

Calendar No. 42

113TH CONGRESS
1ST SESSION

S. RES. 90

Standing with the people of Kenya following their national and local elections on March 4, 2013, and urging a peaceful and credible resolution of electoral disputes in the courts.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2013

Mr. COONS (for himself, Mr. CARDIN, and Mr. FLAKE) submitted the following resolution; which was referred to the Committee on Foreign Relations

APRIL 17, 2013

Reported by Mr. MENENDEZ, with an amendment and an amendment to the preamble and an amendment to the title

[Strike out all after the resolving clause and insert the part printed in *italic*]

[Strike the preamble and insert the part printed in *italic*]

RESOLUTION

Standing with the people of Kenya following their national and local elections on March 4, 2013, and urging a peaceful and credible resolution of electoral disputes in the courts.

~~Whereas the Government and people of the United States stand with the people of Kenya following their national and local elections on March 4, 2013;~~

Whereas the Governments of the United States and Kenya have long shared a strong bilateral partnership, and Kenya plays a critically important role as a cornerstone of stability in East Africa and as a valued ally of the United States;

Whereas Kenya's disputed 2007 presidential election threatened the country's stability and its democratic trajectory, triggering an explosion of violence that resulted in the deaths of some 1,140 civilians and displaced nearly 600,000, some of whom have still not returned home;

Whereas a mediation effort by former United Nations Secretary-General Kofi Annan and an African Union Panel of Eminent African Personalities, supported by the United States, led to the signing of the National Accord on February 28, 2008, which facilitated a power-sharing arrangement and led to a series of constitutional, electoral, and institutional reforms to address underlying causes of the crisis;

Whereas, as part of that reform process, the citizens of Kenya participated in a national referendum in August 2010, approving a new constitution that mandated significant institutional and structural changes to the government;

Whereas those constitutional changes have led to important reforms in the judicial sector and the electoral system in Kenya that aim to build greater public confidence in government institutions, and which demonstrate meaningful progress;

Whereas Kenya's Independent Commission of Inquiry into the Post-Election Violence (the "Waki Commission") concluded from its investigation in 2008 that there had been

“no serious effort by any government” to punish perpetrators of previous incidents of ethnic and political violence, leading to a culture of impunity that contributed to the crisis that followed the 2007 elections, and, since then, despite laudable judicial reforms, few perpetrators or organizers of that violence have been held accountable for their crimes in Kenyan courts;

Whereas, based on the findings of the Waki Commission, mediator Kofi Annan submitted a list of key suspects to the Office of the Prosecutor of the International Criminal Court (ICC) in 2009, and several have been subsequently charged at the ICC with crimes against humanity;

Whereas the Department of State’s 2011 Human Rights Report on Kenya notes, “Widespread impunity at all levels of government continued to be a serious problem. The government took only limited action against security forces suspected of unlawful killings, and impunity in cases of corruption was common. Although the government took action in some cases to prosecute officials who committed abuses, impunity : : : was pervasive”;

Whereas President Barack Obama’s Strategy on Sub-Saharan Africa, released in June 2012, states that the United States will not stand by while actors “: : : manipulate the fairness and integrity of democratic processes, and we will stand in steady partnership with those who are committed to the principles of equality, justice and the rule of law”;

Whereas, prior to the March 2013 elections, concerns about political violence in Kenya were high, and in the months preceding there had been strong indications that local politicians in various parts of the country were involved

in organizing or inciting violence in order to influence local electoral outcomes;

Whereas, in a February 2013 message to the people of Kenya, President Obama highlighted the power Kenyan communities have to reject intimidation and violence surrounding the upcoming election, resolve disputes in the courts as opposed to the streets, and “move forward towards prosperity and opportunity that unleashes the extraordinary talents of your people”;

Whereas, five years after Kenya’s post-election crisis, the country held its first general elections under the new constitution on March 4, 2013, which were largely peaceful; and

Whereas Kenya’s presidential candidates and their political parties committed themselves to a peaceful electoral process, and to resolving any resulting disputes through the judicial process, which is now underway with the filing of cases before the Kenyan Supreme Court on March 16, 2013: Now, therefore, be it

Whereas the Governments of the United States and Kenya have long shared a strong bilateral partnership, and Kenya plays a critically important role as a cornerstone of stability in East Africa and as a valued ally of the United States;

