

COUNCIL ON FOREIGN RELATIONS

Policy Options Paper—Kenya

by

Michelle D. Gavin

March 13, 2008

NOTE: The Council takes no institutional position on policy issues and has no affiliation with the U.S. government. All statements of fact and expressions of opinion contained in its publications are the sole responsibility of the author or authors.

POLICY OPTIONS PAPER—KENYA

Issue for Decision

How should the United States respond to Kenya's political crisis in the wake of the power-sharing deal announced on February 28, 2008? What steps should the Bush administration take to promote political and ethnic reconciliation and to restore the viability of Kenya's governing institutions?

Background

On December 27, 2007, Kenya held local, parliamentary, and presidential elections. Though voting day itself was largely peaceful and orderly, serious irregularities occurred in the tabulation of results for the tightly contested presidential election, which pitted incumbent president Mwai Kibaki, leading the Party of National Unity (PNU) ticket, against challenger Raila Odinga, of the Orange Democratic Movement (ODM). Delays in the announcement of results provoked some protests, and when Kibaki was proclaimed the winner on December 30, these violent demonstrations multiplied, sending the country into turmoil. Because Kenyan politics appeal to ethnic identity, outrage over a political issue quickly took on an overtly ethnic character. Over one thousand people have died and over three hundred thousand have been displaced in the resulting violence (some believe the number of internally displaced persons could exceed six hundred thousand). The Kenyan police force, long viewed with skepticism by many Kenyans, has in some cases been accused of ethnic bias and of the inappropriate use of force in its attempts to control the unrest. In addition to the humanitarian toll and the damage done to the integrity of Kenya's political institutions, the crisis has resulted in serious economic setbacks for Kenya and the surrounding region.

Kenyan civil society and much of the business community responded quickly to the mayhem, calling for reconciliation and a political solution to the standoff despite exposing themselves to significant personal risk. The international community has generally followed their lead, and a series of international efforts to help mediate between the Kibaki and Odinga camps eventually culminated in broad support for the work of

former UN secretary-general Kofi A. Annan, who spent over a month in Kenya as the head of a panel of eminent African experts. Annan laid out a four-point agenda for the negotiations, consisting of (1) measures to bring an immediate halt to the violence and to restore the rights and freedoms of the Kenyan people; (2) measures to address the humanitarian crisis and to promote reconciliation; (3) a political solution to the Kibaki-Odinga standoff in the form of some transitional government that incorporates both factions; and (4) fundamental institutional reforms to address underlying grievances in Kenyan society. Annan has acknowledged that this last point, which is understood to include issues relating to judicial independence, parliamentary oversight authority, electoral reforms, and land policies, will be pursued over the course of the next year, whereas more immediate progress is expected on the first three items. Annan has stated publicly that he does not support holding new elections within the next year, and reports emerging from Kenya suggest that the recently achieved power-sharing arrangement is expected to last for two years or more before the next round of elections.

The Annan mediation process succeeded in quelling most of the violence, but tensions remain high and militia forces on both sides of the primary ethnic and political divides can be reactivated extremely quickly. Both sides have agreed to the creation of an independent commission to review the December 2007 electoral process, a body to investigate post-election violence, a truth, justice, and reconciliation commission, and to a fairly vague constitutional reform effort.

On February 28, the Annan effort met with success on the critical issue of political power-sharing. Aided by Tanzanian president Jakaya Kikwete, Annan coaxed Kibaki and Odinga to sign an “Agreement on the Principles of Partnership of the Coalition Government.” In doing so, both leaders committed to establishing a governing coalition of the PNU and ODM, changing the constitution to create the position of prime minister for the head of the largest party in the National Assembly (Odinga), and endowing that position “with authority to coordinate and supervise the execution of the functions and affairs of the Government of Kenya.” The prime minister and the two deputy prime ministers (one for each party) also created in the agreement can be removed only by a majority vote in the National Assembly. The signatories further agreed to divide cabinet positions based on parliamentary strength, with no minister subject to

removal unless both party leaders approve. Finally, the agreement states that the coalition will be dissolved should the parliament be dissolved, should one party withdraw, or should both parties agree to the dissolution. The Kenyan parliament is expected to adopt legislation reflecting this agreement shortly. Annan has now left Kenya, and former Nigerian foreign minister Oluyemi Adeniji has taken his place as chief mediator.

