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# "REFLECTIONS ON IMPLEMENTATION OF THE NEW CONSTITUTION"

at Forum on Civil Society and the Implementation of the New Constitution



Remarks by U.S. Ambassador Michael Ranneberger

September 23, 2010

I want to thank USAID and Pact for hosting this forum on civil society and the implementation of the new constitution as part of the Kenya Strengthening Civil Society Program. Your organizations work to promote good governance, and vitally important policy reforms concerning the judiciary, decentralization, national land policy, and women's empowerment, among many other areas. Focusing now on how to advance these reforms through implementation of the new constitution in a transparent, accountable, and inclusive manner is essential.

The passage of the new constitution marked a turning point in Kenya's history – the most important achievement since independence itself. Now the country is intensively focused on fully implementing the constitution.

Implementing the constitution according to its letter and spirit will be a major step forward in countering the culture of impunity, negative ethnicity, and pervasive poverty. Truly limiting executive power, expanding the oversight role of Parliament, and putting in place an independent judiciary will deter corruption and make elected and appointed officials more responsive to the people. The opening up of the political system through expansion of Parliament and the establishment of devolved county authorities will mitigate against negative ethnicity. Finally, credible implementation of the constitution in a way which addresses these issues will greatly enhance Kenya's democratic stability, and this will in turn encourage more American and other foreign investment. The end result will be a more prosperous and democratic country which will advance the well-being of all Kenyans.

I want to reflect on the implementation process, but first let me place that in context. Kenya experienced the worst crisis in its history following the 2007 national elections. That crisis unmasked a profound lack of confidence in political institutions and leaders, and exposed the underlying problems which had plagued the country since independence and which had never been addressed: negative ethnicity, the culture of impunity, land issues, and pervasive poverty.

By bringing to light these issues, the post-election crisis opened up an historic opportunity to bring about fundamental change. In order to seize this opportunity – and as a result of pressure from the Kenyan people and the international community -- the reform agenda was agreed to by the coalition government. Putting in place a new constitution is the centerpiece of that reform agenda. President Obama has commended the leaders of the coalition government and the Kenyan people on the very peaceful, transparent, and credible manner in which the constitutional review process and the referendum were carried out. This in itself is a major milestone in Kenya's democratic development, and bodes well for the future.

While there are many elements in the reform agenda, none of those reforms can be accomplished without the new constitutional framework. The hard work of implementing the new constitution has now begun. It is vitally important that the implementation process be carried out – in line with the intent of the constitutional crafters -- to achieve the promise of reform and fundamental change. Let us highlight again that the post-election crisis was in large part due to the lack of citizens' faith in government institutions and leaders. The combination of pervasive poverty, patronage, and political polarization enabled the manipulation of young people to carry out violence. Thus, implementation must take place in a way that transforms institutions and makes leaders more accountable to make them credible in the eyes of Kenyan citizens.

Development and drafting of the new constitution was carried out in a transparent and inclusive manner, under the leadership of the Committee of Experts. There was a broad process of consultation with civil society and ordinary Kenyans, and Parliament was fully involved. The U.S. strongly supported the transparent and inclusive constitutional review process. This resulted in overwhelming approval of the constitution by a two-thirds majority. Recent polls indicate that some 91 percent of Kenyans now accept the constitution as the legitimate law of the land.

In order to realize the enormous promise of the constitution, it is essential that the implementation process be carried out in a similarly transparent and inclusive way. Critical components of the constitution must be implemented well before the onset of the 2012 electoral campaign in order to set up the constitutional structures, electoral units, and safeguards which will help ensure a transparent, peaceful, and credible electoral process, and thus preclude another crisis. There must, therefore, be a sense of urgency, but there must also be a process of careful and meaningful consultation with the Kenyan people and with relevant stakeholders regarding the implementation process.

This is particularly important with respect to the key transformative aspects of the constitution: restructuring executive power, setting up an independent and credible judiciary, establishing the new Parliament with its Senate and new constituencies, putting in place the new structure of devolved county authorities, and implementing the provisions relating to land issues, among others.

Implementing these provisions requires efficient action and clear leadership by the government and the Parliament, but it is equally important that civil society, religious leaders, the private sector and ordinary Kenyans – particularly the youthful majority -- be broadly consulted. Only a consultative, inclusive process to carry out implementation will be credible to the Kenyan people. Politicians must transcend historic divisions and will distinguish themselves by doing so. The public must be vigilant and demand expedited delivery on promises made and a new social compact. The people have high expectations that the constitution will in fact bring about fundamental change to counter negative ethnicity, to end the culture of impunity, and to end pervasive poverty by promoting equitable development and distribution of resources.

While fundamental change will take time, the expectations of the Kenyan people must be met through creation of the creation of transparent and credible structures. For, it is those structures which will create the framework to bring about fundamental change beginning now and accelerating in the coming years.

