

THE BROOKINGS INSTITUTION

AFRICA POLICY DIALOGUE ON THE HILL

"Engaging Kenya's New Leadership: Opportunities and  
Challenges for the U.S. Government"

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## P R O C E E D I N G S

MR. SIMPKINS: Well, good morning, everyone and welcome to the Africa Dialogue on the Hill. I'm Greg Simpkins, Professional Staff Member for the House Subcommittee Africa, Global Health, Global Human Rights and International Organizations. And our forums offer an Africa perspective on Africa issues as well as those of outside experts.

This is a monthly co-presentation by the Congressional African Staff Association and the Africa Growth Initiative of the Brookings Institution. For those who don't know CASA, we're a bipartisan, bicameral association of Staff Members who seek to educate our colleagues on today's issues on the Continent and within the greater African diaspora through panel discussion, briefings and other events with decision makers and officials involved in African Policy.

Our partner, the Africa Growth Initiative brings together African scholars to provide

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policymakers with high quality research, expertise and innovative solutions that promote Africa's economic development. Because of AGI's access to the latest research from the Continent, we thought they offered a great partnership in achieving our mutual goals to inform.

This morning we examine the difficulties involved with US engagement with the new leadership in Kenya which has been indicted for crimes against humanity by the International Criminal Court. Our moderator for today's session is Margot Sullivan, Foreign Policy Fellow in the Office of Ranking Member Karen Bass who we thank for getting this room today. And let me turn it over now to Margot to give us a summary and to introduce our speakers on this topic.

MS. SULLIVAN: Okay, thank you very much, Greg. Good morning, everybody. Thank you for joining us. I think the numbers that we have here underscore the importance of Kenya and underscore just how relevant these dialogues on the Hill are. We are very fortunate this morning to have two renowned experts on

Kenya with us, Professor Barkan and Professor Kimenyi. And they're going to be addressing a very interesting topic, the topic of the day which has to do with the relevance of Kenya and US-Kenyan relationship.

I'm not going to go into the topic. That's going to be something that our two panelists are going to discuss but I would say that obviously Kenya plays a key role for the United States. Kenya is a good friend of the United States. The United States likes to think they're a good friend of Kenya. Kenya is usually seen as the economic hub of the East African region. It plays a very important role in terms of security, stability, democratization. So, from that perspective it's important to have a good relation, good, strong, bilateral relationship with this country.

What we're going to be asking the two panelists to discuss today is engaging with the new presidential team in Kenya, President Uhuru Kenyatta and his deputy William Ruto. This has a specific spin because both of these two gentlemen as you may know

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have been indicted by the International Criminal Court. They have committed to going to their court dates. One I believe is at the end of this month, the other one is going to be sometime in July.

So, it's going to be interesting to hear what our two Profs have to say drawing from, perhaps, some of their work in the past but just talking about that engagement strategy that the US needs to now consider given the importance of this East African country. I'm going to stop there.

Now, I'm sorry I did not go into details with regards to their bios because I understood that was going to be Greg's job. But perhaps they can introduce themselves. Thank you. Professor Barkan, please.

PROFESSOR BARKAN: Hi, great to be here this morning and I can only echo Greg's remarks. It's an honor to be part of this series which I wish there were more of them. So, I'll leave it at that.

My bio is in your sheet. I have both an academic background, a public policy background,

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teaching for many years African politics at the University of Iowa but then segue over to the policy area in the early '90s as the first USAID democracy governance advisor for Eastern and Southern Africa. And the rest is kind of history. It's all the bio. I got Potomey fever shall we say, came to Washington and had a fellowship and on and on. So, let me turn to my comments.

Beginning with the elections, I believe you have already had one session on the elections so I'm going to keep it very brief there but there needs to be a few things said in conjunction with the ICC to sort of set the stage of both the challenge for the United States in terms of engaging Kenya but also the challenge to the new Kenyatta-Ruto Administration. And it is very much a duumvirate. The real question is William Ruto really the Deputy here or he almost co-equal and I'm not sure we fully know yet but we can leave to the question period.

So, the outcome of Kenya's election held on March 4th produced mixed results as well as a major

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challenge for US engagement with Kenya and indeed the international community in general. We're not by ourselves in this by any means. I think it's useful to point out at the outset that much of international engagement on Kenya with respect to democratization going all the way back to the early '90s, the imposition of conditionality, the force of multiparty elections in 1992 and much of what's happened since a very robust USAID program in support of democracy in governance, this has been a 20 year exercise which is very illustrative. I don't want to give a history lesson here or be professorial but the fact of the matter is there are a lot of lessons learned on just how hard it is for a country to make the transition to from authoritarian to democratic.

