

Reluctant Partners: Fighting Terrorism and Promoting Democracy in Kenya

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Do fighting terrorism and promoting democracy go together, as policy makers suggest, or do they conflict in practice? This paper explores these dynamics in the case of Kenya, a transitional democracy that has been the victim of several terrorist attacks. Based on an examination of recent areas of cooperation and contention between the United States and Kenya, the paper argues that democratic pressures can make it difficult for newly elected governments to cooperate publicly in the “war on terror,” though private cooperation often continues behind the scenes. This suggests the need for an approach among American policy makers that recognizes the domestic political constraints faced by foreign partners and seeks common ground between internal and external priorities. While the goals of promoting democracy and fighting terrorism may conflict in the short term, the development of shared democratic values could pave the way for closer partnerships in the future.

Keywords: counterterrorism, democracy promotion, U.S. foreign policy, Africa

As the Bush administration pursues twin foreign policy goals of fighting terrorism and promoting democracy, there are important questions about the relationship between these priorities.¹ U.S. policy makers argue that they are two sides of the same coin; there is no inconsistency in pursuing them simultaneously. Cooperation on security issues creates the necessary setting for democracy, and participatory institutions provide an outlet to counter emerging threats. Indeed, the prevailing view among many commentators is that the democratic deficit in the Middle East has contributed to the rise of international terrorism, as frustrated populations resort to violence to express their grievances. According to this logic, “democracy promotion is the best antidote to terrorism” (Dobriansky 2003).

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¹For centuries, people have debated the tension between liberty and security. In many ways, it is a false choice; as Theodore Roosevelt said, “order without liberty and liberty without order are equally destructive.”

A growing body of literature, however, suggests a more contradictory relationship. From one side, it is not clear that the spread of democracy will reduce the threat of terrorism (Carothers 2003a; Gause 2005). The presumed link between a lack of democracy and terrorism is inconclusive and insufficient at best (Delacoura, 2006). In some countries, democratization would empower extremist groups instead of reducing their appeal. Moreover, several empirical studies find that democracies are *more* prone to terrorism than authoritarian regimes (Eubank and Weinberg 1994, 1998, 2001; Pape 2003; Piazza 2007), in part because of constraints on counterterrorism measures, though others raise questions about these findings (Abrahms 2007; Drakos and Gofas 2006; Li 2005; Wade and Reiter 2007). In the fight against terrorism, it seems, democracy is hardly a magic bullet.

From the other side, it is equally unclear that fighting terrorism will create conducive settings for democracy. To the contrary, critics argue that the Bush administration's "war on terror" represents a setback for democracy by prioritizing security over basic freedoms.² U.S. cooperation with authoritarian regimes in Pakistan, Egypt, and Malaysia, among others, shows that democracy promotion tends to take a back seat to counterterrorism (Carothers 2003b). In Southeast Asia, the Middle East, and North Africa, the "war on terror" has strengthened authoritarian leaders, in part by giving them tools and justifications to resist democratic pressures (Cotton 2003; Delacoura 2005; Jourde 2007; Keenan 2007; Thompson 2004; Volpi 2006). Anti-terrorism measures also have eroded civil liberties in the United States and Europe (Haubrich 2003), though few question the long-term viability of democracy in these countries.

Somewhere between authoritarian regimes and mature democracies, "new democracies" are especially interesting because the outcome of the tension between democracy and fighting terrorism is less predictable. They also may be more vulnerable to terrorist attacks (Eyerman 1998). For now, the focus on terrorism seems to have hindered democratic consolidation in many of these countries. Increased U.S. military attention has undermined efforts to democratize civil-military institutions in Latin America (Weeks 2006). Cooperation with the U.S. "war on terror" has fueled anti-government violence in Thailand, Indonesia, and Mali (Croissant 2007; Gutelius 2007; Thompson 2004). Controversial anti-terrorism bills have galvanized opposition in South Africa and the Philippines (Whitaker 2007). The ways in which such transitional democracies resolve the tension between freedom and security over the long term will have implications for the spread of democracy and the fight against terrorism around the world.

As a victim of international terrorism and as a transitional democracy, Kenya provides a useful opportunity to examine the interplay between these two goals. Long a U.S. ally, Kenya has experienced three terrorist attacks on Western targets since independence. In 1980, an Israeli-owned hotel in Nairobi was bombed, killing 15 people and wounding 80.³ In 1998, a car bomb destroyed the United States Embassy, killing 200+ Kenyans and 12 Americans and injuring thousands. In 2002, suicide bombers hit an Israeli-owned hotel in Kikambala near Mombasa; 12 Kenyans and three Israelis died. At almost the same moment, a missile fired from near the local airport narrowly missed an Israeli airliner carrying 200 passengers. Kenya had become a preferred terrorist target.⁴

²They quote Benjamin Franklin: "Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety."

³The attack was seen as a response to Kenyan cooperation in the 1976 Israeli raid on Entebbe Airport in Uganda, where pro-Palestinian hijackers held more than 100 hostages.

⁴A suicide bombing in Nairobi in June 2007 was still under investigation at the time of writing.

Given these experiences and its strategic location, Kenya is arguably the United States' most important African partner in the "war on terror." Kenyan authorities have cooperated in many ways, especially on security operations and intelligence sharing, but "the willingness of Kenyans to assist the United States ... is by no means assured" (Barkan 2004:87). Kenya's reluctance to cooperate fully in the "war on terror" stems mainly from its recent transition to democracy. In 2002, after years of pressure for reform, President Daniel arap Moi allowed elections that brought to power a coalition government under President Mwai Kibaki. Although Kibaki's government has failed to live up to many people's expectations, as became clear during the controversial 2007 elections,⁵ the political climate is certainly more open than it was in the past. After suffering through decades of authoritarian rule, Kenyans are cautious about adopting policies that threaten their hard-won freedoms. Many criticize the American approach to international relations and want Kenya to promote its own interests. In this context, politicians have sought to distance themselves from the United States on key issues. Thus, Kenya's willingness to cooperate with the United States is the outcome of a two-level game involving both domestic politics and international influences.

