Senator FEINGOLD. I'm pleased to hear you say that.

Doctor, in your submitted testimony, you stated that the United States failed to effectively respond to the conflicts that unfolded during the 2 days after the December 27th election. What mistakes did the United States Government make, and how do you account for these errors? What should U.S. officials have done differently?

Dr. BARKAN. Sorry, I thought you were addressing——

Senator FEINGOLD. I was addressing you, Doctor.

Dr. BARKAN. What we should have done differently? Well, No. 1, we should not have made the congratulatory message that we did. I also think that we should have been much more proactive in the period running up to the election. It's true, Secretary Rice called both principals in the week preceding the election, but I can tell you that is because Kenyans and, shall we say, people here in Washington who follow Kenya, urged through the channels that they had open to them, that the Secretary make that move.

We could have probably done a much better job, as I also said in my testimony, in terms of scrutinizing the record, and we definitely, probably should have spoken out in terms of the composition of the Electoral Commission. Because the five Commissioners that were appointed by President Kibaki actually, it was a retrograde

step. Because there had been an informal understanding in place, since the 1997 elections, repeated prior to the 2002 elections that the opposition would be accommodated with roughly half of the Commissioners, and that they would be consulted, and they were not consulted this time. We should have spoke out on that.

Senator FEINGOLD. Thank you.

Mr. Mozersky, the last time I went to Kenya, the purpose was to understand some other problems in the region, as well as challenges facing Kenya. Kenya was a place we could go in relative safety to learn about things happening in less stable places like Somalia and Sudan.

Could you briefly address the regional impacts of the current crisis, from a humanitarian, economic, and political perspective?

Mr. MOZERSKY. Well, as you said, Kenya is the center for humanitarian activities in Somalia, to a certain degree, diplomatic activities in Somalia, and was, for a long time, the center for humanitarian and diplomatic activities on Southern Sudan, as well, although that's beginning to shift.

Kenya took the lead in brokering both the Somali peace agreement, and the Sudanese peace agreement, and the crisis in Kenya, one of the side effects, is that it is taking attention away from implementation and followup in both of those cases. Kenya was taking the lead in trying to organize a head of state meeting on the situation in Sudan, on the implementation of the comprehensive peace agreement that is now, I assume, off the table indefinitely.

Likewise, in Somalia, the attention of much of the diplomatic community in Kenya was split to also focus on Somalia, and that has now shifted, I assume, almost entirely to the crisis in Kenya.

So it—Kenya provided a hub for diplomatic efforts, both regional and international diplomatic efforts for the crises in the region. And it will now be much more difficult to provide consistent and sustained attention on Somalia, on Sudan, out of our existing operations in Kenya.

Senator FEINGOLD. I think that that's a very important point coming out of this hearing, for all of my colleagues to realize, given the centrality that Kenya has had, in terms of our policies in that region.

In your opinion, who is primarily responsible for the disastrous direction Kenya has taken since December 27? Who should face U.S. and international travel bans?

Mr. MOZERSKY. I think there's two sources—there's people responsible for the violence and there are political leaders who are holding up the negotiation process.

Just to repeat the point, and I think all of the speakers have made it, the solution is not—or, the solution to the problem is not only a power-sharing agreement and an end to the violence. It's dealing with the electoral irregularities and putting in place a process that will lead to a new, free and fair election as soon as possible. And you have resistance there, on that third point, from Kibaki's government, from the PNU.

Kibaki was sworn in almost immediately, they're claiming that they are now the sitting government in power, and any complaints should be taken through the legal process. But there is no credible—the opposition, at least, does not have confidence in the credi-

bility of the judicial system to address that. And so that's where the international mediation has to lead the negotiations. And from there, it's up to the U.S. and other international actors to provide the leverage necessary on the actors.

Senator FEINGOLD. Thank you very much.

Senator Lugar.

Senator LUGAR. Thank you, Mr. Chairman.

I appreciate the responses to the chairman's questions, and I want to underline and get more information in this respect.

Essentially, you pointed out, Mr. Lackey, that you believe that there were already political leaders in Kenya, preparing for violence in the aftermath of the election. And I'm curious, Secretary Frazer mentioned Mungiki as an organization that was along militia-ethnic lines.

Some have wondered whether, in fact, there were any Muslim activities that were involved in this? But, describe, if you can, more specifically, who generated violence? Were there specific groups, as opposed to a spontaneous uprising, just ordinary citizens?

Mr. ALBIN-LACKEY. Well, there have been a couple of different phases to this, and there may still be more. But the initial explosion of ethnic violence immediately after the election was focused mostly in the Rift Valley. There—that's where these land issues and deeper historical grievances that lie at the root of why conflict boiled over so quickly and so violently, are really most at play.

And there, much of the violence took the form of people in—our own research focused mainly around a town called Eldoret, which was the epicenter of that initial wave of violence. And the predominant group in that area is the Kalenjin, and there's a large minority population of Kikuyu settlers who bore the brunt of the violence. Partly because they were seen as supporters of Kibaki and the PNU, and partly because of all of these underlying grievances there.

It was very clear that in the runup to the elections, community elders, local politicians and others really primed people for violence by telling them that if the election went the wrong way, that was proof-positive that the results were rigged, and that their reaction should be war. And the word "war" was used over and over again in many different communities. And often, that's exactly what happened.

And after an initial—after the first day or two of post-election violence, much of what followed was actually not just incited, but organized by those same people. Different—people from different small rural communities, in some cases came together under the leadership of community elders and others and attacked larger population centers.

And now there are some of those same communities, some of those same leaders, trying to raise money to procure firearms, trying to plan attacks on IDP camps and remaining population centers.

After that, that violence then triggered a wave of reprisal attacks in other parts of the country that essentially saw the same violence taking place in reverse. And that's where this Mungiki group has come into play, which is essentially a bloody, a very violent crimi-

nal organization that the government had been, quite brutally, trying to crush, in years past.

And now there are very disturbing allegations that people close to government have been reactivating the Mungiki sect and using them to help organize some of these reprisal attacks against people who belong to ethnic groups seen as supportive of the opposition.

So, really there's—as the violence is spreading, the number of parties who seem to be involved in organizing and inciting it, is also growing, day by day.

Senator LUGAR. Well, given that background, let's say, hypothetically, the two leaders and their immediate followers, at the upper levels, responded to mediation of Kofi Annan or others, and said, "Very well. We will both support a new constitutional amendment," that you've discussed here as a panel here today, that really gives more checks and balances, perhaps even better ethnic background at the hustings, and so forth, "and furthermore, we will have another election, we will run this whole thing again."

Now, are the groups that you're describing going to be satisfied as a matter of fact that another election is being held, if in fact the outcome of the next election was the same. And it's now transparent, the world is watching, and so forth.

What I'm trying to get at—are the underlying forces so great that unfortunately, at this particular point in Kenya's history, though we might have had greater foresight, the whole world community might have thought more about this? Nevertheless this happened. And forces have been unleashed that even constitutional reform and another election—very transparent and well-run—are not going to cure?

Mr. ALBIN-LACKEY. Well, I think, if a new election is held, I don't think anyone is arguing that it should happen tomorrow. A lot of these issues have to be dealt with prior to that, and one of the most central is that the people most responsible for inciting and organizing this wave of post-election violence have to be identified and held to account for what they've done. Otherwise, the message will be that this is a new and acceptable part of Kenyan politics, as opposed to an aberration that has to be investigated, punished, and denounced on all sides.

But, certainly there's no reason to think—in spite of all of this chaos, it's important to remember that just at the end of December, Kenyans all over the country turned out and voted peacefully, displaying a faith in the democratic process that's been shattered by the events over the past few weeks. And the key is restoring that faith, and giving people a reason to believe that their votes will count in the way they thought they would in this last election.

Senator LUGAR. And would that large majority of Kenyans who came out to participate find, then, some conciliatory efforts, some reconciliation of the upper levels to be helpful? What is going to be required for this very large majority, hopefully, of Kenyans to have this degree of confidence?

Doctor, do you have a thought about this?

Dr. BARKAN. Well, the leadership has to be much more proactive, in terms of going out in the hustings. And I alluded to this group of 105 parliamentarians where now you have, shall we say, middle echelon leaders, but nonetheless in peace, who have literally gone

back to their constituents and said, "You must cool it. This is counterproductive for all of us."

And there was a clip on CNN the other day, showing one such individual who is actually not known for his own tactics, finally, in effect, coming to his senses and realizing that this thing is getting out of hand.

But I think one thing needs to be said about the violence in the Western Rift Valley—this is not new. There was violence in 1992, where actually 1,500 people were killed in that area, alone. There are historic roots here, given land tenure in that area. Kikuyu migrants, some of whom going all the way back to the 1920s—so there's a lot of history here, and that makes it very difficult to repeal.

That said, it is reported that there are retired Kalenjin Army officers, those who had been senior officers during the Presidency of Daniel arap Moi, who were dismissed by the Kibaki government, who are behind this. There is Mungiki, as was mentioned, and I might suggest that perhaps we could do a much better job investigating these organizations.

You asked about Muslims—my sense is that we devote all our counterterror efforts to what's going on, on the Kenyan Coast, and here we have this other, very real threat to Kenyan society and the Kenyan state elsewhere, we pay insufficient attention to it, or so it would appear. And we have our main regional security office based in Nairobi, and the Embassy there, as you may well know.

Senator LUGAR. What are likely to be the effects, Mr. Mozersky, of Kenya's proceeding—or maybe our own activities in this direction, that we have sanctions on individual leaders? And on persons we believe were responsible for trouble—in essence, the United States itself takes these actions, and we encourage other nations to do the same.

Likewise, if we encourage that there be the electoral reforms that are being suggested—I think Mr. Lackey would say too early to have another poll, you ought to let justice work itself out, which may take some time also. It may be that we come to the conclusion that another election is useful. Are we likely to be effective in this respect? In other words, given the dynamics of what is involved, is this a viable program, and if it is, does it have to be international? What is the influence of the United States, what is the influence of these business leaders who we believe are giving jobs to Kenyans? Who are making prosperity possible?

And I just underline, again, the chairman's thought—what does the prospect of our outlining our own respect for Kenya's leadership in Africa hold in these very difficult diplomatic situations?

We haven't really gotten into an unraveling of all of the things that may occur, but just having a visit, as our committee did yesterday, with our new Presidential Envoy to Darfur, Mr. Williamson. You see extraordinary complexity in these situations, which are exacerbated by what we're discussing today.

So, you know, what is our influence here, and how should it be applied?

Mr. MOZERSKY. We have tried to put our effort behind the Annan effort, because this is an African-led effort and I think that is certainly the way to go. But we have to exert more pressure. And the

fact of the matter is we do not have that many levers. It's important to recognize that the aid card, which we played very effectively back in 1992 and throughout the 1990s cannot be played, in part, because Kenya is not aid-dependent. Although, with the economy declining, and their revenues declining, they may soon will be.

But before all of this erupted, Kenya, Kenya's annual budget was only 8 percent dependent on aid. In fact, a model to other countries.

So, we have to look in other directions, so that's why I mentioned in my testimony, the targeting the hard-liners, perhaps publicly so—I indicated the names of those individuals who are most suspected of being in those, in that category. We have to investigate to be absolutely sure, so we don't falsely accuse—there are actually, may be one person on that list who shouldn't be there. But nonetheless, we should move forward, and we should be more public about it.

Also, on hate speech—it's possible, this was, I mentioned, Mr. Lackey—a lot of this is being spread through text messages. I'm not sure whether software exists to block those, by dealing with the cell phone companies, but we should certainly explore that. Ambassador Ranneberger himself has been on the radio—you were asking about the press in your previous panel—there are actually 42 FM radio stations now, some that are ethnically based. And on that level, speaking in the local language, a number of things we could do there to get the message of peace across.

Senator LUGAR. Thank you, Mr. Chairman.

Senator FEINGOLD. Thank you, Senator Lugar.

Senator Nelson, thank you for your patience. Please proceed.

Senator BILL NELSON. Do you see a regional manifestations and implications to this crisis of Kenya, outside of Kenya?

Dr. BARKAN. Very definitely——

Senator BILL NELSON. Trace that, for the committee.

Dr. BARKAN [continuing]. And the leaders in the region are getting nervous.

Well, tracing it—one can go all the way back to Colonial times. Kenya, Tanzania, and Uganda were a single unit, single currency, if you look at the transportation grids, the fact that Uganda is landlocked, gasoline in Uganda now is evidently up to $15 a gallon. The trade routes go through Mombassa, into Uganda, up to Southern Sudan, all the way to Eastern Congo and all into Rwanda.

So, we have this huge area, and particularly with respect to Southern Sudan, where we're trying to consolidate a peace there, it's all affected, simply by where Kenya is geographically located, and the fact that Kenya has the largest economy in the region—more than the others combined.

Senator BILL NELSON. I'm curious, because you mentioned Sudan—what's the linkage there? And the spillover?

Dr. BARKAN. The linkage is——

Senator BILL NELSON. Either way.

Dr. BARKAN. The linkage is in Southern Sudan, in terms of the extent to which the government of the south, which has come out of the comprehensive peace agreement—and that agreement itself is very shaky. And the big question, of course, whether it's going to hold—but you have to have a viable government in the South,

and it's based in Djuba, which is basically a bush town—dirt roads leading up to there and most of the supplies they get come from Kenya, up through northwestern Kenya and on into Sudan, or up from Kampala, so their lifeblood of supplies—humanitarian assistance, as well, ultimately is in Kenya.

The main road between Nakuru and the Uganda-Kenya border has been blocked, on occasion. And petrol supplies, as I mentioned, the railway, there's been sabotage to the Uganda railway. This is a very difficult situation, and President Museveni, in fact, flew down to Kenya last week to make his concerns known. But I might add, however, he appeared to be tilting toward the support for the government.

Mr. MOZERSKY. Can I just add, on that point?

Senator BILL NELSON. Please.

Mr. MOZERSKY. If it's OK—in addition to the economic impact, there's a political impact. The Kenyan Government was the leader in the negotiation process that led to the comprehensive peace agreement in Sudan, and has the chair within Egad for the Sudan subcommittee. And Kenyan leadership on Sudan is critical to see continued engagement from the region on the implementation of the comprehensive peace agreement.

The Deputy Chair of the Assessment and Evaluation Commission, the main monitoring and oversight body of the comprehensive peace agreement, it provides diplomatic support, training to the Southern Sudanese—Government of Southern Sudan, as well as assistance on security issues.

So the impact and implication—Kenya's involvement is a—in Sudan—is a force multiplier, for lack of a better word, to the general international efforts, to see the comprehensive peace agreement implemented. And the domestic crisis in Kenya, essentially removes them from playing a large role, an engaged role, in Sudan and other regional crises, where they have had the lead in the last number of years.

Senator BILL NELSON. And how about the economic implications on the other countries in the region?

Mr. MOZERSKY. Well, I think it's largely—as Dr. Barkan pointed out—the most affected will be those who are reliant on goods and services that come through the Port of Mombassa. So, Uganda, by extension, and then Southern Sudan, as well. And the problems will only multiply as time goes on. Already there's been a sharp rise in the cost of commodities, and cost of petrol, and it will only get worse as time goes on.

Senator BILL NELSON. You all talked about the process of mediation. Are there other international participants that you think would move the process of peace discussions along?

Dr. BARKAN. Well, Kofi Annan has not intended to stay in Kenya forever. He's really engaged in talks about talks. And one key to the mediation is finding an appropriate individual to take over—who really knows the technical issues—about some of the questions that I indicated in my presentation, particularly this issue of devolution, which is an extremely emotive one in Kenya. It can be reduced to a series of technical questions to facilitate a deal, but you need a very skilled negotiator, supported by a team of people, such

as economists, who know about revenue-sharing and block grants, and all of this sort of stuff that we deal with here.

The United States, perhaps, can provide that, and the broader international community can encourage the negotiations.

But just this week, Cyril Ramaphosa—who was arguably the most qualified African to take over from Annan, because he's done this before, in Northern Ireland, and particularly in 2 years of hard negotiations in South Africa was basically rejected by the government.

And I think that really underscores the point that all of us have made in one way or another—that the government is basically stalling for time, think they can ride this thing out. At best, they can do so for awhile, but in terms of the long-term solution, it won't work.

There are Kikuyu, just to finish here, who are terribly fearful that if this keeps up, Kikuyu will be completely pushed out of the Rift Valley. That the natural homeland of the Kikuyu people, the largest ethnic group in Kenya, will basically end at Limuru or the Rift Valley about 20 miles north of—west of Nairobi, and the whole country will become zoned. Somehow, we have to get across to these people that they must make a deal.

Senator BILL NELSON. Well, if you were President, what would you do? [Laughter.]

