

The Reform Agenda and Kenya's Historic Opportunity
Speech to the Law Society of Kenya
By
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Thank you for inviting me to speak today. It is an honor to address Kenya's legal community and to share ideas about the way forward at this critical juncture in the country's history.

Historic Opportunity for Fundamental Change

Recently a commentator in one of the leading newspapers asked "who will save us from the abyss?" Kenyans across the political, social, and ethnic spectrum are expressing profound concerns about whether the country is headed toward another crisis in the lead-up to the 2012 elections. Having recently been in Washington, I can testify that President Obama shares these concerns. Kofi Annan reflected these preoccupations during his most recent visit when he referred to the Kenyan people's crisis of confidence in the leadership of their country. In all corners of Kenya, one hears intelligent appreciation of what must be done to avert a crisis: full implementation of the reform agenda to which the coalition government committed itself. The progress – or lack of it – on implementation of the reforms and what can be done to encourage and support implementation are, therefore, the most urgent issues facing the nation.

Kenya is at a crossroads. The window is fast closing for the meaningful reforms Kenya must undertake in order to avoid a repeat of the 2008 violence – or worse – and to ensure a stable and prosperous democratic future. To paraphrase the American poet Robert Frost, Kenya faces two divergent paths. One leads back to conflict, economic crisis, and the ruin of innocent lives. The other leads to a more stable, prosperous, and open society in which corruption and impunity are no longer tolerated. It is the determination to take the path less traveled that will indeed make all the difference for the future of this vibrant country.

The Law Society of Kenya is a well-respected and unique organization in that its members represent all facets of Kenya's legal community. You come from all the regions and ethnic communities of Kenya, and collectively represent a brain trust of remarkable expertise. Among your members are many of the prominent officials charged with overseeing key portions of the reform process, including the Chairperson of the Independent Boundary Review Commission; the Chairperson and six of the members of the Committee of Experts on the Constitution; the Vice Chair of the Truth, Justice, and Reconciliation Commission; members of the Police Reform Task Force; and a number of Members of Parliament who chair important committees. You have in the past played a very critical role in charting the path that this country has taken in the democratization process. You continue to be a beacon of hope for many Kenyans. I urge you to increase your engagement in support of the reform process, including encouraging and supporting

your colleagues who occupy these important reform-minded positions to put their hearts and minds without reservation into the tasks before them for the benefit of Kenya.

The reform process is the most urgent issue for the international community's relations with Kenya, because the United States and all Kenya's partners want to see a stable and prosperous democratic future for this country. President Obama knows the impressive quality of the people of Kenya and the great potential of this country. That is why he and his Administration are pushing hard to ensure that Kenyans seize the opportunity, opened up by the crisis last year, to bring about fundamental change. We will not relent.

Progress Overshadowed by the Culture of Impunity

In considering the challenges Kenya faces today, let me pause to take stock of what has been achieved. Since independence Kenya has had an upward trajectory marked by important milestones: independence, the establishment of multi-party democracy, the smooth transition between former President Moi and President Kibaki, the holding of the first truly democratic election in Kenya's history; and the subsequent achievement of an unprecedented 7 percent rate of growth, to name only some.

And yet, the culture of impunity has hung like a dark cloud over the country, retarding growth. How much greater could Kenya's trajectory have been? True turning points in history are rare and even more rarely understood at the time. But Kenyans and foreign observers alike can all see that Kenya is at such a turning point. Can leaders seize the opportunity to end the culture of impunity and launch a process of fundamental change through implementation of the comprehensive reform agenda?

I believe that the Kenyan people are determined to see this done, and that makes me positive about the future of the country. At the same time, I am realistic and recognize that tackling the culture of impunity requires a Herculean effort. I know that there are strong and influential vested interests which are fighting against change through political manipulation and corruption, through intimidation, and even through violence.

That is why it is essential to encourage people to press their leaders – and the entire political class – to move rapidly to implement the reform agenda. Democracy only works effectively when people clearly and peacefully make their views known to their elected leaders. President Kibaki and Prime Minister Odinga and parliamentarians need to hear a more concerted message from the Kenyan people on the importance of implementing reforms. You can exert leadership to help mobilize that concerted message.

The coalition government has been in office for almost 18 months, since the Cabinet was formed in May of 2008. There have been some achievements, but much more should have been accomplished, and must be accomplished within the next 8-12 months. If not, the window of opportunity to bring about fundamental change will be lost – as most Kenyans already realize – with dire consequences for the nation.