It's a tortuous route. Kenya has achieved a lot and the United States together with some very key partners, most the British, the Canadians, the Scandi regions and the Dutch have been a major part of this and the Germans. But this election that just occurred, it's important to remember because it

created a very complicated system, was the first under Kenya's new constitution passed in 2010. A constitution that was Kenya's third attempt over a 20 year period, very complicated, finally a document of referendum which passed two to one, very forward looking, very democratic in terms of its content beginning with a broad bill of rights but most significantly in terms of Kenya's past and looking forward and the challenge to the Kenyatta Administration is that the powers of the executive have been significantly reduced.

The powers of the legislature have been increased. There's now a bicameral parliament instead of a single chamber national assembly. There's now a Senate, provisions for devolution which was a major demand and reform among Kenyan civil society and elements of the Kenyan political class going all the way back 50 years to independence. But it was this big unresolved issue from the past. A series of commissions to deal with land not the least of which a new commission to run the elections in Kenya because



as most of you know the 2007 elections were a disaster due to quite probably manipulation of the vote in terms of a bad register and then a faulty result reporting exercise which resulted in violence, over 1,000 people killed and nearly 600,000 people displaced from their homes and half of which are still displaced.

So, I mention this because there's a lot of history here that this is not just the new government coming in with a clean slate and a few, sort of immediate challenges like getting the macroeconomic policy right. There is a lot of historical overhang here. Okay, so the new election is complicated by the fact that it was for six offices and heretofore Kenyan's had never voted for more than three.

So, this posed a challenge to the electoral commission because in the run up to the election they ran some mock polls and they determined among other things that in order for the process to work and be understood by Kenyan voters, they would have to have six ballots. That, in turn, made the time period for

each casting the ballot very long and that in turn led to a decision to double the number of polling places up to 33,100. Some of this is discussed in a piece I did for the Council on foreign relations. I brought a few copies which I left outside. It's a little bit dated but if you're interested you can come back to me.

The point is is that the logistical challenges of running this election were unlike anything that occurred before. And yet what had occurred in 2007 had not been pulled off very well. Because of what happened in 2004, and as I indicated part of the new constitution was to essentially scrap and create a brand new independent Electoral and Boundaries Commission. That was done. The individuals were vetted and then they then embarked on a hi-tech solution to the problems of the past by a metric voter register and an electronic results reporting systems.

The briefer meet today is to look at the engagement in the future so I don't want to get too

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sidetracked on that except to say that this technology largely failed not because of the technology which the United States supported --

MS. SULLIVAN: Professor Barkan?

PROFESSOR BARKAN: Yes?

MS. SULLIVAN: Can you wind up please?

PROFESSOR BARKAN: Wind up? I haven't even gotten to the issue. I thought I had 15 minutes.

MS. SULLIVAN: 10.

PROFESSOR BARKAN: All right, I'll truncate it. Obviously, they're going to gavel me out. You know the result. The whole thing fell apart. You're trying to embed technology in a system of over 120,000 individuals who are temporary workers, no matter how trained, when you procure this stuff late it's unrealistic. So, the election produces results that you know with Uhuru Kenyatta coming in with 50.07 percent.

Many people doubt whether in fact that was the case. The result of the breakdown of the vote suggests that he may well have won the 50.1 percent

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but he probably did not. And the same thing, when you use the same conclusion if you look at the results of the parallel vote tabulation run by ELOG, supported by MDI on the one hand and also some exit polls. So, an unclear election result compounded by a Supreme Court decision that basically dodged the issue. It said the election was bungled but the results whole. And then the ICC since that's what I'm supposed to focus on.

MS. SULLIVAN: Excuse me, Professor Barkan; we're going to have another time for you to speak. Could we let Professor speak and then we'll come back to you and then the two of you can go back and forth, okay?

PROFESSOR BARKAN: Can I jump to my --

MS. SULLIVAN: Sure, we'll give you that.

PROFESSOR BARKAN: I'm sorry. I'm trying to do the best I can given what I thought were my terms of reference. So, that's what I'm trying to follow.

Look, the new team was sworn in on the -- in Mid-April and let me cut to the chase. President Kenyatta gave a superb inauguration speech because he

basically said he was going to pursue full implementation of the Constitution including the very contentious issue of devolution which his predecessor called into question just a week before the inauguration.