This deal was hard-won. For weeks, President Kibaki and his supporters appear to have been operating on the premise that time was on their side, and that the longer they continue to govern a relatively stable Kenya, the fewer concessions they would ultimately be required to make. But as international pressure rose, the PNU position shifted. First the president's team abandoned its initial suggestion that the ODM simply pursue their concerns through the courts (a likely fruitless exercise given the lack of judicial independence in the country), then they were forced to concede that granting the ODM a handful of token cabinet positions would not suffice. Conversely, Odinga and his supporters believed that they must make progress on an urgent basis or risk losing leverage, and they threatened a return to mass action when the process appeared to stall. The ODM faction abandoned its initial demand that Kibaki step down, but then held firm in insisting on a new, constitutionally created prime minister's post for Odinga. The struggle over executive power may not be over, as text of the power-sharing agreement is rather vague regarding the scope of the prime minister's powers.

Assistant Secretary of State Jendayi E. Frazer traveled to Kenya in early January to advocate for an end to the violence and a political solution. The United States, like others in the international community, has since thrown its weight behind the Annan effort. Thirteen Kenyans have received letters from the U.S. government informing them that, because of their involvement in encouraging the violence, their visa statuses are under review, and additional letters are likely to be sent in time. The administration has announced that it will review its roughly \$500 million per year foreign assistance program for Kenya in light of the government's questionable legitimacy, but has also provided over \$5 million in emergency humanitarian support since the crisis began and signaled its intent to double democracy and governance assistance from \$5 million to \$10 million for the fiscal year. The United States joined other members of the UN Security Council in supporting a presidential statement on February 6 that expressed support for

Annan, called on Kenyan political leaders to “engage fully in finding a sustainable political solution,” and urged that those responsible for violence be brought to justice. Both the House of Representatives and the Senate held hearings focused on the Kenyan crisis in early February, and both bodies passed resolutions expressing deep concern about the turmoil and supporting a peaceful resolution. In the midst of his Africa trip, President George W. Bush dispatched Secretary of State Condoleezza Rice to Nairobi on February 18 to underscore U.S. support for Annan, to pressure the parties to move quickly toward an agreement, and to reinforce the signal that there will be no “business as usual” until some power-sharing arrangement has been struck. Secretary Rice also emphasized U.S. willingness to provide incentives for peaceful progress, particularly singling out support for civil society, infrastructure repair, and resettlement of displaced persons as areas where the United States would be willing to help once a viable political arrangement is in place. On February 26, the secretary issued a strong statement reiterating U.S. support for Annan, expressing disappointment in the failure of the parties to come to agreement on power-sharing, and stressing that “the future of our relationship with both sides and their legitimacy hinges on their cooperation to achieve this political solution.” Once the power-sharing agreement was announced, the secretary issued a statement congratulating Kenyans and pledging continued U.S. support.

Stakes

Given its importance to regional stability and to U.S. interests, Kenya’s crisis should assume a higher priority for the United States than other flashpoints of instability on the continent. The fact that the U.S. Embassy in Nairobi is the largest in all of sub-Saharan Africa reflects the country’s centrality to a number of U.S. priorities. Kenya is a significant counterterrorism partner and an important point of military and humanitarian access in the region. Kenya has been a vital diplomatic partner in efforts to bring stability to Sudan and Somalia. The country is also a regional hub for U.S., international, and nongovernmental programs as well as the linchpin for private sector activity in East Africa. Trouble in Kenya can quickly infect neighboring countries, as the economic spillover effects of the current crisis have already made plain.

Because Kenya has been perceived as a bulwark against instability in the region for so long, the political crisis and civil conflict that emerged in the wake of the elections have been especially jarring. Coming on the heels of problematic elections in Ethiopia, Uganda, and Nigeria—all countries where the United States maintains important relationships with regimes of dubious democratic legitimacy—Kenya’s turmoil calls into question the strength of the democratizing trend in Africa as a whole, as well as the strength of the United States’ commitment to democracy in the region.