Dr. BARKAN. President of——

Senator BILL NELSON. If you were President of the United States, what would you do? To make a deal?

Dr. BARKAN. Well, I would urge President—what?

Senator BILL NELSON. You said you've got to get these people to make a deal. So, what would you do if you were President?

Dr. BARKAN. I think we know, given the analogy that often it's very difficult to make a deal, even here.

Perhaps the President, that is to say, President Bush, can call up the principals—I don't think he's done so, yet, to my knowledge, maybe there was one instance. But you had a parade of people into Kenya, including Ban Ki-moon just this week, and what you see here is almost tone deaf. So, it's very frustrating.

I think only until these individual hard-liners are hurting personally—their families, their respective economic interests, and that might take some time—that they will become more flexible. How you hasten that, again, we have limited arrows in our quiver, it will also have to be coordinated with the EU. Because, simply us doing a travel ban, asset freezes, et cetera, is not going to be sufficient.

Senator BILL NELSON. And you're talking about hard-liners on both sides?

Dr. BARKAN. I'm talking about hard-liners on both sides, but I think you can tell by, from my remarks, I'm suggesting that they are disproportionately on the government side.

The hard-liners on the ODM side are those who are behind the violence in the Rift Valley. Not hard-liners who do not want to reach a power-sharing agreement—they've actually presented a list of what they want to Kofi Annan and among other things, they based that on a parliamentary committee—the Committee on Jus-

tice and Legal Affairs, that came up with a package of minireforms just last July. And which actually are fairly modest steps.

But the real negotiation, it's the government that needs to be pushed.

Senator BILL NELSON. Final comment that I would like you to sketch for us. If the chaos continues in Kenya, and the chaos continues between Sudan and Chad—that portion of the world—that makes it very difficult to advance the interests of the United States, does it not?

Dr. BARKAN. Without a doubt. We have very large assets in Kenya, one that's probably not even known is a large CDC facility in Kisumu—200 research specialists there. That place is all but shut down, and a good friend of mine, his daughter was a doctor there, she's a Kikuyu, heading a research staff of 80 people—she can't go back. Trashed. We have our Regional Security Office there, the United States Department of Agriculture—even the Library of Congress, counterterrorist efforts, et cetera, et cetera. It's our largest Embassy and operation in sub-Saharan Africa.

Senator BILL NELSON. Mr. Chairman, and Mr. Chairman Emeritus over there, you know, earlier last year I tried to go to the Sudan, they would not let me in, so I went in the back door. But to get from Ethiopia to Chad, I had to go all the way around. I had to—because they wouldn't let us overfly, Sudan, I had to go all the way down, across Kenya, and around the southern end, and then up into Chad, that way. And, you know, here we have now Sudanese rebels attacking Chad's Government, and Chadian rebels attacking the Sudanese Government, creating conditions that are so much worse than what was already absolutely one of the worst situations that I've ever seen, of the refugees from Sudan, over in Chad. And then Chad refugees, in additional refugees camps in Eastern Chad.

And now, next door, they've got all of this problem. So, this could be a real flashpoint in Africa.

Senator FEINGOLD. Throw in Somalia, and we are in a world of hurt, as we say in Wisconsin.

Let me thank the witnesses, and my colleagues. I hope everybody here realizes, we had four Senators who spent a great deal of time on this, because we're very interested in Kenya's fate and its implications for the region and the continent. Senator Sununu is very engaged in this issue as well.

There's also another member of the subcommittee, since the question was asked, what would your advice be, Doctor, if you were President—he is also a member of this subcommittee, he has more than a passing interest in Kenya, but he's extremely busy—Senator Obama. [Laughter.]

And I'm sure he would want his good wishes conveyed to you, as well.

Thank you very much, that is the conclusion of the hearing.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

MATERIAL SUBMITTED FOR THE RECORD

TESTIMONY OF GREGORY GOTTLIEB, DEPUTY ASSISTANT ADMINISTRATOR, BUREAU FOR DEMOCRACY, CONFLICT AND HUMANITARIAN ASSISTANCE, DEPARTMENT OF STATE, WASHINGTON, DC—BEFORE THE HOUSE SUBCOMMITTEE ON AFRICA AND GLOBAL HEALTH OF THE FOREIGN AFFAIRS COMMITTEE, WEDNESDAY, FEBRUARY 6, 2008

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

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 reignited 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 7 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 preindependence 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 of 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 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 has repeatedly blocked ground transport in western Kenya and threatens to obstruct major access routes within Kenya and to neighboring countries. The U.N. 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, 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, 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 attacks 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 intergroup 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, unharvested 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 U.N. and international relief organizations, and engaging with other donors to identify evolving priority needs.

The USG is the largest donor to the U.N. 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. These contributions to ICRC and UNHCR for the response to the refugee/IDP situation in Kenya and Uganda 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 U.N.'s Central Emergency Response Fund authorized $7,022,854 toward the Inter-Agency Standing Committee's Humanitarian Emergency Response Plan and Flash Appeal, which was well-allocated toward 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 contributions, 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 nonfood items; food.	U.N. & NGOs.
China	300,000		KRCS.
Denmark	43,305		KRCS.
DFID (UK)	5,972,000	Food, shelter, water and emergency health care.	KRCS, ICRC.
ECHO	8,093,415	Shelter, water, sanitation, emergency health care, basic household equipment, hygiene products, food, logistics.	U.N., 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	Nonfood items	Trocaire.
Italy	358,600	Assistance for Kenyan refugees in Uganda.	IFRC.
Japan	200,000		ICRC.
Korea	200,000		UNICEF and OCHA.

Donor	Amount	Sector	Recipient agency
Netherlands	2,207,295	Emergency relief supplies, water and health.	KRCS.
Norway	2,189,949		U.N., KRCS, CRC & 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.

LETTER FROM HON. STEPHEN KALONZO MUSYOKA EGH MP, VICE PRESIDENT AND MINISTER FOR HOME AFFAIRS, REPUBLIC OF KENYA

FEBRUARY 6, 2008.

Senator RUSSELL FEINGOLD,
Chairman, Subcommittee on African Affairs, Senate Committee of Foreign Relations, Dirksen Senate Office Bldg., Washington, DC.

MR. CHAIRMAN AND HONORABLE MEMBERS OF THE SUBCOMMITTEE: Many thanks indeed for the opportunity to speak to this committee and provide you at least one voice from the homeland as you and your committee consider these important issues on Kenya.

For those of you who do not know me, while I am the current Vice President of Kenya, I also emerged as the third candidate overall in the most recent Presidential election. Since 2002 and throughout the past election I have worked together with Mr. Odinga, his party the Orange Democratic Movement (ODM), and my party Orange Democratic Movement Kenya (ODMK) originating from our combined efforts to change the Kenyan Constitution over the past several years. After the recent election, with violence rearing its ugly head, President Kibaki reached out to me and the ODMK, appointing me Kenya's Vice President; through a coalition of parties' arrangement.

First, let me tell you that the violence in Kenya has subsided. While there has already been too much bloodshed in Kenya—one lost life in pursuit of political ambition is one death too many—it appears that we have turned the corner, but having said this, all parties must agree to resolve these issues in the context of our laws and institutions, rejecting violence as a means to a political end.

With the bloodshed contained, we must then move to address the plight of more than three hundred thousand displaced Kenyans living as refugees in their own country. They are the victims of this atrocious violence as much as those that have been murdered. That is the immediate growing crisis that needs to be urgently addressed.

It is important the Members of Congress, the State Department and the White House understand that the murder and bloodshed in Kenya is NOT due to the general public "revolting" against what was a legitimate political outcome—it is sadism and slaughter that is being encouraged by certain parties in order to REJECT a legitimate political outcome. It is violence that is driven by longstanding ethnic differences, and competing claims to land and property. It is not aggression driven by a belief that this election was illegitimate. Your own representative from the State Department was correct in calling this violence "ethnic cleansing"—it is ethnic hatred stirred up by others who are selfish at best in their motives.

The solution to the problem in Kenya will not come externally. The democratic institutions that the country has developed over the past decades were created to resolve political problems in a peaceful manner. There are avenues for the losing candidates to challenge election results—through the courts much like the challenge

Al Gore made in the 2000 Presidential Election here in the United States. Unfortunately it appears that instead of using these proper channels the opposition has resorted to violence in the misguided hope that the fear of further bloodshed and mayhem would encourage other nations to impose a change.

It should not be this way. Despite numerous elections in Kenya over the past several decades, some as contentious as this past election, no individual or group has used violence as a means of obtaining political power. Why should the most successful democracy in East Africa now compromise what a generation of Kenyans has built? Why would the United States and Europe, whose own traditions of peaceful challenge of election outcomes "encourage" the use of mob justice for political ends.

Advocating for a "power sharing" solution on Kenya will result in a dangerous precedent and my country will be faced with MORE hostility, not less. If the United States promotes this kind of resolution it will create the wrong impression that violence is a legitimate means to resolve disagreeable democratic outcomes. I find it difficult to fathom that this is what your country truly recognizes as a justifiable solution. How can the United States consider the idea that blackmail, with terror and murder as leverage, is a legitimate political tool in any democracy?

So what would I propose to resolve these issues?

First and foremost, everyone, winners and losers, Kenyans and foreigners, must recognize that violence and murder are unacceptable responses to an electoral result. Everyone must condemn and do what is in their power to stop any attacks.

Second, the persons responsible for financing, inciting and approving of this activity must be brought to justice. While the individuals performing these acts may never be known, the persons behind the incitement of this bloodshed are known, and must be held accountable and brought to justice.

Third, the protagonist factions must come together with the rest of Kenya, the United States and other countries to resolve the dislocation of three hundred thousand persons inside the country. Humanitarian aid, health services and settlement over lost or damaged property must be addressed immediately so that this situation does not turn into an unbearable crisis.

Next, the United States and other countries should encourage the opposition to pursue its challenge to the election through lawful means and other institutions as outlined in our Constitution and our legal system. If there are serious concerns about the outcome then these are the channels to address those concerns. There should not be any support from foreign powers to usurp or circumvent Kenyan law and ignore our Constitution.

With respect to the election results and the desire by many to allow the opposition to have a voice in our government, I suggest that you look at the entire election that has taken place. This election divided the Kenyan Government, with Mr. Kibaki remaining as President, but with the opposition party having a large block of seats in Parliament. With ODM's sizable numbers in Parliament, they have a significant say in the funding and priorities of the goverment, much like the Democrats in your Congress have a role to play in the priorities and funding of your government. In addition, if Mr. Odinga so desires he can call for a vote of "No Confidence" in the sitting government and initiate a new round of elections. He has as much lawful power in Kenyan politics, if not more, than the Democrats comparatively have here in the United States; but I hope you will agree that to share control of the executive branch with the opposition, here in your country would not be considered.

Give my country time and allow our institutions to deal with these complex issues. We encourage assistance from the United States, Europe and NGOs to investigate these acts of violence and help us bring the instigators to justice. We encourage the United States, Europe and the NGOs to help us prevent a crisis with respect to our dislocated people. We encourage the United States to advise the opposition to use any legal means to review the election results.

But I encourage you to reconsider the threats of action that some in your Congress wish to impose unless we initiate an unconstitutional "power sharing" structure that will do more to disrupt our fragility.

Kenya has a proud history as a peaceful democracy. We will resolve these issues while ensuring our Constitution and its values survive this troubling period. Kenya will stand up for democracy. Kenya will stand up for the peaceful transition of power. Kenya will stand up for bringing those responsible for the bloodshed to justice.

Despite our difficult elections and despite this period of violence—we can solve our problems, maintain our constitutional principles and stand as an example for all of Africa.

Thank you again for this opportunity to be a voice for my country.

Hon. STEPHEN KALONZO MUSYOKA EGH MP,
Vice President and Minister for Home Affairs,
Republic of Kenya.

PREPARED STATEMENT OF TAVIA NYONG'O, ASSISTANT PROFESSOR OF PERFORMANCE STUDIES, NEW YORK UNIVERSITY, NEW YORK, NY

As a Kenyan-American professor currently teaching at NYU, I was an eyewitness to the election and its immediate aftermath in Kenya. I can confirm the judgment of the EU and domestic observers that, while the runup to the election, the voting process itself, and the initial counting at the polling stations was credible, the results announced at elections headquarters in Nairobi lacked credibility. Indeed, the electoral commission chair quickly disowned them. As this is only Kenya's fourth election since the restoration of competitive (multiparty) democracy, I find it critical that the U.S. does not simply support "power sharing" among elites or repeat empty calls for "an end to the violence," but that we stand resolutely for a democratic resolution to the crisis. It was despair over the theft of their votes that spun many Kenyans into tragic and illegitimate violence, even as ethnic grudges and criminal opportunism now perpetuate the violence beyond the easy control of either side of the political dispute to quickly resolve.

A democratic resolution can take various forms: A recount or audit of the vote, or an interim government followed by a rerun. Any resolution will also have to address Kenya's crippling constitution, which a democratic process began to reform before Kibaki derailed it during his first term in office (a widespread reason for his current unpopularity). Recognizing Kibaki as Kenya's "duly elected president" and returning to business as usual will set back democracy in Kenya and on the continent by decades.

Jendayi Frazer's claim of "ethnic cleansing" needs to be addressed. Kenya's sad history of politically motivated "tribal clashes" during election season, begun during the Moi era, has sadly continued under Kibaki's watch. That said, Kibaki's regime is less like Rwanda and more like other authoritarian regimes the world over, hoping to keep up appearances with the West through pro forma liberalization, without substantive decentralization of power. Ethnic violence, together with the state's promise to clamp down hard and restore order, plays to Kibaki's benefit, as it did for Moi, who opposed democracy precisely because he claimed it would stoke ethnic tension. In response to the current crisis, China is now pushing this same line. In fact, it is the theft of democracy, not its presence, that escalates ethnic violence.

That said, given the reality of ethnic violence and escalating retaliation, and given the low confidence Kenyans now have in their security forces, who shot and killed unarmed protestors, the possibility of neutral peacekeepers, such as EU or AU forces, deployed to the Rift Valley and Western Provinces to restore security should also be considered.

To date, the regime has met with mediators and with the opposition, but has otherwise made no movement from its hard-line position. To the contrary, Kibaki immediately had himself sworn in, and appointed most of his Cabinet before mediation had even begun. In order for Kofi Annan's mission to succeed, more pressure, including the suspension of travel visas on high ranking government officials, needs to be considered. Kenya is a strategic ally of the U.S., and a pillar of stability in an insecure region. The theft of this election has pushed Kenya to the brink, and only firm action to reestablish the democratic legitimacy and accountability of Kenya's institutions will bring it back.

PREPARED TESTIMONY OF CHARLES CLEMENTS, M.D., M.P.H., CEO AND PRESIDENT, UNITARIAN UNIVERSALIST SERVICE COMMITTEE (UUSC), CAMBRIDGE, MA

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 secretively 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 firsthand 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 U.S. 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.

"KENYANS FOR PEACE" POSITION PAPER

THE CRISIS IN KENYA: HOW THE U.S. CAN HELP KENYA—AND AFRICA—GET BACK ON TRACK

Kenyan civil society's priorities

While the two political parties have been trading accusations, civil society organizations have urgently tried to find approaches that can end the devastating violence and disruption that have left between 500 and 1,000 dead, a quarter of a million people displaced and a booming economy on its knees and—equally important—defend the intention of the voters.

Kenyans for Peace with Truth and Justice (KPTJ)—led by the Kenya National Commission on Human Rights and comprising nearly 30 major independent human rights, governance and prodemocracy groups took a strong lead on January 5, calling for the politicians to commit to a mediation process with the aim of agreeing an interim electoral oversight body that could audit the just-derailed process and propose either a retally or recount of existing votes or a rerun of the election within a specified time period.

The Law Society of Kenya was a signatory to the KPTJ statement but also issued its own trenchant position seeking a rerun of the election and rejecting the view that Kibaki, having had himself sworn in, should be allowed to remain in power. While the statement recommends a new election within 90 days, it's likely that with all the disruption and displacement of the past 2 weeks, it would take longer to mount a fair election. The key point is not the time but the commitment to fix what has been broken.

The LSK might have been expected to support resolution of electoral disputes in the courts but the statement decries the length of time election petitions have taken in the past and secondly notes that the Chief Justice and the Registrar, who determine whether to hear such petitions, were involved in the contested swearing in of President Kibaki and are partisan.

Civil society is fully aware of the need for constitutional change, particularly to end the over-concentration of power in the Presidency. However addressing these problems will take time; failing to remedy the derailed vote as well as longer term reform is a recipe for public cynicism and loss of trust in democracy. This implies that some form of transitional administration will need to be agreed through mediation that can rule for a limited period and deliver a new election. Civil society believes there is no way forward unless the voters' intentions are upheld.