The native of the inauguration speech was also 180 degrees apart from what Ruto and Uhuru had run in their campaign where they basically said that Western power supporting the ICTC were imposing a new form of colonialism on Kenya. Quite an anti-Western town, so where does the US go from here in 10 seconds and then we can come back for details. I think we ought to embrace the inauguration speech; we ought to also embrace the speech that the President gave to the opening of Parliament and we ought to continue offering assistance to implement the new Constitution.

We've done very well. I think it's important to point out here USAID assistance to strengthen Parliament. There's a long history of US support to civil society most recently through USAID OTI program. The judiciary is a great opportunity and

finally devolution which is a very tricky thing to pull off in terms of foreign assistance. In some respects the World Bank has more expertise in this than we do but there are great opportunities here and what I'm really suggesting here is we can engage, remain true to our democratic principles. But most important it's the President's own words that are the standard now, not something that's imposed.

Kenyans have ownership on this and those who did not vote for the new government are expecting him to carry through on this as well. Thanks.

MS. SULLIVAN: Thank you very much. I'll give you Professor Kimenyi.

PROFESSOR KIMENYI: Thank you very much. I'll try to keep within 10 minutes and I will avoid going over what Joel was talking about particularly of the electoral process and the results because I may have a different view, a different take on actually what happened and what results means.

But I think we are here to talk about, okay, we have accepted we have a President, an democratic

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President. They are indicted, the ICC, how does US engage from here. Let me make a few points. Just a background and also what I think should be what we need to consider from a US, now thinking about how US should engage, not even other countries.

The first thing we need to see I think is based on what we saw. Looking at regional and global reaction, the action has been brought in the combination of the bigger progress made in terms of democracy with Kenya. And a lot of people, a lot of organizations actually believe the elections it was fair and credible—even within the data looking at even scenarios of what would have happened if there was a re-run. There is that these elections were fair and credible. The regional partners, East Africa community, COMESA, the African Union have been very supportive of Kenyatta. They believe that this was a progress for democracy and they believe that Kenya is moving in the right way. So, they are supportive for this government and the President himself has a very strong position on regional integration.

Most of the key economic partners are very positive with the government. They have been our pledges from a group of nations from particularly, from China. In other words, Kenya is not actually sort of isolated at all by partners. A lot of countries have actually recommitted and even at higher levels.

The private sector is quite possibly about was going. The markets are reacting very positively and there have been a lot of move now in terms of domestic and business. There is a really a positive feeling in terms of what could happen. So, we see this very positively.

Multilateral organizations, the World Bank, the IMF were among the first institutions to congratulate the new leadership. The World Bank, for example, is actually I know discussing increasing commitments and engagement in areas of health and education. So, as so far as we can see the relationship between Kenya and other organizations and other international community is actually moving and



moving very well.

In this sense, we need to take the point that one past, one country or one organization distancing itself from Kenya is going to be ... to have an impact but I don't think it's something that's keeping Kenyans awake. I think it's important but I think it is trying to review and broaden the partnerships. So, it's important to think about the prospects for Kenyan macroeconomic growth is very good. The prospects in terms of the community is very good.

So, what are the options? Given that context what are the options for the US government and what do they need from my point of view. And of course I don't speak for the Kenyan government. I could say the Kenyan government more often than I support it or regimes. One, let's say that we keep things as usual. This would mean continued cooperation particularly in the areas of the development and also particular the areas of security.

If you look at the security aspect, my view

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is that doing without Kenya is more costly to the United States. In fact, if US tries to disengage in the area of security it will be more costly to the United States. Now, the question is can the US disengage the development cooperation and say let's deal with you only with security issues. I think it will not be a good way forward.

Two, there is something that has come to be a new language called "essential contacts." For example, UN used to say that it would engage with countries where you have this (this type of (inaudible) only with this issue. But then they changed. Just after (inaudible) we should engage with Kenya, throughout, there are no limitations and that's very important. UN realized the position of the Kenya Courts and that is what I think that's changed.

But to US stays essential contact only when its interests are paramount but I think that would be a problem. If this happens it's likely to be considered an insult to the people of Kenya that you want just to engage where US benefits. And countries

that take this position would be seen as relevant and Kenyans have this, Kenyans actually Kenyans are good people but the moment they feel that someone is imposing things on them. They are actually pretty bad. And I think in this case it can be half of the US position.

The final possibility is total isolation, sanctions just to get the country. This would be the worst stance and it would have implications beyond Kenya and I believe that would be more harmful to the region than to Kenya. It is very difficult actually to punish Kenya without punishing everybody in the region. And I think we need to realize this. And Kenya is not only the country that needs a lot of this support most but it also helps a lot of the other countries.