This paper examines the interplay between counterterrorism and democracy promotion by exploring recent relations between the United States and Kenya. It posits that democracy can make it difficult for governments to cooperate *publicly* with the United States in the "war on terror," though *private* cooperation often continues behind the scenes. A detailed analysis of several recent issues demonstrates a pattern of private cooperation and public contention. This suggests the need for an approach among American policy makers that recognizes the domestic political constraints faced by foreign partners and seeks common ground between internal and external priorities. The goals of promoting democracy and fighting terrorism may conflict with one another in the short term, but the development of shared interests could pave the way for a closer partnership in the future.

While Kenya is just one partner in the "war on terror," its relationship with the United States has broader implications. If the United States is able to secure strong Kenyan cooperation, it will strengthen a foothold in a turbulent region where Al-Qaeda cells operate. If the United States cannot win support in a country that has been a victim of terrorism, the chances of finding steadfast allies elsewhere seem slim. And if the U.S. approach actually generates hostility among erstwhile friends, the "war on terror" runs the risk of making the country less secure in the long run rather than more so.

U.S.-Kenyan Relations

Kenya has long been an ally of the United States. Even before the country's independence from Britain in 1963, the Kennedy airlift brought thousands of Kenyan students (including Barack Obama's father) to American universities. After independence, President Jomo Kenyatta aligned his country with Western powers in the Cold War and was rewarded with military and economic assistance. Following Kenyatta's death in 1978, Moi continued to side with the West, shifting focus from Britain to the United States. Agreements were

⁵The officially announced results of the December 2007 elections in Kenya showed Kibaki narrowly winning reelection, while many ministers and members of parliament from his party were defeated. Significant irregularities in the vote-counting process led to charges of rigging and widespread violence during which more than 1,000 Kenyans were killed and nearly 500,000 displaced. At the end of February 2008, through the mediation efforts of former UN Secretary General Kofi Annan, Kibaki and the main opposition candidate, Raila Odinga, reached a power-sharing agreement that was in the process of being implemented as this paper went to press.

concluded that gave the United States military access to Kenyan ports and provided equipment and training to Kenyan troops. After a coup attempt in 1982, Moi used increasingly authoritarian tactics to secure his hold on power. As courageous Kenyans agitated for political reform, U.S. aid flowed freely to this trusted anti-communist ally.

The end of the Cold War significantly altered relations between the United States and Kenya. American diplomats, notably Ambassador Smith Hempstone, shifted attention to the lack of political liberalization in the country. In 1991, when the United States and other donors suspended \$250 million of aid, Moi quickly legalized opposition parties (Barkan 2004). He kept his hold on power in the 1992 and 1997 elections, which were marred by politically engineered violence and contested by multiple candidates splitting the opposition vote. Throughout the decade, Moi reluctantly made minor reforms and then undermined them. This was possible in part because of the inconsistency of American pressure. Strong pro-democracy rhetoric eased at times when the United States needed Kenyan cooperation to support humanitarian and military operations in Somalia, Sudan, the Persian Gulf, and Rwanda, and following the 1998 bombing of the U.S. Embassy in Nairobi. Although relations between the two governments had clearly soured, many Kenyans viewed the United States as an important if unreliable ally in the struggle for democracy.

In 2002, to the surprise of many, Moi agreed to step down at the end of his term. His attempt to hand-pick a successor angered many presidential hopefuls and generated a realignment of personalities that led to the formation of the National Rainbow Coalition (NARC). With the opposition finally united behind a single candidate and Kenyans anxious for change, the elections produced a decisive NARC victory and Kibaki was sworn in as president. Many politicians who had worked hand-in-hand with U.S. diplomats to pressure Moi were now in leadership positions, and officials on both sides hoped for better relations. In the context of the “war on terror” and a renewed sense of Kenyan national pride, though, this vision would face challenges. In 2003, fearing a missile attack on Air Force One (Carson 2005), the White House cancelled a planned visit by President Bush to recognize Kenya’s historic elections. Kenyans were angered by the snub and offended by the U.S. expectation that Kibaki would go meet Bush in Uganda (Munene 2005). Kibaki instead went to a meeting in Mozambique, earning him praise among Kenyans that would set the tone for subsequent relations with the United States.

Private Cooperation and Public Contention

Since 1998, Kenyan authorities have worked closely with American officials on counterterrorism efforts. Soon after the U.S. Embassy bombing, Kenya established the National Security Intelligence Service and was added to the U.S. Anti-Terrorism Assistance Program, which trained more than 500 Kenyan police. With U.S. training and financial assistance, primarily through the \$100 million East African Counterterrorism Initiative (EACTI) launched in 2003, the Kenyan government established the Anti Terrorism Police Unit (2003), the Joint Terrorism Task Force (2004),⁶ the National Counter-Terrorism Center (2004), and the National Security Advisory Committee (2004). These initiatives were intended to improve Kenya’s capacity to investigate terrorist incidents, identify cells, coordinate law enforcement, and prevent future attacks.

⁶In 2005, to the dismay of U.S. policy makers, the Kenyan government disbanded the JTTF (U.S. Department of State, 2006). Police officials reportedly did not want to give up control over the Anti-Terrorism Police Unit to the JTTF.

Kenya also participates actively in the Terrorist Interdiction Program (TIP),⁷ which provides technology to screen travelers arriving at airports and borders. With support from the Federal Aviation Administration, Kenya has improved airport security and worked with Uganda and Tanzania to harmonize regional aviation security regulations. The U.S. and Kenyan militaries continue to conduct periodic joint training exercises. On a multilateral level, Kenya has ratified or acceded to 12 United Nations conventions on terrorism⁸ and has submitted regular reports to the United Nations Counter-Terrorism Committee (CTC).⁹

These initiatives have resulted in some apparent successes. Kenyan and American officials have shared information about local Al-Qaeda cells and reportedly disrupted some operations, including a planned attack on the new U.S. Embassy in Nairobi (*Agence France Press* 2003). Kenyan authorities have arrested hundreds of terrorist suspects and seized weapons that might have been used in future attacks. A Kenyan policeman died in 2003 when the suspect he was escorting exploded a grenade (the suspect also died but his partner escaped). There have been several high-profile drug busts, and the United States helped Kenyan police destroy a huge quantity of seized cocaine. In 2006, after a wave of piracy incidents off the coast of Somalia, the U.S. Navy detained 10 suspects and turned them over to Kenyan authorities; the men were subsequently convicted by a Kenyan court and sentenced to prison. More recently, Kenya handed over a suspect in the 2002 bombing near Mombasa to U.S. officials who transferred him to Guantanamo Bay (Roberts 2007).