U.S. responses

The U.S. has prioritized the crisis in Kenya putting its weight behind the AU mediation and pressing the parties to commit. Secretary Frazer is quoted in press reports as saying that "We will support whatever decision this country comes to, as long as it comes in a unified fashion." She is also quoted as saying that constitutional reform is necessary to limit Presidential power and address social grievances and strengthen governance institutions such as the ECK to forestall a similar crisis in future. Regarding the election itself, she acknowledged to reporters that, "The people of Kenya have been cheated by the political leaders and institutions" and that, "the U.S. was deeply concerned with the Presidential vote tallying process." However she has stated that political reform and lower tension would be needed "before a rerun of an election would be an effective measure of who should govern the country." While acknowledging concerns about the judiciary's partiality, she is said to believe that the present dispute should be resolved within established institutions, specifically the courts.

Civil society observers appreciate U.S. engagement to help end the crisis. There is some unease, however, with the U.S. Government's apparent focus on restoring order through compromise between rival political leaders rather than upholding the primacy of the voters' intentions. They fear that U.S. backing for a government of national unity on Kibaki's terms leaving the election dispute to be resolved separately would be problematic, for a number of reasons:

- If President Kibaki believes the U.S. does not support a new election, he may be emboldened to refuse compromise and try to sit out the protest without making concessions since his position will seem secure.
- Unless a new, clean election is eventually held, the impression will be created that democracy and electoral processes rank lower than the need to pacify powerful political leaders. The U.S. Government and others have confirmed the use of rigging in the election; Kenyans will lose faith in the possibility of transferring power fairly through the ballot box if a rigged result is allowed to stand, with serious consequences for the political future.
- There is concern that the judiciary has been shown to be highly manipulated by the government in the past and might not provide independent decisions on election petitions. The courts might take years to reach a conclusion allowing the Kibaki government to rule for a term regardless of the eventual verdict.
- While thoroughgoing political and constitutional reform is needed, it will take a long time to achieve and Kenyans cannot be asked to wait indefinitely for a fresh Presidential election. A transitional body could put interim steps in place that would allow for a new election to be held without waiting for a full revision of the constitution.
- Failure to ensure a fair election is held could impact democratic efforts in other African countries. It is possible that the impunity witnessed in Nigeria's and Ethiopia's elections (in 2007 and 2005) encouraged similar impunity in Kenya. Ghana and Angola among others have elections later this year and it is vital for the U.S. to uphold the value of effective elections.

What the U.S. can do to help resolve the crisis

- The U.S. should state for the record that it is open-minded and impartial on the outcome of a mediated settlement and should refrain from making recommendations that could pre-empt the mediation, particularly any that imply that President Kibaki's de facto rule must be accepted.
- The U.S. should state that like Kenya's civil society leaders, it views electoral truth and justice as paramount and the restoration of Kenyan's confidence in their democracy is of critical importance. If the mediated settlement proposes holding a new Presidential election under better conditions, the U.S. should be supportive.
- The U.S. should continue to support the AU-led mediation effort and withhold recognition of the Kibaki government pending an agreement with the ODM. Hard-liners in the two political parties are currently refusing to compromise on their positions. If such intransigence continues the U.S. should be prepared to impose travel bans on the key players and their families, particularly those with students studying here.
- Noting that death threats have been made to civil society leaders and human rights defenders and that such individuals are vital to Kenya's future, the U.S. should press all sides to assure their safety.
- The U.S. should call for the immediate lifting of restrictions on media and relaxation of limits on freedom of association and assembly.
- In coordination with other donor institutions and states, sustain and/or step up financial and technical support to help meet humanitarian needs and restore confidence of Kenyans and international partners in the future.

"BREAKING THE STALEMATE IN KENYA"—BY JOEL D. BARKAN, JANUARY 8, 2008

The historical origins of the violence that has engulfed Kenya since the discredited election of December 27 run deep, and it will take more than a recount of the vote and/or the formation of a government of national unity to resolve the crisis. Although nearly 9 million Kenyans went to the polls in what was to be the crowning event of the country's two-decade struggle for democratic rule, the ingredients for post-election violence were clear. Public opinion polls conducted before the election indicated that the race between incumbent President Mwai Kibaki and his principal challenger, Raila Odinga, was too close to call. Outbreaks of violence had occurred in the runup to previous elections in 1992 and 1997. Many Kenyans, especially the leaders of civil society, worried that unless the Election Commission of Kenya (ECK) conducted the December elections in a manner that was scrupulously "free and fair" and regarded as legitimate by all candidates, the losers would not accept the verdict, and violence would ensue.

Sadly, their fears were correct. Despite many warnings and pleas for restraint before the election—from Kenyan civil society, the Kenyan press, and the international community, including the United States—an election that started well has ended in

crisis. Between 500 and 1,000 people have died in post-election violence, while more than 250,000 Kenyans, mainly Kikuyu settlers in the western Rift Valley, have been displaced from their homes. How and why did this crisis evolve, and how might it be resolved?

The December election was the fourth since the reintroduction of multiparty politics in 1992 and pitted Mwai Kibaki and his Party of National Unity (PNU) against Raila Odinga, the leader of the Orange Democratic Movement (ODM), and Kalonzo Musyoka, head of ODM-Kenya. In addition to the Presidential contest, more than 2,500 candidates vied for 210 seats in the National Assembly. Members of local councils were also elected. The turnout was the highest on record, about 70 percent of those registered, and passions ran high.

The election was arguably the "freest and fairest" since independence through all stages except the last. In marked contrast to prior elections, the Presidential candidates and those seeking legislative office were unimpeded during the course of their campaigns. The polls opened more or less on time on election day, and most voters who wished to vote cast their ballots by the time the polling stations officially closed. The count at nearly all polling stations viewed by domestic and international observers, including this writer, was slow, but transparent. Agents of the rival candidates signed off on the count and went home thinking that the rest of the process would proceed according to the procedures specified by the ECK.

Unfortunately, they were wrong. As became apparent during the 48 hours following the election, and confirmed by both international and domestic observers, the tallying of the vote reported by the individual polling stations in more than 35 parliamentary constituencies was highly flawed. The result was that Raila Odinga, who had been reported in the Kenyan media to be leading in the Presidential contest by more than 370,000 votes with 90 percent of the constituencies reporting, suddenly found himself the loser by nearly 200,000 votes when the ECK announced the winner on December 30. The European Union, the Commonwealth, and the Kenyan Domestic Observation Forum (KEDOF) all called for an international audit of the count, at which point the chaos began.

As with close elections elsewhere, the vote and the opinion surveys preceding the election revealed the deep fault lines within Kenyan society that now threaten to roll back 5 years of democratization and economic gain achieved since Kibaki was elected to succeed former President, Daniel arap Moi, in 2002. Whereas the Moi years were marked by economic stagnation and resistance to democratic reform, Kibaki's administration turned the country around on both fronts. Economic growth hit 6 percent per capita in 2006, the highest rate of growth in more than 30 years. Investment and tourists poured into the country. Civil society, the press, and Parliament came alive to advance what had been a tortuous quest for democratization to unprecedented levels. Kenya, it appeared, had been reborn, and Kibaki should have been in position to win reelection handily.

Deep schisms, however, existed within the political elite that reflected persistent divides in Kenyan society. Many attribute Kibaki's victory in 2002 to Odinga, who campaigned tirelessly for Kibaki and swung his political allies and followers in Nyanza Province, the heartland of the Luo people, behind Kibaki to form a broad multiethnic coalition, the National Rainbow Coalition (NARC). The formation of NARC was based on a now-controversial memorandum of understanding between Kibaki and Odinga that ostensibly promised Odinga the position of Prime Minister with substantial executive power. Odinga's alliance, which included Kalonzo Musyoka and other prominent non-Kikuyu leaders from outside Nyanza, were also promised an "equal" number of posts in Kibaki's Cabinet should they win the election. After the election, however, Kibaki reneged on the deal, although he did appoint Odinga Minister of Works and Housing, and Musyoka became Kenya's Foreign Minister.

Kibaki also miscalculated by relying heavily on a small group of ministers from his own Kikuyu tribe, as well as ministers from the culturally related Meru and Embu communities. Known as the Mt. Kenya Mafia, because the three groups inhabit the foothills around Mt. Kenya, the group, and hence Kibaki's administration, was regarded by most members of Kenya's other 41 ethnic groups as a government that favored the Kikuyu at the expense of their communities. As the largest (22 percent), most educated, and most prosperous ethnic group in Kenya, the Kikuyu have long held a disproportionate number of positions in the civil service and Kenya's professions. Kikuyu are also overrepresented in the business community, which has prospered greatly as the economy has regained its position as the dominant economy of eastern Africa. By the end of Kibaki's term, Kikuyus controlled the key ministries of finance, defense, information, and internal security.

The result was that while Kibaki campaigned for reelection on the theme that the country never had it so good, the opposition, led by Odinga, mobilized the electorate

with appeals for change, arguing that it would do a better job at distributing the fruits of Kenya's economic and political resurgence more equally across Kenya's 42 ethnic groups. The implicit anti-Kikuyu message in this appeal was clear. Odinga and the ODM also called for the establishment of a federal form of government that would protect the interests of the other ethnic groups.

This appeal, in addition to a well-organized, well-financed, and colorful campaign by ODM, enabled Odinga and other prominent non-Kikuyu leaders to rally a majority of Kenyans against Kibaki. Inevitably, the campaign also polarized the country along ethnic lines. While over 90 percent of the Kikuyu and Meru residents around Mt. Kenya voted for Kibaki, a similar percentage of Luos in Nyanza voted for Odinga. Odgina also rolled up large majorities of between 55 and 70 percent of the vote in Western Province, the home of the Luhya people; in the Rift Valley Province, the homeland of the Kalinjin and a half dozen other small tribes; in Coast Province, which is also inhabited by smaller ethnic groups, as well as most of Kenya's Muslim population; and in North-Eastern Province. Odinga also obtained a narrow majority in Nairobi.

In the process, ODM won 99 seats in the National Assembly to 43 for Kibaki's PNU. While most, but not all, of the 35 members of Parliament from smaller parties support Kibaki, Odinga and the ODM will control a majority of seats in the legislature. The election reflected dissatisfaction with Kibaki's government across Kenya. Even within the Kikuyu community, especially among younger Kikuyu unhappy with Kibaki's exclusivist approach to governance, there were signs of revolt. Eighteen ministers, more than half of Kibaki's Cabinet, were defeated, as were a substantial number of Kikuyu incumbents, including two members of the old guard: Njenga Karume, the Minister of Defense, and David Mwiaria, the former Minister of Finance.

Resentment against Kikuyus runs particularly deep in the area of the northern Rift Valley between Nakuru and Eldoret and Kerichio. It is in this triangle, inhabited by the Kenya's white settler community before independence, that most of the killing has occurred in the week following the election. Land vacated by the former settlers during the 1960s and early 1970s was purchased by Kikuyu with assistance of the Kenyan Government, then led by Jomo Kenyatta, himself a Kikuyu, instead of being returned to the communities from which the land was taken during colonial rule. This created a domestic Kikuyu diaspora 100 miles west of the Kikuyu homeland around Mt. Kenya, and it is this group that has suffered the most during the past week.

Kikuyu business has suffered too. Although Kibaki retained the Presidency through questionable means, events following the election make it clear he cannot govern the country, despite being sworn in for a second term. Although the unrest may subside, a negotiated deal between the two protagonists is essential for long-term stability and to overcome the losses to the Kenyan economy, which are approaching $500 million.

To this end, Kibaki announced on Monday, January 7 that he is prepared to form a government of national unity that will presumably give the ODM a large proportion of seats in the Cabinet. But on January 8 he greatly complicated the prospects for a settlement by appointing Kilonzo Musyoka, the candidate who finished third in the Presidential race, to be his Vice President, and 16 others to serve in what he described as "part" of his Cabinet. The appointments also include the ministries of finance, internal security, justice, local government, education, information, and defense, leaving only minor posts to be filled in the future by Odinga and his colleagues in ODM. Although this move is intended to send a signal to Odinga that the ethnic constituencies behind ODM do not command a majority of Kenyans, it is also a continuation of the self-isolating policy of his Presidency as it now means that the new government rests on a central-eastern Kenyan alliance of the Kikuyu, Embu, Meru, and Kamba peoples verses everybody else. Of the 17 positions, 8 are held by the members of these groups.

This is precisely the type of governance Raila Odinga and his colleagues want to break. They will not settle for mere posts in an expanded Cabinet but want an arrangement of genuine power-sharing: The position of Prime Minister with real executive power for Raila, at least half the positions in the Cabinet, and even more important, a new constitution for Kenya that will guarantee non-Kikuyu an equitable slice of the pie. The key to this is some form of federalism, perhaps the devolution of power to 13 regions to replace Kenya's current eight provinces that are controlled by the Office of the President via the provincial administration. The call for federalism, or Majimbo, by Kenya's smaller and poorer ethnic groups—the so-called have-nots compared to the Kikuyu—has been on the agenda of the political leaders of these groups for nearly 50 years. Long resisted by Kikuyu leaders, it is an idea whose time may have come. Like India in the 1950s or Nigeria in the 1980s, the

mechanism for diffusing linguistic strife and ethnic issues may be the restructuring of the basic rules of the political game. Given the reality of African politics, democratization across the continent requires more than the expansion of individual rights, both political and economic. Group rights to address the "ethnic factor" must be afforded, too.

Whether Kenya's two principal leaders can broker such a deal remains to be seen and the prospects look much dimmer than before Kibaki made his appointments. It has taken a week for both to realize that a bloody and hurtful stalemate has emerged, from which neither can emerge victorious. While Kibaki cannot govern Kenya from the narrow base of Central and Eastern Provinces, Odinga and ODM would be well advised not to repeat the mistake of former President Daniel arap Moi, who tried to run Kenya without support from the Kikuyu community, and especially its members of Kenya's business and professional class. That strategy doomed Kenya economically throughout the 1980s and early 1990s and must not be repeated if Kenya is to build on its economic performance of the past 5 years. Kikuyu have also been prominent within those civil society organizations that have advanced and consolidated the process of democratization in Kenya.

Whether and how Kibaki and Odinga negotiate a power-sharing deal will require sustained pressure on the principals from both within and outside Kenya. Pressure must especially be applied on the hard-liners who surround both principals—old guard Kikuyus, such as John Michuki, George Saitoti, Stanley Murage, and Njenga Karume, who have undercut Kibaki's authority to govern by pushing him into the Mt. Kenya strategy of governance; and Kalenjins, such as William Ruto, a supporter of former President Moi, who is reported to be behind some of the atrocities occurring in the northern Rift.

If there is an encouraging aspect to Kenya's post-election week of agony, it is that civil society—the churches, the organizations that fought for democratization throughout the 1990s, and the press, and even Kenya's singers and music entertainers—has stepped forward to plea for negotiations to occur. The international community, especially the United States, the United Kingdom, and the European Union, have also done their part. British Prime Minister Gordon Brown, U.S. Secretary of State Condoleezza Rice, and EU Secretary General Javier Solana have leaned on both principals. South African prelate, Desmond Tutu, spent part of last week in Kenya urging both principals to exercise restraint. The IMF has also issued a statement detailing the mounting economic costs of the stalemate. Last but not least, the Kenyan diaspora in North America and the United Kingdom, a small but prosperous community of professionals and business people that maintain close ties with their homeland, and which is an important source of remittances and investment, has called for a negotiated settlement.

After initially praising the election in a premature statement on December 29, the United States sent Assistant Secretary of State Frazier to Kenya on January 4. Since her arrival, Frazer has suggested that real power-sharing is required, including, perhaps, some measure of "devolution" that would address the long-simmering issue of group rights noted above. The United States is also rightly backing the initiative by the current President of the African Union and Ghanaian President John Kufour, who arrives in Kenya today.

The way out of the crisis will ultimately depend on Kenya's political class recognizing what civil society and the diplomatic community has made clear: That Kenya is indeed at the proverbial fork in the road. One fork leads to continued chaos and the loss of much of what the country has gained since the reintroduction of multiparty politics in 1992, and especially since the end of the Moi regime in 2002. The other fork leads to the consolidation of democracy, renewed economic development, and the continued emergence of Kenya as arguably the most significant country in Africa after South Africa and possibly Nigeria. As the anchor state of the region of greater eastern Africa, Kenya matters. A stable and prosperous Kenya raises the prospects for peace and development in Uganda, Rwanda, eastern Congo, and southern Sudan. Kenyans are being tested to the limit by the current crisis, yet if a deal can be reached, including with minimal constitutional reforms, Kenyans may in 10 years look back on the events of the first week of January 2008 as the time when their country turned the corner and became an example for the rest of Africa.