So, how is the government trying -- what I have like two minutes?

MS. SULLIVAN: Go on, please.

PROFESSOR KIMENYI: How is the Kenya government directed to this point from any of these

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actions? I'm pretty certain of some of this. Supposing the US took the harshest position and again this is Kenya. The likely position of the Kenyatta government is to ignore the United States and seek to strengthen other ties. It's likely to take a position that is even worse.

So, we are trying to -- you have a friend here and then you want to isolate this country, you lose the best friend that you have in the country. So, it would be as I mentioned before another policy mistake.

There is another problem that the US faces in Kenya and it's important that whatever US best should be taken into account. There is a very broad perception in Kenya that the US and the Cabinet and that is the worst thing that the US could have. Now, you can look and say no we didn't have a candidate, we didn't support someone. Perceptions matter. There is a broad perception that the US and the Cabinet and in the actions banishing Kenya is try to solidify that position. And that, to me, is a big problem.

So finally, I would say that the best we would be in Kenya is to continue the way we are. The President will be cooperating and I think we are going to get very positive results with Kenya. Thank you.

MS. SULLIVAN: Well, thank you, gentlemen. That was an interesting discussion because I'm not sure that I've heard, did you hear or did anyone hear a major difference? Both of you are essentially saying that you should be, that the US should be supporting Kenya at this point in time as opposed to isolating Kenya.

MR. SIMPKINS: I was leading a delegation of staffers to Kenya before the election, about 10 days before the election and in talking with our embassy and in talking with State Fund people here I think that first option is what we're looking at. The question wasn't whether we wanted to disengage from Kenya, it was whether the laws that we have would restrict us in what we could do? And I think what we've seen is thus far that's not the case. The President and the Deputy President are cooperating

unlike Mr. Bashir. So, there's a difference there but it's a long dragged out process. And that's the problem.

But actually I think this will work itself out in some ways. It's very serious but I think it will work itself out. The real questions I have about moving forward are two. One is you have a lot of young people in Kenya and they were very engaged in this election. And they're looking to be a part of government in some way, at least have their voice heard. How that's going to play out is going to be very important.

The second thing is Joel mentioned devolution and as you said this is a longstanding issue in Kenya. Federalism has been an argument since independence. But when Kenyans have said, talked about Federalism, a lot of them they made this is my area, you go somewhere else. And so, if that happens in 47 counties, if they become ethnic counties, if now we need affirmative action in the counties that could be a problem. And I don't know, I know there was a

lot of voter education before the elections. I'm not sure that people actually understand how this is supposed to -- how government works at the county level.

So, those two issues I think are ones that the Kenyan government has to be more concerned with than the ICC which in any event is a long dragged out process and so, I don't think there's an immediate threat of a change in our relationship.

MS. SULLIVAN: If I could just add to that I would ask our two panelists to also address what Greg said and also what I would like to say on this very quickly. I think given the outcome of the election, okay, the election was peaceful and that was a key issue. It was peaceful. We're not going to go after the transparency, the free and fair and all that. It was peaceful and I think that was very important given the importance of Kenya and the bar that it had to reach and surpass.

But the issue is what is the reaction on the ground of ethnic groups who are not of the two major

ethnic groups who won? Are they going to participate in devolution in a particular order? Are they going to use the optic of the election to undermine what the Constitution had laid out?

PROFESSOR BARKAN: Well, thank you. You put your finger on exactly the problem and also Greg in his comment that devolution and how it's perceived. And the point that I wanted to make and going into a little bit detail of and ran out of time is that regardless of how you do the outcome of the election it was a decisive victory for Uhuru Kenyatta but it left a divided society. And yes, there was peace because of the efforts by Kenyans, the international community, all that was good.

But the question is in many Kenyan's minds, particularly those that of the regional tribe, at what price was their peace and one shouldn't replay the election ad nauseam. You've to move forward and yet the fact of the matter is that the election was not perceived as legitimate by a large segment of the population. Now, therein lies the opportunity for



devolution particularly for the opposition including the Governor of Nairobi who is a member of the opposition.

So, there's a lot of spinoff from the election that we can go into in however much detail as you want in terms of the politics. But I think a big challenge to both the governors who were trying to implement at the local level and the central administration, the Kenyatta Administration, but first of all are they going to let it go forward and facilitate it? Because if they don't, there will be a pushback and not only from the opposition, from Governors in Central Province and in the former Rift Valley Province and this is a political dilemma for both Ruto and Kenyatta. If they try to over-control the people of their own party there is going to be some very interesting dynamics.