Recent counterterrorism cooperation between Kenya and the United States has not been without criticism, however. Human rights groups and Muslim leaders in particular have expressed concern—outrage at times—over the treatment of suspects and their families. The Anti Terrorism Police Unit (ATPU) is accused of targeting Muslims, especially ethnic Somalis, and using extreme tactics. Amnesty International (2005) describes a significant but unknown number of irregular arrests, searches without warrants, unlawful detentions, and instances of torture, some involving “foreigners.” Allegations of human rights violations by Kenyan and American investigators increased in 2007, when security forces intensified their activities in northeastern Kenya to capture suspected terrorists fleeing violence in Somalia. As anger grew over the government’s cooperation with the U.S. “war on terror,” opposition politicians highlighted the issue while campaigning in Muslim areas before the 2007 elections.

Much of the recent cooperation between Kenyan and U.S. authorities has taken place behind the scenes, coordinated primarily out of the president’s office. Intelligence sharing and terrorist investigations have involved police and security personnel from both countries, often without public knowledge. When operations have gained media attention and criticism, it generally has been after the fact and focused on a small number of cases. In contrast, several other issues have emerged as very public points of contention between the United States and Kenya, affecting relations and generating reluctance among Kenyans about their partnership in the “war on terror” more broadly. The following sections examine the debates surrounding these issues from both the Kenyan and American perspectives.

⁷The TIP program has been controversial in some countries because it involves sharing traveler information with American intelligence agencies.

⁸Kenya has signed but not yet ratified the latest Nuclear Terrorism Convention negotiated in 2005.

⁹The CTC was established in 2001 to monitor the implementation of Resolution 1373, which calls on member states to ratify all relevant international and regional conventions on terrorism and to enact the domestic legislation necessary for their enforcement.

Compensation for Victims

On August 7, 1998, a car bomb exploded outside the U.S. Embassy in downtown Nairobi, destroying several buildings and creating a massive pile of rubble from which many bodies would be pulled. Even as the rescue operation was getting started, questions emerged over the way in which American officials handled the emergency. Kenyans were especially upset about U.S. Marines who pointed guns at would-be rescuers rushing to the scene.¹⁰ Although this measure was meant to prevent looting and maintain crowd control, it created a sense of “us” versus “them” and left a bad taste in the mouths of many Kenyans.

Over the next five years, the U.S. government spent \$42 million on health care, counseling, and physical therapy for the Kenyan victims, as well as programs to reconstruct buildings, support business recovery, establish transfusion centers, and train emergency personnel. It also provided more than \$2 million for expenses of children whose parents were killed or seriously injured in the blast.¹¹ Kenyans initially expressed gratitude for such assistance, but as they saw discrepancies between American and Kenyan victims, and later the huge sums of money for families of 9/11 victims, there were growing demands for Kenyan victims of the embassy bombing to receive additional compensation.

An overwhelming majority of Kenyans believe that their country has become a terrorist target because of its close relationship with the United States, and to a lesser extent Israel.¹² For that reason, many argue, the United States has a responsibility to compensate the country for its losses. In 2002, a class action lawsuit was filed in a U.S. district court on behalf of 5,000 Kenyans seeking compensation. It alleged that the United States government had failed to protect the embassy from attack. In a decision that was later upheld by the Supreme Court, the suit was thrown out on the grounds that the claimants had not proved that the United States was responsible. Despite the ruling, Kenyan victims vowed to continue pushing for compensation; some staged a hunger strike at the bombing site (now a memorial park). Several Kenyan politicians have joined the effort and there are periodic calls for the United States to pay up, but American officials worry that doing so would imply responsibility and set a dangerous precedent in the case of future attacks.

Anti-Terrorism Legislation

In Kenya, recent terrorist attacks have fueled demands for anti-terrorism legislation. American diplomats have repeatedly called for such a measure, and the UN CTC has stepped up pressure by sending high-level delegations to the country. Many Kenyans acknowledge the need for stronger laws. Supporters of anti-terrorism legislation have been particularly disappointed by the inability of prosecutors to convict key suspects, often due to legal loopholes and competition between police and prosecutors. In 2005, seven men charged in connection with the Nairobi and Kikambala attacks were acquitted and released, despite several having confessed their involvement to police.¹³ One man was rearrested immediately on related weapons charges and in 2006 became the first person in Kenya convicted (even indirectly) in relation to the attacks.

¹⁰This was mentioned by several Kenyans and Americans in Nairobi, and later confirmed by a U.S. Marine Corps official.

¹¹“U.S. Embassy Remembers August 7th,” press release from the Public Affairs Section, U.S. Embassy, Nairobi, August 6, 2003.

¹²Although it is not the focus of the current analysis, Kenya has had very positive relations with Israel over the years (see Oded 2000).

¹³This evidence was inadmissible because of a provision in the law requiring confessions to be made before a magistrate.

In the face of calls for stronger legislation, the newly elected Kibaki government in 2003 introduced a controversial Suppression of Terrorism Bill. Opponents quickly seized on the perceived U.S. backing of the bill, drawing comparisons with the U.S.A. Patriot Act and describing it as a foreign imposition. In fact, the draft bill was a “poor copy” of an earlier British statute, not the American law.¹⁴ Although the United States was a strong proponent of anti-terrorism legislation in Kenya, embassy officials expressed concerns about details of this particular version.¹⁵ Human rights activists worried about the bill’s implications for civil liberties and blamed the Kenyan government for bowing to American pressure. Muslims felt especially targeted by the proposed legislation and blasted a provision that would allow the police to detain people who wore certain types of clothing. Widespread opposition forced the government to withdraw the measure for revision in late 2003.¹⁶

By late 2005, with assistance from the Law Society of Kenya, the government completed a new draft of the anti-terrorism bill. Lawyers and politicians agreed privately that the new bill was better and included civil liberties protections. Nevertheless, several members of parliament promised to block the revised bill simply because of its association with the United States. The chair of a key committee was especially adamant: “We will block it. The American government is not going to have its way.”¹⁷ When the revised bill was published in April 2006, the government organized a series of seminars and asked the U.S. ambassador to avoid public comment.¹⁸ In the wake of corruption scandals and constitutional debates, though, Kibaki did not have the political capital to get such a controversial measure passed. With elections approaching and a long list of challengers, it did not make sense to alienate sections of the electorate. The subsequent controversy surrounding the 2007 elections, and Kibaki’s loss of support in parliament, made passage of counter-terrorism legislation even less likely. For the time being, therefore, Kenya’s anti-terrorism bill is a victim of its democracy, a process that the United States itself has promoted for more than a decade.