"TOO CLOSE TO CALL: WHY KIBAKI MIGHT LOSE THE 2007 KENYAN ELECTION"—BY JOEL D. BARKAN

Kenya's President Mwai Kibaki has presided over a dramatic economic turnaround that not long ago was expected to guarantee him reelection in the Presidential vote coming up on December 27, 2007. The country's economy is growing at

nearly 7 percent annually, and a genuine "trickle down" of benefits, including free universal primary education, has touched the lives of many Kenyans in all regions. Why, then is Kibaki trailing in the polls, and fighting for his political life in an election that is now too close to call? The answer lies in a combination of Kibaki's mode of governance, bad advice from his political advisors, and hard work by his principal challenger, Raila Odinga of the Orange Democratic Movement (ODM).

Few African countries have experienced the broad-based renewal of their economies that Kenya has enjoyed since 2005. After nearly two decades of zero to negative economic per capita growth, Kenya turned the corner in 2004 with an aggregate growth rate of 5.1 percent. This rose to 5.7 percent in 2005 and 6.1 percent in 2006—and continues to rise. Tourism is booming. The value of agricultural production rose 12.1 percent in 2006 as Kenya benefited from high commodity prices, better management and marketing of agricultural products, and rising production. The contrast with 2001, when electricity and water shortages turned Nairobi into a ghost capital, is striking. Kenyans have not enjoyed such prosperity since the mid-1960s and early seventies when Jomo Kenyatta, Kenya's first President, governed their country.

Therein explains both Kibaki's success and his problem. When Kibaki was elected to succeed former President Daniel arap Moi in December 2002, public expectations were high that he and his government would reverse Moi's dismal record of economic stagnation and predatory rule. Kibaki had been swept into power by a broad coalition of parties, the National Alliance Rainbow Coalition or NARC, beating Uhuru Kenyatta of the Kenya African National Union (KANU) by nearly two-to-one in the popular vote. Ururu, Jomo Kenyatta's son, was Moi's hand-picked candidate to be his successor. NARC also won control of Kenya's Parliament in the 2002 voting. Democracy had triumphed. But would democracy deliver by improving lives? It did, but not in the manner that many had hoped.

Instead of governing via the big tent that NARC had established during the runup to the election, Kibaki relied on a small group of leaders drawn from his own Kikuyu ethnic group and the related Meru and Embu communities. Dubbed the "Mount Kenya Mafia," because its members came from ethnic communities that inhabit the slopes around Mt. Kenya, the group controlled the Ministries of Finance, Internal Security, Justice and Information, arguably the key positions of government. Kibaki began his term in ill-health, the result of a debilitating auto accident before the 2002 election, and at least one stroke following his inauguration. During the first half of his Presidency, until November 2005, he relied heavily on the "Mafia." This group was determined to run Kenya as the country had been run during Kenyatta's time—soundly managed, both with respect to macroeconomic policy and delegation to the civil service and business community. In marked contrast to Moi, Kibaki and his inner circle did not micromanage. Individual Kenyans enjoyed more personal freedom, both political and economic, than at any time since independence.

The result was that the Kenyan economy began to regain its position as the dominant economy in East Africa. Growth, despite persistent corruption, resumed. Parastatal organizations (state owned corporations), including the marketing boards for coffee and tea and sugar factories functioned for the first time in years. Ditto for other organizations such as the Kenya Meat Commission, and Kenya Cooperative Creameries, corporations that had been driven into bankruptcy or near bankruptcy by Moi. Ditto too for Kenya's universities, which had also been compromised during the Moi era. In sum, economic growth and the rejuvenation of institutions was broad based, but perceived by many Kenyans as being Kikuyu controlled. The same perception that had dogged the Kenyatta regime at the end of the 1970s, and which triggered the ruinous policies of redistribution during the Moi era, now dogged Kibaki and his government—that Kikuyus and related communities run the government at the expense of other groups, even though all regions of Kenya and thus all ethnic groups have arguably benefited from Kibaki's rule. Given the fact that Kenyan elections have always involved the mobilization of ethnic communities by local and regional bosses, the likely scenario for 2007 became clear as early as 2005. While the government would justifiably run on its record at turning the economy around and instituting other reforms, the opposition would cohere into broad-based coalition that played on fears of Kikuyu domination.

A nationwide referendum held in November 2005 to approve a new constitution for Kenya was a prelude of these strategies. Since the return of multiparty politics in 1992, the various factions that comprise Kenya's political elite have struggled to arrive at a new constitution. The Constitution of Kenya Review Commission presented a draft constitution prior to the 2002 elections, but neither its draft nor an amended version was ever passed by Kenya's Parliament. The Kibaki government then formulated its own draft which it presented to the Kenyan public. It was im-

mediately opposed by an amalgam of political leaders and parties from both inside and outside the government, including Raila Odinga, then Minister for Works and Housing. He had long argued that Kenya should return to a parliamentary form of government and institute a measure of federalism, or "Majimbo," to protect the interests of Kenya's 42 ethnic groups. The son of Kenya's first Vice President, Odinga draws an immense following from his home region of Nyanza, the homeland of the Luo people. He is also immensely popular in Nairobi, where he has represented the Langata constituency since 1992 and where he appeals to younger voters. During the runup to the 2002 elections, Odinga campaigned tirelessly for Kibaki and was widely recognized as the key to Kibaki's victory. However, he soon became marginalized by the inner circle around Kibaki, especially when he demanded to be appointed Prime Minister in the new government.

The constitutional referendum held in November 2005 was a political disaster for Kibaki, as Odinga and his allies persuaded Kenyans to reject the proposed constitution by a nearly 3:2 margin. Opponents included Uhuru Kenyatta; Kalonzo Musyoka, then Kenya's Foreign Minister and a prominent Kamba leader from Eastern Province; and Musalia Mudavadi, a prominent Luhya leader from Western Kenya. Because the Election Commission of Kenya had assigned the symbol of an orange to the "No" side of the ballot (as contrasted to a banana for those wishing to vote "Yes"), the group soon took on the name of the Orange Democratic Movement or ODM. They drew broad support from across Kenya except in Central Province, the Kikuyu homeland and Kibaki's political base. In defeating the proposed constitution, they also demonstrated that a coalition of ethnic groups mobilized in opposition to the "Mount Kenya" groups was a viable strategy for 2007. Kibaki and his advisors also played into their hands by dismissing Odinga, Musyoka, and others from the cabinet following the referendum defeat. The battle lines for 2007 had been drawn.

By June 2007, this year's elections had boiled down to a contest between Kibaki and his supporters telling Kenyans "reelect us, because you have not had it this good in years"; versus Odinga and his allies in ODM, who were quietly organizing Kenyans whose ethnic communities did not hold prominent positions in the Kibaki government. ODM has not run an explicitly "anti-Kikuyu" campaign. It has not had to; a fact unappreciated by the President and his advisors. They also made the mistake of believing that the ODM would fail to unite around a single Presidential nominee.

Because ODM had become a catchall coalition of those opposing the government, and because this coalition included at least four viable aspirants to the Presidency—Odinga, Kenyatta, Musyoka, and Mudavadi—both Kibaki and the Nairobi "pundocracy" concluded that ODM would eventually split. Kenyan opposition parties have historically done so, and a split would allow the President to win reelection easily. Based on the usual "ethnic arithmetic" employed by Kenya's political elite, the pundits rightly reasoned that the President would win at least 40 percent of the vote—from Central Province, the Kikuyu homeland; from Eastern Province, the homeland of the Embu and Meru peoples; and from some Kamba areas which had long supported Kibaki. The President could also count on a significant number of votes, perhaps an outright majority, from Nairobi, and from Kikuyu minority areas in the Rift Valley Province, where Kikuyus comprise between a fifth and a quarter of the population. In this analysis, while Kibaki might be returned with only a plurality of the vote, he had little to fear.

Whereas Kibaki's ethnic arithmetic on his support base is proving correct, the assumption that ODM would split into squabbling factions of roughly equal size led by each of its top leaders has turned out to be wrong. After Raila Odinga won the party's Presidential nomination, only Kalonzo Musyoka decided to hive off and form his own party, ODM-Kenya, to contest the Presidency. Odinga shrewdly picked Musalia Mudavadi as his Vice Presidential running mate immediately after his own nomination thereby keeping the Luhya leader in the Orange fold. Most significantly, Odinga has been able to retain the support of a group of prominent younger Kalenjin leaders from the former ruling party, KANU, including William Ruto; while Uhuru Kenyatta, still the nominal leader of KANU, decided to sit this election out. Poor Kenyatta was caught in a bind when his mother, Mama Ngina Kenyatta and the third wife of Kenya's first President, announced that she was supporting Kibaki. Former President Daniel arap Moi also encouraged Uhuru to do the same, and he complied. Both Moi and Mama Ngina have been shielded from prosecution for alleged acts of corruption by Kibaki's government, and shudder at the prospect of Kibaki being replaced by a government headed by Raila Odinga. The result, however, is that while the leader of KANU and the formal leader of the opposition is now supporting the Kibaki, most other leaders of his party, which draws most of its current support from the Kalenjin peoples of the Rift Valley, are backing Raila.

With the exception of the defections of Kalonzo Musyoka and Kenyatta, who is no longer a candidate, ODM has remained largely intact.

With less than 5 weeks to go before Kenyans go to the polls, the Presidential contest has come down to a three-way race that is too close to call. If the public opinion polls are valid, Raila Odinga may nip out the incumbent President by two to three percentage points or less. This would be Kenya's closest election since the country's return to multiparty politics in 1992.

While the validity of the public opinion polls is always questioned, the quality of survey research and market research in Kenya is amongst the best in Africa. The surveys are conducted on a random sample basis, and most (though not all) polling organizations strive to reach a level of accuracy of plus or minus three percentage points. Perhaps most important, the major polls, such as Steadman and Gallup, have been reporting similar and consistent results since September. At the aggregate level, i.e., for Kenya as a whole, the latest Steadman poll, released on November 30 (based on 2709 interviews conducted between November 17 and 19) has Odinga up by 44 percent to 43 percent for Kibaki, with 11 percent favoring Kalonzo Musyoka and only 2 percent undecided or favoring minor candidates. Similarly, the latest Gallup poll, released on November 22 (but based on interviews conducted between October 25 and November 10) has the race at 45 percent for Odinga, 42 percent for Kibaki, and 11 for Musyoka. As both polls have a margin of error of 2 to 3 percentage points, it is possible that Kibaki may in fact be in a dead heat or have a narrow lead of 1 percentage point.

The other consistent result from the major polls is their confirmation of the candidates' ethno-regional bases of support. Thus, Steadman (and the earlier Gallup poll) reports that Kibaki enjoys an overwhelming lead of 92 percent in Central Province, the Kikuyu homeland, but fails to command a majority anywhere else. Kibaki also commands a plurality of 46 percent in Nairobi and 48 percent in Eastern Province, the homeland of the Embu and Meru people, and of the Kamba.

By contrast, Raila Odinga is supported by the majority of likely voters in five provinces—86 percent in Nyanza Province, 73 percent in Western Province, 51 percent in Coast Province, 65 percent in the sparsely populated North Eastern Province; and 54 percent in Rift Valley Province. Most Kalenjins in Rift Valley and voters from other smaller groups in the province, who once followed Moi, are apparently deserting the former President. They are listening more to younger KANU leaders, such as William Ruto, who are backing Odinga, Indeed, a major sub-theme of the 2007 election is that the former President is no longer a political force. Odinga also has a strong following in Nairobi. Musyoka, not surprisingly, does best in the Kamba areas of Eastern Province, but is running slightly behind Kibaki in the province as a whole.

A summary of the latest Steadman poll by province is reported in the table below. Most interesting is that not only does Kibaki's support vary greatly from one province to the next, but his support and the support for his two principal opponents closely track the results from the constitutional referendum of November 2005. Where the referendum passed with an overwhelming vote as in Central Province, Kibaki is also far ahead in the polls. Where the referendum barely passed, as in Eastern Province, he is in a close race. And where the referendum was rejected, as it was by large margins as in Nyanza and Coast Provinces, he is far behind. Skeptics might reject the results of recent surveys in Kenya, but they cannot ignore the pattern of voting in the referendum, a pattern that will be repeated in the December election.

Steadman Presidential Poll, November 17-19, 2007 by Province (in percentages)*

	Kenya	Nairobi	Central	Coast	Eastern	North Eastern	Nyanza	Rift Valley	Western
Kibaki - PNU	43	46	92	35	48	32	12	40	21
Odinga - ODM	44	40	5	51	6	65	86	54	73
Musyoka - ODM-Kenya	11	12	2	10	44	3	2	5	5
Others	2	2	0	4	1	0	1	1	1

*Results are based on 2709 interviews nationwide with a margin of error of +/- 2 percentage points for Kenya as a whole. Results for individual provinces have a margin of error of +/- 5 to 8 percentage points.

Constitutional Referendum Results, November, 2005 by Province (in percentages)

	Kenya	Nairobi	Central	Coast	Eastern	North Eastern	Nyanza	Rift Valley	Western
"Yes" (Banana)	42	43	92	20	52	26	12	25	39
"No" (Orange	57	59	7	79	47	73	87	75	59

The bottom line is that the outcome of the 2007 Presidential election will most likely turn on which candidate can turn out his supporters in the greatest numbers. Although Kibaki has been consistently behind in the polls, the gap has narrowed to the point that the two leading candidates are in a statistical dead heat. Kibaki is also likely to benefit from a higher level of turnout amongst his political base in Central Province than Raila Odinga will obtain from supporters elsewhere in the country. Central Province has historically been the epicenter of Kenyan politics. Education and literacy levels, two determinants of public interest in elections and turnout worldwide, are also highest in Central. Odinga and ODM, however, have managed to establish themselves as a party to reckon with across a much broader ethnic and geographical segment of the electorate. There is also some indication that he appeals to younger and first-time voters more than Kibaki.

The wild card in this mix is Kalonzo Musyoka, the candidate of ODM-Kenya. Running a distant third, he can continue his candidacy through the election, and probably spoil the outcome for Kibaki. Or, he can fold his campaign and throw his support behind the President or Odinga. Given the popularity of the President in Eastern Province, Musyoka's home turf, it is more likely that he would back the incumbent. But at what price? He has already served in the Cabinet, and only the promise of appointment as Kenya's Vice President is likely to bring him into the President's camp.

Because the election is too close to call, it will also test Kenya's fledgling democracy in at least two ways. The first challenge is whether the Electoral Commission of Kenya (ECK) can administer a credible election in which the losers accept the verdict, even if the vote is close. In a country where allegations of "rigging" are the rhetoric of politics, the ECK must be fastidious in its approach. So too must election observers, both domestic and international, because in a close election, any assessment of how the polls are conducted can fuel post-election discontent.

The second challenge is that this is the first time since Kenya's independence in 1963 that an incumbent President faces a genuine prospect of defeat at the polls. The stakes are high, and the incentive to cross the line of propriety and engage in questionable practices is there for both candidates. Both Kibaki and Odinga must rein in their activists, lest the final weeks of the campaign be marked by campaign violence. The international community, including the United States, also has a role to play by encouraging both leaders and their lieutenants to let Kenyans exercise their franchise freely and with the confidence that their ballots will be counted accurately.

Kenya After Moi

Joel D. Barkan

AN INSECURE PARTNER

On December 27, 2002, more than five million Kenyans went to the polls to elect Mwai Kibaki as their country's third president—Kenya's first electoral change of government since independence. The election marked the end of the 24-year presidency of Daniel arap Moi and an opportunity for Kenya to return to its once-vaunted record of political stability and economic growth. Kenyans were elated, their expectations high.

Ten months later, President George W. Bush welcomed President Kibaki to Washington for a state visit, the first African head of government he had honored in this way. Kenya has attracted Washington's attention not just because of its regional importance but because of its bold strides toward democracy and its expected role in the U.S.-led war against terrorism. But these developments cannot be taken for granted. Kenya's democratic government is fragile: it lacks centralized leadership, is riven by ethnic factionalism, and is threatened by mounting economic and security challenges. The willingness of Kenyans to assist the United States, meanwhile, is by no means assured—the result of Washington's heavy-handed policies and its lack of sensitivity to Kenyan domestic politics. If the United States wants to secure Kenya's engagement in the war on terrorism it must develop a more nuanced understanding of Kenya's domestic situation and realize that the process of democratization extends beyond defeating the country's former authoritarian regime.