But the immediate challenge to devolution in addition to the one that Greg mentioned, and there has been violence, most of it was violence that did occur in this election was at the county level but the media

-- proper challenge is public expenditure and financial management. And this is where the whole devolution thing can come apart. Devolution of corruption, et cetera, it's also an opportunity for the international community to assist.

MS. SULLIVAN: Thank you.

PROFESSOR KIMENYI: I agree. I think devolution -- but in terms of devolution I don't think anyone is going now to stop it. This is moving forward and the President has no interest or the Deputy I don't think they would stop this. So, I assume this is moving.

Now, the bigger relationship between the county governments and the central government is actually resources and the solidity of constitutional provision of how much they get of resources. So, that's going to happen. In fact, one of the projects we have at Brookings right now is on a way to count resources issue, county and central government. So, devolution I think will continue.

Whether it will really bring moderations in

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the country, that is something that we need to see but again, most counties are fairly homogenous so except a few. There are several counties where you could get a problem but in most cases it's not true. But is the new government inclusive? Well, think about the new Cabinet for example. If you look at the Cabinet, it's fairly to me fairly inclusive. And it's got people from all over. We will wait to see now the principle secretaries and the ambassadors. So, I think that they will be good.

But when it comes to survival of this government it's a question of economic growth. If the economy does not perform no matter how we will to try for devolution, no matter how you try to include our own people, it's going to be useless. It's not going to work. The issue is for the government to institute the policies that are producing economic growth and that will be it. That's it.

MS. SULLIVAN: I want to add to devolution but please.

PROFESSOR BARKAN: Yeah, I want to pick up  
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on Mwangi's point. And here you'll see the different prospectors of the economists versus the political scientists. He's absolutely right. The future of this government and particularly it's reelection in five years stands on Kenya moving forward economically. And the success has been amazing but it's very important to remember that in addition to what I said about the elections there are deep-seated grievances of other issues particularly land which threatens this coalition; that is to say a coalition between Kalenjins and Kikuyus and the persistent issue of land in the Rift Valley, the IDPs.

The Truth and Justice Commission just released its report yesterday. Indicted just about everybody who was in the Who's Who of Kenya, so there is a dissatisfaction in the society and economic growth alone as Mwai Kibaki learned in the 1970s and 2007 election, he should have won that election going away two to one. Instead, of course, it was -- he did win but leaving that point aside, it was a dead heat.

So, economic growth plus the implementation

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of the Constitution and dealing with some of these grievances and if President Kenyatta simply accepts the truth, the report of the Truth and Justice Committee as he did yesterday, announced the last we ever see of it which has been true of every other condition over the last 30 years, then the list will begin to fray.

MS. SULLIVAN: I did want to mention something about devolution. You had mentioned, Professor Barkan, that you thought that this was a role that the international community could play. I didn't quite understand what you were saying.

PROFESSOR BARKAN: Okay, what I meant was this. First of all, it's very hard to set up governments from scratch, particularly completely new structures. There is some mellowing with the old structures but there are basic issues of budgeting, of financial management, under the Constitution 15 percent of revenue automatically go to the counties. In addition there is some devolved funds like a constituency development fund and there are issues

here on how they are going to be transferred and when and how much.

But once the funds are there, this history has been in an earlier attempt in Kenya and in other countries like Uganda, corruption, mismanagement and then dissatisfaction at the subnational level. Well, the donors like the World Bank had spent a lot of time on the public sector financial management. It was a real role to play there. And then on the demand side of politics, USAID and its parliamentary strengthening program and we have all these new county assemblies. And perhaps we could do something useful there.

USAID is planning a devolution problem --

MS. SULLIVAN: Well, the reason I'm raising it, not to cut you off --

PROFESSOR BARKAN: That's fine.

MS. SULLIVAN: -- was because of the situation on the coast, okay, which is a prime example of problems devolution proposed. Because everybody feels on the coast, everybody has a grievance, a historical grievance that goes way back. And one of

the issues at one point was well who was going to own the port, et cetera, et cetera. Now, we know that those large installations are owned by the Government of Kenya but it's not clear that devolution in places like the coast will work given the makeup of the community, what happens with some of the marginalized groups?

And I'm going to open this to -- leave that question standing. I'm going to open it now to the audience for you to ask some questions to our two panelists. Just raise your hand, please. Speak loudly. Yes, sir.

MR. HARBISON: John Harbison, I have an affiliation with --

MS. SULLIVAN: Could you stand up?

