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Kenyan Election Signals Need to Overhaul U.S. Policy Toward Nascent Democracies

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The recent post-election chaos in Kenya highlighted the now-obvious fact that democratic processes in new and developing democracies are often troubled and fraught with weaknesses. In the case of Kenya, the United States prematurely recognized the re-election of President Mwai Kibaki and, following revelations of numerous irregularities and violence, was embarrassingly forced to backtrack from its initial support for the results. Considering the temptation to quickly congratulate electoral victors in order to bolster diplomatic relations, it is surprising that such incidents are not more common. The growing number of new and developing democracies in the world makes it imperative that the U.S. overhaul its policy of issuing official statements following elections, support good governance and the rule of law in developing nations, and ramp up its efforts to monitor, track, and encourage transparent processes in elections in nascent democracies.

The Kenyan Election. In recent years, Kenya had been touted as a democratic success story. The country had been ruled as a one-party state for decades following independence in 1963. Kenya's first president, Jomo Kenyatta, quickly established his Kenya African National Union (KANU) party as the dominant political force in Kenya. Following Kenyatta's death in 1978, Vice President Daniel arap Moi became president. The constitution was amended in 1982 to make Kenya officially a one-party state, but even before that, opposition parties struggled to be relevant.

Spurred by domestic protests and pressure by international donors, the provisions of Kenya's constitution constraining opposition parties were repealed, and multiparty elections were held in 1992. Divisions among the opposition parties led to victories for Moi in 1992 and 1997. Both elections were accompanied by violence and unrest.

In the 2002 election, however, opposition parties formed the National Rainbow Coalition (NARC) and succeeded in electing their candidate, Mwai Kibaki, as Kenya's third president with a strong majority vote. NARC candidates also won 59 percent of parliamentary seats.¹ NARC fractured in 2003 over disagreements about provisions in the draft constitution. A 2005 referendum on the new constitution was defeated, in large part due to opposition by former NARC members, particularly Raila Odinga. Notably, however, the 2002 election and the referendum were conducted with a minimum of violence.

The largely peaceful, transparent, and fair electoral experiences in 2002 and 2005 stoked hopes that the 2007 presidential election would be similarly peaceful and further solidify the democratic tradition in Kenya. Tragically, this did not happen.

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The chief opposition candidate, Raila Odinga, led most pre-election polls and was expected to win. Following the election, this prediction appeared accurate. Odinga had a large lead in initial counting, while Kibaki's allies were suffering—more than half of Kibaki's cabinet officials were defeated in parliamentary voting. Odinga's party, the Orange Democratic Movement, won nearly 100 parliamentary seats, almost tripling the tally for Kibaki's party.²

Following delays in the voting results in two provinces strongly supportive of Kibaki, Kibaki was declared the victor in the presidential election and was hastily sworn in. Allegations of fraud, bolstered by improbably high levels of turnout and support for Kibaki in the delayed voting results, led to street protests by the opposition. Using tactics favored by authoritarian regimes around the world, Kibaki banned live television and radio broadcasts and instructed security forces to put down unrest by force. Violence erupted, fanned by both Raila and Kibaki, leading to numerous attacks, arson, and at least 300 deaths.

Perhaps based on the positive electoral experiences in recent elections, the U.S. Ambassador to Kenya quickly accepted the re-election of Kibaki, noting that while there were “problems with the process,” the United States would abide by the decision of the electoral commission.³ The European Union was more cautious, stating, “Because of [a final tally from one polling center that had nearly 25,000 more votes for Kibaki than officials had announced on election day] and other observed irregularities, some doubt remains as to the accuracy of the result.”⁴

As evidence of fraud became apparent and violence escalated, the U.S. quickly retracted its recog-

niton of, and support for, Kibaki's re-election. In a joint statement with United Kingdom Foreign Secretary David Miliband, Secretary of State Condoleezza Rice announced:

We have closely followed the events in Kenya over the last 48 hours. We congratulate the Kenyan people on their commitment to democracy. However there are independent reports of serious irregularities in the counting process. The immediate priority is to combine a sustained call from Kenya's political leaders for the cessation of violence by their followers with an intensive political and legal process that can build a united and peaceful future for Kenya. In that context we welcome the call by the African Union for the parties to end the violence; we call on all political leaders to engage in a spirit of compromise that puts the democratic interests of Kenya first; we applaud the commitment of the EU and Commonwealth as well as the AU to stay engaged at this important moment for democracy in Africa; and we pledge the diplomatic and political efforts of our two countries to support reconciliation and national unity at this vital time for Kenya and the region.⁵

Following its initial missteps, the United States has taken the correct actions. It has urged Odinga and Kibaki to rein in their supporters and negotiate a mutually acceptable agreement to resolve the political crisis. The U.S. has sent its Assistant Secretary of State for African Affairs, Jendayi Frazer, to meet with Kibaki and Odinga to forge a compromise solution—an effort that appears to be bearing fruit.⁶

The solution to the conflict may lie in a recount of the votes, a power-sharing arrangement between

1. For more details, see “Background Note: Kenya,” U.S. Department of State, October 2007, at www.state.gov/r/pa/ei/bgn/2962.htm.
2. Editorial, “Crisis in Kenya: The Government's Apparent Manipulation of Election Results Prompts a Violent Backlash,” *The Washington Post*, January 1, 2008, p. A10, at www.washingtonpost.com/wp-dyn/content/article/2007/12/31/AR2007123101770.html.
3. Stephanie McCrummen, “Incumbent Declared Winner in Kenya's Disputed Election: Rival Alleges Fraud; Widespread Riots Turn Deadly,” *The Washington Post*, December 31, 2007, p. A11, at www.washingtonpost.com/wp-dyn/content/article/2007/12/30/AR2007123002506.html.
4. *Ibid.*
5. Office of the Spokesman, “Joint Statement by Secretary of State Condoleezza Rice and UK Foreign Secretary David Miliband on Situation in Kenya,” U.S. Department of State, January 2, 2008, at www.state.gov/r/pa/prs/ps/2008/jan/98220.htm.

Kibaki and Odinga, or a new election. All have been mentioned as possible solutions. But it is critical to acknowledge that Kenya's future is for Kenyans to resolve—not the United States. Thankfully, the U.S. has recognized that if democratic traditions are to become firmly embedded in Kenya, the solution has to be made in Kenya and considered legitimate by Kenyans rather than imposed from outside. Importantly, the U.S. correctly emphasized that such an agreement must conform to the confines of the Kenyan constitution, laws, and institutions if the democratic process is to become more robust rather than weak or ad hoc.⁷

The role of the U.S. and the international community in situations like Kenya is limited to granting or withholding recognition of the results and taking steps to hold accountable those who foment violence. The long-term role of the U.S. is to broadly encourage free and fair elections and undertake steps to bolster the electoral process in countries with new and developing democracies.

Time to Formalize U.S. Policy. The situation in Kenya is not unique. It is all too common for elections in nascent democracies in Africa and elsewhere to be improperly influenced or stolen outright. One need only look at the intimidation that characterized the last presidential election in Uganda, the corruption in the recent Nigerian election, or the repression that followed Ethiopia's election in 2005. Africa does have some positive examples in Botswana, Namibia, and a few other nations, but they remain rare.

Africa does not have a monopoly on troubled elections, however. Just months ago, Latin America saw political intimidation in Venezuela. Asia has the recent events in Pakistan. These examples do not even include the more overtly totalitarian states such as Iran and authoritarian states such as Russia that hold show elections as a fig leaf.