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Along with Nigeria and South Africa, Kenya is one of three "anchor states" in sub-Saharan Africa—countries that are key to the stability of the region because of location and resources. As a result, Kenya has become the platform for U.S. operations in East Africa and the Horn. It houses the largest U.S. embassy on the continent and regional headquarters for a host of U.S. activities and agencies, including security and military assistance, the Agency for International Development, the Department of Agriculture, the Library of Congress, and the Centers for Disease Control. Under the terms of an agreement signed in 1981, the U.S. Navy and Air Force may use the port of Mombasa and Kenya's international airports at Nairobi and Mombasa. These facilities have been important in U.S. naval operations in the western Indian Ocean, and for providing food and aid missions to Somalia, Rwanda, and southern Sudan.

THE LONG MARCH

POLITICALLY, Kenya has a checkered history. Under its first president, Jomo Kenyatta, the country prospered. Coffee and tea production expanded, a thriving tourist industry was established, and development was spurred by prudent macroeconomic policies, extensive investments in infrastructure, and the expansion of education. From 1963 to 1978, the economy grew at a rate of 5 to 8 percent in every year but two. Although Kenya became a de facto one-party state as early as 1964, Kenyatta's brand of authoritarian rule was relatively benign. The civil service maintained high professional standards, and competitive elections for the National Assembly were held every five years.

Kenya's fortunes declined sharply, however, once Daniel arap Moi took power in 1978. If Kenyatta's Kenya had a basic flaw, it was that most of its prosperity was concentrated among the members of Kenyatta's ethnic group, the Kikuyu. Residing mainly north and west of Nairobi and comprising the largest ethnic group in Kenya (with 22 percent of the population), the Kikuyu formed the core of Kenya's nationalist movement and came to dominate the civil service and the private sector during the 1960s and 1970s. Moi sought to redress this imbalance, pursuing a set of redistributive policies that favored his own ethnic group—the Kalenjin—and other disadvantaged tribes in the Rift valley.

Although these policies were initially popular, they triggered a failed coup attempt in 1982, after which Moi became increasingly repressive. He demanded absolute loyalty to his rule, rewarding acquiescent members of the legislature with ministerial positions or dollops of cash and expelling from the ruling party, the Kenya African National Union (KANU), anyone who dared criticize his policies. Elections were often rigged, the press and civil society were suppressed, and opponents were jailed. Human rights violations, including torture, became increasingly common.

By the end of the 1980s, Kenya had become a classic example of "big man" rule. Like Mobutu Sese Seko in the former Zaire and Robert Mugabe in present-day Zimbabwe, Moi turned Kenya into his personal fief, a kleptocracy under which KANU leaders looted with impunity. Corruption became the principal mechanism for regime maintenance. Not surprisingly, the economy declined. From 1990 through 2002, annual per capita income in Kenya fell from $271 to $239 and poverty rose from 48 to 56 percent. Basic social services and infrastructure, particularly roads, decayed or collapsed. The civil service, the legislature, and the judiciary became impotent, little more than rubber stamps for Moi's repressive policies.

By the end of the 1980s, Kenya had become a classic example of "big man" rule.

Kenya's transition to democracy—which lasted from the late 1980s through the 2002 elections—was marked by a protracted struggle between Moi and those seeking to pry open the political system. Consistent with the pattern seen elsewhere in sub-Saharan Africa, demands for change came first from disaffected elites and ordinary citizens. But these calls fell on deaf ears. It was the changed international climate at the end of the Cold War that proved decisive. Although the United States had been silent on Moi's stewardship throughout the 1980s, it became increasingly critical of Kenya's record of economic management, corruption, and human rights. Sharing these concerns, international donors suspended $250 million in aid to Kenya in November 1991. Moi's response was swift: within a month, Kenya's constitution was amended to permit the return of multiparty politics.

Moi prevailed in Kenya's first two multiparty elections, held in 1992 and 1997, but with only a plurality of the vote. KANU won a narrow

majority of seats in the National Assembly but not a majority of the ballots cast. Both elections were characterized by unprecedented levels of communal violence and foul play. Neither could be described as free and fair, despite the presence of domestic and international observers. The main reason for the opposition's defeat, however, was its failure to unite behind a single slate of candidates. In both elections, the opposition split its vote among three major ethno-regional parties and several smaller ones.

Democratization did make halting progress through the 1990s, however, as Moi's grip on power started to slip and political momentum gradually shifted to the opposition. With a narrow parliamentary majority after the 1997 elections, KANU could no longer legislate as Moi pleased. More important, a new generation of politicians, in alliance with a cohort of the old guard, began to assert its independence and openly defy Moi. This coalition was led by Kibaki, who had served as minister of finance under Kenyatta and as vice-president under Moi, before being shoved aside. Although Kibaki was a losing candidate in both elections, he finished second in 1997. The tide was beginning to turn.

UNDER THE RAINBOW

KIBAKI'S VICTORY in the 2002 elections was the culmination of a long and difficult process. Then 71 years old, Kibaki beat Moi's designated successor, Uhuru Kenyatta, with 62 percent of the vote. Kibaki's party, the National Rainbow Coalition (NARC), also defeated KANU in parliamentary elections, winning 132 seats to KANU's 67. A reinvigorated election commission and 28,000 observers (supported by the United States, among others) certainly helped: the elections were largely free of violence and judged to be free and fair. Between May 2001 and November 2002, moreover, Secretary of State Colin Powell, Vice President Dick Cheney, and President Bush had met with Moi on four separate occasions to encourage him to retire and hold elections.

But the most important factor behind Kibaki's victory was the opposition's decision to unite around a single slate of candidates. It was a lesson that had taken a decade to learn—NARC did not come together until ten weeks before the 2002 election—and underscores

the fact that democratic transitions are often protracted struggles requiring more than one election to complete.

NARC is exactly what its name implies: a coalition of parties. In fact, it is a coalition of two coalitions. The first, the National Alliance of Kenya (NAK), was formed five months before the 2002 elections, linking Kibaki's Democratic Party—which drew its support from the Kikuyu people—with a dozen other ethno-regional parties. NAK could win just over half the national vote if its constituent parties delivered all of their potential supporters. But betting the elections on such tight margins was too risky. The party found additional allies in another coalition: the Liberal Democratic Party (LDP). The LDP was formed ten weeks before the elections by three disaffected members of KANU, the most prominent of whom was Raila Odinga, the

acknowledged leader of the Luo people. On October 22, 2002, NAK and the LDP signed a memorandum of understanding, thus creating NARC. The memorandum's key provisions were that Odinga would be appointed to the new post of prime minister and that cabinet posts would be divided "equally" between NAK and the LDP. Once NARC had been formed, the outcome of the elections was never in doubt. But NARC's formation underscores a fundamental weakness typical of political parties across Africa. The new party was—and remains—a coalition of convenience, united more by what it opposed than by what it actually stands for.

NARC's inherent weakness has been compounded by Kibaki's poor health and leadership style since he assumed office on December 30, 2002. The president was hospitalized in January 2003 after suffering a stroke due to injuries he sustained in a car accident just before the elections. He was unable to work full-time until early April 2003, which left a vacuum at the center of government and fueled speculation that the new president might not serve out his term.

The process of democratization extends beyond the defeat of Kenya's former authoritarian regime.

Kibaki's method of governing has come under criticism. Whereas Moi micromanaged all aspects of government, Kibaki's approach has been to appoint competent people to head government ministries and delegate authority to them. This was Kenyatta's method when Kibaki served as minister of finance, and it worked well. It is unclear, however, whether this style will be effective under so-called Kenyatta II. Delegation requires clear guidelines, yet Kibaki's approach is often described as laid-back. The absence of a strong hand at the center of government has encouraged the most prominent leaders in the new government to pursue their own agendas, resulting in confusion and, at times, intense conflict within the ruling coalition. Indeed, four factions have emerged in the past year.

The first faction—the old guard—is a group of elder politicians and retired senior civil servants who were prominent during the Kenyatta era and who have been brought back to government. All are Kikuyu or Meru in ethnic background. They view Kenyatta's

presidency as Kenya's golden age and believe that Moi wrecked Kenya by bringing into government a bunch of incompetents and looters. In their eyes, the central challenge today is restoring government competency rather than rethinking the role of government in the economy.

This powerful group is close to Kibaki but intellectually out of touch with younger Kikuyu professionals and businessmen—most of whom are 15 to 30 years their junior—and with other younger members of Kenya's middle class. Most of the younger cohort does not want a return to Kikuyu hegemony, because they appreciate the resentment this caused under Kenyatta. They also worry that the people around Kibaki cannot provide the leadership required to modernize the economy and make Kenya competitive in regional and world markets. People who share such concerns make up the second political faction. Its most prominent member is Kiraitu Murungi, minister of justice and constitutional affairs. Its priorities include combating corruption, enacting judicial reform, and ensuring truth and reconciliation.

The third faction is led by Odinga, the former LDP leader, and includes more than 20 members of the National Assembly. Odinga was offered the new post of prime minister under the pact that created NARC. But whether Kibaki and his supporters will honor this pledge is a matter of growing contention. Given Odinga's barely concealed ambition to lead Kenya one day, the old guard and the faction around Murungi are reluctant to support the new post. This perceived backtracking, coupled with an unequal distribution of ministerial posts between NAK and LDP officials, has led to a simmering dispute between the first two factions and the third.

The fourth faction includes independent leaders from both the NAK and LDP sides of NARC who command significant local followings, including Vice-President Moody Awori. It is the main force for moderation and cooperation within the coalition.

All four factions of NARC hold ministerial positions in an unwieldy cabinet of 24 members, deliberately enlarged to house all. Their divergent perspectives and constant bickering, combined with Kibaki's laissez-faire approach, have limited the government's ability to deal with the major challenges facing Kenya today. As a consequence, Kibaki now faces a dilemma: should he continue to muddle

through with his present team or reshuffle and downsize the cabinet by sacking its more rebellious members—particularly Odinga—and the less effective performers?

The most likely scenario is the first. Notwithstanding their differences, the most prominent members of all four factions would rather remain in the government than return to the opposition. All leaders are committed to making the government work, even if this means little more than running their respective ministries effectively. Furthermore, no one faction or combination of factions is sufficiently strong to expel another without seriously weakening the government.

But there are still grounds for concern. NARC's postelection honeymoon is fast nearing its end. And although the government remains popular, largely because Moi is gone, professionals and business leaders are increasingly disappointed with its performance.

MAKING KENYA WORK

BROADLY SPEAKING, four major challenges remain. The first is to reform Kenyan governance. This means not just bringing in competent people to run the government at the top, but also changing the civil service from the bottom up. Kenya's civil servants currently number 190,000 (excluding teachers), roughly 20 percent more than the country needs. Most of these are poorly paid, which encourages corruption. A comprehensive policy of pay reform has yet to be implemented, but any significant raise will increase the government's wage bill, which already stands at 9 percent of GDP. This is one of the highest levels in Africa and is unsustainable given current government revenues. The solution to this quandary will be painful: pay reform must be linked to retrenchment in the civil service. But the government has resisted this step so far, largely because of the lack of private-sector employment opportunities.

The government's ability to enact civil service reforms has been hampered by NARC's lack of experience. Few ministers have had prior government service. Before the elections, most were professionals, backbench members of the National Assembly, or activists, not managers. The new team has also been highly suspicious of civil servants, given the pervasive cronyism under Moi, resulting in mutual distrust

at the heart of government. Morale problems have been compounded by Kibaki's decision to replace or rotate all permanent secretaries and other senior officers. Many civil servants remain fearful of being swept away by the new broom, further undermining the basis for reform.

The second challenge Kenya faces is improving its economic prospects. NARC campaigned on the promise of restoring economic growth and creating 500,000 new jobs a year, but Kenya's economy has remained flat since NARC took office and there has been little new investment, domestic or foreign. Several factors explain the lack of economic recovery. Kenya's macroeconomic policy has been the source of perennial friction between the government and the international donor community since the mid-1980s. The International Monetary Fund (IMF) and the World Bank regard Kenya's budget deficit—projected at nearly $800 million in the 2004 fiscal year—as unsustainable and have urged the government to reduce it by 25 percent. International donors' prescriptions include cutting the government wage bill, privatizing state-owned enterprises, deregulation, and reducing corruption.

The NARC government has taken the last most seriously, elevating the reduction of corruption to the centerpiece of its economic program by committing itself to a "zero tolerance" policy and passing the Anti-Corruption and Economic Crimes Act and the Public Ethics Act. Most noteworthy has been the government's decision to clean up the judiciary. The chief justice was forced to retire in March on allegations of corruption, and 23 senior judges of the Court of Appeal and the High Court and 82 magistrates were suspended in October 2003—a dramatic shakeup that removed half the judicial branch overnight. Yet only a few dozen civil servants have been prosecuted for corruption since the new government took office and no present or former elected officials have been prosecuted, despite widespread allegations against them. Even though the multimillion-dollar looting of the Moi era appears to be over, smaller scams and rent-seeking continue.

Moreover, although the IMF and the World Bank are expected to announce the resumption of lending to Kenya—ending a three-year suspension of new aid—they are concerned that the deficit will grow even bigger if the government carries out Kibaki's plan to double police

salaries and double the number of police to 68,000. These cost increases, coupled with the hiring of more teachers to implement Kibaki's pledge for free primary education, will make it impossible for the government to reduce its wage bill without politically painful retrenchments elsewhere. The government hopes to cover additional costs and lower the deficit by reducing corruption, but this projection is unrealistic. The government's Economic Recovery Strategy, unveiled in June 2003, the goal of which is to reinvigorate the rural economy by supporting the informal and small-scale manufacturing sector, also seems modest when compared with the enormity of this challenge.

Making the government work also requires a new constitution—the third major challenge faced by Kibaki's government. The constitutional reform issue has been on the table for more than a decade, but Moi's resistance to change meant that the Constitution of Kenya Review Commission, the body charged with drafting a new basic law, was not established until April 2001. It issued its first draft just three months before the 2002 elections, by which time both KANU and the opposition had decided to contest the polls under the existing rules. The commission's proposal called for the devolution of authority to district governments, a substantial reduction of presidential authority, and, most controversially, the establishment of a new prime minister post. Although a National Constitutional Conference has been deliberating these issues since March 2003, they are still yet to be settled.

As already noted, the constitutional reform question has exacerbated tensions within NARC. Odinga and his faction support the original draft, but the old guard and the faction around Murungi are adamantly opposed to its provision for a non-appointed prime minister. Kibaki was elected under the present constitution, they argue, and is thus entitled to retain his full set of executive powers. This dispute has nearly paralyzed the government and could lead to Odinga's desertion from NARC.

TERRORISM'S DEEP IMPRINT

KENYA'S ECONOMIC PROSPECTS are clouded by insecurity and the growing threat of terrorism. Crime rates in Kenya's urban areas have skyrocketed since the early 1990s, as the sinews of urban society have been undermined by bad governance, economic decline,

rural-urban migration, nearly 900,000 AIDS orphans, and the influx of small arms from Somalia. Violent crime—particularly car-jackings and killings by hired hit men—has created a climate of fear.

To reverse this trend, Kenya needs more police. There is currently only one police officer per 850 people, down from the UN standard of one per 450 that Kenya once met. Most are poorly paid, which has driven many into crime just to survive. Once highly respected, the police are now regarded as one of the most corrupt arms of government. Restoring the police force will take time and better salaries, training, and equipment. At an estimated annual cost of $27 million for salaries alone, it is unlikely that the funds will be available anytime soon.

A viable police force is also essential if Kenya is to contain the threat of terrorism within its borders. The bombing of the U.S. embassy in Nairobi on August 7, 1998, killed more than 240 Kenyans and injured 5,000, in addition to the 12 Americans who lost their lives. Kenya was hit again on November 28, 2002, when al Qaeda agents attacked an Israeli-owned hotel north of the port city of Mombasa and almost hit an El Al plane with shoulder-fired SA-7 missiles.

A more nuanced and quieter approach by Washington is required.

The situation became even more alarming in 2003. In February, the Kibaki government announced that an al Qaeda cell existed somewhere in Mombasa. In response to warnings of a possible attack, the new U.S. embassy, which opened in March, closed at intervals between April and June, and the State Department authorized the departure of all nonessential embassy personnel. British Airways suspended flights to Nairobi from May 15 to July 1, and to Mombasa until September. U.S. travel advisories warning Americans not to travel to Kenya remain in effect. The threat of renewed terrorism has devastated Kenya's tourist industry. Once Kenya's second-largest source of foreign exchange, tourism has now dropped to third place. Hotels both in Nairobi and on the coast are at their lowest occupancy levels in years.

Given these realities, Kibaki's government knows that it has no choice but to join the war on terrorism. It has established a special counterterrorist unit and has stepped up its search, with assistance

from the FBI, for al Qaeda agents along the Kenyan coast. The United States has already spent nearly $4 million in antiterrorism assistance to Kenya, including training more than 500 security personnel in the United States. Kenya also hopes to obtain up to one-third of the $100 million counterterrorism money for East Africa announced by President Bush in July 2003 (but yet to be disbursed).