Efforts to stop the funding of terrorist organizations have not received nearly as much attention. Kenya has anti-money laundering legislation on the books, though it is rarely enforced, and a bill on terrorist financing introduced in 2007 quickly got stuck in committee. Some experts believe Kenyan lawmakers are reluctant to enact stricter banking regulations that would affect their own involvement in questionable financial activities (Kegoro, 2003). Regardless, combating terrorist finance is not high on the list of American priorities in East Africa (Piombo 2007) and has not become a major issue in relations with Kenya.

¹⁴Interview with Ahmednasir Abdullahi, former chair of the Law Society of Kenya, Nairobi, October 24, 2005.

¹⁵In a press release on December 15, 2003, U.S. Counselor for Public Affairs Peter Claussen wrote, “Many people in Kenya think that parts of the draft could be rewritten to better protect individual human and constitutional rights. We frankly share these concerns, though it is not for the U.S. Embassy to tell Kenyans how to write their laws.”

¹⁶Unlike Indonesia, where anti-terrorism legislation passed quickly after terrorist attacks on Bali and Jakarta, the 2002 attacks in Kenya did not increase the urgency among lawmakers to enact such a law.

¹⁷Interview with Honorable Member of Parliament Paul Muite, chair of the Parliamentary Committee on Justice and Legal Affairs, Nairobi, November 9, 2005. Interestingly, the U.S. government has supported and provided training for the development of a committee system in the Kenyan parliament.

¹⁸This information was provided by a senior official in the Ministry of Foreign Affairs who asked to remain anonymous. In an interview on March 27, 2006, then U.S. Ambassador to Kenya William Bellamy confirmed that the United States had stepped back publicly on the issue but privately still reminded Kenyan leaders about the need for legislation.

Travel Warning

Another issue that angers many Kenyans is a series of travel warnings issued by the U.S. State Department since 2002. Many believe that the warnings tell Americans not to go to Kenya, but their wording actually has changed over time.¹⁹ The initial advisory was only for Americans in Kenya to be vigilant, but specific threats led to a stronger statement in 2003 discouraging nonessential travel to the country. Since 2004, when the tone softened once again, Americans in Kenya have been advised to “evaluate their personal security situations in light of continuing terrorist threats.”²⁰ U.S. officials argue that they are obligated to provide American citizens with information about any security threats; as long as there are such threats in Kenya, they will continue to warn Americans.

From the Kenyan perspective, the travel advisory wrongly punishes Kenya for past terrorist incidents, which were a direct result of its friendship with the United States. Tour operators been particularly outspoken and at one point estimated that the warning cost them \$2 million a week (Opiyo 2004). Kibaki flouted protocol and raised the issue in an after-dinner toast on his state visit to Washington in late 2003. According to Kenya Tourist Federation (KTF) data, the number of American tourists to Kenya dropped by 28% from 2002 to 2003. The travel advisory was not the only reason for this decline; the Iraq war, the 2002 bombing, and other factors also played a role. Regardless, tourism officials say that the drop in U.S. visitors had a disproportionate impact on revenue; Americans are more likely to do expensive safaris, while Europeans take cheaper vacations on the coast.²¹

Since 2003, tourism in Kenya has rebounded dramatically, despite the U.S. travel advisory. As months passed without another attack, tourism was bound to increase. The change of wording in the advisory in 2004 perhaps also made a difference.²² In 2006, the number of American tourists to Kenya reached a new high, second only to those from Britain, and tourism became the country’s top foreign exchange earner. Tour operators argue that these numbers would be even higher if the State Department advisory were lifted. Recent insecurity in Nairobi, particularly the murders of two Americans in a carjacking incident in early 2007 and widespread violence after the controversial 2007 elections, are likely to affect tourism in the near future.

Many Kenyans believe that there is an explicit relationship between the travel warning and the anti-terrorism bill: if Kenya passes the legislation, the United States will lift its warning. American diplomats strongly deny a *quid pro quo*; “the two are not connected and never have been.”²³ But according to officials, a travel warning is issued when a security threat is credible, specific, and not counterable by existing security measures; if these measures could be improved, the threat could be countered and the warning could be lifted.²⁴ This logic suggests an indirect relationship between the two issues, but does not guarantee that action in one area would lead to change in the other.

¹⁹All State Department travel warnings and public announcements for Kenya since 2002 can be accessed at <http://www.expataxchange.com/tvfall.cfm?networkid=159>.

²⁰Short-term advisories also were issued in late 2005 for the constitutional referendum, in early 2007 when there was allegedly a specific threat on Mombasa, and in early 2008 during post-election violence.

²¹Interview with Jake Grieves-Cook, Kenya Tourist Board chair, Nairobi, November 30, 2005.

²²Ibid.

²³Interview with Ambassador Johnnie Carson, former U.S. ambassador to Kenya, Washington, DC, June 29, 2005.

²⁴Interview with Michael Fitzpatrick, political counselor at the U.S. Embassy, Nairobi, September 26, 2005.