The number of troubled democracies is increasing. In an important way, this is actually a good sign. As noted by *The Economist*, the number of democracies worldwide has increased significantly in recent decades:

The global spread of democracy since the 1970s, especially after the collapse of communism, has been impressive. According to Freedom House, an American organization that tracks global trends in political freedom, at the end of 2005 there were 122 “electoral democracies” (64% of the world's states, compared with 40% in the mid-1980s). On a more stringent criterion, 89 of these were rated as “politically free”—46% of all states, compared with only 25% in 1975.⁸

As the number of countries testing the democratic waters increases, it is inevitable that the frequency of questionable elections, fraudulent practices, and electoral violence will increase as well. Perfection is an unrealistic standard for these new democracies. Countries need time and experience to smooth out the electoral process and establish a firm understanding among their politicians and populations of what is expected and required in a sound democracy. Even then, the process is subject to occasional rough patches as seen in the 2000 U.S. presidential elections.

History has shown that it is in the United States' interest to foster freedom and democracy in countries that have known little of either. Countries that were once wartime enemies of the United States—such as Germany and Japan—are now long-time peaceful allies. In nations where the U.S. has shown strong support for freedom and democracy, a strong and reliable U.S. ally has often followed. Authoritarian governments are rarely allied with the U.S. militarily, economically, or politically. Perhaps the greatest contrast in this regard may be seen on the Korean peninsula. One nation, South Korea, has

6. Michelle Faul, “Kenya's Opposition Calls Off Rallies,” *The Guardian*, January 7, 2008, at www.guardian.co.uk/world/latest/story/0,,7204560,00.html.

7. U.S. Department of State Spokesman Sean McCormack, “U.S. Encourages Resolution to Violence in Kenya,” Daily Press Briefing, January 3, 2007, at www.state.gov/r/pa/prs/dpb/2008/jan/98347.htm#kenya.

8. Laza Kekic, “A Pause in Democracy's March,” *The Economist*, at www.economist.com/theworldin/international/displayStory.cfm?story_id=8166790.

chosen democratic government with the aid and support of the U.S. government and has grown into a world economic power. Across the demilitarized zone to the north is the distinctly undemocratic Democratic People's Republic of Korea, which has become a world pariah and an economic backwater.

Also, free and democratic nations rarely, if ever, go to war with one another—a phenomenon known as the “democratic peace principle.” The closest military allies of the United States—notably the United Kingdom, Australia, and Canada—have long traditions as free and democratic nations. In contrast, it is with the world's remaining authoritarian regimes where the United States' potential national security challenges lie. It is clear, therefore, that the expansion of political freedom and representative government is nearly always in the United States' interest.

With the proliferation of imperfect democracies, however, the U.S. will face situations like that in Kenya more frequently. The U.S. should adjust its policy to reflect the often unpredictable and chaotic processes in these nascent democracies. Specifically, the U.S. should take the following actions:

- *Expand its current support for impartial election observers.* The current U.S. practice for providing electoral assistance to foreign countries involves ad hoc support of observation teams sponsored by U.S.-based non-governmental organizations such as the International Republican Institute and the National Democratic Institute. These groups deserve praise, but they cannot always provide an adequate number of observers, particularly if the election occurs during holidays as did the Kenyan election. Moreover, the use of other non-governmental organizations may lead to a perception of partiality that can lend undue credibility to a fraudulent election.⁹ Importantly, the U.S. effort should not center just on elections, but seek to underscore the importance of the integrity of the democratic process and bolster the institutions

that serve as the bulwark against election fraud and intimidation. A more professional and better funded U.S. effort, perhaps in cooperation with other countries, would help increase the professionalism of such efforts and better inform the U.S. government of electoral legitimacy in questionable situations.