The war on terrorism has become a major domestic political issue in Kenya and has complicated the country's relationship with the United States. The government's search for terrorists has occurred mainly along the Indian Ocean coast, the home of most Kenyan Muslims. Residents of this area have long felt neglected by Nairobi, which they view as being controlled by "upcountry" Kenyans. No prominent leader from the coast has ever held significant power at the center. The Coast Province, nonetheless, voted overwhelmingly for Kibaki and NARC in 2002 in the hope that a new government would pay greater attention to their needs. It has—but not in the way people imagined. Coastal people now feel singled out and increasingly view themselves as victims. Aggressive interrogations of suspected terrorists by the Kenyan police have exacerbated their sense of grievance at the very time such feelings should be reduced.

The government's introduction of the Suppression of Terrorism Act in the National Assembly in April 2003 has also raised passions. Modeled on a generic draft disseminated by the Commonwealth Secretariat, the proposed legislation is viewed by human rights activists as a threat to civil liberties. Having just emerged from the Moi era, the National Assembly has unsurprisingly refused to pass the bill so far.

Although Kibaki's state visit to Washington was greatly appreciated by his government, the relationship between Kenya and the United States has suffered from what many people regard as the Bush administration's obsession with the war on terrorism. Anti-American sentiment among Kenyan Muslims, once nonexistent, has risen markedly over the last year. Kenyan opinion leaders are also beginning to ask whether their country's problem with terrorism is a result of its close ties with the United States and of U.S. Middle East policy.

The Kibaki government came to power with two basic goals: to consolidate Kenya's decades-long struggle for democracy and to

improve the economy. That the terrorism issue has intruded on these objectives does not mean they should be dropped. Just the opposite: the restoration of the Kenyan economy and key state institutions such as the civil service, judiciary, and police are essential for fighting terrorism. Kenyan leaders increasingly wonder whether U.S. policymakers appreciate this complementarity. They worry that although the United States was at the forefront of the international effort to support Kenya's transition to democracy, the task of consolidating democracy has been forgotten as a result of the recent terrorist threats. Kenyans also resent being publicly lectured by the U.S. embassy on their need to do more to combat terrorism. They know Kenya is on the front lines and argue that if the United States wants Nairobi to do more, then it should provide greater assistance toward this end. U.S. support for the passage of the Suppression of Terrorism Act (albeit in a modified form) has also raised a good deal of concern.

Relations have been further complicated by what Kenyans perceive as the Bush administration's "hardball" tactics to secure Kenya's support on other issues. For example, the U.S. threat to cut off military aid (currently $3 million per year) if Kenya ratifies the treaty for the International Criminal Court (ICC) without exempting U.S. servicemen under Article 98 is viewed as an infringement on Kenyan sovereignty. Senior members of Kenya's government, as well as many in the private sector, are particularly upset by the continuation of U.S. warnings against travel to Kenya, even when the British and other European governments have ceased similar warnings. So strong are Kenyans' feelings on this matter that President Kibaki included an appeal to lift the advisory in his after-dinner toast at the White House.

A more nuanced and quieter approach by the administration is required if Washington is to maintain its historically warm relations with Kenya. As noted by Johnnie Carson, the U.S. ambassador in Nairobi from 1999 to July 2003, dealing with a democracy requires more, not less, diplomatic effort than dealing with an authoritarian ruler such as Moi. Indeed, democracies allow a plurality of voices to be heard and should not be expected to automatically follow the wishes of the world's most powerful nation all the time.

The Bush administration must appreciate these realities and remain sensitive to Kenya's domestic politics if it wants to advance its agenda in the region. This means the United States should renew military aid to Kenya without conditions, as is permitted under the presidential waiver provision in the American Service Members' Protection Act of 2002 (which otherwise bans military support for countries that have joined the ICC). The administration should deliver the aid package it has promised for the war on terrorism, rather than getting sidetracked on forcing the equivalent of the U.S. Patriot Act through Kenya's National Assembly. The administration should also consider increasing U.S. development aid, contingent on Kibaki's government's making tough decisions to restore economic growth.

Above all, the United States must recognize that the best way to fight terrorism is to help Kenya consolidate its hard-won democracy. Although democracy is no panacea for the many challenges facing Kenya, its success is essential for the long-term stability and prosperity of this crucial African anchor state.

ORANGE DEMOCRATIC MOVEMENT (ODM) POSITION PAPER

EXECUTIVE SUMMARY

1. ODM rejects the 2007 Presidential Election Results announced by the Electoral Commission of Kenya (ECK/The Commissioner) on grounds of massive vote rigging. Consequently a special meeting of ODM Parliamentary Elect and the Party/Presidential Campaign Secretariat constituted a committee under the Chairmanship of Hon. Dalmas Otieno MP elect of Rongo Constituency. The Terms of Reference of the committee is to carry out Audit and Reconcile the Tallies for 2007 Presidential Election Results; report on the true winner, confirm the magnitude of theft and suggest the way forward.

2. The Committee reviewed voting procedures in Polling Stations, Procedures for reporting Presidential Election results, highlighted why ODM is disputing the results, analyzed returns from the Agents, Constituency Tallying Centre and National Tallying Centre at KICC and has prepared the report which is summarized here below.

3. The Electoral Commission errored when it announced on 30th December 2007 that Mwai Kibaki won 2007 Presidential Elections, having allegedly garnered 4,584,721 votes against the Tally of Raila Odinga of 4,352,993 resulting in alleged lead of 231,728 votes.

4. Mwai Kibaki was fraudulently added 471,063 votes and therefore did not win the election.

5. Raila Odinga actually won the 2007 Presidential Elections. He garnered 4,356,279 votes against the tally of Mwai Kibaki 4,065,949 a lead of 246,957 votes.

6. Documentary evidence available confirm that massive rigging of votes took place in the Constituency Tallying Centres and National Tallying Centre at KICC. In addition the following are some of the reasons why ODM rejected the 2007 Presidential Election Results:

6.1 The ECK failed to set up a National Tallying Centre to facilitate transparent and objective tallying of Presidential votes. This was against the law and allowed ECK officials to receive the results eventually altered from the constituencies which they unilaterally inflated votes for Mwai Kibaki.

6.2 ECK announced Presidential Results from computer print outs without reference to the supporting Form 16A as required by law. This confirms the deliberate action by ECK officials to inflate votes to Mwai Kibaki.

6.3 ECK announced results from some constituencies which were different from those in Form 16A forwarded by the Returning Officers. This was confirmed in 19 Constituencies where ECK officials inflated votes to Kibaki.

6.4 In 47 Constituencies Total Presidential votes cast exceeded Total votes cast for all the Parliamentary Candidates by large margin. It is illegal for a voter to go to the polling station and only obtain ballot papers for the Presidential Candidates and place that one only in the ballot box but decline or otherwise refuse to obtain ballot papers votes for the Parliamentary and Civic Candidates. The omission should be detected and action taken against the voter by the Presiding Officer. The omission of such large magnitude as detected during the audit is only possible if the Presiding Officer facilitated the rigging by introducing ballot papers to inflate the Presidential Candidates tallies.

6.5 In 42 Constituencies where Mwai Kibaki had majority support the Presiding Officers refused to avail to ODM Agents Form 16A. The intention was to facilitate the altering and inflation of votes in favor of Mwai Kibaki. In some cases where Form 16A had been correctly filled at the Constituencies Tallying Centres, ECK officials amended the results at KICC or filled new Forms 16A to inflate votes for Mwai Kibaki. Available information indicate that ECK officials have, since the announcement of the results, followed up with more tampering of the documents to cover up evidence of the votes inflated for Mwai Kibaki and other electoral malpractices.

6.6 ODM Agents were denied entry to Constituency Tallying Centres in 21 Constituencies. In these cases security agents were used to intimidate, threaten and forcefully evict ODM Agents. This facilitated the rigging of elections at the Constituency level through the introduction of more ballot papers, mainly to inflate votes cast in favour of Mwai Kibaki.

6.7 ECK refused to act on disputes raised on results announced for 47 constituencies that had been established by a Tally Team made up of representatives of political parties and observers to have grave voting anomalies. In most of these Constituencies the actual votes cast for Kibaki were lower than those announced by ECK.

6.8 Other than the rigging that alleged to have been taking place at KICC, electoral malpractices took place in the following Constituencies: Kieni; Molo; Juja; Limuru; Mwea; Lari; Kirinyaga Central; Kandara; Gatundu South; North Imenti; Igembe South; Igembe North; Tigania West; Nithi; Malava; Kimilili; Ol Kalau; Naivasha; Mandera West, Kajiado North, Tetu and Laikipia West. These were Hon. Mwai Kibaki's strongholds.

3.0 WAY FORWARD

3.1 In light of these electoral malpractices, it is doubted whether justice will take place if ODM decides to seek redress through the court. This should not be an option for ODM.

3.2 The Sovereign and unalienable right of Kenyans to freely elect their representatives and government must be respected. Therefore impartial mediation consisting of eminent International persons be constituted to retract the results as announced by the Electoral Commission that erroneously declared Mwai Kibaki a winner of 2007 Presidential Election and to address fundamental issues that made ODM to reject the 2007 election.

3.3 ODM should not accept the option of re-tallying Presidential votes using Form 16A from Constituencies or National Tallying Centres as there is corroborating evidence that they have been tampered with and doctored in favor of Mwai Kibaki. The re-tallying of results if deemed absolutely necessary should only be accepted if Form 16A from the Polling Stations are to be used or recounting of votes to tally with the voters' names crossed out of the voters register.

3.4 ODM must continue pressuring Kibaki Administration through sustainable peaceful mass action to respect free and fair General Election as contained in the National Assembly and Presidential Election Act Cap 7 of the Laws of Kenya. The past experience shows that after return of peace before addressing fundamental cause of injustice there will be no negotiation.

3.5 It is justice that will bring about long lasting peace and International mediation process should consider the following:

3.5.1 Re-constitution of Electoral Commission afresh to oversee Presidential Election run-off. The image of the current ECK has been damaged beyond repair by facilitating and participating in rigging Presidential Elections and erroneously announcing Kibaki a winner purportedly under duress as the Chairman of ECK later admitted.

3.5.2 Foreign Government and International Community should not recognize Mwai Kibaki as the president of the Republic of Kenya until the mediation process facilitated by internationally reputable persons has successfully restored justice and long lasting peace to Kenyan people. Mwai Kibaki did not win the 2007 Presidential Elections.

3.5.3 The right of assembly and freedom of the media be restored immediately to resuscitate democracy in Kenya. The theft of the 2007 Presidential Election has caused the death of democracy in Kenya.

3.5.4 Relief food and other essential goods must be distributed to all the affected Kenyans without discrimination.

3.5.5 Extra-judicial killings, especially in police cells and the arming of local militias such as Mungiki must stop forthwith.

THEFT OF THE 2007 PRESIDENTIAL ELECTIONS BY ELECTORAL COMMISSION OF KENYA

1. INTRODUCTION

1.1 Elections are an integral part of the democratic process. They are held to enable citizens to elect their representatives. This underlines the fundamental importance of free and fair elections.

1.2 When an electoral process lacks integrity due to irregularities, or because of open fraud, the people have the right to withdraw support to that process and to those who have subverted it.

1.3 Kenyans struggled for decades to introduce multi-party democracy. During those struggles many Kenyans were killed, maimed, detained without trial and subjected to untold suffering. The democratic gains that have been achieved by Kenya were undermined by the open rigging of the 2007 General Elections by Mwai Kibaki in collusion with the Electoral Commission of Kenya. In addition, Kibaki has unleashed unimaginable brutality on Kenyans. The ongoing massacre of innocent civilians by Kibaki and his henchmen is callous and criminal.

1.4 In the meeting held on 31st December, 2007 attended by the Pentagon Members, ODM Members of Parliament elect and Party/Presidential Campaign Secre-

tariats, it was resolved that a Committee be constituted under Chairmanship of Hon. Dalmas Otieno, MP elect for Rongo Constituency to carry out audit and reconcile the Tallies for 2007 Presidential Elections Results and report on the true winner and confirm the magnitude of theft.

1.5 This report highlights the voting procedures in polling, counting and tallying of Presidential elections; the magnitude of the rigging during 2007 General and Presidential Elections by Mwai Kibaki; and, a full analysis of why the ODM is disputing the 2007 Presidential results announced by the Chairman of the ECK, Mr. Samuel Kivuitu. ODM's position is supported by credible documentary evidence that demonstrates the extent to which Kibaki has subverted the will of the Kenyan people.

2. VOTING PROCEDURE IN A POLLING STATION

2.1 The voting procedures in a Polling Station are covered by regulation 29 of National Assembly and Presidential Election Act Chapter 7 of Laws of Kenya. Under Regulation 29(1) an elector who enters a polling station/stream first produces both his/her National Identity card and Voter's Card for the purpose of verification of whether his/her name is in the Voters' Register for the Polling Centre and the Constituency before receiving ballot papers. On confirmation that the name is in the Register, the name is crossed out from the Register and the voter proceeds to Clerk Number Two, Three and Four in that order, to be handed over the ballot papers in different colours for the presidential, parliamentary and civic candidates. After marking the ballot papers and inserting them into the respective ballot boxes placed in the open hall in the same room, the voter proceeds to last Clerk who dips the elector's small left finger in indelible ink to confirm that he/she has voted. The elector is then given back the national identity card and voter's card duly pressed to indicate that he/she has voted.

2.2 Under Section 29(4) a voter who knowingly fails to place a ballot paper into a ballot box before leaving the place where the box is situated shall be guilty of an offence and liable to a fine. It is the responsibility of the Presiding Officer or Deputy Presiding Officer to ensure that electors comply with this regulation. With this arrangement, every voter who enters a polling station/stream to vote is obliged to vote for presidential, parliamentary and civic candidates listed on the ballot paper. In this respect, the total votes cast for presidential candidates and those cast for parliamentary candidates in the same polling station/stream are expected to be equal. The spoiled votes must be duly marked "rejected" by the Presiding Officer.

3. PROCEDURE FOR REPORTING PRESIDENTIAL ELECTION RESULTS

3.1 Procedures for reporting presidential election results are covered under Regulations 39 and 40 of the National Assembly and Presidential Election Act, Chapter 7 of the Laws of Kenya. At the close of counting of votes at each polling station, the Presiding Officer, the candidates or their agents shall sign a declaration as set out in Form 16A which shall state:

3.1.1 The name of the polling station;

3.1.2 The total number of registered electors for the polling station;

3.1.3 The total number of valid votes cast at the polling station;

3.1.4 The number of votes cast in favor of each candidate at the polling station;

3.1.5 The number of votes that were rejected at the polling station; and

3.1.6 The number of disputed votes at the polling station.

3.2 The Presiding Officer shall then:

3.2.1 Immediately announce the results of the voting at the polling station before communicating the same to the Returning Officer, and

3.2.2 Provide each candidate or agent with a copy of the declaration of the results as summarized in Form 16A.

3.3 Regulation 39(1), states inter alia that upon the completion of counting of votes, the Presiding Officer shall seal in separate packets:

3.3.1 The counted ballot papers which are not disputed;

3.3.2 The rejected ballot papers together with the statement relating thereto; and

3.3.3 The disputed ballot papers.

3.4 The Presiding Officer under Regulation 39(2) shall allow candidates or their agents to affix their own seals on the packets specified in Regulation 34. Thereafter,

the Presiding Officer shall put the three packets specified in Regulation 39(1) together with the statements made under Regulations 37 and 38 and the declaration of results made under Regulation 40 in the used ballot box after first demonstrating to the candidates or their counting agents present that it is empty. The ballot box is then sealed with the Electoral Commission's seal and the candidates or their agents present may affix their own seals on the ballot box. Thereafter, the ballot boxes together with the statements made under Regulation 37 and 38 are forwarded to the Returning Officer in the Constituency Tallying Centre.

3.5 Under Regulation 40(1), immediately after the results of the poll for all polling stations in the constituency have been received, the Returning Officer shall in the presence of the candidates or their agents:

3.5.1 Tally the results from the polling stations for each candidate without recounting the ballots that were not in dispute;

3.5.2 Examine the ballot papers marked "rejected," "rejection objected to," and "disputed" and confirm or vary the decisions of the Presiding Officers with regard to the validity of the ballot papers;

3.5.3 Publicly announce to the persons present the total number of valid votes cast for each candidate in case of an election of the President;

3.5.4 Publicly announce to persons present the total number of valid votes cast for each candidate in the case of a parliamentary election;

3.5.5 Publicly declare to the persons present the candidate who has won the parliamentary election for the constituency;

3.5.6 Complete Form 17A set out in the First Schedule in which he/she shall declare the:

i. Name of the constituency;
ii. Total number of registered voters;
iii. Votes cast for each candidate in each polling station;
iv. Number of rejected votes for each candidate in each polling station;
v. Aggregate number of votes cast in the Constituency; and
vi. Aggregate number of rejected votes.