Three areas of implementation merit special scrutiny. First, the judiciary must be structured in a way that eliminates corruption and cronyism. This requires appointment of a Chief Justice of the highest caliber and rigorous vetting of judges based on sound criteria and review by independent experts. Let there be an open candidate selection process and public discussion of the names under consideration for appointments to all key government offices, and appointments should be made transparently to ensure the most qualified individuals will be chosen. Third, devolution must be implemented in way which transfers real authority to the local level, ensures accountability, and brings communities together rather than exacerbating divisions or, even worse, devolving corruption to lower levels.

As part of the broader reform process, holding accountable the perpetrators of post-election violence is essential. The Government of Kenya has a clear obligation to cooperate with the International Criminal Court in investigations and prosecutions of post-election violence. That process has begun and must be seen through to its conclusion. That is the expectation of the Kenyan people and of the international community.

Parliament will play a key – indeed a decisive -- role in the implementation process. It is, therefore, essential that Parliament be held accountable to vet very carefully and rigorously in accordance with high standards all proposed appointments to commissions and key government positions, as well as proposed legislation.

Parliament will enact the legislative framework for the implementation process, including the creation of commissions and the devolved county structure. We encourage stakeholders to engage now with parliamentarians, before Parliament reconvenes later in September to consider appointments and legislation. As the civil society you need to work together with Parliament and press to ensure that all legislation is approved into law within timelines and in a way which meets international standards. That will create a new framework for Kenya's future. I recently signed an agreement with the Speaker of Parliament to provide \$10 million in technical assistance to support Parliament's role in the implementation process. The support will improve research and the work of parliamentary committees, and enhance infrastructural development to facilitate the work of the bicameral Parliament.

Some observers have sounded concerns that the implementation process is being driven by a small group

within the government and political structure, without any real consultation with civil society and other key stakeholders. I think it is important that no one presume bad faith. At the same time, however, it is both appropriate and necessary that Kenyans follow the implementation process closely, insist that they be consulted and informed at every step, and that they ask their leaders tough questions about how implementation is being carried out in order to ensure that fundamental change will take place. Vested interests and the political establishment are realities that will change only over time as new institutions take hold, and in response to domestic and international pressure, and the realities of the new constitution. Implementation must not be allowed to take place through old-fashioned political deals, dividing spoils behind closed doors. Dividing offices or responsibilities for implementation based on political affiliation and the old-fashioned spoils system, or based on ethnic identification, would be wrong – and send an entirely negative signal to the Kenyan people, which would not be consistent with the spirit of the new constitution. There is a new dawn in Kenya, and the old ways of doing business are no longer appropriate – in the eyes of the Kenyan people and of the international community as well.

We urge politicians to set aside for at least the next several months considerations of the 2012 elections. I note and applaud the fact that President Kibaki and Prime Minister Odinga have urged this as well, and we look forward to their continued leadership to ensure a transparent and inclusive implementation process. Let “politics as usual” be put on hold in the greater interest of all the Kenyan people. Instead of salivating at the prospect of more spoils as a result of the expanded number of constituencies, the expansion of Parliament, and the creation of the county authorities, let Kenya’s political leaders instead focus on implementation of the new constitution in order to make the democratic structures of the country more responsive to the Kenyan people.

As we talk about the importance of transparency and inclusiveness, we must also focus on the vital role which the media should play in this regard. I commend the media for their comprehensive and well-informed coverage of the constitutional review process, and the role they played in promoting civic education. I encourage the media to play an equally assertive role to help ensure that the constitution is implemented in a transparent and inclusive manner. We urge the media to focus on the implementation of these reforms and not on premature political ambitions for 2012.

We look forward to the post-referendum activities that you have planned and are planning to ensure meaningful collaboration between the Government of Kenya and key stakeholders. In order to be effective and to have a real impact on the implementation process, civil society must speak with a unified voice, setting aside divisions and competition.

The United States played a major role in helping resolve the post-election crisis, and in support of the constitutional review process. We will remain intensively involved to help ensure that the implementation process is carried out through a transparent, inclusive, credible process, and that the full reform agenda is implemented. I urge you to play your indispensable role as an advocate, watchdog, and voice of the Kenyan people. As the largest donor supporting civil society, the U.S. Government will continue to help organizations – such as those here in this room today – drive implementation of the reform agenda.

That said, the onus for real change rests with the coalition government and the Kenyan people. The international community was only able to help resolve the post-election crisis because the Kenyan people themselves exerted decisive and peaceful pressure on their leaders. It is the responsibility of Kenyans to exert peaceful influence through the democratic process to ensure that the constitution is implemented in a way which results in fundamental change.

Thank you.

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