Article 98 Agreement

Kenyan resistance to U.S. initiatives extends into domains beyond the “war on terror,” but with implications for its implementation. Since the establishment of the International Criminal Court (ICC), the Bush administration has been pushing governments to sign Bilateral Immunity Agreements (BIAs) that protect Americans from prosecution before the court, which opponents fear will be used for political purposes. In 2002, Congress passed the American Servicemembers’ Protection Act (ASPA) requiring the suspension of two categories of military assistance to countries that are party to the ICC but have not signed BIAs, also known as Article 98 agreements. The International Military Education and Training (IMET) program trains foreign military officers and Foreign Military Financing (FMF) funds allow friendly governments to purchase weapons and equipment. In 2005, the Nethercutt amendment to the U.S. foreign aid bill extended the aid suspension to include Economic Support Funds (ESF) to some governance projects.

Kenya is one of six African countries that have refused to sign an Article 98 agreement with the United States. In accordance with the above legislation, the United States suspended \$7.8 million of aid to Kenya in FY 2005 and another \$9.2 million in FY 2006.²⁵ Despite heavy pressure from American officials and the cancellation of several programs, there is proud consensus among Kenyans in resisting this U.S. demand. According to a senior official in the Kibaki government, “Kenya will not sign. The Kenyan parliament is very united on this, and it’s not united on much.”²⁶ Some Kenyans argue that existing agreements between the two countries already protect Americans in Kenya from being turned over to the ICC. Former Minister of Foreign Affairs Raphael Tuju made clear that the government would rather side with European countries, most of which also have refused to sign BIAs.²⁷

In 2006, U.S. officials recognized that their demand for Article 98 agreements may in fact hinder the “war on terror.” Pentagon officials in particular expressed frustration that the required ICC-related cuts “are shortsighted and have weakened counterterrorism efforts in places where the threat...is...most acute” (Mazzetti 2006). They cited Kenya, where funding cuts prevented the government from buying equipment and training troops for counterterrorism operations. In September 2006, Congress passed an amendment exempting IMET funds from being cut under ASPA. In November 2006, President Bush waived the ESF suspensions to 14 countries, including Kenya. Given the prevailing attitude in Nairobi, and the resumption of most categories of U.S. assistance, it is unlikely that Kenya will sign an Article 98 agreement anytime soon.

Recent Events in Somalia

The latest hurdle to emerge in U.S.-Kenyan relations is the unfolding situation in Somalia, which is directly related to the “war on terror.” For historical and political reasons, Kenya has long been involved in conflict resolution efforts for neighboring Somalia. After a series of failed negotiations during the 1990s, Kenya hosted regional peace talks that ended with the establishment of a Transitional Federal Government (TFG) in late 2004. The TFG finally relocated

²⁵These numbers were calculated by comparing the requested and actual funding levels for IMET, FMF, and ESF each year in the *Congressional Budget Justification for Foreign Operations*.

²⁶Interview with Honorable Moses Wetang’ula, Assistant Minister for Foreign Affairs, Nairobi, June 16, 2006.

²⁷“On the Spot with Julie Gichuru,” NTV Television, May 4, 2006.

in mid-2005 to Baidoa, about 150 miles northwest of Mogadishu, but continuing violence and insecurity in Somalia made it difficult to establish control.

In early 2006, an Islamist movement started gaining support in southern Somalia. While Kenya continued to back the weak TFG, the United States instead channeled funds to a coalition of Somali warlords.²⁸ U.S. officials worried that an Islamist victory would lead to a terrorist safe haven in the strategic Horn of Africa. Critics argued that U.S. involvement actually generated support for the Islamists among a largely anti-American population. In June 2006, the Union of Islamic Courts (UIC) took power in Mogadishu and the U.S.-backed warlords fled. Somalis celebrated the Islamist victory, particularly the restoration of law and order, though there were grumblings about several harsh decrees. Meanwhile, the remnants of the TFG stayed holed up in Baidoa, protected by Ethiopian troops.²⁹

Initially, Kenyan officials were upset by the U.S. decision to back warlords rather than the TFG, whose formation had cost so much time and money. Then, after the Islamists assumed control, the United States organized the International Somalia Contact Group with representatives from the European Union, Italy, Norway, Sweden, Tanzania, and Britain. Kenyan officials felt snubbed at the time: "We have tried to engage the U.S. on the issue of Somalia without success. Now they have called everyone except [us].... This kind of exclusive conduct is not helpful."³⁰ In the following months, however, U.S.-Kenyan cooperation on Somalia increased and Kenya was added to the Contact Group.

In December 2006, with U.S. backing, Ethiopian troops took the Somali capital and restored to power a weak TFG with little popular support. The Islamists scattered and fled, preparing for future attacks. The United States and Ethiopia launched air strikes on suspected Al-Qaeda operatives in southern Somalia in early 2007. Kenya closed its border and sent additional security personnel to capture Islamist leaders and warlords trying to get into the country. In March 2007, under the African Union banner, Ugandan peacekeepers arrived in Mogadishu, where they were attacked by Somalis opposed to foreign intervention.³¹ As the violence in Somalia escalated, observers questioned U.S. motivations in the region. A well-respected Kenyan columnist and former UN official wrote, "The best antidote to terrorism in Somalia is stability. Instead of engaging with the Islamists to secure peace, the United States has plunged a poor country into greater misery in its misguided determination to dominate the world" (Lone 2007).

Developments in Somalia directly affected Kenya. In its effort to capture fleeing Islamists, the ATPU arrested hundreds of people, renewing allegations by Muslim leaders and human rights activists of profiling and mistreatment. More than 100 people arrested in Kenya, including one American citizen, were deported to Somalia and subsequently turned up in Ethiopian prisons, where some claimed to have been questioned by U.S. agents (Mitchell 2007). The United States denied involvement, having never had custody of the suspects, but many viewed this as another method of extraordinary rendition. There were also reports of U.S. Special Forces operating in northeastern Kenya (Gordon and Mazzetti 2007), though the government denied these allegations. As criticism rose and elections brought such issues to the forefront, it was unclear how long Kenyan cooperation in Somalia would last.

²⁸U.S. officials reportedly disagreed on this issue; State Department officials, including several in Nairobi, protested as CIA agents delivered cash to Somali warlords (Hirsh and Bartholet 2006).

²⁹The complicated history of relations between Ethiopia and Somalia cannot be explored here, but it is clear that many Somalis have not welcomed the presence of Ethiopian troops in their country.