3.5.7 Sign and date the Form 17A and

i. Give any candidate or candidate's agent present a copy of the Form, and

ii. Deliver to the Electoral Commission the original of Form 16A together with Form 17A and Form 18

3.6 Under Regulation 40(2), the results of the Presidential election in a Constituency shown in Form 16A shall be subject to confirmation by the Electoral Commission after a tally of all the votes cast in the election.

3.7 On receipt of the returns by way of Form 16A from the Returning Officers, the Chairman of the Electoral Commission shall, as the National Returning Officer for the Presidential Elections receive and tally the results in the presence of the candidates or their Agents. The candidates or their Agents have a right to peruse, review, confirm or dispute the authenticity of each return submitted by a Returning Officer based on Form 16A.

3.8 The law recognizes Form 16A as the only source of election results. Any results not backed by Form 16A or that are backed by Form 16A that is not in conformity with the requirements of the National Assembly and Presidential Elections Act are not valid results.

3.9 Under Regulation 40(3), the decisions of the Returning Officer on the validity or otherwise of a ballot paper or a vote under this Regulation shall be final except in an election petition.

3.10 In the case of a Presidential election whether or not forming part of a joint election, the Electoral Commission shall hold a certificate issued under Regulation 40(1), until the results of that election in every constituency have been received and thereafter publish a notice in the Gazette declaring the person who has received the greatest number of votes in the election, and has complied with the provision of section 5 of the Constitution, to have been elected the President.

3.11 There is however an addendum to Regulation 40(1) that states "the Electoral Commission may declare a candidate elected as the President before all the Constituencies have delivered their results if in its opinion the results that have not been received will not make a difference as to the winner on the basis of section 5 of the Constitution."

3.12 Under Regulation 40(5) the Electoral Commission shall issue and deliver a certificate in Form 18 to the candidate who shall be elected President in the Presidential election at the time and place where the new President shall take the oath of office.

3.13 Under Regulation 40(6) where a dispute arises over the counting or tally of the votes, a candidate may within twenty-four hours petition the Electoral Commission which shall have the power to order and supervise a count and or tally as is appropriate provided that the decision of the Electoral Commission shall be made within forty-eight hours of such a petition.

4. WHY ODM IS DISPUTING THE 2007 PRESIDENTIAL ELECTION RESULTS

4.0 ODM rejects the results of the Presidential elections announced by the ECK at KICC in Nairobi on grounds of massive fraud. The following are the main reasons for the rejection of the results:

4.1 Deliberate Failure by ECK to Establish a National Tallying Mechanism

4.1.1 The ECK failed, refused and deliberately avoided to establish a National Tallying Mechanism through which it would, as required by law, formally and publicly receive from each Returning Officer the Constituency Results of the Presidential votes. The Returning Officers submitted their returns (Form 16A) to the ECK in the absence of candidates or their duly appointed Agents. ECK officials unilaterally received results away from the public scrutiny by the candidates or their agents and simply announced the results at the Press Centre. When ODM Presidential Agents demanded access to the hall/room where ECK was using to fraudulently change the results, armed police and paramilitary officers barred their entry and denied them access to what ECK was purportedly tallying.

4.1.2 When asked by ODM agents to confirm whether he had established a National Tallying Mechanism and to allow ODM agents into such a room, the Chairman of ECK referred them to the Press Centre set up by ECK for communicating the results to the press. These announcements were being made in the absence of the concerned Returning Officers and without prior verification of the returns by ODM agents.

4.1.3 There was therefore no public, transparent and objective tallying of Presidential votes by ECK at the national level.

4.2 Announcement of Results by ECK not Supported by Form 16A

The ECK announced Presidential Election Results for 48 Constituencies without any supporting mandatory Form 16A. This was confirmed by physical examination of the files on the night of December 28, 2007 by ODM agents in the presence of ECK officials and the agents of Mwai Kibaki. In the absence of Form 16A, ECK results were therefore unacceptable as true and accurate results under the law and should not have been announced.

4.3 Announcement of Results Different from those in Form 16A

4.3.1 The ECK announced Presidential election results that were different from the results issued and confirmed by Returning Officers and ODM agents in 39 Constituencies. In each of these cases, either the votes allotted to Mwai Kibaki by the ECK were higher than what had been recorded in Form 16A and announced at the Constituency level or the votes allotted to Raila Amolo Odinga were lower than the number which had been recorded in Form 16A and announced at the Constituency level. In some cases, votes for the two candidates were unilaterally reduced or increased so as to maintain the original percentages of votes cast.

4.4 Total Presidential Votes cast exceeded the Total Parliamentary votes cast

4.4.1 Documentary evidence of fraud obtained from ECK confirms that in 10 of the disputed constituencies the total Presidential votes cast far exceeds the total Parliamentary votes cast. This is an indication that vote alteration by ECK took place after the voting.

4.5 Refusal by ECK Official to avail Form 16A to ODM Agents

4.5.1 Presiding Officers in 42 Constituencies controlled by Mwai Kibaki refused, neglected and/or failed to make available Form 16A at the close of polling and counting for purposes of recording figures relating to the Presidential vote. Returning Officers in these Constituencies did likewise at close of tallying. They simply announced that they did not have Form 16A and as such they could not

fill and issue to the ODM agents the relevant copies for their records and onward transmission to Nairobi.

4.5.2 The intention was to avoid a paper trail of the correct results and to lay the framework for altering and inflating votes in favour of Mwai Kibaki at the National Tallying Centre at the Kenyatta International Conference Centre (K.I.C.C.) In some cases where the Form 16A were filled, the Electoral Commission of Kenya (ECK) subsequently amended the results by adding more votes in favour of Mwai Kibaki.

4.6 Denial of Entry by ODM Presidential Counting Agents to Polling Stations

4.6.1 ODM Presidential Polling and Counting Agents were denied entry or forcefully evicted from or denied entry into some Polling or Tallying Stations. This was intended to deny ODM the opportunity:

4.6.1.1 To verify the tallying of Votes;

4.6.1.2 To know the votes cast in favour of each of the Presidential Candidate; and

4.6.1.3 To question any irregularities.

4.6.2 In addition, it provided Mwai Kibaki and PNU with the opportunity to manipulate the figures either by adding the numbers of votes cast in favour of Mwai Kibaki or reducing those cast in favour of Raila Odinga.

4.6.3 In 21 of the disputed constituencies ODM candidates and agents were physically assaulted, intimidated and harassed by armed forces at the tallying stations. It is instructive to note that these were constituencies where Ministers and other senior Government officials come from.

4.7 Refusal by ECK to Act on the Audit of 48 Constituencies

As the results were being announced it became evident that some of the results were at variance with those known to ODM through its agents and candidates. After much protest it was agreed that a committee made up of representatives of political parties and observers audit the results that had been announced. In the end files of all 210 constituencies were audited and it was established that at least 48 constituencies had serious anomalies. The ECK refused to receive the audit report when attempts were made to present it.

4.8 Contradictions during the ECK Press Announcements of the Results.

There were contradictions evident in the progressive ECK announcement of vote totals where earlier Presidential vote totals were more than subsequent totals. This confusion has since been confirmed by the ECK Chairman who has admitted publicly and unequivocally that he made the announcement under duress and concerted pressure exerted by Mwai Kibaki's Party of National Unity. He has further stated publicly that he neither believes that Mwai Kibaki won the elections nor is he in a position to state the exact number of votes that were cast in favour of Mwai Kibaki. Another contradiction and concern is the public admission during the ECK Chairman's announcement that some of the returning officers had turned off their phones and may have been cooking the results.

5.0 DISPUTED PRESIDENTIAL ELECTION RESULTS

Rigging in the 47 identified Constituencies are shown in Table 2 and detailed as follows:

5.1 Starehe (No. 03)

5.1.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 70,853. However, the Total Presidential votes, cast was given as 84,452 an increase of 13,599 votes. The additional Presidential votes were added to Mwai Kibaki.

5.1.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates (Refer Table 4)

5.2 Westlands (No. 06)

5.2.1 According to the ECK records at the Tallying Centre, the total Parliamentary votes cast was 79,605. However, the total Presidential votes, cast was given as 86,241 an increase of 6,636 votes. The additional Presidential votes were added to Mwai Kibaki.

5.2.2 Again in this case, such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.3 Kasarani (No. 07)

5.3.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 112,647. However, the Total Presidential votes, cast was given as 116,742 an increase of 4,095 votes. The additional Presidential votes were added to Mwai Kibaki.

5.3.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.4 Embakasi (No. 08)

5.4.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 103,570. However, the Total Presidential votes, cast was given as 141,125 an increase of 37,555 votes. The additional Presidential votes were added to Mwai Kibaki.

5.4.2 It is inconceivable that such a large number of voters could have gone to the Polling Stations to vote only for the President in a Constituency where there were 22 Parliamentary contestants and decline or otherwise refuse to cast their ballots for any of the Parliamentary Candidates. (Refer Table 4)

5.5 Kisauni (No. 10)

5.5.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 60,582. However, the Total Presidential votes, cast was given as 66,964 an increase of 6,382 votes. The additional Presidential votes were added to Mwai Kibaki.

5.5.2 One wonders why such a large number of voters could have gone to the Polling Stations to vote only for the President and decline or otherwise refuse to cast their ballots for their preferred choice of Parliamentary Candidates. (Refer Table 4)

5.6 Bahari (No. 16)

5.6.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 46,229. However, the Total Presidential votes, cast was given as 47,695 an increase of 1,466 votes. The additional Presidential votes were added to Mwai Kibaki.

5.6.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.7 Kaloleni (No. 17)

5.7.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 28,740. However, the Total Presidential votes, cast was given as 41,231 an increase of 12,491 votes. The additional Presidential votes were added to Mwai Kibaki.

5.7.2 Again, there's no good reason why such a large number of voters could have gone to the Polling Stations to vote only for the President and decline or otherwise refuse to cast their ballots for any of the 24 Parliamentary Candidates. (Refer Table 4)

5.8 Malindi (No. 19)

5.8.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 33,500. However, the Total Presidential votes, cast was given as 37,429 an increase of 3,929 votes. The additional Presidential votes were added to Mwai Kibaki.

5.8.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.9 Taveta (No. 26)

5.9.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 13,550. However, the Total Presidential votes, cast was given as 16,817 an increase of 2,267 votes. The additional Presidential votes were added to Mwai Kibaki.

5.9.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.10 Voi (No. 29)

5.10.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 21,043. However, the Total Presidential votes, cast

was given as 22,560 an increase of 1,517 votes. The additional Presidential votes were added to Mwai Kibaki.

5.10.2 Given the fact that in this Constituency there were 15 Parliamentary Candidates, such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for any of the Parliamentary Candidates. (Refer Table 4)

5.11 Mandera West (No. 38)

5.11.1 ECK increased Mwai Kibaki's votes by 900 from 7,857 to 8,757.

5.11.2 Parliamentary votes of 16,911 exceed the Presidential votes cast of 16,528 by 383. (Refer Table 4)

5.12 Igembe South (No. 47)

5.12.1 ECK increased Mwai Kibaki's votes by 22,079 from 37,931 to 60,010.

5.12.2 ECK reduced Raila Odinga's votes by 1,836 from 3,950 to 2,114.

5.12.3 The Total Presidential Votes cast of 63,247 exceed by 8,649 the Total Parliamentary votes cast of 54,598 a good evidence of tampering.

5.12.4 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them. (Refer Table 4)

5.13 Igembe North (No. 48)

5.13.1 ECK inflated Mwai Kibaki's votes by 5,720 from 42,029 to 47,749.

5.13.2 ECK reduced Raila Odinga's votes by 3,585 from 5,508 to 1,923.

5.13.3 The Total Presidential votes cast 50,239 exceeds the total Parliamentary votes cast 50,021 by 218.

5.13.4 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires so that the Form be filled in public under the supervision of the Agents and copies availed to them. (Refer Table 4)

5.14 Tigania West (No. 49)

5.14.1 ECK increased Mwai Kibaki's votes by 4,384 from 33,304 to 37,688.

5.14.2 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.14.3 The Total Presidential votes 38,974 exceed the Total Parliamentary votes of 38,672 by 301.

5.15 North Imenti (No. 51)

5.15.1 Form 16A dated 28/12/2007 was unilaterally altered by ECK at KICC to have Mwai Kibaki's votes inflated by 16,216 from 62,468 as declared and recorded by ECK at the Constituency level to 78,684.

5.15.2 A new Form 16A dated 29/12/2007 was issued by ECK at KICC with conflicting figures and signed by the same official now inflating Mwai Kibaki's votes to 84,006 and maintaining Raila Odinga's votes at 3,370.

5.15.3 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form may be filled in public under the supervision of the Agents and copies availed to them.

5.15.4 The Total Presidential votes cast, 89,532 exceed the Parliamentary votes cast of 84,158 by 5,374 votes, a good evidence of tampering.

5.15.5 Evidence attached hereto.

5.16 South Imenti (No. 53)

5.16.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 74,488. However, the Total Presidential votes, cast was given as 78,803 an increase of 4,315 votes. The additional Presidential votes were added to Mwai Kibaki.

5.16.2 In this Constituency, there were 15 Parliamentary contestants. It is therefore unlikely that such a large number of voters could have gone to the

Polling Stations to vote only for the President and decline or otherwise refuse to cast their ballots for the Parliamentary and Civic Candidates. (Refer Table 4)

5.17 Nithi (No. 54)

5.17.1 ECK increased Mwai Kibaki's votes by 29,348 from 66,345 to 95,693.

5.17.2 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.17.3 The Total Presidential votes 99,006 exceed the Total Parliamentary votes of 95,981 by 3,025. The additional votes were also added to the Parliamentary tally. (Refer Table 4)

5.18 Runyenjes (No. 57)

5.18.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 58,996. However, the Total Presidential votes, cast was given as 63,943 an increase of 4,947 votes. The additional Presidential votes were added to Mwai Kibaki.

5.18.2 With 20 Parliamentary contestants it is most unlikely that such a large number of voters could have gone to the Polling Stations to vote only for the President and decline or otherwise refuse to cast their ballots for their preferred Parliamentary Candidates. (Refer Table 4)

5.19 Ol Kalou (No. 79)

5.19.1 ECK inflated Mwai Kibaki's votes by 26,718 from 50,280 to 76,998.

5.19.2 ECK increased Raila Odinga's votes by 176 from 243 to 419.

5.19.3 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.

5.19.4 The Total Parliamentary votes, 79,315 exceed the Total Presidential votes of 78,097 by 1,218. (Refer Table 4)

5.20 Kieni (No. 82)

5.20.1 Form 16A dated 28/12/2007 was unilaterally altered by ECK at KICC to have Mwai Kibaki's votes inflated by 17,677 from 54,377 as declared and recorded by ECK at the Constituency level to 72,054.

5.20.2 A new Form 16A dated 29/12/2007 was issued by ECK with conflicting figures and signed by a new official that inflated Mwai Kibaki's votes to 72,054 and slightly increasing Raila Odinga's votes by 67 from 513 to 580.

5.20.3 Presiding Officers and the Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.20.4 Evidence attached hereto.

5.21 Mwea (No. 87)

5.21.1 Form 16A dated 28/12/2007 was unilaterally altered by ECK at KICC to have Mwai Kibaki's votes inflated by 2,470 from 59,904 as declared and recorded by ECK at the Constituency level to 62, 374.

5.21.2 A new Form 16A dated 29/12/2007 was issued by ECK at KICC with conflicting figures and signed by the same official now inflating Mwai Kibaki's votes to 62,374 and reducing Raila Odinga's votes by 237 from 550 to 313.

5.21.3 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.21.4 The Total Presidential votes cast 63,376 exceed by 1,000 the total Parliamentary votes cast of 62,376. However, the original figures for Raila Odinga and Mwai Kibaki agree with the total Parliamentary votes cast.

5.21.5 Evidence attached hereto.

5.22 Kirinyaga Central (No. 90)

5.22.1 Form 16A dated 28/12/2007 was unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased by 10,353 from 43,866 as declared and recorded by ECK at the Constituency level to 54,219.

5.22.2 A new Form 16A dated 29/12/2007 was issued by ECK at KICC with conflicting figures and signed by the same official now inflating Mwai Kibaki's votes to 54,219 and increasing Raila Odinga's votes by 13 from 580 to 593.

5.22.3 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law provides that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.22.4 The Total Presidential votes cast were 55,380 against Total Parliamentary votes cast of 44,446 a difference of 10,934 votes.