Whereas Kenya’s disputed 2007 presidential election threatened the country’s stability and its democratic trajectory, triggering an explosion of violence that resulted in the deaths of some 1,140 civilians and displaced nearly 600,000, some of whom have still not returned home;

Whereas a mediation effort by former United Nations Secretary-General Kofi Annan and an African Union Panel

of Eminent African Personalities, supported by the United States, led to the signing of the National Accord on February 28, 2008, which led to a series of constitutional, electoral, and institutional reforms to address underlying causes of the crisis;

Whereas, as part of that reform process, the citizens of Kenya participated in a national referendum in August 2010, approving a new constitution that mandated significant institutional and structural changes to the government;

Whereas those constitutional changes have led to important reforms in the judicial sector and the electoral system in Kenya that aim to build greater public confidence in government institutions, and which demonstrate meaningful progress;

Whereas Kenya's Independent Commission of Inquiry into the Post-Election Violence (the "Waki Commission") concluded from its investigation in 2008 that there had been "no serious effort by any government" to punish perpetrators of previous incidents of ethnic and political violence, leading to a culture of impunity that contributed to the crisis that followed the 2007 elections, and, since then, despite laudable judicial reforms, few perpetrators or organizers of that violence have been held accountable for their crimes in Kenyan courts;

Whereas, based on the findings of the Waki Commission, mediator Kofi Annan submitted a list of key suspects to the Office of the Prosecutor of the International Criminal Court (ICC) in 2009, and several have been subsequently charged at the ICC with crimes against humanity;

Whereas the Department of State's 2011 Human Rights Report on Kenya notes, "Widespread impunity at all levels of gov-

ernment continued to be a serious problem. The government took only limited action against security forces suspected of unlawful killings, and impunity in cases of corruption was common. Although the government took action in some cases to prosecute officials who committed abuses, impunity . . . was pervasive”;

Whereas President Barack Obama’s Strategy on Sub-Saharan Africa, released in June 2012, states that the United States will not stand by while actors “. . . manipulate the fairness and integrity of democratic processes, and we will stand in steady partnership with those who are committed to the principles of equality, justice and the rule of law”;

Whereas, in a February 2013 message to the people of Kenya, President Obama highlighted the power Kenyan communities have to reject intimidation and violence surrounding the upcoming election, resolve disputes in the courts as opposed to the streets, and “move forward towards prosperity and opportunity that unleashes the extraordinary talents of your people”;

Whereas, five years after Kenya’s post-election crisis, the country held its first general elections under the new constitution on March 4, 2013, which were largely peaceful;

Whereas Kenya’s presidential candidates and their political parties committed themselves to a peaceful electoral process, and to resolving any resulting disputes through the judicial process;

Whereas the Kenyan Supreme Court ruled on March 30, 2013, that Uhuru Kenyatta was validly elected, and his opponents pledged to respect and honor the decision of the Court;

Whereas the White House issued a statement on March 30, 2013, stating, “The electoral process and the peaceful adjudication of disputes in the Kenyan legal system are testaments to the progress Kenya has made in strengthening its democratic institutions, and the desire of the Kenyan people to move their country forward. Now is the time for Kenyans to come together to fully implement the political, institutional, and accountability reforms envisioned in the Kenyan constitution. . . . We welcome and wish to underscore the importance of Kenya’s commitment to uphold its international obligations, including those with respect to international justice.”; and

Whereas in his inauguration speech on April 9, 2013, President Kenyatta said, “I will lead all Kenyans – those who voted for me – and those who voted for our competitors – towards a national prosperity that is firmly rooted in a rich and abiding peace in which unity can ultimately be realized. . . . Indeed, national unity will only be possible if we deal decisively with some of the issues that continue to hinder our progress. Achieving peace and strengthening unity will be the goal of my Government. This work begins now. We welcome all Kenyans to hold us to account.”: Now, therefore, be it

1 *Resolved, That the Senate—*

2 (1) congratulates the people of Kenya on their
3 commitment to peaceful elections, as demonstrated
4 on March 4, 2013;

5 (2) calls on the people of Kenya to continue to
6 reject intimidation and violence, and encourages the

1 peaceful and credible resolution of electoral disputes
2 in the courts;

3 (3) urges restraint on all sides, while recog-
4 nizing the right of the people of Kenya to peacefully
5 exercise their constitutional rights to freedom of ex-
6 pression, assembly, and demonstration;