Core Issues

How to Address Tensions between Short-term and Long-term Stability?

Kenya’s society and economy badly need political stability in the immediate future, and the power-sharing arrangement is intended to provide it. However, the viability of the coalition government remains in doubt. Raila Odinga and his supporters have tried to share power with Kibaki (and with Daniel Moi before him) in the past, only to be bitterly disappointed when promised reforms and authorities did not materialize. The prime minister’s powers remain vague, and hardliners within the PNU elite will continue to fiercely protect the power of the presidency. Achieving some immediate political unity and cooperation is an essential and difficult task, but it could be rendered fairly meaningless within a short period of time if past is prologue.

Moreover, even as the promise of short-term stability in the form of a coalition government remains fragile, the issue of long-term stability, embodied in Annan’s fourth agenda item, presents another set of challenges. An accommodation among political elites will not necessarily address the deeply felt frustrations and grievances in Kenyan society surrounding issues of corruption and income inequality, which have fueled the recent crisis. Short-term political unity also promises to do little to restore the confidence of the Kenyan people in the integrity of their democracy and the utility of peaceful, rule-governed political expression. Power-sharing is not an end in itself; it is a means by which the Kenyan polity should be able to right itself, reorganize its systems, and regroup for a return to democratic governance. Without progress on reforms that will strengthen the rule of law and enable Kenyans to address underlying tensions and structural

inequities in their society, power-sharing will not help Kenya avoid similar crises in the future.

What is an Appropriate Level of Intensity of U.S. Engagement?

While the United States has a great deal at stake in Kenya, it remains unclear what role the administration can play in promoting lasting solutions beyond expressing support for the Annan/Odeniji process. Currently there is no clear connection between that mediation effort, which is somewhat informally linked to the African Union (AU), and concrete commitments from major international actors to help encourage constructive implementation of the deal or progress on needed reforms.

In addition, while international pressure was undoubtedly essential in achieving the power-sharing agreement, sensitivities surrounding fears of foreign and particularly Western interference in Kenyan affairs are real. The Kibaki government resisted international calls for progress in political negotiations by warning Western powers not to “dictate” to Kenya and suggesting that neocolonial overtones color this type of international engagement. At the same time, it is important to recognize that early in the crisis, the United States was suspect in the eyes of ODM supporters due to a series of events including the transmission of an early congratulatory message following the elections, the International Republican Institute’s decision not to release a disputed exit poll, and the decision of President Kibaki to make unilateral cabinet appointments shortly after meeting with Assistant Secretary of State Frazer. These perceptions have been changed by strong U.S. support for a constitutionally created prime minister’s post, but it remains important to acknowledge that either side could tap into resentment of Western interference to mobilize opposition to any heavy-handed U.S. intervention.

Options and Recommendations

All of the options acknowledge the decision already taken by the United States to wholeheartedly support the Annan effort and its achievements to date rather than spearheading any alternative intervention. Similarly, all options assume ongoing humanitarian support for the displaced.

The United States can best protect its interest in a stable, democratic Kenya by helping to keep the coalition together, and by facilitating needed institutional and structural reforms. It is critical that neither goal fall by the wayside. To invest energy and resources only in the immediate power-sharing arrangement would do nothing to address the most important priorities for Kenya's long-term stability, leaving the administration's legacy on this issue in question. There is no reason to believe that reforms will be easier to tackle at some point in the future than they are now, when international attention remains focused on Kenya and a fluid political situation can create not just tensions, but also opportunities. Indeed, a pledge to address these underlying problems in Kenya's governing structures was a part of the successful National Rainbow Coalition (NARC) platform that swept Kibaki power in 2002, but the winner-take-all nature of Kenyan politics and the sweeping powers of the executive stifled the political will necessary to deliver on these reforms. At the same time, the now-obvious gulf between recent years' international perceptions of a Kenya on a steady upward trajectory and the simmering, deeply felt Kenyan frustrations with the nature of their government and society over the same timeframe should signal not only the need to emphasize the importance of institutional reforms, and but also the need to link those reform plans to a viable political process. The United States may have no opportunity to exercise leadership in support of critical structural reforms if it declines to exercise leadership in support of meaningful power-sharing. Therefore the two tracks must be pursued simultaneously and with vigor.