³⁰Interview with Honorable Moses Wetang'ula, Assistant Minister for Foreign Affairs, Nairobi, June 16, 2006.

³¹This prompted debate in Uganda about whether their government was simply doing mercenary work for the United States (*The Monitor (Uganda)* 2007).

Democracy and Fighting Terrorism

Recent relations between the United States and Kenya have been marked by both cooperation and contention. Interestingly, the areas in which the Kenyan government has cooperated most with the United States are largely within the bureaucratic and security (i.e., nonpolitical) realms. With few exceptions, law enforcement coordination and information sharing take place behind the scenes. Thus, a great deal of Kenya's involvement in the "war on terror" has been kept out of the public eye. As one Kenyan academic explained, "the anti-terror machine in the Office of the President is collaborating with the U.S. like this [interweaves fingers], but it's very secretive."³² In contrast, on issues that are more visible (anti-terrorism legislation, Article 98 agreement, etc.), Kenyan officials are less willing to go along with U.S. preferences. This pattern is a result of the recent process of democratization in Kenya, which was promoted by the United States. In their effort to win votes, Kenyan politicians struggle to maintain support among voters who are increasingly wary of U.S. interests.

Why are Kenyans reluctant to cooperate with the United States in the "war on terror"? First, after years struggling against an authoritarian regime, many Kenyans feel empowered in the new political context. The NARC victory in 2002 generated excitement and hope; a poll at the time found people in Kenya to be the most optimistic among all 58 countries surveyed (Gallup International 2003). This sense of enthusiasm subsequently was tempered by political infighting, corruption scandals, and delays on constitutional reform (Holmquist 2005). Frustration with the Kibaki government soon translated into the defeat of a proposed new constitution in a 2005 referendum. Thus, twice in three years, Kenyans demonstrated their power at the polls and rejected the preferences of a sitting government, which respected the outcome. This is why the 2007 elections were so disappointing to many opposition supporters, who saw the outcome as rigged in favor of President Kibaki. Once voters had experienced democracy, they dreaded a return to the heavy-handedness and authoritarianism of the past.

The sense of empowerment that comes with democratization has affected attitudes toward the United States in that Kenyans no longer want to be told what to do. They want to be consulted and given the necessary information to make their own decisions. As a political scientist-turned-politician explained, "That's the whole idea of sovereignty. We should be able to determine what our own interests are."³³ Another outspoken MP argued, "Kenya has come of age. We accept that we're a weak economy, but that's no reason for humiliation or a condescending attitude."³⁴ This sense of prideful defiance also is reflected within the Kenyan government as members of the legislative branch seek to counterbalance the power of the president. As a powerful committee chair explained, "Parliament has become fairly independent—the executive is no longer able to get its way. So it's no longer easy [for a foreign envoy] to just come talk to the chief executive."³⁵ Increasingly, members of parliament and the Kenyan people want to have their say.

Second, the democratization process in Kenya has contributed to the mobilization of the Muslim community. Muslims represent roughly 15% of the population (though that figure is debated), and most are concentrated in Coast and Northeastern Provinces. Despite a rich history, Muslims were politically and

³²Interview with Professor Michael Chege, Nairobi, October 3, 2005.

³³Interview with Honorable Member of Parliament Professor Peter Anyang'Nyong'o, Nairobi, June 12, 2006.

³⁴Interview with Honorable Member of Parliament Paul Muite, Nairobi, November 9, 2005.

³⁵Ibid.

economically marginalized in Kenya's postindependence politics. The calculus has changed since the transition to multiparty competition in the 1990s, though, and the requirement that presidential candidates win 25% of the vote in five of eight provinces; suddenly, the Muslim vote is important, especially in two provinces. Without overestimating its power, the Muslim community clearly has gained a voice in Kenyan politics (Oded 2000; Wolf 2000). Recognizing this reality, the leading candidates in the 2007 presidential elections solicited support from Muslim leaders during their campaigns.

Despite claims by some U.S. policy makers, there is little evidence that Islamic radicalism has gained much support among Kenyan Muslims (Haynes 2005; Rosenau 2005). The recent mobilization of the Muslim community in Kenya is motivated primarily by local concerns (political inclusion, economic development, etc.), not by global issues (Seesemann 2005), and Muslim activism should not automatically be interpreted as radicalism. This is not to deny that a small number of Kenyans have been involved in extremist groups, a fact that Kenyan officials are reluctant to admit. Ideologies from the broader Muslim world also have found support in some circles, and Iran in particular has developed a network in Kenya (Oded 2000). On the whole, however, Kenyan Muslims have largely rejected militant methods and extremist ideology.

Until recently, Muslims in Kenya also have not been particularly anti-American, but the presence of FBI agents and U.S. Marines along the coast has left them feeling targeted. The chair of the Supreme Council of Kenyan Muslims explained, "It is the American government that has sowed the seed of being hated. When Mr Bush says, 'this is a crusade' or 'you're either with us or against us,'...When you are told, 'You are bad, you are our enemy,' then we become your enemy."³⁶ Muslim leaders were grateful for a special Fulbright program that brought scholars from their community to the United States, suggesting that small efforts can go a long way. Meanwhile, Muslims continue to take advantage of political openings to make their opinions heard. In March 2007, leaders in Mombasa organized a massive protest against Kenyan cooperation in the "war on terror" but cancelled at the last minute, in part over concerns they would be blamed for any violence during the World Cross Country Championships.

A third reason for the reluctance of Kenyans to cooperate in the "war on terror" is that they generally view the concept of security much more broadly than that implied by U.S. policy. While American policy makers focus on international terrorist networks, a survey showed that Kenyans "perceive their individual security endangered less by terrorists than by AIDS, local criminals, and car accidents" (Krause and Otenyo 2005:99). As a seasoned human rights activist explained, "Americans have dealt with their own personal security [the Embassy], but not with common criminal security."³⁷ Kenyans are more worried about criminal activity that affects their daily lives than about the small chance of an Al-Qaeda attack at their home or workplace.