- *Wait at least three days, longer if necessary, before recognizing the results of elections in nascent democracies to ensure that the results are valid.* In mature democracies, such as those in Western Europe, there is little dispute about electoral outcomes. It is proper for the U.S. to quickly recognize the results in these situations. As the Kenyan elections tragically illustrate, however, the legitimacy of elections in nascent democracies is often less clear-cut. In these situations, a more prudent policy would be for the U.S. to wait until election observers and opposition parties are able to voice concerns or provide evidence of electoral misconduct before endorsing electoral results to avoid inadvertently lending U.S. credibility and support to fraudulent outcomes.
- *Identify extremists who exploit electoral uncertainty to incite violence.* In many cases, the individuals responsible for fomenting violence are the losers in elections. Some of these people may have legitimate complaints, but that is no excuse for inciting violence. The U.S. should condemn individuals who resort to violence. Similarly, the U.S. should hold governments to account, including withholding foreign assistance, if they abuse their power by inappropriately influencing elections. In both cases, the U.S. government should use its visa process to restrict access to the United States by individuals—and their families who often travel to the U.S. or attend schools there—who foment violence or fraudulently win elections.
- *Urge discussions and reconciliation to resolve electoral disputes.* The U.S. fairly quickly retracted its

9. A good example of this is the endorsement by the Carter Center (an NGO run by former President Jimmy Carter) of a controversial 2004 referendum in Venezuela. In that case, the Carter Center endorsed results favoring Hugo Chávez despite the presence of widespread fraud and the government having reneged on an agreement to audit the results. See J. Michael Waller, “What to Do About Venezuela,” The Center for Security Policy, May 2005.

endorsement of Kibaki's win in the December election and urged the parties to arrive at a mutually agreeable compromise. The circumstances and resolutions of these situations will vary considerably between countries, but the U.S. should be prepared to facilitate discussions to preclude violence when practical.

- *Continue to emphasize the need for developing countries to adopt economic freedom, good governance, and the rule of law.* The *Index of Economic Freedom*, co-published annually by The Heritage Foundation and *The Wall Street Journal*, measures the level of economic freedom in more than 150 countries around the world.¹⁰ The evidence of the *Index* indicates that economic freedom, good governance, and the rule of law are key components in improving economic growth and development. In addition to benefiting the economy, sound institutions and a reliable, fair rule of law help to avoid violent clashes like those plaguing Kenya. Significantly, Kenya ranks poorly in the rule of law and corruption in the *Index*. People do not feel compelled to resolve disputes through violence when they are confident that the rules are obeyed or, if violations occur, they have access to a fair and impartial court system to mediate disputes. The U.S. should continue to encourage developing countries to improve governance and the rule of law for both the economic and political benefits.
- *Revisit the Community of Democracies.* The U.S. helped found the Community of Democracies in order to “use the power of our shared ideals to accelerate democracy’s movement to ever more

places around the globe.”¹¹ Unfortunately, with more than 100 members, the standards of membership are lax: A democracy index devised by *The Economist* ranked only 28 countries as “full democracies” and another 54 as “flawed democracies” in 2006.¹² The idea of a coalition of democracies working to expand representational government and holding each other to account has merit, but only if the members themselves are credible democracies. A new aim for this more stringent group should be to coordinate efforts to isolate and condemn authoritarian governments or leaders elected through fraud in international forums.

Conclusion. Democracy is often messy, but legitimacy requires that candidates and parties operate by well-established rules and in a transparent manner. The positive trend of more countries adopting democratic systems of government means that a number of countries are developing the rules, traditions, and practices of legitimate and accountable government. As the recent election in Kenya illustrates, the U.S. must understand that prematurely recognizing the declared victors as such may prove to be counterproductive. The United States should also adjust its policy to reflect the significant expansion of nascent or flawed democracies and adopt measures to bolster their democratic development.

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10. Tim Kane, Kim R. Holmes, and Mary Anastasia O’Grady, *2007 Index of Economic Freedom* (Washington, D.C.: The Heritage Foundation and Dow Jones & Company, Inc., 2007), at www.heritage.org/index.

11. The U.S. Department of State, “The Community of Democracies,” at www.state.gov/g/drl/c10790.htm.

12. Laza Kekic, “A Pause in Democracy’s March,” *The Economist*, at www.economist.com/theworldin/international/displayStory.cfm?story_id=8166790.