On the positive side, the electoral commission was disbanded and the Interim Independent Electoral Commission was set up. The Waki and Kriegler Commissions delivered credible, detailed reports laying out a roadmap for key reforms. The Truth, Justice, and Reconciliation Commission has been established, as well as the Boundary Commission. And there have been some other modest steps as well.

Perhaps most importantly, the government has signaled its intention to implement far-reaching police reform, and has begun the process by changing the police leadership. This, coupled with the resignation of the Director of the Kenyan Anti-Corruption Commission (KACC), opens the possibility for real reform to make the legal system more effective, unbiased, transparent, and corruption-free. We have made clear that we will maintain pressure for implementation of the entire reform agenda, but that we will support reforms when they are undertaken and backed by real and sustained political will.

Fundamental Reforms

While acknowledging some progress, the most important reforms that are needed to end the culture of impunity and to ensure future democratic stability and prosperity have either not been implemented or are moving at an alarmingly slow pace which mitigates in favor of the status quo.

- No steps have been taken to hold accountable the principal perpetrators of post-election violence.
- Decisive, bold steps against corruption have not been launched.
- Far-reaching judicial reform has not been undertaken.
- The Attorney General's office remains an obstacle to effective anti-corruption efforts and thus to reform.
- The constitutional revision process is moving slowly and could prove disastrously divisive unless the coalition partners cooperate to support key changes.
- Major and complex issues relating to districts, the census, and preparation of a new voter list must be resolved.

Each element of these reforms is vital to Kenya's future.

Constitutional Revision

Meaningful and comprehensive constitutional revision is crucial to create a framework in which all Kenyans can compete without fear that any ethnic group or community will be disadvantaged. The election of the NARC government in 2001 and the peaceful transition of power was a time of hope and expectation in Kenya. The biggest expectation was the one call that brought NARC to power: the promise to deliver a new constitution. If a new constitution had been passed that addressed important issues effectively, it might have prevented or solved a number of divisive problems now facing this country. I agree with the increasingly unified voice of Kenyans who are insisting that it is critical to have a new constitution now, and not at some undefined future date. In addition, that constitution must address the difficult issues head-on, including the

structure of executive power, the system for devolution, and judicial independence. The Law Society of Kenya, due to the talents and abilities of its members, has been at the forefront of constructive dialogue on constitutional reform for many years. I urge you now to redouble and revitalize your energies in this direction so that this historic opportunity is not lost.

Rule of Law

Rule of law reform is essential to assure Kenyans that everyone regardless of their class, social status, or ethnicity will be protected and given justice. Public perception that the court system lacks impartiality and is riddled by corruption is a major concern. Because all the elements of the criminal justice system are interdependent, police and judicial reforms are closely linked. We are encouraged that the government appears to recognize that the culture of policing in Kenya needs to undergo some fundamental changes in order to better serve the Kenyan people and to be in line with modern international policing standards. I have told the government that the United States is ready to support reform of the police if the Task Force recommendations are implemented, and that we will provide assistance to make the Kenya Anti-Corruption Commission more effective if credible new leadership is chosen through a transparent process. Among the most important police reforms are the establishment of effective internal and external oversight mechanisms to curb corruption and human rights abuses, and the establishment of a Police Service Commission. Extrajudicial killings must be fully investigated and stopped.

Accountability

Bringing inciters and financiers of violence to account is vital to send a strong message to those who choose to think that violence is a viable strategy to influence the political process. Kenya needs to become a place where it is no longer politically acceptable or advantageous to exploit and worsen inter-ethnic tensions, to pay voters or youths to carry out acts of violence, or to organize local militias with the express purpose of terrorizing and punishing innocent citizens. We continue to urge that a credible independent Special Tribunal be established in Kenya and that Kenya fully cooperate with the International Criminal Court to investigate and prosecute those suspected of orchestrating and supporting post-election violence.

Kenya in the Globalized World

In today's globalized world, no leader or nation can stand alone. Every leader and nation, whether commenting on global issues or the situation in another country, must do so while acknowledging that his or her own country is not immune from criticism. This is perhaps especially true of the United States for, as President Obama has stated, to whom much has been given much is expected. The world rightly comments on our shortcomings – whether with respect to the continuing challenges we face to achieve true racial equality, with respect to the growing disparity in income between our rich and our poor, with respect to abuses of detainees at Abu Ghraib and Guantanamo, or with respect to our foreign policy, just to name a few issues. Profoundly cognizant of our own

limitations, we seek to play a responsible global role based on the mutual interests that we share.