Despite warnings that the United States should not allow terrorism to dominate its agenda in Kenya (Carson 2003), the U.S. Embassy states clearly that its top priority is counterterrorism.³⁸ This emphasis on terrorism above all else has angered many Kenyans, who argue that the whole package must come together. In fact, U.S. economic assistance to Kenya increased from \$114.3 million in 2002 to \$209 million in 2006. Much of this increase was due to a \$200 million initiative under the President's Emergency Plan for AIDS Relief (PEPFAR).

³⁶Interview with Professor Abdulghafur El-Busaidy, chair of the Supreme Council of Kenya Muslims, Nairobi, June 13, 2006.

³⁷Interview with Maina Kiai, chair of the Kenya National Commission on Human Rights, Nairobi, May 15, 2006.

³⁸Interview with Ambassador William Bellamy, Nairobi, March 27, 2006.

American diplomats have continued to discuss good governance and other issues. As long as top billing is given to terrorism, however, cynical Kenyans will view investment in other areas as thinly veiled attempts to buy support in the “war on terror” instead of genuine interest in economic and political reform.

Fourth, despite the history of attacks, Kenyans still see terrorism largely as an American (or Israeli) problem. In this view, Kenyans are just collateral damage in a conflict between these countries and terrorists. Kenyans are not involved nor are they the intended targets; they are innocent bystanders. Without the recognition of terrorism as a local problem, there is little homegrown demand for stronger counterterrorism measures. These sentiments are reflected among senior government officials as well, with few willing to acknowledge any link between their policies and the terrorist threat (though they readily assign blame to U.S. policies). As long as influential figures in the Kenyan government continue to see terrorism as a foreign problem, U.S. efforts to obtain cooperation in the “war on terror” are unlikely to yield consistent results.

Finally, Kenyan resistance to U.S. demands is driven in part by international influences. After years of distancing themselves from Europe in some respects, many Kenyans now side with their European counterparts in criticizing the United States. Perhaps even more important is the growing influence of China throughout Africa. In Kenya, prominent billboards, radio and television programming, and a new Confucius Centre all demonstrate the high level of Chinese interest in the country. Kenyan politicians and people alike see China as an alternative ally whose presence allows them to stand up more easily to traditional Western partners.

In the end, though, Kenyan reluctance to cooperate fully with the United States in the “war on terror” may be more rhetorical than substantive. Kenyan politicians rail against the United States in public, but privately acknowledge the need for anti-terrorism legislation in a country that has suffered several attacks. They also understand the U.S. obligation to warn its citizens by issuing travel advisories.³⁹ Similarly, polls suggest that the Kenyan public is more sympathetic to U.S. interests than recent rhetoric would imply. Among 25 countries in one poll, Kenya was third in terms of favorable ratings of the United States; 70% of Kenyans surveyed had a mainly positive view of the U.S. influence in the world (*BBC World Service*, 2007). Clearly, most Kenyans are not wildly anti-American.

In many ways, in fact, Kenyans are reluctant to cooperate with U.S. policy not because they *reject* American values but rather because they *embrace* them. In 2006, university students conducted a survey of 420 Kenyans.⁴⁰ A plurality of those questioned approved of the way the United States is waging the “war on terror” (48%) and thought the United States was right to remove Saddam Hussein (45%). Several respondents said that someone needs to stand up to terrorists and the United States is most capable of doing so.⁴¹ More broadly, 55% agreed that the United States promotes democracy and human rights in Africa and 50% saw American democracy as a good model for other countries. This is probably a result of U.S. democracy promotion efforts in the 1990s, which had long-term positive benefits for its image among many Kenyans. A majority said they would like to visit the United States someday (66%) and thought the United States provides good opportunities for Kenyans (69%). Moreover, 85% of respondents agreed that it is

³⁹Interviews with Honorable MP Muite (November 9, 2005), Honorable MP Anyang’Nyong’o (June 12, 2006), and Maina Kiai (May 15, 2006).

⁴⁰The author worked with four Kenyan undergraduates to design and implement a survey on Kenyan attitudes toward the United States. The poll was conducted mainly in Nairobi, but respondents came from all regions of Kenya. Of those surveyed, 68% were Christian, 17% were Muslim, and 5% were Hindu.

⁴¹Some of the support expressed for the U.S. “war on terror” may be a result of a continuing anti-Muslim bias among many Christians.

important for Kenya to maintain good relations with the United States. These results suggest some level of support for U.S. goals, including both promoting democracy and fighting terrorism.

While Kenyans may sympathize with U.S. goals, they do not always like the way in which policies are pursued. In the same survey, 61% said that the United States is arrogant and pushy in its interactions with other countries. Nearly 73% said the U.S. travel warning is wrongly penalizing the Kenyan economy. On the anti-terrorism bill, 46% said that it is being forced on Kenya by the United States. As suggested earlier, 73% believe that Kenya has been a victim of terrorism because of its friendship with the United States. Many Kenyans apparently distinguish between what the United States *is* and what it *does* (Katzenstein and Keohane 2007), suggesting that their attitudes could change as U.S. policy changes.⁴² In the meantime, the “war on terror” threatens to tarnish the U.S. image among Kenyans.

The recent process of democratization in Kenya, therefore, has created a context in which politicians find it popular to resist U.S. demands on issues that are highly visible, while continuing to cooperate in areas that receive less attention. Many Kenyans support U.S. foreign policy goals in principle, but are frustrated with a Bush administration style that demands rather than negotiates, targets certain population groups, and pushes a narrow view of security. Politicians who stand up to the “bully on the block” get coveted media attention, gain popular support, and foster a sense of pride. Indeed, the opposition’s success in the 2007 parliamentary elections would seem to be based at least in part on support from Kenyans who were critical of the Kibaki government’s cooperation with the U.S. “war on terror.” Thus, the very same democratic system that the United States promoted in Kenya has now made it difficult for the United States to secure complete cooperation in the “war on terror,” at least in the short term. But Kenyans generally hold positive views of the United States and share similar values, suggesting that they could be a reliable partner over the long term.