MR. HARBISON: I'm John Harbison. I have an affiliation with SEIS and I've worked on Kenya pretty much my entire career. I think in addition -- I'm glad Joel mentioned the land issue and I'm glad he mentioned the DGRC but I think the larger question is whether Kenya's political process is in position to

move ahead on some of these issues. There's a report from Africog that is devastating about the quality of that election. And I would think -- I'm not the pro on these things but I think it could take five years to get that in order for the next election in 2018.

The second thing is that Uhuru to me was kind of full speed ahead with not backward looking into the inherited issues that Joel referred to. And specifically in there, there is some language about civil society which suggests that they've taken a page from the Ethiopians and that civil society is in administration sights in not a good way. I think we all know that civil society has been the engine of change in Kenya. So --

MS. SULLIVAN: Did everybody understand that? Do we need to repeat anything? Professor Mwangi, could you address that and Professor Barkan after you.

PROFESSOR KIMENYI: I think it's good to accept that this country has many challenges in the implementing the Constitution and all these issues



that have come at this point from all these historical issues. They are there. Land issue is a very important aspect of the Kenyan politics and I do not also see an argument here that if we don't solve this issue in some way, I don't see that it's possible to move ahead.

And for one, the coalition between Uhuru and Ruto it can be very fragile, can be very fragile if those issues are not handled properly. So, it is in their best interests to actually tackle these longstanding issues. So, to me, strategically I see that this would be prioritized and I think it's also important for economic growth. I think they will prioritize this.

I don't have a lot of new evidence that there will be any reactions or any -- many different approach in civil society for example, I don't see that happening because again where Kenya is in terms of civil society, movement, we have seen a lot of things changing because the civil society just is there. I mean, this issue of salary increase for

example, the main reason way increase are even not -- introduce it is because of the pressure from the civil society. And you can't stop the civil society. Again, so I think the country -- I don't the President's -- the new government has much in terms of control.

PROFESSOR BARKAN: Well, there is a new civil society law but no one's really moved ahead with implementing it yet and I will tell you straight away I haven't read it. So, I can't tell you the issues and interpretation. The big fear here is in response to John Harbison's comment is that a limit will be placed on the extend of foreign funding of civil society which certainly through the '90s was arguably one of USAID's great success stories because we came in behind what was a Kenyan initiative.

But one must also I think acknowledge that civil society is very much a Nairobi-based group of professionals and any trip to Nairobi, I mean there are 10 seminars in any hotel at any day, everybody having lunch off the donors. Fortunately, there is

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some different programs going on including OTI where civil society is being built in the rural areas which is really the critical need.

So, civil society has been a leader. We certainly will need to speak out no matter how it affects the relationship if there's any hint of going down the Ethiopian route. Probably best to have a little quiet diplomacy beforehand on this so it doesn't come out that way. But yes, it's a potential issue.

MS. SULLIVAN: Did you want to answer again?

PROFESSOR KIMENYI: I just wanted to note that the Kenyan media is so competitive and so free that we have one of the agents that safeguards civil liberties there and it's very strong. And I don't think whatever else might be happening, you know, it's going to mess around with the media.

MS. SULLIVAN: Could you stand up please?

MS. BLANCHARD: Sure. Lauren Ploch  
Blanchard with the Congressional Research Service. I  
want to go back to Assistant Secretary Carson's

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comments right before the elections. Actions have consequences. And obviously the Kenyan people have elected President Kenyatta but we have a new report this week, the Truth and the Justice and Reconciliation Commission Report that again implicates Kenyatta and Ruto. You know, setting aside the ICC issue we have now two Kenyan government initiated reports that implicate these two individuals with evidence. And I'm curious going forward what your thoughts are on how the US government should engage.

You have a number of staffers, some of whom their members may travel to the country and engage with the Presidency. And how do we engage in a way that we, the US government, indicate that actions do have consequences and this sort of political violence if they were involved in it or otherwise, you know, we don't have a history of convictions for political violence and human rights abuses in Kenya. And so, how do we work with this government on that?

MS. SULLIVAN: Thank you. Who would like to tackle that for us? Joel.

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PROFESSOR BARKAN: Yeah, well, Johnnie Carson's comment sparked a lot of controversy in Kenya and unfortunately became grist for the Jubilee Campaign. But some of President Obama's rather anodyne comment before that because Carson was clarifying it, look my response would be in a way what you just said. And welcome back, by the way. And that is we embrace the Truth Commissioner's Report. What I'm suggesting here and when I was commenting about the inaugural speech is we have to get away from this narrative that the West is imposing bad things on Kenya including the ICC and flipping around and saying, no we are embracing your institutions and your own policymaking process as we have in the past to support democratization. And hence the implementation of the Constitution including we'd like to see some prosecutions, not only of what's in that report but in everything else that's come out over the years.