1. Help to Keep the Coalition Stable

A clear-headed assessment of the current situation must acknowledge that the search for a power-sharing deal is an ongoing challenge, and that the deal struck last month is extremely fragile. Reports of rearming and reorganizing taking place in ethnic militias raise the very real prospect of a return to violence in the near term. The United States must be prepared to continue using carrots and sticks to keep the PNU and ODM committed to the coalition. Both incentives and disincentives will be required to help keep reluctant partners working together, and the pressures applied during the negotiations that led to the power-sharing deal help point the way forward. The United States can aim to compel both PNU and ODM hardliner compliance by extending

targeted sanctions to a wider circle of those associated with violence or simply with obstruction of the political process, and by deepening those sanctions to include asset freezes. The specter of pariah status could be made more solid by publicly raising the prospect of referring those political elites responsible for organizing and encouraging grave violent crimes to international authorities for prosecution (this could be linked to the findings of the UN Office of the High Commissioner for Human Rights' fact-finding team). In terms of incentives, the United States can identify projects of particular value to important constituencies on both sides, including significant infrastructure rehabilitation and job-creation assistance, and could strategically deploy resources to support such initiatives when specific actors need immediate motivation to help to make the power-sharing arrangement work.

2. Support Institutional Reform

At the same time, the United States must focus policymakers' energy on the fourth item on Annan's agenda, structural reform. This would require working with other donors and Kenyan civil society to develop and execute plans to address the technical challenges and resource requirements inherent in disarming militia forces, reforming the electoral process, establishing a new regime to govern land tenure, and strengthening the parliament, judiciary, and police force. It would likely entail a significant restructuring of the United States' foreign assistance portfolio in Kenya and would require substantial new resources, as it would be unrealistic and unwise to shift resources away from HIV/AIDS-related programs, which currently represent the lion's share of U.S. assistance. To ensure sustained attention, it would also require close collaboration with Odeniji and Annan.

Engage the Congress

Pursuing long-term reforms in earnest raises a number of difficult questions. First, the Bush administration's time in office is running out, potentially rendering long-term initiatives unappealing. One way to address this issue would be to engage Congress, which has already demonstrated concern about the Kenyan situation, to help provide some consistency in the U.S. approach from 2008 to 2009. The supplemental

appropriations bill that will be taken up this spring provides a particularly attractive vehicle for involving Congress in this policy approach, as including funds to support important reforms rather than simply humanitarian needs in Kenya would allow the United States to send a timely signal of its seriousness commitment to the longer-term agenda. Just as Congress was willing to provide supplemental resources to help embark on needed reforms in post-conflict Liberia, the will could be mustered to do the same in the Kenyan case.

Identify Priority Sectors

Second, the United States will need to prioritize one or two elements of the reform agenda in Kenya where the U.S. government may have a comparative advantage, rather than attempt to provide strong support to all reforms at once. It is undoubtedly true that land reform (including compensation and resettlement policies), judicial reform, police reform, constitutional reform, and electoral reform are all needed in Kenya. But the United States might focus specifically on a narrower set of issues in which the U.S. government has strong experience, such as those relating to accountability and the rule of law, including support for the truth and reconciliation commission and for legal reforms that would strengthen judicial independence. Once an appropriate legal framework is in place, the United States could add providing technical support to a new electoral commission to that list. In any case, identifying clear priorities will be critical in rallying the aforementioned congressional support as well.