Conclusion: Kenya and Beyond

The tension between fighting terrorism and promoting democracy is playing out in U.S. foreign policy. Recent experience in Kenya suggests that the two do not necessarily go together. As a victim of terrorism, Kenya is a crucial ally in the “war on terror,” but as a transitional democracy, its willingness to cooperate with the United States is mixed. Kenyan officials work with American counterparts to investigate past incidents, identify terrorist cells, and strengthen law enforcement. These activities are conducted by security personnel and largely removed from public debate. In contrast, Kenyan leaders are reluctant to cooperate with the United States on issues that receive more public attention; instead, they gain popular support by resisting U.S. preferences. This finding is consistent with the argument that counterterrorism measures in democracies are constrained, but suggests some variation depending on levels of public awareness. In this context, popular opinion is seen as a problem by advocates of a more aggressive approach.

Just as democratic pressures have limited Kenyan cooperation in the “war on terror,” counterterrorism efforts may have hindered the process of democratic consolidation. U.S. support has strengthened Kenyan military and police vis-à-vis other actors, including parliament⁴³ and civil society. The implicit alliance of

⁴²To the extent that recent rhetoric in Kenya reflects negativity toward the United States, it is largely along the lines of what Katzenstein and Keohane (2007) call “liberal anti-Americanism,” which criticizes the United States for not living up to its ideals. Of course, some people question whether this constitutes anti-Americanism at all since many Americans themselves share such concerns.

⁴³A U.S.-funded program to build capacity in the Kenyan parliament was cut because of the Article 98 issue.

U.S. and Kenyan security personnel contrasts sharply with the 1990s, when the United States was informally allied with civil society, and threatens the balance of political forces in the country. Kenya's cooperation in some aspects of the "war on terror" also generates anti-government opposition and fuels anti-American rhetoric. Like in other countries (Croissant 2007; Gutelius 2007), Muslims feel especially targeted by a U.S.-backed approach that exaggerates the extremist threat and fails to recognize legitimate political concerns (Prendergast and Thomas-Jensen 2007). As the government navigates competing internal and external pressures, images of the United States as a champion of democracy are fading.⁴⁴

Kenya is not alone in its reluctance to cooperate with the United States. In Africa, elected leaders in historically friendly countries like South Africa, Senegal, and Tanzania have taken pride in asserting their independence on issues from the war in Iraq to international trade. But despite their refusal to implement several U.S.-backed initiatives, these countries remain some of the United States' closest allies on the continent. They are among the more democratic countries in the region and their citizens share similar values, including a desire to protect freedoms they only recently won. The latest U.S. proposal to generate controversy is the creation of an African central command (AFRICOM).⁴⁵ Many Africans worry about the securitization of U.S. policy that the plan represents. Critics argue that the United States values its own security over good governance, democracy, and development in Africa. There is growing concern that the "war on terror" will once again undermine these priorities, much like the Cold War did in past decades.

Outside Africa, other transitional democracies have demonstrated similar patterns of private cooperation and public contention in relations with the United States. South Korea had the third-highest number of troops in Iraq, but political debates have prevented the passage of anti-terrorism legislation. Filipino President Gloria Arroyo's government has cooperated actively on security and intelligence, while her opponents in the Senate blocked related legislation for four years. Indonesian President Susilo Bambang Yudhoyono has taken a strong stance on terrorism, but courts have overturned several convictions and the parliament has yet to update laws. Former Thai Prime Minister Thaksin Shinawatra "quietly aided the U.S. anti-terrorist campaign, while trying to keep it hidden from a critical Thai public" (Thompson 2004:1088). In these cases and others, leaders have privately cooperated with the United States, while public debate has continued over the implications for civil liberties and democratic consolidation.

The reluctance of transitional democracies to cooperate with the United States in the "war on terror" suggests the need for a new approach. The current emphasis on counterterrorism above all else (including democracy) is complicating relations with one-time allies and undermining their support at home, bringing into question future cooperation on a range of issues. In countries like Kenya, where moderate forces predominate and the United States continues to get some positive ratings, there is still a chance to change course. A renewed emphasis on democracy promotion would recognize the legitimate concerns of these populations and take away the message that American interests are more important. Suspicion of U.S. motivations would likely decline, thus paving the

⁴⁴The United States may have improved its pro-democracy image in Kenya in the aftermath of the controversial 2007 elections. After retracting its initial recognition of Kibaki's reelection, U.S. officials put significant pressure on government and opposition leaders to negotiate a power-sharing agreement. This pressure was appreciated by most Kenyan observers, though it has yet to be seen whether the positive feelings will last.

⁴⁵The decision, announced by the Bush administration in February 2007, reflects growing U.S. concern about terrorism, oil resources, and Chinese influence in Africa.

way for the identification and pursuit of common interests. Admittedly, this might not work as well in countries where extremism has taken hold and anti-American attitudes are strong. Even in places like Pakistan, however, there is reason to believe that moderate elements may ultimately prevail through democratic processes (Markey, 2007).

By emphasizing democracy and recognizing domestic political concerns, the United States may be surprised at the level of cooperation it receives on various issues, including perhaps counterterrorism. Leaders in these countries can no longer force their policies through rubber stamp legislatures; policymaking now involves consensus building among civil society, the media, and elected representatives. U.S. officials must engage all of these groups if they want to build support for their proposals. This involves collaboration and compromise, and at times stepping back altogether. Once people are given the opportunity to build consensus around their own ideas, it is possible that the resulting policies will resemble U.S. preferences. In South Africa and the Philippines, for example, lengthy parliamentary debates and public controversy (full of anti-American rhetoric) ultimately led to the passage of anti-terrorism laws that enhance law enforcement powers while protecting civil liberties and constitutional rights.

In the end, the twin U.S. foreign policy goals of promoting democracy and fighting terrorism may conflict with one another in the short term, as newly elected governments resist imposing restrictive policies to counter terrorist threats. Even so, citizens in most transitional democracies share with the American people (if not always their government) similar interests in freedom, democracy, and peace. They do not reject American values; they embrace them. As they increasingly assert their own voices in the international community, these countries could become true partners with the United States, rather than reluctant subordinates. To get to that point, the United States might have to compromise on its demands at times and alter its rhetoric in the “war on terror” so that complementary policies can emerge through domestic political processes. In such countries, prioritizing democracy over counterterrorism for now may in fact contribute to both goals in the future.

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