And we'd also like to see less of what happened and why we had the ICC case in the first place. Let's be very clear about it. The whole thing

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went to the ICC because Parliament explicitly dodged the issue of setting up local tribunals which if they would have been set up and acquitted these guys the US would have basically had to say, okay Kenya has a democratic process.

One final point, we face a sticky wicket here aside from the specifics of the ICC in that there is a classic shall we say not so much a divide but a tension between human rights injustice on the one hand and the majority rule and the people speak on the other. We want both the majority rule, minority rights. That's the essence of democracy but they don't always come in tandem. And that is really the tension here.

So, when people say in Kenya the people have spoken, yes, but there's the other side.

PROFESSOR KIMENYI: Okay, let me make a brief comment cause I think this is important. I think the Secretary Carson's statement was unfortunate and actually it had consequences that people in Kenya. And it's also been the election of Uhuru and Ruto,

that's what they say.

Now, I think in terms of the reports that have come, the Truth and Reconciliation Report, this is exactly the South African model. Now, South Africa went this route. They decided that we want to bring the truth out. Let us reconcile. What Kenya does not want is for us to be told now that you have to jail these people now so that we'll see that you made an action. They didn't do that in South Africa. What you need to do is solve it in your own the way.

If we do that way, if nobody goes to jail. We decide some man has to be distributed some that have been -- we don't have to go through that way of penalizing people for crimes that happened 60 years ago because we didn't do it even in South Africa. So, why don't you let us do this thing our way and so, but don't shelve the report. That's the most important.

MS. BLANCHARD: But do you think that Kenyans don't want people to go to jail for things that happened not 60 years but four years ago?

PROFESSOR KIMENYI: Yeah, they can use the  
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process. Also, other things the process, use the judicial process, those people if they are criminals, I mean people who committed murders and all that, let them be prosecuted for that. But I don't think it's good for us to say that this is another thing that's gone on. Yes, it has gone on. The only thing is let them deal with it. If they shelve it, that would be a problem.

MS. SULLIVAN: Just one second. I have a request from Ambassador Jean Kamau. Would you like to just explain your response?

AMBASSADOR KAMAU: Thank you, Madam Moderator. My name is Jean Kamau. I wanted to comment about the Public Benefits Act which you mentioned and just to set the record straight. The Public Benefits Act was a negotiated piece of legislation that was actually brought to the front by civil society as a result of the kind of challenges that were facing the sector from between 1992 and 2008. And it came to Parliament through a private member motion through honorable Sophia aid and who was



a member of civil society.

So, a lot of the content in that Bill came from civil society. Is there a danger that we could go the Ethiopian way? I don't think so. If you look at the body of the Act, if you look at the history of how that act was negotiated, discussed, deliberated within the sector itself and how we manage to bring the NGO registration Board which is the government sanctioned act before, is very much a way of bringing better accountability to civil society. And hence the name the Public Benefit was if you are in the business of public benefit using public funds, using donor funds, there's a level of accountability that had to be ensured. And the structure of the bill came from civil society.

So, it's important that we don't see it as a government driven initiative although towards the end the government took over so that it could go through Parliament. Otherwise, it would have had the risk of a new Parliament and then going back. So, that's just something I wanted to clarify.

MS. SULLIVAN: Which also actually raises the question there are a number of commissions like CIC, a Commission for the Implementation of the Constitution who have done some stellar work. And the question is they will continue to do that work in the implementation of the constitution. And so, they will also be, presumably they will be talking with civil society and other stakeholders to move that process forward.

PROFESSOR BARKAN: There is clear language in that Bill that coopts civil society. There are goodies in there, you're right about that but there's also edits in there that coopt civil society. I'll be happy to anybody who wants to and I'll add that I sent the nation based on having read that report. So, it's not -- it's more subtle than the Ethiopians but there's bad stuff in there.

MS. SULLIVAN: Perhaps we should have a debate.

PROFESSOR BARKAN: Any time.

MR. CASHIN: Hi, Oliver Cashin ExxonMobil

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and I'm also born in Kenya as well so it's wonderful to hear your comments on this. It's a topic that's close to my heart. I wanted to ask a question more on commercial ties and the implications of this election for the commercial ties between not just the United States government in Kenya but also US companies in Kenya where there's been mass influx of investments over the past five, 10 years. And where with the new oil and gas regional boom whether or not Kenya sees as many as it's other partners, there are many new American companies interested in coming in and what you see is the implication of this election for those. And actually, Ms. Sullivan, I'd be interested to hear your thoughts as well.