5.22.5 Evidence attached hereto.

5.23 Mathioya (No. 92)

5.23.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 39,052. However, the Total Presidential votes, cast was given as 44,761 an increase of 5,709 votes. The additional Presidential votes were added to Mwai Kibaki.

5.23.2 Such a large number of voters could not have gone to the Polling Stations to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.24 Kiharu (No. 93)

5.24.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 85,255. However, the Total Presidential votes, cast was given as 87,077 an increase 1,822 votes. The additional Presidential votes were added to Mwai Kibaki.

5.24.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.25 Kigumo (No. 94)

5.25.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 58,879. However, the Total Presidential votes, cast was given as 59,984 an increase of 1,105 votes. The additional Presidential votes were added to Mwai Kibaki.

5.25.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.26 Kandara (No. 96)

5.26.1 Form 16A undated was unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased by 36,618 from 33,825 as declared and recorded by ECK at the Constituency level to 70,443.

5.26.2 Form 16A is filled by two different persons.

5.26.3 A new Form 16A dated 29/12/2007 was issued by ECK at KICC with conflicting figures and signed by the same official now inflating Mwai Kibaki's votes by 36,618 to 70,443 and maintaining Raila Odinga's votes at 295.

5.26.4 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.26.5 The Total Presidential votes cast 71,364 exceed the total Parliamentary votes cast 69,896 by 1,468.

5.26.6 Evidence attached hereto.

5.27 Gatanga (No. 97)

5.27.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 69,585. However, the Total Presidential votes, cast was given as 73,418 an increase of 3,833 votes. The additional Presidential votes were added to Mwai Kibaki.

5.27.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.28 Gatundu South (No. 98)

5.28.1 Form 16A dated 28/12/2007 was unilaterally altered by ECK at KICC to have Mwai Kibaki's votes inflated by 10,644 from 41,836 as declared and recorded by ECK at the Constituency level to 52,480.

5.28.2 A new Form 16A dated 29/12/2007 was issued by ECK at KICC with conflicting figures and signed by the same official now inflating Mwai Kibaki's votes to 52,480 and increasing Raila Odinga's votes by 37 from 388 to 425.

5.28.3 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.28.4 ODM records show that Mwai Kibaki received 41,836 votes while Raila Odinga received 388.

5.28.5 Evidence attached hereto.

5.29 Juja (No. 100)

5.29.1 Form 16A dated 28/12/2007 was unilaterally altered by the ECK at KICC to have Mwai Kibaki's votes inflated by 52,097 from 48,293 as declared and recorded by the ECK at the Constituency level to 100,390.

5.29.2 A new Form 16A dated 29/12/2007 was issued by ECK at KICC with conflicting figures and signed by the same official now inflating Mwai Kibaki's votes to 100,390 and increasing Raila Odinga's votes by 7,671 from 6,081 to 13,752.

5.29.3 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form could be filled in public under the supervision of the Agents and copies availed to them.

5.29.4 A Letter from the Returning Officer to the ECK confirm that the votes cast for Mwai Kibaki was 48,293, total Parliamentary votes cast was 37,212 while total Presidential votes cast is 56,519. These disparities indicate tampering with both the Presidential and Parliamentary votes.

5.29.5 Evidence attached hereto.

5.30 Kikuyu (No. 103)

5.30.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 85,879. However, the Total Presidential votes, cast was given as 87,257 an increase of 1,378 votes. The additional Presidential votes were added to Mwai Kibaki.

5.30.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.31 Limuru (No. 104)

5.31.1 Form 16A dated 29/12/2007 was unilaterally altered by ECK at KICC to have Mwai Kibaki's votes inflated by 7,601 from 40,788 as declared and recorded by ECK at the Constituency level to 48,384 and further adjusted by the ECK to 48,389.

5.31.2 A new Form 16A dated 29/12/2007 was issued by ECK at KICC with conflicting figures and signed by the same official now inflating Mwai Kibaki's votes to 48,384 and reducing Raila Odinga's votes by 210 from 3,144 to 2,934.

5.31.3 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.31.4 The Presidential votes allocated to Mwai Kibaki alone of 48,389 exceed by 3,620 the total Parliamentary votes cast of 44,769.

5.31.5 The total Presidential votes of 52,343 announced by the ECK exceed the total Parliamentary vote of 44,769 by 7,574, a good evidence of tampering.

5.31.6 Evidence attached hereto.

5.32 Lari (No. 105)

5.32.1 Form 16A dated 29/12/2007 was unilaterally altered by ECK at KICC to have Mwai Kibaki's votes inflated by 8,063 from 41,213 as declared and recorded by ECK at the Constituency level to 49,276.

5.32.2 A new Form 16A dated 29/12/2007 was issued by ECK at KICC with conflicting figures and signed by the same official now inflating Mwai Kibaki's votes to 49,276 and increasing Raila Odinga's votes by 191 from 266 to 457.

5.32.3 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.32.4 Evidence attached hereto.

5.33 Turkana Central (No. 107)

5.33.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 29,930. However, the Total Presidential votes, cast was given as 34,028 an increase of 4,098 votes. The additional Presidential votes were added to Mwai Kibaki.

5.33.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.34 Saboti (No. 115)

5.34.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 76,417. However, the Total Presidential votes, cast was given as 78,167 an increase of 1,750 votes. The additional Presidential votes were added to Mwai Kibaki.

5.34.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.35 Laikipia West (No. 133)

5.35.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 72,261. However, the Total Presidential votes, cast was given as 78,228 an increase of 5,967 votes. The additional Presidential votes were added to Mwai Kibaki.

5.35.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.36 Laikipia East (No. 134)

5.36.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 54,334. However, the Total Presidential votes, cast was given as 57,010 an increase of 2,676 votes. The additional Presidential votes were added to Mwai Kibaki.

5.36.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.37 Naivasha (No. 135)

5.37.1 ECK increased Mwai Kibaki's votes by 8,680 from 50,145 to 58,825.

5.37.2 Parliamentary votes 84,142 exceed Presidential votes 79,101 by 5,041.

5.37.3 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.37.4 Vote tampering took place at both the Parliamentary and Presidential levels.

5.38 Molo (No. 138)

5.38.1 Form 16A dated 28/12/2007 was unilaterally altered by ECK at KICC to have Mwai Kibaki's votes inflated by 25,086 from 50,175 as declared and recorded by ECK at the Constituency level to 75,261.

5.38.2 A new Form 16A dated 29/12/2007 was issued by ECK with conflicting figures and signed by a new official now inflating Mwai Kibaki's votes to 75,261.

5.38.3 The Returning Officer at the Constituency having made available Form 16A at the close of polling and counting and had the Form filled in public under the supervision of the Agents and copies availed to them, appeared in person at the ECK Press Center at KICC to challenge the results announced

by ECK but the ECK Chairman refused to listen to him or receive from him the original Form 16A.

5.38.4 The ECK unilaterally increased Raila Odinga's votes by 4,073 from 19,195 to 23,268.

5.38.5 The total Presidential votes cast exceeded the Parliamentary votes cast by 2,562, a good evidence that some official changed the figures.

5.38.6 Evidence attached hereto.

5.39 Subukia (No. 140)

5.39.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 63,819. However, the Total Presidential votes, cast was given as 68,770 an increase of 4,951 votes. The additional Presidential votes were added to Mwai Kibaki.

5.39.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.40 Kajiado North (No. 144)

5.40.1 ECK increased Mwai Kibaki's votes by 27,682 from 21,356 to 49,038.

5.40.2 Presiding Officers and Returning Officer at the Constituency level deliberately refused, neglected and/or failed to make available Form 16A at the close of polling and counting. The law requires that the Form be filled in public under the supervision of the Agents and copies availed to them.

5.40.3 ODM candidate and agents were forcefully evicted from the counting hall by government security personnel on their refusal to accept the count of ballot papers from excess ballot boxes that had been introduced.

5.40.4 Presidential votes cast of 79,901 exceed the Parliamentary votes cast of 66,190 by 13,711. (Refer Table 4)

5.41 Malava (No. 155)

5.41.1 ECK reduced Raila Odinga's votes by 6,087 from 25,938 to 19,891.

5.41.2 ECK reduced Mwai Kibaki's votes by 2,923 from 17,635 to 14,712.

5.41.3 The reductions for both candidates match the difference between the total Presidential votes cast and the total Parliamentary votes cast and is evidence of vote tampering. (Refer Table 4)

5.42 Kimilili (No. 169)

5.42.1 ECK increased Mwai Kibaki's votes by 12,661 from 23,126 to 35,787.

5.42.2 ECK increased Raila Odinga's votes by 510 from 16,804 to 17,314. (Refer Table 4)

5.43 Funyula (No. 177)

5.43.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 26,991. However, the Total Presidential votes, cast was given as 28,553 an increase of 1,362 votes. The additional Presidential votes were added to Mwai Kibaki.

5.43.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.44 Bomachoge (No. 203)

5.44.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 38,484. However, the Total Presidential votes, cast was given as 45,725 an increase of 7,241 votes. The additional Presidential votes were added to Mwai Kibaki.

5.44.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.45 Nyaribari Masaba (No. 205)

5.45.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 31,359. However, the Total Presidential votes, cast was given as 33,357 an increase of 1,998 votes. The additional Presidential votes were added to Mwai Kibaki.

5.45.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.46 Kitutu Masaba (No. 208)

5.46.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 52,824. However, the Total Presidential votes, cast was given as 54,746 an increase of 1,922 votes. The additional Presidential votes were added to Mwai Kibaki.

5.46.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

5.47 West Mugirango (No. 209)

5.47.1 According to the ECK records at the Tallying Centre, the Total Parliamentary votes cast was 40,865. However, the Total Presidential votes, cast was given as 45,261 an increase of 4,396 votes. The additional Presidential votes were added to Mwai Kibaki.

5.47.2 Such a large number of voters could not have gone to the Polling Station to vote for the President and decline or otherwise refuse to cast their ballots for the Parliamentary Candidates. (Refer Table 4)

6.0 OBSERVATIONS OF AUDIT AND RECONCILIATION OF 2007 PRESIDENTIAL ELECTIONS RESULTS

6.1 Based on the ECK documents reviewed by ODM, and the testimony of ECK officials to ODM including press statements attributed to the Chairman of ECK, it is now clear that the ECK fraudulently manipulated the Presidential votes by unilaterally inflating the numbers for Mwai Kibaki and reducing those of Raila Odinga with a view to closing and eventually eliminating the earlier lead taken by Raila Odinga. The magnitude of rigging by ECK is tabulated in Table 3.

6.2 The results from Raila Odinga strongholds were tallied and released first while the tallying and release of those from Mwai Kibaki's strongholds were deliberately delayed to facilitate the manipulation of the tallying process. However, using our own data and those of ECK we establish that even with the rigging at the constituency level, that we were unable to account for Hon. Raila Odinga won the 2007 Presidential elections as detailed in Table 4 and summarized below:

6.3 ECK Declared and Printed Results

The figures released by the ECK on 30th December while declaring Mwai Kibaki the winner were as follows:

Raila Odinga: 4,352,993 Mwai Kibaki: 4,584,721

This indicate that Kibaki won by 231,738 votes.

6.4 The figures printed by the ECK on 30th December, 2007 gave the final tally of the Presidential votes that were of different figures from those announced in 6.3 above as follows:

Raila Odinga: 4,353,035 Mwai Kibaki: 4,574,337

The printed Presidential Election Results declared Kibaki the winner with 226,302 votes.

These differences are indicative of the confusion that reigned at ECK before the announcement of the results and explains why the ECK chairman is uncertain as to who won the elections.

6.5 ODM Audited and Reconciled Results

These results were obtained in two stages. Firstly, undisputed results from 161 (excluding Kamkunji) out of 210 constituencies (Table 1) Presidential votes provided by ODM Polling and Counting Agents agreed with the results announced by ECK. The following are total tally of votes from undisputed Constituencies:

Raila Odinga: 3,734,972 Mwai Kibaki: 2,269,612

It is evident at this stage Raila was leading by 1,465,360 votes.

6.6 In stage two tallies were examined for the 48 constituencies in which anomalies had been established by the Audit Committee (Table 2). This exercise established that a total number of 514,128 votes were unilaterally added to Mwai Kibaki by the ECK at KICC. There is further evidence that votes were unilaterally added and deducted by the ECK at KICC that led to a net loss of 2,950 votes by Raila Odinga. The ECK therefore inflated Kibaki's win by (514,128+2,950) 517,078 votes.

6.7 Consequently, based on the vote tallying from the 161 constituencies not in dispute and following adjustments made to deducting the votes added unilaterally

by the ECK to Mwai Kibaki and adding the votes reduced from Raila Odinga, the cumulative results of the Presidential election indicates that Raila won the election by 290,330 as follows:

Raila Odinga: 4,356,279 Mwai Kibaki: 4,065,949

6.8 The analysis has been made purely on the basis of documentary evidence obtained from the ECK. It is reasonable to believe that with further evidence becoming available, the tally for Mwai Kibaki will reduce while that of Raila Odinga will increase.

7.0 CONCLUSIONS AND WAY FORWARD

7.1 The Report of the Audit Committee confirms the views of Kenyans that the 2007 Presidential Elections were rigged.

7.2 The rigging was planned well and executed at the Polling Stations, Constituency Tallying Centre and National Tallying Centre at KICC by the Presiding Officers, Returning Officers and Electoral Commissioners.

7.3 The Audit Report confirms that Raila Odinga Total Tally was 4,356,279 votes against Mwai Kibaki tally of 4,065,949. Raila Odinga therefore won the 2007 Presidential Election with a lead of 290,330 votes.

7.4 There is also clear indication that the rigging started by the appointment of ECK Commissioners without following the IPPG guidelines and the appointment of Judges just before the elections.

7.5 The contention by Kibaki that ODM should seek redress in court is part of the planned rigging as it aims to tie ODM in court for years while he illegally stays in office. This explains why the president's agents put pressure on Kivuitu to announce false results.

7.6 In addition the documentary evidence, Form 16A have been tampered with by altering them or replacing what was received from the Constituency Centres with fresh ones completed at the National Tallying Centres.

7.7 ODM has given reasons for rejecting the election results. Others, including local and international monitors and NGOs have concurred that 2007 Presidential Elections were rigged by ECK.

7.8 Mr. Samuel Kivuitu, the Chairman of ECK has himself admitted that:

7.8.1 He is not sure that Kibaki won the elections.

7.8.2 Documents had been tampered by ECK officials after the announcement of the results.

7.8.3 He was aware that ECK officials especially in Central and Eastern provinces were tampering with the results before the end of the tallying.

7.8.4 He was not in control of his officials in the critical period of tallying as some in the key constituencies where votes are known to been rigged "disappeared, switched off their phones."

7.8.5 He announced the results under duress from PNU and ODM–K.

7.9 It is important that other ECK official, Commissioners, Returning Officers and clerks have come forward to admit that rigging of election results took place. Perhaps the most telling sign of vote rigging is that the ECK is itself contemplating going to court to challenge its own results.

7.10 It is therefore without doubt that the announced elections results were rigged. However, even with the election malpractices we are confident that Raila Odinga won the Presidential Elections by over 290,330 votes.

7.11 It is in this context that the way forward as recommended by the Committee should include the following:

7.11.1 Demand justice and the reversal of the election results.

7.11.2 Justice and long lasting peace can not be achieved through the courts in which the public have no faith in.

7.11.3 Sustainable peaceful mass action and civil disobedience be pursued simultaneously with a process of dialogue mediated by internationally respected statesmen and women to resuscitate democracy in Kenya.

ODM TABLE SHOWING RECONCILIATION OF 2007 PRESIDENTIAL ELECTION RESULTS TO CONFIRM THE WINNER AND MAGNITUDE OF THEFT BY ELECTORAL COMMISSION OF KENYA (ECK)

No.	Item	Mwai Kibaki	Raila Odinga	Kibaki winner	Raila winner
1.	Figures as announced by ECK on 30th December 2007	4,584,721	4,352,993	231,728	
2.	Figures Printed by ECK on 30th December 2007	4,579,337	4,353,035	226,302	
3.0	Undisputed results from 162 Constituencies excluding Kamkunji (Table 1)	2,312,870	3,735,114		
3.1	Disputed results from 47 Constituencies (Table 2)	2,267,207	618,115		
3.2	SUBTOTAL (3.0+3.1)	4,580,077	4,353,229	226,848	
3.3	Less Net Votes added to Mwai Kibaki by ECK	471,063			
3.4	Add Net votes subtracted from Raila Odinga by ECK		2,772		
3.5	Audit/Reconciled results as at 7th January 2008 (3.2–3.3+3.4)	4,109,014	4,356,001		246,987
4.0	ECK inflated Mwai Kibaki's Win by (471,063+2,772)	473,835			

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