7 (4) urges accountability for anyone found to be
8 complicit in promoting violence or manipulating elec-
9 toral processes or results;

10 (5) notes that many of the underlying griev-
11 ances that have underpinned ethnic divisions and
12 fueled the 2007–2008 violence remain largely
13 unaddressed;

14 (6) affirms that accountability for the 2007-
15 2008 post-election violence is a critical element to
16 ensure Kenya’s democracy, peace, and long-term sta-
17 bility;

18 (7) calls on the Government of Kenya to respect
19 commitments to seek justice for the victims of polit-
20 ical violence, including by honoring its obligations
21 under the Rome Statute to cooperate fully with the
22 International Criminal Court with regard to the
23 three cases that remain before the Court slated to
24 go to trial in 2013;

1 (8) recognizes that, while the Government of
2 Kenya has made important progress since the 2007
3 election, aspects of the Kenyan reform agenda speci-
4 fied in the National Accord and 2010 constitution
5 remain unfinished, particularly with regard to police
6 reform, devolution, land reform, and security;

7 (9) encourages the people and Government of
8 Kenya to support ongoing implementation of con-
9 stitutional reforms, rule of law, and efforts to
10 strengthen governing, security, and judicial institu-
11 tions that respect the dignity and rights of all the
12 people of Kenya and ensure protection for judges;

13 (10) congratulates the many candidates elected
14 to office in the March 2013 election—including
15 those at the newly-formed county level—and ex-
16 presses hope that newly-elected members of govern-
17 ment will herald a new generation of responsible
18 leadership in Kenya; and

19 (11) reaffirms that the people of the United
20 States will continue to stand with the people of
21 Kenya in support of democracy, partnership, and
22 peace.

23 *That the Senate—*

1 (1) *congratulates the people of Kenya on their*
2 *commitment to peaceful elections, as demonstrated on*
3 *March 4, 2013;*

4 (2) *calls on Kenyans to come together to fully*
5 *implement political, institutional, and accountability*
6 *reforms envisioned in the Kenyan constitution;*

7 (3) *calls on the people of Kenya to continue their*
8 *efforts to end intimidation, impunity, and violence;*

9 (4) *notes that many of the underlying grievances*
10 *that have underpinned ethnic divisions and fueled the*
11 *2007-2008 violence remain largely unaddressed;*

12 (5) *affirms that accountability for the 2007-2008*
13 *post-election violence is a critical element to ensure*
14 *Kenya's democracy, peace, and long-term stability;*

15 (6) *calls on the Government of Kenya to respect*
16 *commitments to seek justice for the victims of political*
17 *violence, including by honoring its obligations under*
18 *the Rome Statute to cooperate fully with the Inter-*
19 *national Criminal Court with regard to the three*
20 *cases that remain before the Court slated to go to trial*
21 *in 2013;*

22 (7) *calls on the Government of Kenya to ensure*
23 *the International Criminal Court witnesses are fully*
24 *protected and not subject to interference but afforded*
25 *the protections they deserve to ensure justice is served;*

1 (8) recognizes that, while the Government of
2 Kenya has made important progress since the 2007
3 election, aspects of the Kenyan reform agenda speci-
4 fied in the National Accord and 2010 constitution re-
5 main unfinished, particularly with regard to police
6 reform, devolution, land reform, and security;

7 (9) encourages the people and Government of
8 Kenya to support ongoing implementation of con-
9 stitutional reforms, rule of law, the establishment of
10 county level government and efforts to strengthen gov-
11 ernance, security, and judicial institutions that re-
12 spect the dignity and rights of all the people of Kenya
13 and ensure protection for judges;

14 (10) supports the devolution process in order to
15 enable constitutional reform to be fully implemented;

16 (11) encourages the Government of Kenya to re-
17 spect and protect the freedom of civil society organi-
18 zations and activists which have historically led the
19 process of political reform in Kenya;

20 (12) expresses hope that newly elected members of
21 government will herald a new generation of respon-
22 sible leadership in Kenya; and

23 (13) reaffirms that the people of the United
24 States will continue to stand with the people of

1 *Kenya in support of democracy, partnership, and*
2 *peace.*

Amend the title so as to read: “A resolution congratulating the people of Kenya on their commitment to peaceful elections, as demonstrated on March 4, 2013, and calling on Kenyans to come together to continue to implement political, institutional, and accountability reforms envisioned in the Kenyan constitution.”.

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