Work through Multilateral Mechanisms

Third, the obvious need for donor coordination and burden-sharing alluded to above points to the desirability of establishing a more formalized multilateral structure to support Kenya's recovery. This should be managed without appearing to dilute the role of the AU in any way, as strengthening the AU is an important U.S. policy goal. That said, the AU has an extremely ambitious agenda already, and limited capacity to execute that agenda. Equally important to note, the United States has limited leverage in Kenya and would be far more effective if it operated through multilateral mechanisms. Thus a contact group of key donors and Kenyan trading partners, working in close consultation

with the AU, should provide coherence to international efforts to assist in Kenya's recovery. This group can also provide structure and force to the short-term goal of supporting power-sharing implementation by ensuring that targeted disincentives for failing to adhere to commitments agreed to in the negotiating process are multilateral in nature.

Engage with Kenyan Leaders beyond the Top Tier of Political Elites

Finally, efforts to promote long-term reform should also aim to further strengthen Kenyan civil society, which stood as a bulwark against total lawlessness during the worst days of the current crisis. This asset should not be overlooked, and the United States can help to underscore the relevance of civil society by establishing regular consultation mechanisms relating to ongoing reforms, and encouraging the rest of the contact group to do the same.

Similarly, the United States should recognize that neither PNU nor ODM elites necessarily represent the best hope for improved governance in Kenya over the long term, and should work now to cultivate and support the next generation of Kenyan leaders. Regular engagement with parliamentarians, many of whom unseated long-serving incumbents in the recent elections, will be a critical part of not only helping to strengthen checks on executive power, but also helping to lay the groundwork for generational change in Kenya's governing class. Aiming for transformative change in Kenya rather than papering over the current crisis and returning to the governance status quo makes particular sense given that over 75 percent of Kenyans are under the age of thirty. The interests of this youthful generation in a more open and equitable political process were made manifest in the 2007 campaign, and if the job creation and land reform policies that they desperately need are not freed from the grip of politically based ethnic favoritism, the frustrations of young people will be sure to take on an ethnic dimension into the foreseeable future, trapping Kenya in the same cycle of communal resentment and hostility that threatens it today.

The Council on Foreign Relations is an independent, nonpartisan membership organization, think tank, and publisher dedicated to being a resource for its members, government officials, business executives, journalists, educators and students, civic and religious leaders, and other interested citizens in order to help them better understand the world and the foreign policy choices facing the United States and other countries. Founded in 1921, the Council carries out its mission by maintaining a diverse membership, with special programs to promote interest and develop expertise in the next generation of foreign policy leaders; convening meetings at its headquarters in New York and in Washington, DC, and other cities where senior government officials, members of Congress, global leaders, and prominent thinkers come together with Council members to discuss and debate major international issues; supporting a Studies Program that fosters independent research, enabling Council scholars to produce articles, reports, and books and hold roundtables that analyze foreign policy issues and make concrete policy recommendations; publishing *Foreign Affairs*, the preeminent journal on international affairs and U.S. foreign policy; sponsoring Independent Task Forces that produce reports with both findings and policy prescriptions on the most important foreign policy topics; and providing up-to-date information and analysis about world events and American foreign policy on its website, CFR.org.

THE COUNCIL TAKES NO INSTITUTIONAL POSITION ON POLICY ISSUES AND HAS NO AFFILIATION WITH THE U.S. GOVERNMENT. ALL STATEMENTS OF FACT AND EXPRESSIONS OF OPINION CONTAINED IN ITS PUBLICATIONS ARE THE SOLE RESPONSIBILITY OF THE AUTHOR OR AUTHORS.

For further information about the Council or this report, please write to the Council on Foreign Relations, 58 East 68th Street, New York, NY 10065, or call the Director of Communications at 212-434-9400. Visit the Council's website at CFR.org

Copyright © 2008 by the Council on Foreign Relations®, Inc.
All rights reserved.
Printed in the United States of America.

This report may not be reproduced in whole or in part, in any form beyond the reproduction permitted by Sections 107 and 108 of the U.S. Copyright Law Act (17 U.S.C. Sections 107 and 108) and excerpts by reviewers for the public press, without express written permission from the Council on Foreign Relations. For information, write to the Publications Office, Council on Foreign Relations, 58 East 68th Street, New York, NY 10065.