MS. SULLIVAN: Well, I am playing Moderator today so. But thank you very much. Did everybody understand that question? Does it have to be repeated? Okay, would you like to start.

PROFESSOR BARKAN: Well, you know, again, if some of the issues of the past can be dealt with so the stability of the country continues I have no doubt

about the macroeconomic policy continuing. Either one of these had they been elected would not have changed that. So, the conditions for growth are pretty good. A couple of points to point out here, rule of law very important for foreign direct investment, there's a real opportunity for the transformation reports under the Chief Justice.

But I think it's, to me, let's be honest, the Court didn't do itself a great favor in its decision. It either should have had a more detailed explanation of why it ruled or called for an often which the results would have been the same, by the way. Let me be clear about that what I said about the outcome. I was only talking about the 50 plus one percent. But the rule of law needs to be strengthened. If that can be done in conjunction with the incredible Internet and IT penetration, Kenya's a takeoff state. It's probably already taken off.

Fengler, who's the Economist for the World Bank has suggested that Kenya could perhaps become a middle income country by 2018 if the stars align. So,

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it's this combination of governance and what is already there and you mentioned the investments. You know who's come in, Proctor & Gamble and Google and everybody else. American has finally discovered Kenya, American business.

PROFESSOR KIMENYI: Yeah, I think that Nairobi is really the headquarters of a lot of now American companies. I just came from the World Economic Forum in South Africa and Kenya, the Kenya President was the most sought after person by the private sector. All forums, you are looking for him, you are trying to book appointments. So, the way I see it and he understands the pressure. So, I think what I see in Kenya is a real improvement and in terms of possibly having to improve a lot of things, infrastructure, and so on. But I think it will be a very good place for growing business.

MR. CASHIN: I guess just more to clarify a possible Kenyan reaction to a US stance against American business?

PROFESSOR KIMENYI: To businesses? No, no,  
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no. I think that Kenya needs the American business and the American business needs Kenya in terms of -- I mean GE is very at Kenya, in Kenya, yes.

PROFESSOR BARKAN: You mentioned oil and gas by the way. Kenya has an advantage here if there is, in fact, commercial reserves up in Turkana because as you probably know oil has also been discovered in large quantities in Uganda and then there's Southern Sudan. But the Kenya crude, at least what's been discovered so far is much sweeter. So, it's some of the issues of heated pipelines that make the Uganda thing very problematic, don't arise in Kenya.

On the other hand, again, how is Kenya going to deal with the governance of this extracted industry? Something that some Kenyans will tell you fortunately they never had to deal with it in the past.

MS. SULLIVAN: I think the devolution aspects in Turkana count.

PROFESSOR BARKAN: Absolutely, yes.

MS. SULLIVAN: That's going to be an issue,

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I think so. My private thought on that. Any other questions? I think one question which I think a lot of people may be wondering is both the President, President Kenyatta and his Deputy have committed to going to The Hague. Is there any thought of what may happen if The Hague makes decisions against them?

PROFESSOR KIMENYI: Anyway, I think as you know, from my point of view, that in this case is a natural death, I mean, is a question of time. It's just dragging us. It's going to die a natural death. So, there is no case actually. So, that's my view. I think maybe as a final comment I think those of you close to our very good President Obama, I think it's good if you ask him not to bypass Kenya on his trip. I think it's very important that he goes there to show courage and support for democracy.

MS. SULLIVAN: Thank you.

PROFESSOR BARKAN: It's the last comment I'm not sure I want to get into. I think somebody particularly in the ICC case is going to die not a natural death, a sort of writhing death that

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unfortunately hurts the future report. I would use the case has been bungled from day one. The trial should have occurred well before the Presidential campaign. This would have been out of the way.

So, far the Kenyan government has cooperated at one level but perhaps not at all levels. William Ruto was in The Hague last week but his trial has been put off. The Prosecutor is quite clear about what she believes is not full cooperation on the part of the government and certainly the government has mounted a campaign to try to bring the cases back to Kenya. Most recently a letter to the Security Council on May 3rd, so this is a fuzzy area here and as far as Obama going, I think until this thing is resolved it's going to be very difficult.

Maybe the thing to do is to cut off the trip so that will raise the prospect of his going whether it dies a natural or an unnatural death.

MS. SULLIVAN: Thank you both for a very interesting dialogue.



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