Kenya and the United States have long shared a deep friendship and partnership based on the extensive ties between our people and, increasingly, on shared democratic values. It is within this context and in this spirit that we speak out about the reform agenda and its vital importance to Kenya's future.

Today I reiterate the calls of Secretary of State Clinton and President Obama for Kenya's leadership to listen to the voices of its people and to undertake implementation of the key reforms I have listed above with a much, much greater sense of urgency. All of us know what must be done. There is no more time for commissions, rhetoric, obfuscation, and half-steps.

U.S. Efforts to Propel Reform

Our efforts to press for implementation of reforms are both private and public. Privately, we are maintaining intensive dialogue with the coalition leadership, parliamentarians, and actors across the political, social, and economic landscape. That dialogue is frank and constructive. Publicly, we are continuing to encourage the Kenyan people to press peacefully for implementation of reforms. We are involved in a number of other activities aimed at promoting implementation of reforms. These include expanded outreach to Members of Parliament; support for independent grassroots youth organizations; and intensified contacts with civil society, the private sector, the media, and religious organizations, to name only a few. We are providing millions of dollars to support the reform agenda, including technical and financial assistance to Parliament, civil society, land reform, the Interim Independent Electoral Commission, and constitutional reform, among other areas. In the coming weeks we will be announcing new initiatives to expand this engagement: through increased support for grassroots youth organizations, empowerment of women, increased support for reform-minded parliamentarians, and expanded dialogue with civil society. As the elite representatives of Kenya's legal profession, you have a special responsibility to employ your expertise to support and press for implementation of the reform agenda.

In *Wizard of the Crow*, the great Kenyan writer Ngugi wa Thiong'o's magical, spellbinding novel about Kenya -- thinly disguised as another fictional African nation -- he writes of the heroine: "Helpless, she sought, as usual, solace in work, burying herself even more deeply in the day-to-day details of the People's Assembly, rallying around the call for the return of their (the people's) collective voice. Their activities would climax in a day of self-renewal during which the people would...renew their vows to step up efforts to steer the country in a different path." Most Kenyans I talk with say that their country is in a state of crisis right now, and that the country needs to move in a different path -- towards fundamental change. Thankfully, Kenya is not burning, but these Kenyans rightly sense that the historic opportunity to bring about fundamental change and to avoid a repeat of the crisis last year will be lost without urgent implementation of the reform agenda. Yet, in the absence of a dramatic crisis, along the lines of what

Kenyans experienced last year, it is hard to mobilize in a concerted way to exert peaceful pressure for change. It is important that all Kenyans who want to see peaceful change come together in a more coordinated fashion to send an unequivocal message to the entire political class on the need for reform.

I have repeatedly observed that the crisis last year was resolved by the Kenyan people precisely because they came together in a concerted way, with the help of the United States, Kofi Annan and the Eminent Persons, and other international friends. The United States could only play the helpful role it did because we were supporting the Kenyan people. Neither we nor others can impose an outside agenda for change. The reform agenda was drafted by Kenya's leaders – and now the Kenyan people must hold those leaders accountable for its implementation.

Secretary Clinton and President Obama have both stated that we will not do business as usual with those who do not support reform or who support violence. Thus, earlier this week Assistant Secretary for African Affairs Johnnie Carson – a great friend of Kenya – announced that the United States has imposed a visa ban on a very senior Kenyan government official, and that we are considering a number of such visa bans. We will take additional actions if the reform agenda does not move forward.

Our President, a son of Kenya, wants to see a stable and prosperous democratic future for this nation. No true friend of Kenya, no true Kenyan patriot can want anything less. Failure to grasp the historic opportunity Kenya now has in its hands would be unconscionable. To take up this challenge and carry out reforms will require heroic leadership and responsible pressure by the Kenyan people. This is a daunting task. Some would say that the odds are stacked against success, but I reject that categorically. The Kenyan people rose to the unprecedented challenge they faced last year, and I am confident that they will do so again, with the support and encouragement of their friends. Today we can see a growing awareness by Kenyans of the need for change, and dynamics shifting in the direction of reform. These dynamics include a more assertive Parliament, more constructive activism by youth, and a citizenry that is more outspoken. Kenya has no greater relationship than with the United States, and thus we have a great responsibility to engage to our utmost to help Kenyans build a stable democratic future in which the well-being of all will be advanced through shared prosperity.

Thank you.